

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

OAK RIDGE ENVIRONMENTAL PEACE  
ALLIANCE,  
  
NUCLEAR WATCH OF NEW MEXICO,  
  
NATURAL RESOURCES DEFENSE  
COUNCIL,  
  
RALPH HUTCHINSON,  
  
ED SULLIVAN,  
  
JACK CARL HOEFER, and  
  
LINDA EWALD,

Plaintiffs,

v.

JAMES RICHARD PERRY, SECRETARY,  
UNITED STATES DEPARTMENT OF  
ENERGY, and  
  
FRANK G. KLOTZ, ADMINISTRATOR,  
NATIONAL NUCLEAR SECURITY  
ADMINISTRATION,

Defendants.

**Case 1:17-cv-01446-RJL**

**DEFENDANTS' ANSWER TO  
COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

Defendants, James Richard Perry, Secretary of the United States Department of Energy (“DOE”), and Frank G. Klotz, Administrator of the National Nuclear Security Administration (“NNSA”), hereby respond to the allegations of Plaintiffs’ Complaint for Injunctive and Declaratory Relief (“Complaint”). The numbered paragraphs in this Answer correspond to the numbered paragraphs in the Complaint.

1. The allegations of this paragraph constitute Plaintiffs' characterization of their case, to which no response is required. To the extent a response is deemed required, Defendants admit that NNSA in a July 5, 2016 Amended Record of Decision amended its prior July 20, 2011 Record of Decision by deciding to upgrade existing facilities and build three new buildings instead of building a single structure uranium processing facility ("UPF") and that NNSA made this decision, in part, due to cost considerations. Defendants deny the remaining allegations of this paragraph.

2. The allegations of this paragraph constitute legal conclusions to which no response is required. To the extent a response is deemed required, Defendants admit that this case presents federal questions that may be considered by this Court pursuant to 28 U.S.C. § 1331, provided that subject matter jurisdiction is otherwise established, but deny that Plaintiffs have established subject matter jurisdiction over certain of their claims for relief. Defendants further admit that venue is permissible in the District of Columbia under 28 U.S.C. § 1391, but aver that this case should be transferred to the Eastern District of Tennessee pursuant to 28 U.S.C. § 1404(a).

3. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

4. The allegations of this paragraph purport to characterize a "Petition" to NNSA and NNSA's response, both of which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the Petition to NNSA and NNSA's response are denied.

5. Defendants deny the allegations of this paragraph.

6. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

7. The allegations of this paragraph purport to characterize a “Petition” to NNSA and NNSA’s response, both of which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the Petition to NNSA and NNSA’s response are denied.

8. Defendants deny the allegations of this paragraph.

9. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

10. Defendants deny the allegations of this paragraph.

11. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

12. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of the first three sentences of this paragraph and on this basis deny them. Defendants admit the allegations of the fourth sentence of this paragraph.

13. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

14. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

15. Defendants deny the allegations of this paragraph.

16. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

17. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

18. Defendants deny the allegations of this paragraph.

19. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

20. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

21. Defendants deny the allegations of this paragraph.

22. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

23. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and on this basis deny them.

24. Defendants deny the allegations of this paragraph.

25. The allegations of this paragraph consist of legal conclusions, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations of this paragraph.

26. Defendants admit that Defendant James Richard Perry is the Secretary of the United States Department of Energy and has authority over and is responsible for all programs and activities within the Department of Energy. Defendants deny that DOE is a “parent agency” of the NNSA and further respond by averring that the NNSA is a separately organized agency within the DOE, responsible for the management and security of the nation’s nuclear weapons, nuclear nonproliferation, and naval reactors programs. The remaining allegation that Defendant

Perry is “responsible for the decision challenged here” is vague and ambiguous and therefore denied. Notwithstanding that denial, Defendants admit that Defendant Perry in his role as Secretary of the DOE has ultimate oversight over the NNSA, but deny that he determined that no further NEPA analysis was necessary to support the decisions reflected in the July 5, 2016 Amended Record of Decision.

