

Hearing Charter
Joint Hearing of the
Subcommittee on Investigations and Oversight and the
Subcommittee on Energy and Environment

Committee on Science and Technology

Hearing on:

The Department of Energy's Support for the Savannah River Ecology Laboratory
(SREL), Part II

August 1, 2007

Purpose:

The purpose of the hearing is to examine the events leading to the Department of Energy's decision to withdraw funding for the Savannah River Ecology Laboratory (SREL) in fiscal year 2007.

Background:

SREL was established in 1951 to track the ecological changes and environmental consequences of establishing nuclear weapons production facilities on the Savannah River Site (SRS). It is unique within the DOE complex because it is the only lab that is not "owned" by DOE. Rather, the University of Georgia founded the lab and has always had a relationship with DOE that has allowed them to be present on the site and funded by the Department (and the Atomic Energy Commission before DOE was established).

SREL has been a very productive scientific lab with a distinguished record of publication and an amazing amount of unbroken data sets on the ecology of the site. While the site itself was a center for weapons production and contains enormous amounts of waste, with ongoing waste processing that will stretch out for a generation or longer, it is also an enormous physical site—much of which includes pristine environmental conditions. Largely untouched by development, the Savannah River site hosts the most diverse and complex ecology in North America and contains all representative ecosystems of the southeastern U.S.

Recognizing these unique features of the site, in 1972 the Atomic Energy Commission created the first National Environmental Research Park (NERP) located within the DOE complex at Savannah River. There are seven NERPs located at DOE sites around the country. SRS has 30 set-aside areas where no development of any kind is allowed to go forward. SREL has monitored the ecology in these set-asides ever since they were established. Another facet of the SREL work in the NERP is that they are a major way

that the Savannah River Site carries out its long-term stewardship responsibilities--to demonstrate care for the site in a manner that satisfies their requirements under the National Environmental Policy Act (NEPA) and other federal land management laws and to demonstrate DOE is managing contaminated areas of the site in a manner that does not put public health and the adjoining off-site environment at risk.

NEPA established environmental protection as a mission of all federal agencies. SREL has carried out this function through very successful public education programs to bring the public and students to the site and show them the unique qualities of the ecology there.

SREL also collects data that is used by the site to demonstrate its compliance with a number of environmental laws. IF SREL does not provide these data as part of their base work, the site will have to hire a contractor to collect that information. The communities that border the site in Georgia and South Carolina and that are located downstream from the site also rely on the lab to be a trusted, independent voice that will tell them the truth about the nuclear wastes on the site, the remediation activities on the site, and the safety of being near or downstream from it.

DOE Funding and Cooperative Agreement with SREL and UGA:

The Bush Administration's budget requests for SREL have varied considerably, but with a general downward trend since FY 2002. The first budget they composed, for FY 2002, included a 30% cut in the request for the lab by Environmental Management (EM). Then in FY 2003 through FY 2005, the lab was funded through the Office of Science accounts at a level of around \$8 million. In FY 2006, the Administration's budget request eliminated all funding for the lab. The Georgia and South Carolina delegations secured funds in the FY 2006 appropriation to reverse this decision.

These delegations met with DOE and an agreement was made that the Administration would fund the lab at \$4 million in FY 2006 with \$1 million coming from the Office of Science and \$3 million coming from EM. It is with that deal that the path to closing the lab begins and the understanding of the different parties involved about the future funding arrangement for SREL diverges. The description of events that follows is largely based on the documentary record provided the Subcommittees by the Department of Energy, SREL and the University of Georgia.

Negotiations Begin on a New Cooperative Agreement – May 2005:

In May 2005, the Department hosted a meeting involving then-Assistant Secretary for Congressional and Intergovernmental Affairs, Jill Sigal, and other DOE staff, representatives from the University of Georgia and SREL, and representatives from the Georgia and South Carolina Congressional delegations. The Department did not want to face an ongoing string of appropriations earmarks and the delegations wanted some agreement that the lab would be supported. That meeting led to an agreement that in FY 2006 the Department would provide \$4 million (plus some money from the National

Nuclear Security Administration—NNSA) and in FY 2007 it would provide at least \$1 million from EM accounts. SREL and UGA's existing Cooperative Agreement was to expire in July, 2006.

One of the points of disagreement among the parties is about whether \$1 million was a cap or a floor, but there was ample discussion at that meeting about the perceived need for the SRS to use SREL to further their mission. Director Bertsch said that as long as he could pursue money from the programs on the site in addition to the base EM funding of \$1-\$2 M, he would be able to keep the lab going.

Ms. Sigal requested that Dr. Bertsch put together a plan to show how he would do that, and so the day after the meeting, Dr. Bertsch forwarded a business plan that included the work SREL would undertake that was needed by the site. He was never told the plan was unacceptable.

