

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**FRANK MCKINNON AND  
CONCERNED CITIZENS OF SOUTHEASTERN  
NEW MEXICO,**

**Petitioners,**

**v.**

**NO. 07-912 JH/LAM**

**DENNIS R. SPURGEON, United States Department of Energy, Assistant Secretary for Nuclear Energy, Leader for the Global Nuclear Energy Partnership (GNEP); TIMOTHY FRAZIER, Associate Deputy Assistant Secretary (Acting), Office of Fuel Cycle Management, Office of Nuclear Energy of the US Department of Energy; TAMMY L. WAY, GNEP PEIS Document Manager, Corporate Communications and External Affairs, Office of Nuclear Energy of the US Department of Energy; DALE GANDY; LARRY GANDY; MIKE MARLEY, of Gandy Marley, Inc.; STEVE CREAMER, President and Chief Executive Officer of EnergySolutions, Inc.; ALLEN DODSON, General Manager, GNEP Program, EnergySolutions, Inc.; PETER MAGGIORE, Vice President, North Wind, Inc.; All Others Culpable in this Matter, including, but not all inclusive of, Senator PETE DOMENICI, President GEORGE W. BUSH, Presidential Candidate Senator JOHN MCCAIN, Representative STEVE PEARCE, etc...;**

**Respondents.**

**MOTION TO DISQUALIFY, RECUSE AND, OR, REMOVE JUDGE JUDITH HERRERA  
AND RELATED MOTIONS**

**COME NOW** *pro se* Petitioner Frank McKinnon on behalf of himself, and, for, and with One Thousand One Hundred Thirty-Five Concerned Citizens of Southeastern New Mexico (Petitioners), in allegiance and civic duty to, and for the defense and protection of, the State of New Mexico and the United States of America, regarding the matter of the Petitioners' Petition for Emergency Order of Protection or Injunction, to respectfully submit a motion to disqualify, recuse, and, or remove Judge Judith Herrera from this case (**MOTION TO DISQUALIFY, RECUSE AND, OR, REMOVE JUDGE JUDITH HERRERA**), along with other related motions, which include the following:

- (1) motion to the Court to assign this case to an impartial judge (**MOTION TO HAVE**

AN IMPARTIAL JUDGE),

(2) motion to the Court to strike Judge Judith Herrera's "MEMORANDUM OPINION AND ORDER," and to strike any perception or information, which is said in any forum or written in any document that gives her Opinion and Order, or any other decision, order, or comment made by Judge Judith Herrera, regarding this case, any credibility (MOTION TO STRIKE MEMORANDUM OPINION AND ORDER, AND TO STRIKE ANY PERCEIVED AUTHORITY HELD BY JUDGE JUDITH HERRERA),

(3) Request to the Court to save the content of Judge Judith Herrera's Memorandum Opinion and Order to be made available for evidence of her appearance of collusion with Respondents in criminal acts, in the event that it may be used for any, potential, criminal investigations: regarding impropriety in Senator Pete Domenici's and President George W. Bush's hirings of federal judges, regarding impropriety in this case, or regarding evidence in criminal complaints against the Respondents, and regarding evidence in, potential, criminal trials related to the actions of the Respondents (REQUEST TO SAVE CRIMINAL EVIDENCE),

(4) motion to the Court to Expedite the issuance of injunction relief and make it permanent (MOTION TO EXPEDITE INJUNCTIVE RELIEF MAKE IT PERMANENT)

#### PREFACE

Before submitting above mentioned motions, Petitioners respectfully submit to the Court following:

- (1) a clarification of terms used (DECEPTIVE TERMS USED BY RESPONDENTS),
- (2) a brief description of the background of this mater (BRIEF BACKGROUND AND

INTRODUCTION).

#### DECEPTIVE TERMS USED BY RESPONDENTS

There are many deceptive terms used by the Respondents in this matter. Petitioners are pressed for time, so not all deceptive terms used be the Respondents will be addressed, but Petitioners see a

need for clarification on some of these terms to give the Court the ability to better evaluate the damage being done by the Respondents, which include the following.

(1) Respondents use the terms “clean,” “safe,” and “emission” free throughout their literature, in their speeches, used to describe their high level nuclear waste, or nuclear fuel, reprocessing plant and nuclear waste burner reactor. Petitioners submit to the Court information published by the United States Library of Medicine, which has a much different perspective. See Exhibit H.

(2) Until recently, Respondents have avoid using the word “reprocessing” when they described their nuclear waste or nuclear fuel reprocessing plant. They apparently didn't want people to study what they are planning enough to become aware of the horrific history of reprocessing nuclear fuel (highly radioactive waste), and why reprocessing nuclear fuel (highly radioactive waste) was banned in 1979.

Instead of saying “reprocessing” Respondents say “recycling.”

(3) The Advanced Burner Reactor is actually just on paper, at this point, and it looks a lot like an incinerator with stacks for emissions.

(4) For the sake of making things simple, this document will use the word “reprocessing” when talking about reprocessing, and use the term “nuclear waste burner reactor” when talking about what the Respondents mean when they say “Advanced Burner Reactor.”

### **BRIEF BACKGROUND AND INTRODUCTION**

Because there is no monetary compensation being sought by Petitioners, at this point, and because there is no money or potential for money to be made by a lawyer or lawyers for representing Petitioners in this case, there is nobody with a law degree representing the Petitioners.

Petitioners understand that some of the Respondents are represented by lawyers of corporations that have received millions of dollars from the Government of the United States, which the

corporations have not been required to give a record to show how and why it has been spent.

Petitioners also understand that some of the Respondents are represented by at least one lawyer, who is employed by the Department of Justice of the Government of the United States.

As described in the document entitled: “**PETITION FOR EMERGENCY ORDER OF PROTECTION OR INJUNCTION**,” Petitioners are seeking injunctive relief from the threats that are posed by the Respondents' Global Nuclear Energy Partnership nuclear waste reprocessing plant and nuclear waste burner reactor. Petitioners filed that document in state District Court on July 13, 2007.

It took a while for Petitioners to figure out how to properly serve all of the necessary summonses to the Respondents, but managed to stay in compliance with state law. But, Pete Domenici use a law, which Petitioners understand to be a law that President George W. Bush passed in 2005 to remove civil actions from state court to federal courts, without question, so that cases, like this one, would not be heard by judges who would be required to live with the consequences of their decisions.