27. Defendants admit that Defendant Frank G. Klotz is the Under Secretary for Nuclear Security and the Administrator of the NNSA and has authority over and has responsibility for all programs and actions within NNSA (except for the functions of the Deputy Administrator for Naval Reactors under Executive Order 12344). The remaining allegation that Defendant Perry is “responsible for the decision challenged here” is vague and ambiguous and therefore denied. Notwithstanding that denial, Defendants admit that Defendant Klotz signed the July 5, 2016 Amended Record of Decision, but deny that he issued an April 2016 “Supplement Analysis” (“SA”) in which NNSA determined that no further NEPA analysis was necessary to support that decision.

28. The allegations of this paragraph purport to characterize NEPA, which speaks for itself and provides the best evidence of its content. As such, the allegations require no response. Any allegations contrary to the plain language, meaning and context of NEPA are denied.

29. The allegations of this paragraph purport to quote and characterize NEPA and several of its implementing regulations, which speak for themselves and provide the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the cited provisions are denied.

30. The allegations of this paragraph purport to quote and characterize several of NEPA's implementing regulations, which speak for themselves and provide the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the cited regulations are denied.

31. The allegations of this paragraph purport to quote and characterize NEPA's implementing regulations, which speak for themselves and provide the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the cited regulations are denied.

32. The allegations of this paragraph purport to quote and characterize several of DOE's NEPA regulations, which speak for themselves and provide the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the cited regulations are denied.

33. Defendants admit the allegations of this paragraph.

34. Defendants admit the allegations of the first sentence of this paragraph that the processing of nuclear materials at the Y-12 National Security Complex ("Y-12") currently occurs in multiple buildings. The remaining allegations of the first sentence are vague and ambiguous and are therefore denied. The allegations of the second through fifth sentences and a portion of the seventh sentence of this paragraph purport to quote and characterize unidentified source(s) which, if identified, would speak for themselves and provide the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the unidentified source(s) are denied. Defendants admit the allegation in the sixth sentence that many of the older buildings at Y-12 do not meet current building codes and

standards or modern fire codes, but further aver that existing facilities are not required to meet current codes, except in very few circumstances that do not apply to the existing facilities at issue in this case. The remaining allegations of the sixth sentence alleging that these buildings are “at significant risk in the event of a natural disaster such as an earthquake” are vague, ambiguous, and speculative and are therefore denied. With respect to the remaining allegations of the seventh sentence, Defendants admit that many of the aging facilities at Y-12 continue to host activities critical to the processing of enriched uranium used to support the nuclear stockpile, but deny that nuclear weapons are processed at Y-12.

35. The allegations of this paragraph purport to quote and characterize unidentified source(s) which, if identified, would speak for themselves and provide the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the unidentified source(s) are denied.

36. The allegations of the first sentence of this paragraph are vague, ambiguous, and speculative and are therefore denied. The allegations of the second sentence purport to quote and characterize an unidentified DOE Office of the Inspector General (OIG) source, which, if identified, would speak for itself and provide the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of this unidentified OIG source are denied. The allegations of the third sentence purport to quote and characterize an unidentified NNSA source, which, if identified, would speak for itself and contain the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of this unidentified NNSA source are denied. Defendants further deny that any such wastes are “dangerous,” as waste is

managed in accordance with applicable laws, regulations, and DOE orders. Defendants admit the allegations of the fourth sentence that Y-12 is a part of the DOE Oak Ridge Reservation and that it was included on the National Priorities Listing in 1989. The remaining allegations of the fourth sentence are vague and ambiguous and are therefore denied. Notwithstanding the foregoing, Defendants further respond by averring that environmental cleanup at Y-12 has been and will continue in the future to be performed in accordance with the schedule and requirements agreed to by the DOE Office of Environmental Management in a Federal Facility Agreement among DOE, the Environmental Protection Agency, and the Tennessee Department of Environment and Conservation and that low-level radioactive waste, mixed waste, and hazardous waste are properly stored and managed in accordance with all applicable laws, regulations, and DOE Orders.