In fact, a subsequent memorandum from the Principal Deputy for Environmental Management, Charlie Anderson, directed the SRS Manager, Jeff Allison, to negotiate a new 5 year Cooperative Agreement with SREL-UGA. Mr. Anderson's memo drew extensively from Dr. Bertsch's business plan. The memo did not include direction to Mr. Allison on a specific funding level for SREL in FY 2007 or beyond.

Although DOE claims the terms of the deal struck in the May 2005 meeting were well-known to all parties, there is no evidence of this clarity in the documentation provided by DOE or indicated by the subsequent actions of Mr. Allison and Dr. Bertsch. For example, a May 2005 briefing memo prepared for the Secretary contains no information about two key elements of the deal:

- 1) The requirement for Headquarters review and approval of all funds for projects negotiated between SREL and SRS even if the funds were drawn from the discretionary funds available to the SRS Manager for site-specific activities; and
- 2) SREL would seek all funds above the \$1 M provided by EM base funding from non-DOE sources and become completely self-sustaining with no guaranteed funding from FY 2008 forward.

With no direction from Headquarters other than to begin negotiations on a new Cooperative Agreement, the Manager of the SRS, Jeff Allison, informs Dr. Bertsch that he has been directed to negotiate a new agreement and Dr. Bertsch and Mr. Allison proceed to work toward that end for over a year.

In March of 2006, even as negotiations continue, Mr. Allison tells Dr. Bertsch to budget for \$4 million at SREL from SRS/EM in the FY 2007 budget, and documents this guidance in a letter to Dr. Bertsch. Similar budget information had also been conveyed to the University of Georgia in a letter from the SRS contracting officer in February 2006. Also, according to SRS documents, the site included \$4.1 million for SREL in their budget request for FY 2007. The site's budget request had gone to Headquarters

as part of the normal budget review process. No objections were raised by Headquarters at the time. A similar budget was subsequently being put together with similar funding levels for SREL by the site in October 2006 for inclusion in the FY 2008 budget.

When SRS and SREL-UGA conclude the negotiations on a new Cooperative Agreement, it provides for \$4 million a year from FY 2007 through FY 2011 with a 2.5% escalator to allow for inflation. The agreement is sent up to DOE Headquarters for notification in August of 2006 and then again (due to an imperfection in the process) in September 2006. If Headquarters had approved it, Mr. Allison would have been authorized to sign the agreement. However, the agreement was never approved at Headquarters.

The Cooperative Agreement is Not Approved and Negotiations Begin Again – September 2006

Instead of concluding the year-long negotiation and establishing the new Cooperative Agreement, negotiations are re-opened with new criteria for the Cooperative Agreement.

It appears the agreement came to the attention of Charlie Anderson, who began to ask questions about the nature of the agreement, and Ms. Sigal who was adamant the agreement did not reflect the Secretary's direction. By early October, headquarters learns of the March 2006 letter from Mr. Allison to Dr. Bertsch directing him to build a budget for SREL around a funding level of \$4 M in FY 2007, Secretary Bodman becomes involved and directed that Mr. Allison come to Washington to meet with Deputy Secretary Clay Sell to explain what had happened.

On October 16, 2006, Mr. Sell, Mr. Anderson, James Rispoli (head of Environmental Management), Dave Garman and Mr. Allison met in the Deputy Secretary's office.

According to Mr. Allison, he explained that he had never been told that the Department wanted to change the way it had historically funded the lab (i.e., lump sum payment for continuity of services), and that he negotiated an agreement that ensured SREL would be able to conduct research needed by the site as well as engage in public education and stewardship matters that were important to the site.

It is still unclear why Mr. Allison was provided no direction prior to engaging in the negotiations with SREL-UGA. DOE maintains that Dr. Bertsch knew the terms of the deal, however, there is no documentation to support that claim and DOE made no objections or comments in response to the business plan (outlining funding by DOE of about \$4 M in FY 2007) that Dr. Bertsch supplied prior to the start of the negotiations.

Following the meeting with Mr. Allison, Deputy Secretary Clay Sell determined—supposedly with the approval of the Secretary—that the new agreement would provide

\$1 million of guaranteed funding in FY 2007 plus additional funding on a task-by-task basis.

According to the e-mail sent out by Mr. Rispoli to record this guidance, Mr. Sell indicated that DOE was to “”compete” the rest of our FY 2007 needs to SREL (over the \$1 million base), to insure that we will get what we want at a fair and reasonable price. The needs can include what was presented today.”

Among the “needs presented” at the meeting with Mr. Allison were education and outreach activities and long-term site stewardship activities. This part of the guidance from the Deputy Secretary is contradicted by subsequent actions of Headquarters and site personnel.