The reason that Pete Domenici used for moving this case to the United States District Court for the District of New Mexico was that it had a federal question of whether or not Petitioners were being deprived of due process and equal protection under the law; a right that is provided by both the New Mexico Constitution and the United States Constitution.

For reasons previously described, Petitioners had no lawyer to help with filing in federal court, and Petitioners, and this caused Petitioners to feel intimidated. Petitioners, also, felt intimidated for reasons including it the following:

- (1) According the the United States Department of Energy, President George W. Bush is the most culpable in this matter,
- (2) According to many published articles, Senator Pete Domenici is just as culpable for this matter, if not more than President Bush.
- (3) Petitioners believed that Frank McKinnon was taking care of filing the Petition,
- (4) When Frank McKinnon attempted to learn to file documents in the United States

District Court, he ran into the following:

(A) He was led to believe that the only way he could file was electronically, and filing electronically required that he read a variety of ambiguous manuals, which had portions in them that had suggestions that implied that understanding them would likely require that he attend courses in Albuquerque, Santa Fe, or Las Cruces.

(B) He was led to believe that large fees would be required for each document he would need file;

(C) He had just spent the 5 years dealing with a chemical corporation, which had been very good at breaking the law and lying about it for 40 years, resulting in sickness and death for many of his loved ones, and resulted in ruining his property that shared a border with the chemical corporation's large chemical plant. This had been a very expensive learning experience for him. On the day before he became aware of the Respondents' plans of putting a nuclear waste reprocessing plant and a nuclear waste burner reactor about 15 miles from Bottomless Lakes State Park, he had come the conclusion that all he had accomplished, during the 5 years of trying to hold the chemical company accountable for its actions, he had done a best that he could at informing the hundreds of people for whom he believe he held the responsibility to inform about the poison they had been exposed to at the camp, and he had, inadvertently, done a good job at helping state and federal government agencies, and the chemical company, figure out which documents to destroy. This experience with the chemical company's lawlessness that caused so much sickness, death, and sadness for so many, along with running into all of the government corruption was an unhappy time for him. He could see the same sort of thing with an outlaw company like energy solutions. Feeling defeated in his efforts to hold all of the criminals involved with chemical company accountable for what they had done, and feeling the defeat of all that has been presented above in this document, caused him to give up on continuing his effort use the Court and laws to protect his home, his state, and his country from the threats that are posed by the Global Nuclear Energy Partnership (GNEP) nuclear waste reprocessing plant and nuclear waste

burner reactor. He understood that he could do nothing to stop history repeating itself at a more horrific scale with the high level radioactive materials being reprocessed so close to where he and the rest of the Petitioners live.

Considering (1)(2)(3)(4)(A)(B)(C) above, and considering retrospectively all of the times that employees of environmental and law enforcement agencies had told Frank McKinnon that the he needed to talk to his U.S. Representatives and Senators, he was easily persuaded into running for Congress in an effort to protect all that he cares about from the Respondents plans. This resulted in him spending, from November 3, 2007 to March 15, 2008, driving several thousand miles, and giving about 40 speeches, in an effort to either get one of his opponents to stand up for the People of New Mexico against nuclear industry's insidious plans for New Mexico, including, but not all inclusive of GNEP, or to win the election himself. He learned a good bit about what it would take to win an election, but his effort ended in failure.

After the above mentioned failures, with an understanding that the fight was lost, Frank McKinnon became aware that Congress cut the funding for GNEP, but this didn't appear to stop the Respondents for continuing with their threatening plans.

Frank McKinnon received word that, although Congress cut the funding for GNEP and funding for GNEP ran out in September 2008, the Respondents are planning to hold more of their hearings about GNEP in November and December of 2008, where they apparently want to continue with their threatening talk about operate a nuclear waste reprocessing plant and nuclear waste burner reactor near where Petitioners live. On this same day, he was informed by the United States District Court that there was activity occurring in this case. A few days later, on October 14, 2007, he was officially served, electronically, with Judge Judith Herrera's Memorandum Opinion and Order. About this time, he became aware that he would not be required to pay fees to file documents in the United States District Court, and that he would be provided assistance in the procedures of electronically filing, in the event that he wanted to respond to the Memorandum, if could have them ready in pdf format

before or on October 24, so he is filing this document on October 24, 2008.

It is impossible for Frank McKinnon to submit to the Court all the information that he believes the Court should be aware of in this matter by October 24, 2008. It is highly unlikely that this document will be free of typographical errors and misspelled words. But he is sure that he, and the rest of the Petitioners, would like to for experience happiness in November and December of 2008, instead of experiencing an unreasonable amount of distress and experiencing an unreasonable amount of serious fear of bodily injury, destruction of property, and death of Petitioners and all of the people that Petitioners care about as GNEP hearings have caused to happen in the past. With this in mind, Frank McKinnon will file this document before the deadline of October 24, likely in incomplete form with the hope that the Court will at least have an understanding that Petitioners in this case are not giving up on seeking protection that laws of the United States provides its citizens.

Petitioners understand, and, emphatically, inform the Court, that the value of what the Petitioners are trying to protect is far more valuable to the Petitioners, and to the rest of the People and Government of the United States than the billions of dollars of personal gain that the Respondents apparently expect to obtain, as the Respondents defraud, and threaten to steal the future from, the People and Government of the United States.

A reasonable person understands that, if the Respondents intended to have, or even believed that they would have, a nuclear waste reprocessing plant operating without leaking and, or emitting poisonous, highly radioactive materials onto the people living nearby, the nuclear waste reprocessing plant would be built in or near a big city where millions of people live. They most certainly would not put it in such an inconvenient place for regulators to monitor, and they would not be setting things up to prohibit the Nuclear Regulatory Commission, the United States Environmental Protection Agency, and the New Mexico Environment Department, from enforcing laws at the Respondents' facility site of their nuclear waste reprocessing and nuclear waste burner reactor, like they are doing.

Petitioners submit to the Court the understanding that Petitioners are aware of cases where

criminals, who have defrauded the People and Government of the United States in behavior that has been similar to the Respondents' behavior, the criminals have had their lawyers execute an underhanded trick to allow them to disregard and be above the law. This underhanded trick that Petitioners have witnessed is when lawyers get a case thrown out on technicalities as nitpicky as the Plaintiff or Petitioners having an, inadvertent, miscalculation of a math problem, regardless of the merit of the rest of the case.

