



U.S. DEPARTMENT OF
ENERGY

Environmental Conflict Resolution at the Savannah River Operations Office

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Chief Counsel

Savannah River Operations Office



EM *Environmental Management*
safety ♦ performance ♦ cleanup ♦ closure



Natural Resources Defense Council et al. v South Carolina Department of Health Control (DHEC), et al. (South Carolina Administrative Law Court, 2007)

- **Appeal of DHEC Landfill Permit for Saltstone Disposal Facility**
- **Permit crucial for tank farm operations**
- **Automatic stay when appeal filed – minimum 9 month delay**
- **Potential follow-on state and federal court litigation and stays**
- **Complex and costly discovery and hearing**



Natural Resources Defense Council et al. v South Carolina Department of Health Control (DHEC), et al. (South Carolina Administrative Law Court, 2007)

Factors favorable to reaching a settlement

- **Public support for permit from DHEC and Citizens Advisory Board**
- **DOE and intervenor WSRC's case strong on the merits**
- **Strong interlocutory motions filed by DOE and WSRC**
- **Previous successful mediation with local counsel**



Natural Resources Defense Council et al. v South Carolina Department of Health Control (DHEC), et al. (South Carolina Administrative Law Court, 2007)

Other considerations for settlement discussion

- **Who should approach NRDC and local counsel**
- **Format**
 - **Whether to use a third party neutral**
 - **National expert or respected local**
- **What DOE could offer to settle case**
- **NRDC sent a demand letter**
- **Case settled within a month**
- **Legal challenge resolved six months sooner**



Natural Resources Defense Council et al. v South Carolina Department of Health Control (DHEC), et al. (South Carolina Administrative Law Court, 2007)

Settlement

- **Waste disposal**
 - New disposal cell design
 - Permit requirements

- **Transparency**
 - Web page and other data
 - Waste Characterization System

- **Ongoing discussion**
 - 18 month meeting
 - ECR before filing suit



Natural Resources Defense Council et al. v South Carolina Department of Health Control (DHEC), et al. (South Carolina Administrative Law Court, 2007)

Environmental Conflict Resolution Clause

- **Other than challenges barred by paragraph 13 above, Petitioners agree that, before initiating a challenge pursuant to State or Federal law, including Section 3116, of future DOE actions arising out of information and matters provided as part of this Consent Order, Petitioners will meet with DOE in an effort to resolve any conflict prior to filing suit.**



Natural Resources Defense Council et al. v South Carolina Department of Health Control (DHEC), et al. (South Carolina Administrative Law Court, 2007)

Afterword

➤ 2009

- **Continued communication**
- **Tour and opportunity to view Waste Characterization System – very well received by NRDC representatives**
- **Planned close-out of Consent Agreement**



Aiken County v U.S. Department of Energy (U.S. District Court for the District of South Carolina)

- **Suit filed in 2005 because of delay in building MOX facility**
- **DOE's motion to dismiss granted because DOE had no imminent plans to ship Plutonium**
- **Discussions with County after EM decided to ship at Savannah River Site (2007)**
- **Agreement to stay case with six months review**
- **Tour for Aiken County Council in 2009 to show progress on MOX**
- **Case dismissed by Court in 2009 – NO APPEAL**



STATE OF SOUTH CAROLINA
BEFORE THE ADMINISTRATIVE LAW COURT

Natural Resources Defense Council,)
Environmentalists, Inc., Nuclear Watch South,)
Carolina Peace & Resource Center, Southern)
Alliance for Safe & Clean Energy, Blue Ridge)
Environmental Defense League, and)
Sierra Club,)

Petitioners,)

v.)

South Carolina Department of Health and)
Environmental Control, United States)
Department of Energy, and Washington)
Savannah River Company LLC,)

Respondents.)

Docket No. 07-ALJ-07-121-CC

**CONSENT ORDER
OF DISMISSAL**

I. INTRODUCTION

1. This matter is now before the Court on the joint motion of Natural Resources Defense Council, Environmentalists, Inc., Nuclear Watch South, Carolina Peace and Resource Center, Southern Alliance for Safe and Clean Energy, Blue Ridge Environmental Defense League, and Sierra Club, including all officers, members, employees, agents, representatives, and persons acting or purporting to act on behalf of these organizations (hereinafter "Petitioners"), and the South Carolina Department of Health and Environmental Control ("SCDHEC"), the United States Department of Energy ("DOE") and Washington Savannah River Company LLC ("WSRC") for entry of this Consent Order of Dismissal to dismiss the above-captioned consolidated case based on the terms provided in this Consent Order.