The initial reaction from SREL was that this offer would lead to the closure of the lab, but the SRS Manager, Mr. Allison, assured SREL their work was needed by the site and he would fund their tasks using funds the site Director has discretion to award for site-based projects. DOE Headquarters was aware of the assurance provided by Mr. Allison to SREL because Mr. Allison had forwarded that e-mail to Headquarters and it included Mr. Rispoli, Mr. Anderson, Mr. Gilbertson, and was subsequently forwarded to Jill Sigal by Mr. Rispoli.

SREL-UGA then enters into negotiations once again to secure a new Cooperative Agreement. From September 2006 through November 2006, Dr. Bertsch was working with SRS assistant managers to identify projects the site would fund to meet \$3 million in identified needs. It is during this time period when the Citizens Advisory Board for the SRS submits a Recommendation (#240) to DOE that SREL be funded “ at a minimum of \$4.5 M in the future” after several years of concern about the funding of the lab.

At the same time, DOE Headquarters officials were editing the language of the Cooperative Agreement. Headquarters was insisting on highlighting language that emphasized funds were subject to “need, merit and availability of funds.” They also included a provision that any funds could be subject to a “technical peer review.” Dr. Bertsch believed this would be the kind of review his programs had been through many times in the past—where evaluators look at the sweep, mix and quality of science being done by the lab. However, DOE had something else in mind that was not made clear to the lab until months after the agreement was signed on December 1, 2006.

New Funding Criteria are Established by Headquarters and Funding is Denied – February 2007

In December 2006, Dr. Bertsch and SREL believed they had a new cooperative agreement that made them financially stable because of the SRS Manager’s repeated assurances that site needed the work SREL could provide and he had the money to fund it—his budget for FY 2007 had \$4.1 million identified for SREL.

Then, in a January 29, 2007 memorandum, Mark Gilbertson, Mr. Anderson's Deputy for Technology at EM, writes to Mr. Allison to tell him that Headquarters is going to be conducting oversight of Savannah River's implementation of the Cooperative Agreement. The memo also indicates that Headquarters will conduct a peer review for the scientific merit of the SREL proposals and then the site will be asked to review them for their "relevancy".

No official can provide an example of a memorandum or direction of this nature to a site Manager from Headquarters issued before on any matter. The only similar example offered was by Mr. Anderson who said that when he worked at Savannah River, the site received a letter from Headquarters stripping them of their authority to negotiate with the State of South Carolina regarding clean-up matters.

The difference between this example and the SREL memo is that the memo from Mr. Gilbertson involves the oversight by Headquarters of \$3 million in proposals from a University laboratory and Mr. Anderson's example involved negotiations regarding the Department's liability for billions of dollars in clean up and environmental compliance with a state government.

On February 20, 2007, Mark Gilbertson participated in a conference call with several SRS staff. The lead for the site at this point is Yvette Collazo, the Assistant Manager for Closure Projects. Mr. Gilbertson explained to Ms. Collazo and others on the call that the site needed to have a list of proposed tasks for SREL that included more detail. He also directed that each proposed task be tied to a budget line and a deliverable. Most importantly, Mr. Gilbertson directed that each task had to be reviewed to determine whether it met a "Mission Critical Need" in Fiscal Year 2007.

According to Mr. Gilbertson, he was not provided this guidance by his superiors at Headquarters and his direct supervisor, Mr. Anderson, indicated he did not inquire about the status of the Cooperative Agreement Mr. Gilbertson was now managing. This information was provided to Committee staff during interviews with Mr. Gilbertson and Mr. Anderson.

This standard—mission critical need in FY 2007—sounds rigorous and formal, but it is not a phrase commonly used by Environmental Management, and it has no formal, written definition. Although SRS staff were instructed to use this standard, they were not provided a written definition of the term. In staff interviews of SRS staff, five different people were asked to provide their definition of the term. The answers varied, and the SRS staff could not provide examples or instances in which this standard was applied to the evaluation of individual projects conducted at the site.

The implementation of the standard resulted in determinations that the proposed tasks had to result in a necessary deliverable in FY 2007 or directly facilitate site clean-up in FY 2007. Not surprisingly, by this standard almost nothing proposed by a research lab would meet this standard. In fact, the only projects that met the standard were those

that SRS had been initiated in a prior year, that SRS already paid for and essentially were completed at the time of the review.

Several questions remain unanswered in relationship to the application of the mission critical need standard for review. Although several SRS staff pointed to the development of the annual budget as an example of the application of a mission critical need standard, this did not explain the results of the FY 2007 and FY 2008 budget submissions for SRS. No one could offer an explanation other than “our needs have changed” to explain how the mission critical standard resulted in a SRS budget submission with an allocation for SREL in FY 2007 and FY 2008 of \$4 M during the budget process if in fact SREL was not capable of performing significant mission critical tasks for SRS.