Considering the above paragraph, Petitioners respectfully submit to the Court that, in the following motions, and in other documents filed by the Petitioners, when Petitioners write “Petitioners' understanding” or “Petitioners understand”, or a “reasonable person understands,” and any similar statements, Petitioners expect the Court to understand that such statements are made with the intent of meaning that Petitioners request of the Court to let Petitioners know, if the Court believes that the Petitioners are incorrect about the topic being submitted or presented, but this is the Petitioners current understanding..

Considering the information in all of the above paragraphs, if the Court believes that the Petitioners need to be corrected on understanding anything about this case, Petitioners respectfully petition the Court to provide an opportunity for Petitioners to provide the Court with information that may clarify to the Court why a statement has been made, which may result in the Court finding that the Petitioners are actually correct.

Considering all information in all previous paragraphs of this document, Petitioners respectfully petition this Court to prohibit the Respondents from using the underhanded trick of using a technicality to allow them to get away with violating laws of the United States.

**(MOTION TO DISQUALIFY, RECUSE AND, OR, REMOVE JUDGE JUDITH HERRERA)**

Petitioners respectfully move the Court to disqualify, recuse, and, or, remove Judge Judith C. Herrera from this case, because there is a substantial amount of information which makes evident an appearance of her conflict of interest with the Respondents of this case. Petitioners make this motion

pursuant to: 28 U.S.C. § 455(a), 28 U.S.C. § 455(b)(4), and the CODE OF CONDUCT FOR UNITED STATES JUDGES: Canon 7; Canon 7(A)(3); Canon 3(C)(1)(a); Canon 3(C)(1)(b); Canon 3(C)(1)(e), and COMMENTARY of Canon 3, COMMENTARY of Canon 3(A)(1) which is as follows.

(1) Petitioners submit to the Court that Petitioners' understanding is that a reasonable person can understand that, if Judge Judith Herrera had put the time and effort that would be necessary to prudently consider the facts in the matter of the Petitioners' Petition for Emergency Order of Protection or Injunction, which was filed for the purpose of seeking injunctive relief from the threats that are posed by the Respondents as the Respondents are promoting reprocessing nuclear waste or spent nuclear fuel with the Global Nuclear Energy Partnership (GNEP), she would have become aware of the culpability held by Senator Pete Domenici, President George W. Bush, the Republican Party, Senator John McCain, and Representative Steve Pearce, in this matter, aware of how the manner in which she obtained her current position of District Judge, and aware of how her political and financial relationship with Senator Pete Domenici, President George W. Bush, the Republican Party, Senator John McCain, and Representative Steve Pearce would make an appearance of her having conflict of interest in this case.

(2) Petitioners' understand 28 U.S.C. § 455(a) to say that “any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” Petitioners submit to the Court information which makes evident that Judge Judith Herrera's impartiality might reasonably be questioned, and that the only legal remedy is for the Court to disqualify, recuse, and, or remove her from this case, which is as follows:

(A) Petitioners submit to the Court information which makes evident that of an enormous amount of culpability for this matter is held by Senator Pete Domenici, President George W. Bush, and Republican Presidential Candidate, Senator John McCain, Steve Pearce, and the Republican Party. See Exhibit A. B. and C.

(B) Petitioners submit to the Court information which makes evident that Senator

Pete Domenici has put a lot of effort into promoting President Bush's GNEP. See Exhibits A and B.

(C) Petitioners submit to the Court information which makes evident that the United States Department of Energy (DOE) has published information which makes evident the appearance that the Global Nuclear Energy Partnership (GNEP) belongs to President George W. Bush. See Exhibit B.

(D) Petitioners submit to the Court information which makes evident that Republican Presidential Candidate, Senator John McCain has declared that he wants to reprocess nuclear waste in New Mexico. See Exhibit C.

(E) Petitioners submit to the Court information which makes evident that Steve Pearce (U.S. Representative for the southern New Mexico and Republican Candidate for New Mexico Senator) is promoting the idea of reprocessing nuclear waste, while he is apparently trying to take advantage of the vulnerability of the naïve, misinformed victims of the false and misleading information distributed by the entire group of Respondents. See Exhibit E.

(F) Petitioners submit to the Court information which makes evident that Republican Senator Domenici, Republican President Bush, Republican Presidential Candidate John McCain, and Republican Representative Steve Pearce have made clear that they are on a mission to reprocess nuclear waste in a way that causes Petitioners to suffer an unreasonable amount of distress, and causes Petitioners to experience an unreasonable amount of serious fear of bodily injury, damage to property, and of death of Petitioners and all of the people that Petitioners care about, which are the same activities of the Respondents from which Petitioners are seeking injunctive relief. See Exhibits A, B, C, and E, and see the section of this document entitled: “MOTION TO EXPEDITE INJUNCTIVE RELIEF,” “MOTION FOR PERMANENT INJUNCTION,” and see the document filed by the Petitioners entitled: “PETITION FOR EMERGENCY ORDER OF PROTECTION OR INJUNCTION.”

(G) Petitioners submit to the Court information which makes evident that Petitioners

are seeking injunctive relief from the threatening words and actions of the Respondents; actions that involve reprocessing nuclear waste. See the section of this document entitled: “MOTION TO EXPEDITE INJUNCTIVE RELIEF,” “MOTION FOR PERMANENT INJUNCTION,” and see the document filed by the Petitioners entitled: “PETITION FOR EMERGENCY ORDER OF PROTECTION OR INJUNCTION.”

(H) Petitioners submit to the Court information which makes evident that Judge Herrera has the appearance of giving money contributions to the Republican Party, the political organization that has reprocessing nuclear waste or spent fuel as part of their political platform or mission. See Exhibits A, B, C, D, E and F.

(I) Petitioners submit to the Court information which provides evidence that makes Judge Judith Herrera have the appearance of money contributions to the political organization (Republican Party) that has reprocessing nuclear waste as part of their platform or mission. This information makes apparent that Judge Judith Herrera has continued giving campaign contributions to Republican Party after she became a District Judge. This information, also, makes apparent that her appointment to her current position of District was influenced by political money contributions from her and from some of the Respondents of this case. See Exhibit D.

(J) Petitioners submit to the Court information which makes evident that on May 30, 2003, Judith Herrera was apparently “asked to submit a resume to Sen. Domenici to be considered for a judgeship.” See Exhibit D, Item 1.