37. The allegations of the first and eighth sentence of this paragraph are vague, ambiguous, and speculative and are therefore denied. The remaining allegations of this paragraph purport to quote, characterize, and copy images from unidentified DOE OIG and NNSA sources, which, if identified, would speak for themselves and provide the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of these unidentified OIG and NNSA sources are denied.

38. Defendants admit the allegations of the first sentence of this paragraph. The remaining allegations of this paragraph purport to characterize unidentified NNSA source(s) which, if identified, would speak for themselves and provide the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of these unidentified NNSA sources are denied.



39. The allegations of the first sentence of this paragraph are vague, ambiguous, and speculative and are therefore denied. Defendants admit the allegations of the second sentence. The allegations of the third sentence purport to quote an unidentified NNSA source, which, if identified, would speak for itself and provide the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of this unidentified NNSA source are denied. The allegations of the fourth sentence are vague, ambiguous, and speculative and are therefore denied. Notwithstanding the foregoing, Defendants further respond by averring that NNSA recently gave initial approval to the initiation of a capital project known as the West End Protected Area Reduction Project (“WEPAR”), which, if it receives final approval, will result in the installation of a new Perimeter Intrusion Detection Assessment System (“PIDAS”) that would reduce the Y-12 Protected Area by 50% and lower costs for maintenance, site operations, and final disposition of legacy waste facilities. Defendants further aver that WEPAR will be the subject of appropriate NEPA documentation and that such NEPA documentation will be performed in accordance with all applicable requirements, including the timing requirements as set forth in DOE Order 313.3B, “Program and Project Management for the Acquisition of Capital Assets.”

40. The allegations of this paragraph purport to quote and characterize unidentified NNSA source(s) which, if identified, would speak for themselves and provide the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the unidentified NNSA source(s) are denied.

41. Defendants admit the allegations of this paragraph, except that the only NEPA documents referenced in this paragraph that were prepared by NNSA, as opposed to DOE, were

the 2001 SWEIS for the Y-12 National Security Complex and the 2008 Complex Transformation Supplemental Programmatic Environmental Impact Statement.

42. The allegations of this paragraph purport to characterize unidentified NNSA sources which, if identified, would speak for themselves and provide the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the unidentified NNSA sources are denied.

43. Defendants admit the allegations of the first sentence of this paragraph. The remaining allegations of this paragraph purport to quote and characterize the 2011 Final Site-Wide Environmental Impact Statement for the Y-12 National Security Complex (“2011 SWEIS”) and a Record of Decision (“ROD”), issued July 14, 2011 and published in the Federal Register July 20, 2011, which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the 2011 SWEIS and ROD are denied.

44. The allegations of this paragraph purport to quote the 2011 SWEIS, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the 2011 SWEIS are denied.

45. The allegations of the first sentence of this paragraph are admitted. Defendants further respond by averring that, due to the UPF design change and the need for the use of the enduring facilities, NNSA has developed plans to re-evaluate the enduring facilities, and based upon the reevaluation, may require seismic upgrades to those facilities. The remaining allegations of this paragraph purport to quote and characterize the 2011 SWEIS and ROD, which

speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the 2011 SWEIS and ROD are denied.

46. The allegations of this paragraph purport to quote and characterize the 2011 SWEIS, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the 2011 SWEIS are denied.

47. The allegations of this paragraph purport to quote and characterize the 2011 SWEIS, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the 2011 SWEIS are denied.

48. The allegations of this paragraph purport to quote and characterize the 2011 SWEIS and ROD, which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the 2011 SWEIS and ROD are denied.

49. The allegations of this paragraph, except for the allegations of the second sentence, purport to quote, characterize, and copy images from the 2011 SWEIS and the Ten-Year Site Plan (“TYSP”), which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the 2011 SWEIS and TYSP are denied. Defendants admit the allegations of the second sentence and further respond to those allegations by averring that

WEPAR, the PIDAS reduction project described in paragraph 39, will have the effect of reducing the Y-12 Protected Area.

50. The allegations of this paragraph purport to characterize the 2011 SWEIS and ROD, which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the 2011 SWEIS and ROD are denied.