The list of proposed tasks was not developed solely by SREL. Dr. Bertsch developed the list of proposed tasks together with SRS program managers. Why did SRS staff develop a list of proposed tasks that did not meet the site’s need for work?

The result of the mission critical need review was communicated to SREL on May 7, 2007 in a letter. Of the \$3 M in proposed tasks, DOE agreed to fund \$800 K. Despite the earlier guidance from Deputy Secretary Sell that public education and outreach and projects related to long-term stewardship of the site could also be proposed for funding, no tasks of this nature were proposed because SRS staff determined that no such project could meet the mission critical need standard.

The \$800 K offered by DOE is insufficient to support SREL. With anticipated funding cut off during the middle of the fiscal year, the laboratory is left with few options but to plan for closure.

The University of Georgia announced it was extending lab personnel’s salaries through the end of June—even though DOE funding would run out at the end of May. The University decided not to formally close the lab, but 40 people were laid off from the lab effective June 29—some who had been there over 20 years. Approximately 30-40 more are being moved back to the University campus in Athens, GA in one capacity or another. The remaining 30-40 will stay on site to carry out work funded through grants already in place from other agencies. The future of the lab and the long-term data sets it maintains is unclear unless DOE restores funding for its work. Without that core funding, the lab cannot continue to operate. Funds are available in the SRS FY 2007 budget to restore SREL funding.

Subcommittees of the Committee on Science Begin Their Investigation – May 2007

The Subcommittees sent a letter to DOE within 10 days of Dr. Bertsch receiving notice that funding was not to be continued requesting documentation concerning the decision to close SREL and requesting the Department continue funding for the laboratory until the Subcommittees completed their review of the Department’s decision. The

Department has not agreed to the Subcommittees' request that funding for SREL be continued. In the letters to Chairman Lampson and Chairman Miller, Mr. Anderson stated that SREL understood their commitment to become self-sustaining in FY 2007. The Subcommittees' have yet to identify any documentation of this commitment other than in letters DOE has sent to Members of Congress in response to inquiries about SREL's funding predicament.

The Department also indicated in a letter responding to Rep. Barrow's March 28 letter inquiring about SREL's funding that the Department could only approve SREL's proposed tasks for funding if the tasks were: "submitted to DOE for scientific peer review to ensure that the tasks further the Department's mission." The Subcommittee has subsequently learned that the Department did not conduct a scientific peer review of any of the proposed tasks. Mr. Rispoli's letter goes on to say that DOE had received "very few proposals from SREL that would directly further the DOE or SRS mission." This statement suggests a much broader standard was used to evaluate proposed tasks by SREL and that SRS managers played no role in the development of the tasks submitted for review.

The Subcommittee's review of this decision thus far suggests the process for developing and implementing this new Cooperative Agreement with a long-standing partner in mission-related research, education, outreach and stewardship was conducted in a manner to ensure that the 50-year relationship between the Savannah River Site and the Savannah River Ecology Laboratory ended with the signing of the agreement.

Witnesses:

Panel One

The Honorable Clay Sell is the Deputy Secretary of Energy, U. S. Department of Energy.

Panel Two

Dr. Paul Bertsch is the Former Director of Savannah River Ecology Laboratory. Dr. Bertsch is a fact witness to every major action regarding this lab from May 2005 until his forced departure in June 2007.

Ms. Karen Patterson, is Chair of the Citizens Advisory Board for the Savannah River Site. Ms. Patterson will discuss the Board's activities in relationship to the funding of SREL and the Board's view of the role of SREL on the Savannah River Site.

Panel Three

Mr. Jeffrey M. Allison is the Manager of the Savannah River Operations Office, U.S. Department of Energy. Mr. Allison negotiated the original Cooperative Agreement with Dr. Bertsch in 2005 at the direction of Mr. Anderson.

Mr. Charlie Anderson is the Principal Deputy Assistant Secretary for the Office of Environmental Management, U.S. Department of Energy. Mr. Anderson is the senior manager and directed his staff to negotiate the Cooperative Agreements with SREL-UGA.

Mr. Mark Gilbertson is the Deputy Assistant Secretary for Engineering and Technology, for the Office of Environmental Management, U.S. Department of Energy. Mr. Gilbertson oversaw the review of SREL's proposed tasks for funding on behalf of DOE Headquarters at the direction of Mr. Anderson.

Ms. Yvette T. Collazo is the Assistant Manager for Closure Project for the Savannah River Operations Office, U. S. Department of Energy. Ms. Collazo was involved in the implementation of the new Cooperative Agreement with SREL-UGA for the Savannah River Site and oversight of the review of SREL's proposed tasks for funding at the direction of Mr. Gilbertson.