(K) Petitioners submit to the Court information which makes evident that, on June 3, 2003, Senator Pete Domenici, Senator Jeff Bingaman, and Senator Orin Hatch, gave speeches in support of Judith Herrera's nomination to her current position of District Judge. See Exhibit D, Item 3.

(L) Petitioners submit to the Court information which makes evident that Senator Pete Domenici received money campaign contributions from EnergySolutions, formerly called Envirocare. See Exhibit A.

(M) Petitioners submit to the Court that a reasonable person would conclude that Pete Domenici Jr. is Senator Pete Domenici's son.

(N) Petitioners submit information to the Court which makes evident that Senator Orin Hatch received a substantial amount of money campaign contributions from Steave Creamer, Steve Creamer's son, and others associated with EnergySolutions prior to making his recommendation for Judith Herrera to hold her current position of District Judge. See Exhibit D, Item 4.

(O) Petitioners submit information to the Court which makes an appearance of a substantial amount of money paid to the Republican Party (the same political party that receives money from Judge Judith Herrera, the same political party that has reprocessing nuclear waste as part of its platform, and the same political party of Senator Pete Domenici: the person who recommended her to Judith Herrera to President George W. Bush to be appointed to her current position of District Judge, etc...) by EnergySolution, formerly and sometime still called Envirocare. See Exhibit G.

(P) Petitioners submit to the Court information which gives evidence that makes an appearance of the Respondents giving money campaign contributions to Senator Orin Hatch (The third and last Senator to speak on the Senate floor on behalf of Judge Judith Herrera's recommendation for her current position of District Judge). See Exhibit D, Item 3.

(Q) Petitioners submit to the Court information which makes evident that Judge Judith Herrera has strong political ties with the Respondents, which gives the appearance of conflict of interest. See Exhibit D.

(R) Petitioners understanding is that 8 U.S.C. § 455(b)(4) says that a judge “shall also disqualify himself” if “He knows that he...has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding...”

(S) Petitioners' understanding is that Canon 7 of the Code of Conduct for United States Judges says that “A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY.”

(T) Petitioners' understanding of Canon 7 (A)(3) of the Code of Conduct for United States Judges is that it says that “a Judge should not make a contribution to a political organization or candidate...”

(U) Petitioners' understanding of Canon 3(C)(1)(a) of the Code of Conduct for United States Judges is that it says that “A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.”

(V) Petitioners' understanding of Canon 3(C)(1)(b) of the Code of Conduct for United States Judges is that it says that “A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which: the judge knows that the judge...has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding.”

(W) Petitioners' understanding of Canon 3(C)(1)(e) of the Code of Conduct for United States Judges is that it says that “A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which the judge has served in governmental employment...or has expressed an opinion concerning the merits of the particular case in controversy.”

(X) Petitioners' understanding of the COMMENTARY of Canon 3 of the Code of Conduct for United States Judges is that it says that “The duty under Canon 2 to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the judge's activities, including the discharge of the judge's adjudicative and administrative responsibilities. For example, the duty to be respectful of others includes the responsibility to avoid comment or behavior that can reasonably be interpreted as manifesting prejudice...”

(Y) The Petitioners' understanding is that the COMMENTARY Canon 3 of the Code of Conduct for United States Judges says that “A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY.”

(Z) The Petitioners' understanding is that the COMMENTARY Canon 3(A)(1) of the Code of Conduct for United States Judges says that “A judge should be faithful to and maintain professional competence in the law, and should not be swayed by partisan interests, public clamor, or fear of criticism.”

Petitioners submit to the Court the understanding that, if a reasonable person was to consider everything that Petitioners have submitted and on, and related to, pages 1 – 7 of this document, the only conclusion that could be made is that the law requires the Court to disqualify, recuse, and, or remove Judge Judith Herrera from this case.

WHEREFORE, Petitioners respectfully move the Court to disqualify, recuse, and remove Judge Judith Herrera from this case.

#### **MOTION TO HAVE AN IMPARTIAL JUDGE**

Petitioners respectfully move the Court to assign this case to an impartial judge, pursuant to the following: Code of Conduct for United States Judges: COMMENTARY for Canon 1, Canon 2(A), COMMENTARY of Canon 2(A), Canon 3, which is as follows:

(1) Petitioners understand COMMENTARY for Canon 1 of the Code of Conduct for United States Judges to say: “Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they should comply with the law, as well as the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.”

(2) Petitioners understand Canon 2(A) of the Code of Conduct of United States Judges to say: “A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

(3) Petitioners understand COMMENTARY for Canon 2(A) of the Conduct of United States Judges to say: “Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety... A judge must ... accept restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge.”

(4) Petitioners understand Canon 3 of the Code of Conduct of United States Judges to say: “A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY.”

**WHEREFORE**, Petitioners respectfully move the Court to assign this case to an impartial judge.

**MOTION TO STRIKE MEMORANDUM OPINION AND ORDER,  
AND TO STRIKE ANY PERCEIVED AUTHORITY HELD BY JUDGE JUDITH HERRERA**

Petitioners respectfully move the Court to strike Judge Judith Herrera's “MEMORANDUM OPINION AND ORDER,” and to strike any perception or information, which is said in any forum or written in any document that gives her Opinion and Order, or any other decision, order, or comment regarding this case, made by Judge Judith Herrera, any credibility.

Petitioners make this motion pursuant to all information that Petitioners have submitted to the Court, in addition to, and, or in reiteration of, the following: Fourteenth and Fifth Amendments of the United States Constitution, 28 U.S.C. § 455(a), Code of Conduct for United States Judges: Canon 1, Canon 2, Canon 2(A), COMMENTARY of Canon 2(A), Canon 2(B), Canon 3, Canon 3(A)(1), Canon 3(B)(3), Canon 7(A)(3), 18 U.S.C. § 211, 28 U.S.C. § 455(a), 28 U.S.C. § 455(b)(4), 28

U.S.C. § 455(5)(ii)(iii), 28 U.S.C. § 455( c ), 28 U.S.C. § 455(d)(4), 18 U.S.C. 19 § 371 which is as follows:

(1) A reasonable person can understand that Judge Judith Herrera would have come across enough information regarding her appearance of conflict of interest within minutes of studying the matter of the Petitioners Petition for Emergency Order of Protection or Injunction to give her reason to understand that she has an appearance of conflict of interest with this case. Furthermore, a reasonable person can understand that it would not have taken very long in reading through 28 U.S.C. § 455(a) and the Code of Conduct for United States Judges for Judge Judith Herrera to understand that she would be required to automatically recuse herself from this case.