51. The allegations of the first sentence of this paragraph are admitted. The remaining allegations of this paragraph purport to characterize a 2013 Government Accountability Office report, titled “Nuclear Weapons: Factors Leading to Cost Increases with the Uranium Processing Facility” (“GAO Report”), which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the GAO Report are denied.

52. The allegations of the first sentence of this paragraph are admitted. The remaining allegations of this paragraph purport to characterize the GAO Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the GAO Report are denied.

53. The allegations of the first sentence of this paragraph are admitted, to the extent that the allegations are referring to a time period sometime after 2012. The allegations of the second sentence of this paragraph purport to characterize an unidentified DOE presentation which, if identified, would speak for itself and provide the best evidence of its content. As such,

the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the unidentified DOE presentation are denied.

54. Defendants admit the allegations of this paragraph.

55. Defendants admit the allegations of the first sentence that the design costs of the UPF reached between “\$10 billion and \$12 billion, in 2014,” to the extent that the referenced cost estimate includes construction costs and not just design costs. The allegations of the remainder of the first sentence and the second sentence of this paragraph purport to quote and characterize an unidentified NNSA source which, if identified, would speak for itself and provide the best evidence of its content. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the unidentified NNSA source are denied. The allegations of the third sentence are vague and ambiguous as to the time period in question and due to the use of the term “deteriorating” and are therefore denied.

56. With respect to the allegations of this paragraph, Defendants admit that they have not provided the public with definitive information in the form of a date certain regarding how long NNSA intends to continue using certain buildings at Y-12 and further respond by averring that the projected life of the enduring facilities cannot be fixed to a date certain while there remains ongoing safety and technical analyses. Defendants further aver that the estimated use of the enduring facilities until the 2040 time frame is a projection only and that this information has been made available to the public in multiple ways, including through public websites maintained by Y-12 and the Defense Nuclear Facilities Safety Board (“DNFSB”). The allegations of the second sentence stating that Building 9212 “shows significant degradation and poses a serious risk of collapse” are vague, ambiguous, and speculative and are therefore denied.

The remaining allegations of this paragraph purport to quote and characterize unidentified NNSA source(s), which, if identified, would speak for themselves and provide the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the unidentified NNSA source(s) are denied.

57. Defendants admit the allegations of this paragraph.

58. Defendants admit receiving correspondence, dated July 8, 2014, from Plaintiff Oak Ridge Environmental Peace Alliance (“OREPA”) and the Alliance for Nuclear Accountability (“ANA”) on ANA letterhead. Defendants deny the remaining allegations of this paragraph and further aver that the NNSA sent a response letter to ANA, dated December 22, 2016.

59. Defendants admit that the United States Geological Survey released a set of seismic hazard maps in 2014. The remaining allegations of this paragraph purport to characterize the maps and associated commentary prepared by the United States Geological Survey (“USGS Information”), which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the USGS Information are denied.

60. The allegations of this paragraph purport to quote and characterize the USGS Information, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the USGS Information are denied.

61. The allegations of this paragraph purport to quote and characterize the USGS Information, which speaks for itself and contains the best evidence of its contents. As such, the

allegations require no response. Any allegations contrary to the plain language, meaning, and context of the USGS Information are denied.

62. Defendants deny the allegations of the first sentence of this paragraph to the extent that they imply that the USGS maps specifically reference the Y-12 National Security Complex, but admit the allegations with respect to the general area containing Y-12. The allegations of the second sentence of this paragraph purport to characterize the USGS Information and 2008 maps previously prepared by USGS, which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the USGS Information and the 2008 maps are denied. Defendants admit the allegations of the third sentence of this paragraph.

63. Defendants admit that the DNFSB is a federal agency and that DNFSB staff members issued a “Staff Issue Report” dated November 14, 2014 concerning “Structural Evaluations of the 9215 Complex and Building 9204-2E at the Y-12 National Security Complex” (“DNFSB 2014 Staff Report”). Defendants further admit that the Vice Chairman of the DNFSB sent the DNFSB 2014 Staff Report to the Manager of the NNSA Production Office in Oak Ridge with a cover letter dated February 4, 2015. The remaining allegations of this paragraph purport to quote and characterize case law and the DNFSB 2014 Staff Report, which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the referenced case law and DNFSB 2014 Staff Report are denied.

