

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION**

SAVANNAH RIVER SITE WATCH, TOM	)	No. 1:21-cv-01942-MGL
CLEMENTS, THE GULLAH/GEECHEE	)	
SEA ISLAND COALITION, NUCLEAR	)	
WATCH NEW MEXICO, and TRI-VALLEY	)	<b>DECLARATION OF DON R.</b>
COMMUNITIES AGAINST A	)	<b>HANCOCK, IN SUPPORT OF</b>
RADIOACTIVE ENVIRONMENT,	)	<b>PLAINTIFFS' BRIEF IN REPLY</b>
Plaintiffs,	)	
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF	)	
ENERGY, JENNIFER GRANHOLM, <i>in her</i>	)	
<i>official capacity as the Secretary,</i>	)	
NATIONAL NUCLEAR SECURITY	)	
ADMINISTRATION, and JILL HRUBY, <i>in</i>	)	
<i>her official capacity as Administrator,</i>	)	
Defendants.	)	
	)	

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I, Don R. Hancock, make the following Declaration pursuant to the provisions of 28 U.S.C. § 1746:

1. I am the Nuclear Waste Program Director at Southwest Research and Information Center (“SRIC”) in Albuquerque, New Mexico, a nonprofit organization working to promote the health of people and communities, protect natural resources, ensure citizen participation, and secure environmental and social justice now and for future generations. I have been employed by SRIC since 1975, with a principal responsibility during the past 49 years for active involvement in public policy, regulatory matters, and public information regarding the Waste Isolation Pilot Plant (“WIPP”).

2. I have read the Defendants' Brief filed on June 4, 2024, and the Exhibit A Declaration of Jill Hruby, the Exhibit B Declaration of Mark Bollinger, and the Exhibit D Declaration of Mark Brown. I provide this declaration to assist the Court in determining facts related to this matter and its relationship to WIPP.
3. WIPP was designed to operate for a limited timeframe for a limited amount of defense transuranic waste. In addition to setting a capacity limit, the WIPP Land Withdrawal Act (Public Law 102-579, as amended by Public Law 104-201) provides that the Department of Energy ("DOE") must comply with enumerated environmental laws (§ 9(a)(1)) and that the U.S. Environmental Protection Agency ("EPA") and the State of New Mexico can enforce those laws (§ 9(a)(2) and (3), § 9 (c), § 9 (d) and §14). Such enforcement can include, among other things, limiting waste coming to WIPP or requiring closure regardless of whether the capacity limit has been reached.
4. DOE's National Environmental Policy Act Record of Decision provides that WIPP will operate only through 2033. ECF No. 59-1, CT SPEIS\_34149 (WIPP to provide for the disposal of additional TRU waste "to be generated over approximately the next 35 years (through approximately 2033)").
5. I was an invited participant at the November 29, 2017 and March 12, 2018 meetings of the National Academies of Sciences, Engineering, and Medicine during the preparation of the 2020 Report ("NAS Report") that is mentioned various times in the Plaintiffs' Initial Brief and in the Defendants' Brief at pages 40-42 and 53. The NAS Report found that DOE plans for waste disposal at WIPP substantially exceed the legal capacity. ECF No. 161-4, SRS\_00092749-92750, Table 3-2. The NAS Report also specifically recognizes the possibility that WIPP may not be available for the decades into the future that DOE plans

because of the lack of necessary approvals from the State of New Mexico and EPA. *Id.* at SRS\_00092772. Four years later those approvals have still not been given.

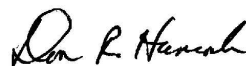
6. The Defendants' Brief and Declarations do not address those facts stated in ¶¶ 3, 4, and 5.
7. Defendants' Brief states: "...future waste from pit production at Savannah River and Los Alamos will not be mixed with legacy waste or constituents with unknown chemical origins. *Id.*; see also Ex. A ¶ 16." at 13. However, both of those sites have significant amounts of legacy waste that under existing plans will still be at those sites when pit production waste is being produced. Thus, it is speculation by Dr. Hruby in ¶ 16 that pit production and legacy waste will not be mixed. As she also states in ¶ 11, Dr. Hruby and the National Nuclear Security Administration have no authority over WIPP, which is an Environmental Management ("EM") facility. The EM principal document setting the criteria for transportation, storage, and disposal of all waste at WIPP is the Waste Acceptance Criteria (DOE/WIPP-02-3122), ECF No. 125-4, SRS\_00047142-47264. The criteria include no requirement that legacy waste and pit production waste be packaged separately. *See* Section 3, *Id.* at SRS\_00047163-00047181.
8. Defendants' Brief states: "An injury that will not materialize until, at the earliest, 2080 cannot be imminent, particularly when future congressional and administrative decisions will almost certainly materialize during this lengthy lead up." *See* Decl. of Jill Hruby ¶ 14, attached as Ex. A; Decl. of Mark Bollinger ¶ 5, attached as Ex. B." at 8-9. The scenarios outlined by the Declarants are speculative whereas the conclusion that WIPP capacity will be exceeded during the life of the proposed dual site pit production effort is based on the actual projections from Defendants. *See* ECF No. 161-4, SRS\_00092749-92750, Table 3-

2; ECF No. 160-11, 2020 Annual Transuranic Waste Inventory Report at pp. 11, 38, 43-44, 127.

9. The speculations also do not address the facts provided in ¶¶ 3 and 5 above, which can result in decisions that stop WIPP's operations even though it is not "oversubscribed." Further, as stated in ¶ 4, DOE's existing WIPP Record of Decision closure deadline of 2033 is less than a decade away, not decades into the future.
10. The Final Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement, ECF No. 81-1, at CT SPEIS\_68289, states: "In addition, use of WIPP capacity for national security missions such as pit production would be given priority in the allocation process." That prioritization has not happened. Such prioritization would be done by DOE EM, but is not mentioned as fact or even possibility in the Bollinger Declaration on behalf of EM.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 21st day of June 2024.



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Don R. Hancock