(2) A reasonable person can understand that it is a well established that Judge Judith Herrera's appearance of conflict of interest might reasonably be questioned in this case. But a reasonable person knows that a conclusion, about her appearance of being in collusion with the Respondents, should not be made, even if there is a substantial amount credible evidence, unless there are no other possible conclusions. So, although there is a substantial amount of of credible evidence which makes the appearance of Judge Judith Herrera being in collusion with the Respondents, while the Respondents are defrauding, and stealing the future from, the People and Government of the United States, a reasonable person cannot, at this point, conclude that Judge Judith Herrera was aware of her conflict of interest when she wrote, issued, or filed her “MEMORANDUM OPINION AND ORDER.” But, a reasonable person understands that, if Judge Judith Herrera was aware of her appearance of conflict of interest prior to her writing, issuing, or filing, her “MEMORANDUM OPINION AND ORDER,” she would be in collusion with the Respondents as they are defrauding, and stealing the future from, the People and Government of the United States and committing several other federal crimes.

Petitioners respect the civil rights that are granted in the United States Constitution, and believe that, even though Judge Judith Herrera clearly believes Petitioners, and the rest of the people living in

southeastern New Mexico, should be excluded from these civil rights, she should not be denied her rights to due process and equal protection of the law as Petitioners understand the the Fourteenth Amendment to say that “...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” So, Petitioners make make no motion or request for the Court to force Judge Judith Herrera to incriminate herself, because petitioners believe that the Fifth Amendment grants her to right to avoid self incrimination.

Petitioners submit to the Court information which makes evident that Judge Judith Herrera may have been overwhelmed by her caseload, which may have caused her to be prohibited from spending the time that it would take to understand the facts in the matter of the Petitioners' Petition for Emergency Order of Protection or Injunction. Petitioners understand the text record of the United States Senate to have Senator Pete Domenici saying “ We have a tremendous overload, and I am very pleased that we finally got to the point where we could have another judge.” as he is recommending Judge Judith Herrera's appointment to her current position of District Judge.

Considering Senator Pete Domenici's statement in the above paragraph, a reasonable person can understand how it may have been possible that Judge Judith Herrera have been overwhelmed by her caseload, which may have prohibited her from spending the time it would take for her to understand the facts in the matter of the Petitioners Petition for Emergency Order of Protection or Injunction. This would have made it possible for her not to be aware of her conflict of interest with the Respondents of this case when she wrote, issued and filed her “MEMORANDUM OPINION AND ORDER.”

A reasonable person, who has, prudently, studied the the facts in the matter of the Petitioners' Petition for Emergency Order of Protection or Injunction, can understand that Judge Judith Herrera did not spend much time considering the facts of this matter.

Regardless of whether or not Judge Judith Herrera was aware of her conflict of interest when she

wrote, issued, and filed her “MEMORANDUM OPINION AND ORDER,” a reasonable person, who has studied the Code of Conduct for United States Judges, can understand that Judge Judith Herrera had no authority to make any official Opinion or Order in this case, and can understand that she will never have such authority in this case.

Petitioners submit information which makes evident that Judge Judith Herrera's acts of issuing and, or, filing her “MEMORANDUM OPINION AND ORDER” were illegal acts, which make it an illegal document, as Petitioners respectfully move move the Court to strike Judge Judith Herrera's MEMORANDUM OPINION AND ORDER, and to strike any perception or information, which is said in any forum or written in any document that gives her Opinion and Order any credibility, pursuant to all that Petitioners have submitted in this document, in addition to, and, or the reiteration of the following:

(1) Petitioners' understanding is that Canon 1 of the Code of Conduct for United States Judges says that “A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.”

(2) Petitioners' understanding is that Canon 2 of the Code of Conduct for United States Judges says that “A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES.”

(3) Petitioners' understanding is that Canon 2(A) of the Code of Conduct for United States Judges says that “A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

(4) Petitioners' understanding is that Canon 2(A) of the Code of Conduct for United States Judges says that “A judge should not allow family, social, or other relationships to influence judicial conduct or judgment...”

(5) Petitioners' understanding is that the COMMENTARY of Canon 2(A) of the Code of Conduct for United States Judges says that “...Public confidence in the judiciary is eroded by

irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety.....The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. ..The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

(6). Petitioners' understanding is that the COMMENTARY Canon 2(B) of the Code of Conduct for United States Judges says that “a judge should not use the judge's judicial position to gain advantage in litigation involving a friend or a member of the judge's family.”

Petitioners' understanding is that the COMMENTARY Canon 3(B)(3) of the Code of Conduct for United States Judges says that “A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge...”

The Petitioners' understanding of 18 U.S.C. § 211 is that it says that “Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined under this title or imprisoned not more than one year, or both... Whoever solicits or receives any thing of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States or by requiring the payment of a fee because such person has secured such employment shall be fined under this title, or imprisoned not more than one year, or both...”

Petitioners respectfully submit information that shows that Judge Judith Herrera has a financial interest in the matter in controversy, in party to proceeding and other interest that are substantially affected by the outcome of this proceeding. See **MOTION TO DISQUALIFY, RECUSE AND, OR REMOVE JUDGE JUDITH HERRERA** and Exhibit D.

The Petitioners' understanding of 28 U.S.C. § 455(5)(ii)(iii) is that it says that “He shall also

disqualify himself” if “He...[i]s known by the judge to have an interest that could be substantially affected by the outcome of the proceeding.”

Petitioners respectfully submit information which shows evidence that Judge Judith Herrera has interest that could be substantially affected by the outcome of the proceeding. See **MOTION TO DISQUALIFY, RECUSE AND, OR, REMOVE JUDGE JUDITH HERRERA** and Exhibit D.

WHEREFORE, since it has been established that Judge Judith Herrera has the appearance of conflict of interest, and that she did not spend much time working on this case, she has no authority or right to have any authority in this case. With this in mind, Petitioners respectfully move the Court to strike Judge Judith Herrera's “MEMORANDUM OPINION AND ORDER,” and to strike any perception or information, which is said in any forum or written in any document that gives her Opinion and Order, or any other decision, order, or comment regarding this case, made by Judge Judith Herrera, any credibility.