64. The allegations of this paragraph purport to quote and characterize the DNFSB 2014 Staff Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2014 Staff Report are denied.

65. The allegations of this paragraph purport to quote and characterize the DNFSB 2014 Staff Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2014 Staff Report are denied.

66. The allegations of this paragraph purport to quote and characterize the DNFSB 2014 Staff Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2014 Staff Report are denied.

67. The allegations of the first two sentences of this paragraph purport to characterize the DNFSB 2014 Staff Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2014 Staff Report are denied. With respect to the allegations of the third sentence of this paragraph, Defendants admit that an earthquake with 0.12g peak ground acceleration is weaker than an earthquake with 0.3g peak ground acceleration, but deny the allegation that an earthquake with 0.12g peak ground acceleration is “significantly” weaker than an earthquake with 0.3g peak ground acceleration on the basis that the term “significantly” is vague and ambiguous. The remaining allegations of the third sentence purport to quote and characterize the DNFSB 2014 Staff Report and the USGS Information, which speak



for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2014 Staff Report and USGS Information are denied.

68. The allegations of this paragraph purport to quote and characterize the DNFSB 2014 Staff Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2014 Staff Report are denied.

69. The allegations of this paragraph purport to quote and characterize the DNFSB 2014 Staff Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2014 Staff Report are denied.

70. The allegations of this paragraph purport to quote and characterize the DNFSB 2014 Staff Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2014 Staff Report are denied.

71. The allegations of this paragraph purport to quote and characterize the DNFSB 2014 Staff Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2014 Staff Report are denied.

72. The allegations of this paragraph purport to quote and characterize the DNFSB 2014 Staff Report, which speaks for itself and contains the best evidence of its contents. As

such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2014 Staff Report are denied.

73. The allegations of this paragraph purport to quote and characterize the DNFSB 2014 Staff Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2014 Staff Report are denied.

74. The allegations of this paragraph purport to quote and characterize the DNFSB 2014 Staff Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2014 Staff Report are denied.

75. The allegations of this paragraph purport to quote and characterize an OIG Report, titled “The Department of Energy’s Management of High-Risk Excess Facilities” (“OIG Report”), which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the OIG Report are denied.

76. The allegations of this paragraph purport to quote the OIG Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the OIG Report are denied.

77. The allegations of this paragraph purport to quote and characterize the OIG Report, which speaks for itself and contains the best evidence of its contents. As such, the

allegations require no response. Any allegations contrary to the plain language, meaning, and context of the OIG Report are denied.

78. The allegations of this paragraph purport to quote and characterize the OIG Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the OIG Report are denied.

79. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of this paragraph. Defendants deny the allegations of the second sentence on the grounds that the October 27, 2016 letter described in paragraph 95 of the Complaint is the first letter that NNSA received from Plaintiffs OREPA and Nuclear Watch requesting preparation of an EIS for the new UPF design. That letter was written after OREPA and Nuclear Watch had notice that NNSA had prepared the SA. To the extent that the allegations are intended to refer to a July 8, 2014 letter from Plaintiff OREPA and ANA, or a letter dated July 30, 2014 letter from Plaintiff OREPA, Defendants admit that the NNSA did not respond to these letters until the NNSA sent response letters to Plaintiffs OREPA and Nuclear Watch and to ANA, dated December 22, 2016.

80. Defendants admit the allegations of this paragraph.

81. Defendants admit the allegations of the first sentence of this paragraph. The remaining allegations of this paragraph purport to quote and characterize the referenced SA, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the SA are denied.

82. The allegations of this paragraph purport to quote and characterize the SA, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the SA are denied.

83. The allegations of this paragraph purport to quote and characterize the SA, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the SA are denied.

84. The allegations of this paragraph purport to quote and characterize the SA, the 2011 ROD for the 2011 SWEIS, and a DNFSB report, which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the SA, 2011 ROD, and DNFSB report are denied.