2. On March 16, 2007, Natural Resources Defense Council, Environmentalists, Inc., Nuclear Watch South, Carolina Peace and Resource Center, Southern Alliance for Safe and Clean Energy, and Blue Ridge Environmental Defense League filed a Request for Contested Case Hearing.

FILED

AUG 07 2007

(Docket No. 07-ALJ-121-CC) before the Administrative Law Court, challenging the January 23, 2007 decision of SCDHEC to issue Modified Permit for the Savannah River Site (SRS) Z-Area Saltstone Disposal Facility, Facility ID No. 025500-1603 (hereafter referred to as "Permit"). On March 26, 2007, the Sierra Club filed a similar Request for Contested Case Hearing for review of the same permitting decision. The Sierra Club Request was consolidated with the NRDC Request by Order of this Court dated April 18, 2007. WSRC intervened in the case as a Respondent.

3. Subsequent to the issuance of the agency's final determination and the Petitioners' requests for a Contested Case Hearing, the parties reached a settlement in resolution of the issues. The provisions of the agreement are incorporated in this Consent Order and are as set forth below. By and through their undersigned counsel, the parties enter into this Consent Order in good faith in an effort to avoid further litigation of Petitioners' Requests for Contested Case Hearing, Docket No. 07-ALJ-121-CC, without any admission or concession by Respondents and without any concurrence by Petitioners regarding Respondents' position. This Consent Order does not alter any provision of the Permit as issued on January 23, 2007 or any provision of the Federal Facility Agreement for the Savannah River Site. Further, nothing in this Consent Order relieves DOE from compliance with any of the conditions of the Permit or any provision of the Federal Facility Agreement for the Savannah River Site.

II. WASTE DISPOSAL

4. DOE agrees to limit the processing and disposal of salt waste treated by the deliquification, dissolution, and adjustment (DDA) process specified in the Permit to only that material contained in Tank 41H as of June 9, 2003 (approximately 1.23 million gallons) and associated low level waste streams used to adjust salt to meet processing requirements as described in Permit Condition A.1.a. DOE intends to treat and dispose of waste from Tank 48H through treatment and destruction of organic materials in the waste resident in Tank 48H. If treatment and

destruction of organic materials in the waste resident in Tank 48H is not feasible, DOE will request an appropriate permit modification from SCDHEC, which shall include public participation. In the event DOE applies for a permit modification or new permit to dispose of waste other than that in Tank 41H by the DDA process, NRDC will be notified of any such application at the same time SCDHEC is notified.

5. DOE agrees that future disposal cells constructed to receive treated salt waste from the Saltstone Production Facility shall incorporate the following features:

- a. a watertight design, designed to prevent water infiltration during waste emplacement and limit infiltration after closure;
- b. a high density polyethylene (HDPE) liner beneath each cell;
- c. an additional geosynthetic-clay composite liner beneath each cell;
- d. a drainwater return system within each cell that will collect free liquids in each cell and return those liquids to the Saltstone Production Facility during waste emplacement;
- e. at least an eight (8) inch concrete bottom for each cell; and
- f. a system located beneath the cell and above the geosynthetic liner beginning with Cell 3A and in every fifth cell thereafter to sample liquids, if any, for reliably detectable radionuclides and hazardous constituents. DOE will provide the results to a representative of Petitioners upon request.

The parties recognize that a permit modification may be necessary to implement the above design features.

6. To the extent that DOE uses any existing vault for the disposal of DDA material, those vaults must have the following features:

- a. a drainwater return system within each cell that will collect free liquids in each cell and return those liquids to the Saltstone Production Facility during waste emplacement; and
- b. a suitable coating applied to the bottom two (2) feet of the exterior vault walls.

DOE also agrees that the above improvements shall be fully implemented in the applicable Vault 4 cell prior to disposal of DDA-treated waste in that cell. DOE further agrees that no waste from the Saltstone Production Facility will be disposed of in the remaining three (3) cells of Vault 1 unless Vault 1 is retrofitted with the above features, which would require a permit modification from SCDHEC and would include public participation.