**(REQUEST TO SAVE CRIMINAL EVIDENCE)**

Petitioners respectfully request that the Court to save the content of Judge Judith Herrera's Memorandum Opinion and Order to be made available for evidence of her appearance of collusion with Respondents in criminal acts, in the event that it may be used for: potential criminal investigations regarding impropriety in Senator Pete Domenici's and President George W. Bush's hirings of federal judges, regarding impropriety in this case, or regarding criminal complaints against the Respondents, and regarding criminal trials related to the actions of the Respondents.

**(MOTION TO EXPEDITE INJUNCTIVE RELIEF AND MAKE IT PERMINENT)**

Petitioners respectfully move this Court to expedite its issuance of an Emergency Order of Protection or Injunction pursuant to all reasonable beliefs, facts, and laws that Petitioners have already submitted or presented to this Court, in addition to and/or in reiteration of the following: Fourteenth and First Amendment of the United States and 18 U.S.C 110A, § 2261A; which is as follows.

One of many reasons that the for the urgency of the Petitioners' motion to move this Court expedite the issuance of the Emergency Order of Protection or Injunction to stop or prohibit the Respondents from continuing with their activities of promoting their plant to reprocess nuclear waste, is because, when the Respondents talk about their plans of reprocessing nuclear waste it causes Petitioners to experience an unreasonable amount of distress, and causing Petitioners to experience an unreasonable amount of serious fear of bodily injury, damage of property, and death of Petitioners and all of the people that the Petitioners care about.

Petitioners understand that the First Amendment of the United States Constitution grants Petitioners and Respondents of this case the right to freedom of speech. But Petitioners' understanding of the First Amendment is that it does not give anyone (not even the President, Senators, and government officials) license to threaten to make us sick, license to make death threats, license to threaten to destroy property, license to threaten to ruin lives, or license to threaten to ruin the lives of our posterity.

Petitioners understand 18 U.S.C 110A, § 2261A: to say is that whoever travels to another State, uses the mail, uses any interactive computer service, or uses any facility of interstate or foreign commerce to engage in a course of conduct that causes substantial emotional distress to that person or places that person in reasonable fear of the death of, or serious bodily injury to the following: that person; a member of the immediate family of that person; a spouse or intimate partner of that person, shall be fined or imprisoned or both.

The Respondents have announced that they plan to have a GNEP hearing in Roswell on November 18, which means that they plan to continue talking about about reprocessing nuclear waste in a way that causes Petitioners to experience an unreasonable amount of distress, and an unreasonable amount of serious fear of bodily injury, destruction of property, and death of Petitioners and all of the people that Petitioners care about.

The distress and fear that their threatening talk causes is unhealthy, and Petitioners would rather

spending November and December of 2008 enjoying life without this emotional distress and serious fear of bodily injury, destruction of property, and death of Petitioners and all of the people that the Petitioners care about.

Petitioners believe that the Petitioners' emotional distress and fear is warranted, and hope that Petitioners children, grandchildren, and great grandchildren are not caught off guard by the another renaissance of the nuclear industries selfish desire to reprocess nuclear fuel. It is not fair or reasonable to ask Petitioners or Petitioners' posterity to sacrifice security, property, or health so the nuclear industry can continue trying to win its futile race against renewable energy technologies that are far more efficient, less expensive, more capable of providing energy, and safer.

WHEREFORE, Petitioners respectfully motion to the Court to issue an Order which provides injunctive relief from the Respondents', or anyone else's, nuclear waste reprocessing plant and nuclear waste burner reactor that are like what they are proposing in GNEP. If it possible, Petitioners would like the injunctive relief to be permanent.

Respectfully submitted,



---

Frank McKinnon on behalf of himself, and, for, and with One Thousand One Hundred Thirty-Five Concerned Citizens of Southeastern New Mexico (Petitioners), in allegiance and civic duty to, and for the defense and protection of, the State of New Mexico and the United States of America  
Mailing Address:  
903 N. Missouri Ave.  
Roswell, New Mexico 88201  
Office Phone: (575) 627-3391  
Cell Phone: (575) 420-8199

## EXHIBIT A

Exhibit A is submitted to the Court to provide information which makes evident that Senator Pete Domenici is culpable for this matter, and to show how his behavior, and how his relationship with Judge Judith Herrera's political activities, causes here to have conflict of interest with the Respondents of this case.

Excerpts from web pages that talk about Senator Pete Domenici and GNEP are presented as follows:

**Congress.** New Mexico Republican Sen. Pete Domenici, a strong GNEP supporter, will retire in January after six terms in the Senate. He has pushed the program as an energy policy priority both as ranking member and former chairman on the Senate Energy Committee (the authorizing committee with jurisdiction over energy issues) and ranking member and former chairman of the Senate Energy and Water Appropriations Subcommittee, which appropriates GNEP funding. As such, he has been able to steer AFCI funding to Los Alamos and Sandia--both located in his home state. Emphasizing his support for reprocessing, Domenici recently proposed legislation that would authorize the construction of U.S. reprocessing facilities; the bill has no prospect for approval.

Source: <http://www.thebulletin.org/web-edition/reports/the-future-of-gnep/the-future-of-gnep-domestic-stakeholders>

UPI [reports](#) the two leading US Senators have written a letter to their colleagues on the Senate Budget Committee warning there is "no consensus" on the legislative path forward for the Global Nuclear Energy Program ([GNEP](#)). Jeff Bingaman (D-NM), the chair of the Senate Energy & Natural Resources [Committee](#), and Pete Domenici (R-NM), the ranking member there, say the nuclear power and waste plan isn't doing well.

Source: <http://djysrv.blogspot.com/2007/03/no-consensus-on-gnep-say-domenici.html>

## **Domenici Subcommittee Studies GNEP as Key to Long-Term Nuclear Power & Waste Problems**

from the Office of Senator Pete V. Domenici

Thursday, March 2, 2006

WASHINGTON – U.S. Senator Pete Domenici today pledged to work toward implementation of President Bush's Global Nuclear Energy Partnership (GNEP), a program to address new solutions to deal with wastes associated with the burgeoning nuclear power sector.

Domenici's Senate Energy and Water Development Appropriations Subcommittee today held a hearing to receive Department of Energy testimony on GNEP. The plan would address nuclear waste through an advance fuel cycle that will reduce the overall volume of waste and protect against possible proliferation by eliminating separated plutonium.