85. The allegations of this paragraph purport to quote and characterize the SA, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the SA are denied.

86. The allegations of this paragraph purport to quote and characterize the SA, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the SA are denied.

87. The allegations of this paragraph purport to quote and characterize the SA, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the SA are denied.

88. The allegations of this paragraph purport to quote and characterize the DNFSB 2014 Staff Report and the SA, which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2014 Staff Report and SA are denied.

Notwithstanding the foregoing, Defendants further respond by averring that the DNFSB recommendations, while not legally required to be accepted, helped contribute to the initiation of the Extended Life Program (“ELP”), which NNSA developed to ensure that Buildings 9215 and 9204-2E will safely support future operations by reviewing regulatory issues and the physical condition of facilities and equipment and making recommendations for infrastructure investments. Defendants further aver that the SA is not an appropriate document in which to adopt new modeling techniques or provide specific details of the upgrades determined to be necessary, many of which are still in the planning and evaluation stages.

89. The allegations of this paragraph purport to quote and characterize the SA and the SWEIS, which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the SA and SWEIS are denied. Notwithstanding the foregoing, Defendants further respond by averring that the SA is not an appropriate document in which to provide specific analysis of upgrades that will be determined to be necessary, consistent with the

Proposed Action described in the SA, and that the DNFSB is involved in reviewing and providing input on the ELP and the Safety Strategy for the ELP, which identifies the roadmap of activities to maintain, refurbish, and replace components in Buildings 9204-2E and 9215, while satisfying safety requirements for adequate protection of workers, the public, and the environment.

90. The allegations of this paragraph purport to quote and characterize the SA and 2011 SWEIS, which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the SA and 2011 SWEIS are denied. Notwithstanding the foregoing, Defendants further affirmatively deny the allegations of this paragraph.

91. The allegations of this paragraph purport to quote and characterize the SA, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the SA are denied.

92. The allegations of this paragraph purport to quote and/or characterize the SA and the OIG report, which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the SA and OIG Report are denied. Notwithstanding the foregoing, Defendants admit that the SA does not mention or reference the OIG Report or include the OIG Report in the SA's list of references.

93. The allegations of this paragraph purport to quote the SA, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the SA are denied.

94. Defendants admit that the NNSA issued the referenced Amended Record of Decision (“AROD”) on July 12, 2016. The remaining allegations of the first and second sentences of this paragraph purport to quote and characterize the AROD, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the AROD are denied. Defendants deny the allegations of the third sentence of this paragraph.

95. Defendants admit that DOE Secretary Ernest Moniz received a letter dated October 27, 2016 (which the Complaint characterizes as a “Petition”) from Plaintiffs OREPA and Nuclear Watch. The remaining allegations of this paragraph purport to quote and characterize the Petition, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the Petition are denied.

96. The allegations of this paragraph purport to characterize the Petition, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the Petition are denied.

97. The allegations of this paragraph quote and purport to characterize the Petition, which speaks for itself and contains the best evidence of its contents. As such, the allegations

require no response. Any allegations contrary to the plain language, meaning, and context of the Petition are denied.

98. The allegations of this paragraph purport to characterize the Petition, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the Petition are denied.

99. The allegations of this paragraph purport to quote and characterize the Petition, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the Petition are denied.

100. The allegations of this paragraph purport to quote and characterize the Petition, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the Petition are denied.

101. The allegations of this paragraph purport to quote and characterize the Petition, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the Petition are denied.

102. The allegations of this paragraph purport to quote the Petition, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the Petition are denied.



103. Defendants admit that the NNSA sent two letters dated December 22, 2016, one addressed to OREPA and the other to Nuclear Watch, in response to the October 27, 2016 letter that OREPA and Nuclear Watch had sent to DOE Secretary Moniz. The remaining allegations of this paragraph purport to quote and characterize those two NNSA letters, which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the two NNSA letters are denied.

104. The allegations of this paragraph purport to characterize NNSA's two December 22, 2016 letters addressed to OREPA and to Nuclear Watch, which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the two letters are denied.