III. TRANSPARENCY

7. Within ten (10) working days of providing quarterly data to SCDHEC under the Permit, DOE agrees to post that data in a reasonably understandable form on a publicly accessible website. This data will present the information provided to SCDHEC under the Permit under General Conditions B.5.a-h beginning on the effective date of this Consent Order. This data will also present: (1) the chemical and radiological composition of the salt waste in the applicable feed tank (e.g., Tank 50) entering the Saltstone Production Facility beginning on the effective date of this Consent Order, (2) the formulation of grout used to treat and solidify the salt waste beginning on the effective date of this Consent Order, and (3) the chemical and radiological composition of the saltstone beginning on the effective date of this Consent Order. DOE agrees to maintain this website until the Salt Waste Processing Facility becomes operational.

8. On a semi-annual basis, DOE agrees to make available, upon request, to a representative of Petitioners: information on the radiological and chemical characterization of the waste in each tank from existing data bases and sources, with an explanation of how the data was derived; and access to the Waste Characterization System data base. DOE will use best efforts to

assist in obtaining any necessary security clearance for the Petitioners' representative. Petitioners agree to comply with all applicable non-disclosure requirements authorized by law.

9. Within ninety (90) days of the effective date of this Consent Order, DOE agrees to provide electronically to a representative of Petitioners the underlying data and assumptions used for the models of the fate and transport of radionuclides for the Vault 4 Special Analysis (performance assessment) for the Saltstone Disposal Facility. DOE will also provide to a representative of Petitioners updates, if any, to DOE's performance assessment for the Saltstone Disposal Facility within ninety (90) days of finalization of any such update.

10. Within ninety (90) days of the effective date of this Consent Order, DOE agrees to provide to a representative of Petitioners the studies and data currently in DOE's possession on saltstone performance and durability. DOE also will provide to a representative of Petitioners the technical reports associated with saltstone performance and durability testing conducted during the term of this Consent Order; these technical reports will be provided to a representative of Petitioners within ninety (90) days of the final report.

11. Ninety (90) days from the effective date of this Consent Order, DOE will provide to a representative of Petitioners a semiannual opportunity to review the information required by SCDHEC to be maintained on file to demonstrate the saltstone's compliance with applicable Land Disposal Restrictions for hazardous constituents contained in the waste. DOE agrees that wastes disposed of in the Saltstone Disposal Facility shall meet the Land Disposal Restrictions contained in S.C. Code Ann. Regs. 61-79.268.

12. Nothing in this Consent Order shall be interpreted as, or shall constitute, a commitment or requirement that the DOE, United States, or any part or agency thereof, obligate or pay funds, or take any other action in contravention of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

13. In consideration for paragraphs 1 through 12 above, Petitioners agree to dismissal with prejudice solely for those claims concerning DOE: (a) treatment and disposal of salt waste treated by the DDA process for Tank 41H as of June 9, 2003 (approximately 1.23 million gallons) and associated waste streams used to adjust salt to meet processing requirements, described in Permit Condition A.1.a; (b) treatment and disposal of waste from Tank 48H through treatment and destruction of organic materials, described in Permit Condition A.1.b; and (c) treatment and disposal of salt waste treated by the Actinide Removal Process (ARP) and Modular Caustic Side Solvent Extraction Unit (MCU) Process, described in Permit Condition A.1.c. Petitioners agree not to challenge these three (3) procedures, or the permit modifications which may be necessary to implement paragraphs 5 and 6 above, in a separate court or administrative proceeding under State or Federal law, including, but not limited to, Section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, P.L. 108-375 ("Section 3116"). Petitioners waive no other potential or future claims under RCRA, Section 3116, or any other provision of law, and nothing in this paragraph shall be interpreted or argued to restrict Petitioners from bringing any State or Federal challenge, under RCRA, Section 3116, or any other provision of law, concerning any other activity not addressed by the specific waivers listed above.