The administration has requested \$250 million through the DOE Office of Nuclear Energy for an advanced Fuel Cycle Initiative (ACFI).

“The United States in the 1970s abandoned its leadership on nuclear recycling and let the rest of the world pass us by. With the creation of the GNEP, we’re getting back in the game,” Domenici said. “I am all for setting forth on a comprehensive global nuclear strategy that promotes nuclear nonproliferation goals while helping resolve nuclear waste issues.”

“With GNEP, we begin to close the cycle on nuclear waste in ways that prevent proliferation and reduce both the volume and toxicity of waste. By recycling spent nuclear fuel, we can reuse the uranium, which is 96 percent of spent fuel, and separate the most toxic radioactive material to be burned in an advanced burner reactor. By reusing uranium fuel and burning the transuranic material in a new generation of modern reactors, we can reduce the amount of waste placed in Yucca Mountain by a factor of 100,” he said.

“I have asked Deputy Secretary Clay Sell to clarify the specific role Sandia and Los Alamos national labs will play going forward. They have immense experience in safeguards and security as well as reactor fuel research,” he said.

Earlier this week, DOE announced that it will release \$400,000 in FY2006 funding to Los Alamos National Laboratory for advanced burner reactor development of fuels and remote fuel fabrication and materials. Other labs are also expected to participate in GNEP, but DOE has not yet allocated the distribution of other AFCI funding.

Domenici has been the leading proponent of expanding nuclear power in the United States as part of an overall policy strategy to increase domestic energy production—particularly advanced nuclear power, clean coal technologies and renewable energies.

There are 103 nuclear reactors at 64 sites in 31 states, and another 19 plants are under consideration since the enactment last August of the National Energy Policy Act. It is estimated that by recycling spent fuel can reduce the amount of waste planned for storage at Yucca Mountain can be reduced by a factor of 100.

Source: <http://domenici.senate.gov/news/topicrecord.cfm?code=EWApprops&id=252130>

### EXHIBIT A, ITEM 1

ITEM 1 gives information which makes an appearance of Senator Pete Domenici (The Senator who led the way in recommending Judge Judith Herrera to her current position of District Judge) received money from or associated with the Respondents of this case.

<b>SEMNIANI, KHOSROW B MR</b>	<a href="#">DOMENICI, PETE V</a> (R)	<b>\$1,000</b>	
SALT LAKE CITY, UT <a href="#">84101</a>	Senate - NM	general	09/23/96
ENVIROCARE OF UTAH	PEOPLE FOR PETE DOMENICI		

Source: [http://www.newsmeat.com/fec/bystate\\_detail.php?zip=84101&last=Semnani&first=Khosrow](http://www.newsmeat.com/fec/bystate_detail.php?zip=84101&last=Semnani&first=Khosrow)

## **EXHIBIT A, ITEM 2**

ITEM 2 gives information which show Senator Pete Domenici's (The Senator who led the way in recommending Judge Judith Herrera to her current position of District Judge) relationship with the Respondents and the rest of the nuclear industry.

“Sen. Pete Domenici, R-N.M., the architect of the package of subsidies for the nuclear industry, said the government assistance will jump-start nuclear power. There has not been a new nuclear plant licensed since the 1979 accident at the Three Mile Island reactor in Pennsylvania... “The time has come to quit playing around with energy and say, wherever we can, we are going to produce more energy,” argued Domenici. Nuclear power has long been neglected, he said, and that has been “a giant mistake.” ””

<http://nucnews.net/nucnews/2003nn/0306nn/030610nn.htm>

## **EXHIBIT B**

Exhibit B is submitted to the Court to provide information which makes evident that President George W. Bush is culpable for this matter, and to show how his behavior, and how his relationship with Judge Judith Herrera's political activities, causes here to have conflict of interest with the Respondents of this case.

The following excerpts were taken directly from the web site published by the United States Department of Energy. They are presented to show culpability in the matter held by President George W. Bush.

“WASHINGTON, DC – The U.S. Department of Energy (DOE) today announced that four consortia have been selected to receive up to \$16 million for technical and supporting studies to support President Bush’s Global Nuclear Energy Partnership (GNEP)...These studies will contribute to the analysis and inform the research that DOE is conducting to further President Bush’s Global Nuclear Energy Partnership...GNEP is part of President Bush's Advanced Energy Initiative...” (Source 1).

“**WASHINGTON, DC** – The U.S. Department of Energy (DOE) and Nuclear Regulatory

Commission (NRC) expanded cooperation for President Bush's Global Nuclear Energy Partnership (GNEP) through a Memorandum of Understanding (MOU)...This MOU represents a significant step in the development of nuclear fuel recycling technologies as envisioned by President Bush's Global Nuclear Energy Partnership," DOE's Assistant Secretary for Nuclear Energy Dennis Spurgeon said...As part of President Bush's Advanced Energy Initiative, GNEP seeks to expand ..." (Source 2).

"WASHINGTON, DC – The U.S. Department of Energy (DOE) today strengthened its commitment to advancing nuclear power by awarding \$100,000 to 38 universities to enhance nuclear research and development (R&D) under President Bush's Global Nuclear Energy Partnership (GNEP)..." (Source 3).

Source 1: <http://www.gnep.energy.gov/media/PRs/gnepPR073007.html>

Source 2: <http://www.gnep.energy.gov/media/PRs/gnepPR071707.html>

Source 3: <http://www.gnep.energy.gov/media/PRs/gnepPR082207.html>

### **EXHIBIT C**

Exhibit C is submitted to the Court to provide information which makes evident that Presidential Candidate, Senator John McCain is culpable for this matter, and to show how his behavior, and how his relationship with Judge Judith Herrera's political activities, causes here to have conflict of interest with the Respondents of this case.

Below are web page excerpts that are found by search words "McCain and Reprocessing and New Mexico.