105. The allegations of this paragraph purport to quote and characterize a DNFSB "Staff Issue Report" dated March 16, 2017 concerning "Y-12 National Security Complex Extended Life Program Safety Strategy" ("DNFSB 2017 Staff Report"), which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2017 Staff Report are denied.

106. The allegations of this paragraph purport to quote and characterize the DNFSB 2017 Staff Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2017 Staff Report are denied. Defendants further respond by averring that, once it was determined that the enduring facilities would be used longer than

was originally planned, work was initiated through the ELP to evaluate the enduring facilities to ensure that they meet the DOE requirements (DOE Order 420.1C, “Facility Safety” and DOE-STD-1020-10112) related to structural integrity to withstand natural phenomena, such as earthquakes, and to make recommendations for practical upgrades. Defendants continue to engage the DNFSB in the review of activities associated with the ELP of the enduring facilities, including the ELP’s seismic analysis path forward.

107. The allegations of this paragraph purport to quote and characterize the DNFSB 2017 Staff Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2017 Staff Report are denied.

108. The allegations of this paragraph purport to quote and characterize the DNFSB 2017 Staff Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2017 Staff Report are denied.

109. The allegations of the first, third, and fourth sentences of this paragraph purport to quote and characterize the DNFSB 2017 Staff Report, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2017 Staff Report are denied. The allegations of the second sentence purport to quote and characterize unidentified source(s) which, if identified, would speak for themselves and provide the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the unidentified source(s) are denied.

110. The allegations of this paragraph purport to quote and characterize a DNFSB letter dated June 26, 2017 and accompanying enclosure (“June Letter”), which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the June Letter are denied.

111. The allegations of this paragraph purport to quote and characterize the June Letter, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the June Letter are denied.

112. The allegations of this paragraph purport to quote and characterize the June Letter, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the June Letter are denied.

113. The allegations of this paragraph purport to quote and characterize the June Letter, which speaks for itself and contains the best evidence of its contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the June Letter are denied.

114. The allegations of this paragraph purport to quote and characterize the DNFSB 2017 Staff Report, the June letter, and the 2011 SWEIS, which speak for themselves and contain the best evidence of their contents. As such, the allegations require no response. Any allegations contrary to the plain language, meaning, and context of the DNFSB 2017 Staff Report, the June Letter, and the 2011 SWEIS are denied.

115. Defendants incorporate by reference their responses to the allegations contained in paragraphs 1 through 114, above.

116. Defendants deny the allegations of this paragraph.

117. Defendants deny the allegations of this paragraph.

118. Defendants deny the allegations of this paragraph.

119. Defendants deny the allegations of this paragraph.

120. Defendants deny the allegations of this paragraph.

#### **PRAYER FOR RELIEF**

The remainder of the Complaint constitutes Plaintiffs' request for relief, to which no response is required. To the extent a response may be deemed required, Defendants deny that Plaintiffs are entitled to relief in the form of a Supplemental Environmental Impact Statement or a new Site-Wide Environmental Impact Statement, or to any other form of relief.

#### **GENERAL DENIAL**

Defendants deny any allegations of the Complaint, whether express or implied, that are not specifically admitted, denied, or qualified herein.

#### **AFFIRMATIVE DEFENSES**

- A. Plaintiffs fail to state a claim upon which relief may be granted.
- B. Some of Plaintiffs may lack standing.
- C. Some of Plaintiffs' claims are not ripe for review.
- D. Some or all of Plaintiffs' claims are or may become moot.
- E. Some of Plaintiffs' claims may be barred by the statute of limitations.

Respectfully submitted this 29th day of September, 2017.

JEFFREY H. WOOD  
Acting Assistant Attorney General

/s/ Thomas K. Snodgrass  
Thomas K. Snodgrass, Senior Attorney  
United States Department of Justice  
Environment & Natural Resources Division  
Natural Resources Section  
*Counsel for Defendants*

**Of Counsel**

Terri Slack, NNSA Production Office Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that on September 29, 2017, a copy of the foregoing was served by electronic means on all counsel of record by the Court's CM/ECF system.

/s/ Thomas K. Snodgrass  
Thomas K. Snodgrass