14. Other than challenges barred by paragraph 13 above, Petitioners agree that, before initiating a challenge pursuant to State or Federal law, including Section 3116, of future DOE actions arising out of information and matters provided as part of this Consent Order, Petitioners will meet with DOE in an effort to resolve any conflict prior to filing suit. Further, Petitioners and DOE agree to meet approximately eighteen (18) months after the entry of this Consent Order to discuss the status of this Consent Order.

15. Petitioners and Respondents agree this Consent Order shall remain in effect for a period of two (2) years or until the Petitioners are notified that DOE has determined that all DDA processing of the material in Tank 41H, as described in paragraph 4 above, is complete, whichever

time period is longer. Petitioners and Respondents agree that paragraphs 7 and 13 shall survive this Consent Order.

16. This Court shall retain jurisdiction to enforce this Consent Order. The parties reserve the right to raise jurisdictional issues in any such action.

17. All written notifications referenced in this Consent Order shall be sent by telefax transmission and regular United States mail to the following individuals at the following addresses:

For Petitioners:

Mr. Geoffrey H. Fettus
Natural Resources Defense Council
1200 New York Avenue, N.W., Suite 400
Washington, D.C. 20005
Fax: (202) 289-1060

South Carolina Chapter of the Sierra Club
c/o James S. Chandler, Jr., Esquire
South Carolina Environmental Law Project
Post Office Box 1380
Pawleys Island, South Carolina 29585
Fax: (843) 527-0540

Mr. Lou Zeller
Blue Ridge Environmental Defense League
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Glendale Springs, North Carolina 28629
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Ms. Allison Peeler
Carolina Peace and Resource Center
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Ms. Sara Barczack
Southern Alliance for Clean Energy
428 Bull Street, Suite 201
Savannah, Georgia 31401
Fax: (912) 201-0354

For Petitioners (continued)

Ms. Ruth Thomas
Environmentalists, Inc.
1339 Sinkler Road
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Fax c/o NRDC: (202) 289-1060

Ms. Glenn Carroll
Nuclear Watch South
Post Office Box 8574
Atlanta, Georgia 31106
Fax: (267) 295-8657

For Respondents:

Mr. Terrel J. Spears, Assistant Manager for
Waste Disposition Project, Savannah River Site
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Savannah River Operations Office
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Vice President, General Counsel,
and Board Secretary
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Ms. Virginia G. Dickert, Director,
Site Regulatory Integration and Planning
Washington Savannah River Company LLC
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For Respondents (continued)

Mr. Marty Lindler, Manager
Solid and Hazardous Waste Compliance Section
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201
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Ms. Shelly Sherritt
Federal Facilities Liaison
EQC Administration
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201
Fax: (803) 896-8941

18. This Consent Order reflects the complete and entire agreement of the parties and is effective upon the date designated below by the Court.

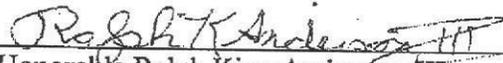
19. The undersigned hereby certify that they are fully authorized to enter into and execute this Consent Order on behalf of each representative party and to bind legally such party, its successor(s) or assign(s), and any other party acting on its behalf, to this Consent Order.

I find the parties' agreement to be fair and equitable and hereby order its adoption. As a hearing is no longer required on this matter, I also order this matter dismissed.

AND IT IS SO ORDERED.

August 7, 2007

Columbia, South Carolina


Honorable Ralph King Anderson, III
Administrative Law Judge

CERTIFICATE OF SERVICE

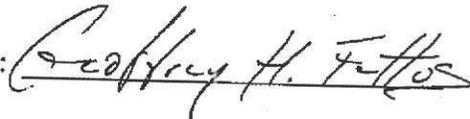
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 7th day of August, 2007
By: Amanda M. Scott
Judicial Law Clerk

WE SO MOVE AND CONSENT:

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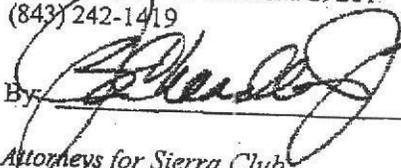
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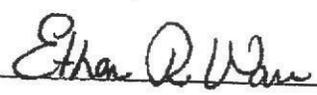
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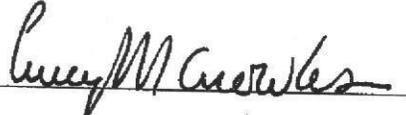
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