Sierra Club Weighs in on McCain Remarks on Energy at Albuquerque Rally

*Note: Read the live blog at [New Mexico FBIHOP](#) for more on the McCain-Palin appearance at the Albuquerque Convention Center last night (with photos). Also listen to Peter St. Cyr's [audio](#) of the short speeches by McCain and Palin.*

**Must Read:** I just got this release from the [Sierra Club NM](#) Club NM and it tells the story so well, I'm going to publish it verbatim:

At a 'Road to Victory' rally in Albuquerque this evening, Senator John McCain advocated for the reprocessing of spent nuclear fuel as a way to deal with the tons of high-level nuclear waste accumulating at reactors around the country. However, he failed to mention America's troubled past

with reprocessing – namely, tanks of liquid waste that are corroding and threatening nearby bodies of water (Columbia and Savannah Rivers as well as Snake River Aquifer). McCain also neglected to mention that France and the UK simply pipe their liquid wastes from reprocessing directly into the North and Irish seas to the ire of neighboring countries, and that reprocessing has not significantly reduced the need for a deep geological repository (Institute for Energy & Environmental Research, [www.ieer.org/fctsheets/repro-intl.html](http://www.ieer.org/fctsheets/repro-intl.html)).

McCain also advocated for greater solar power production, but failed to mention that he did not show up to any of the eight votes held this year on extending clean energy tax credits. About 2,000 construction jobs with the Solana concentrating solar project in McCain’s home state of Arizona are on hold as a result. Similarly, McCain’s opposition to a national Renewable Electricity Standard has cost New Mexicans at least 2,800 new jobs in the solar and wind industries, \$200 million in lower electricity and natural gas bills by 2020 (growing to nearly \$400 million by 2030), and another \$100 million in income to farmers, ranchers, and rural landowners (Union of Concerned Scientists, [Cashing in on Clean Energy in New Mexico](#)).

#### **Statement of Shrayas Jatkari, Sierra Club NM**

Source: [http://www.democracyfornewmexico.com/democracy\\_for\\_new\\_mexico/2008/09/sierra-club-wei.html](http://www.democracyfornewmexico.com/democracy_for_new_mexico/2008/09/sierra-club-wei.html)

### **EXHIBIT D**

Exhibit D is submitted to the Court to provide information which makes evident that Judge Judith Herrera has an appearance of conflict of interest with the Respondents, which is caused by her political and financial relationship with the Senator Pete Domenici, President George W. Bush, Senator John McCain, and Representative Steve Pearce.

Information in ITEM 1 below is published by the by the Center for Investigative Reporting. “MONEY TRAILS TO THE FEDERAL BENCH.” It gives evidence which gives the appearance of Judith C. Herrera giving money contributions to the Republican Party. It makes evident the appearance of her money contributions influencing Senator Pete Domenici's recommendation for President George W. Bush to appoint her to her current position of District Judge.

### **EXHIBIT D, ITEM 1**

**Herrera, Judith C.**

U.S. District Court, District of New Mexico

**Nominated:** September 23, 2003 | **Confirmed:** June 3, 2004

**Summary:** A former attorney in private practice, Herrera contributed \$2,000 to the Republican

Campaign Committee of New Mexico in 2001. Using her married name, Judy Baird, she gave \$300 more to the federal Republican committee on September 23, 2003, the day of her nomination. Herrera also gave \$500 to a Democrat's congressional campaign in 1999-2000.

**Chronology:**

- Jan. 15, 2001: The Albuquerque Tribune reports that Herrera is being mentioned as a possible candidate for a district judgeship.
- April 5, 2001: The Republican Campaign Committee of New Mexico receives \$2,000 from Herrera.
- May 30, 2003: Herrera is asked to submit a resume to Sen. Domenici to be considered for a judgeship
- Sept. 23, 2003: Bush nominates Herrera
- The Republican Campaign Committee of New Mexico, which supports federal candidates, receives \$300 from Herrera, under her married name, Judy Baird.

SOURCE: [www.centerforinvestigativereporting.org/files/MoneyTrails\\_FullReport.pdf](http://www.centerforinvestigativereporting.org/files/MoneyTrails_FullReport.pdf)

**EXHIBIT D, ITEM 2**

<b>Herrera, Judith</b> Santa Fe, NM <a href="#">87502</a>	REPUBLICAN CAMPAIGN COMMITTEE OF NEW MEXICO (R)	<b>\$1,000</b> primary	04/05/01
<b>Herrera, Judith</b> Santa Fe, NM <a href="#">87502</a> BEST EFFORT MADE	REPUBLICAN CAMPAIGN COMMITTEE OF NEW MEXICO (R)	<b>\$1,000</b> primary	04/05/01

SOURCE: [http://www.newsmeat.com/fec/bystate\\_detail.php?zip=87502&last=Herrera&first=Judith](http://www.newsmeat.com/fec/bystate_detail.php?zip=87502&last=Herrera&first=Judith)

**EXHIBIT D, ITEM 3**

This information published a text record of the Senate, for June 3, 2003, during the nomination of Judith Herrera to her current position of District Judge.

**Sen. Pete Domenici [R-NM]:** Mr. President, I rise in support of a New Mexican named

Judith Herrera to be United States District Judge for the District of New Mexico. I believe everyone knows that the administration of justice is one of the most significant pillars of good government. I think in this instance the President has sent us an extraordinary person to be a judge in the District of New Mexico.

We have a vacancy there because of a justice who took senior status. We have a tremendous overload, and I am very pleased that we finally got to the point where we could have another judge. Maybe we can begin to take care of this enormous overload. I thank everyone who worked on this nomination. Her credentials are impeccable. Every group that needed to recommended her.

Judith Herrera is a resident of Santa Fe, NM. She attended the University of New Mexico. She then attended the Georgetown University Law Center where she earned her law degree. We, in New Mexico, are fortunate that Judy decided to return to New Mexico upon completion of her law degree. She began her career in public service shortly after returning to New Mexico, serving on the Santa Fe City Council from 1981 to 1986.

She continued her service by sitting on the boards of St. Vincent Hospital in Santa Fe, St. Michael's High School Foundation, also in Santa Fe, and the University of New Mexico in Albuquerque.

She has practiced law for more than 20 years in New Mexico, amassing in impressive resume and reputation in the legal community.

I am confident she will be an outstanding member of the federal judiciary.

I look forward to Judy Herrera's tenure on the bench.

**Chair:** The Senator from New Mexico.

**Sen. Jeff Bingaman [D-NM]:** Mr. President, I join my colleague, Senator Domenici, in urging the Senate to support this nomination. Judith Herrera is very qualified. I compliment the President for nominating her for this position. I compliment my colleague for recommending that nomination. She will serve us well on the district court in New Mexico.

Ms. Herrera began her career as a prosecutor, and has spent many years in private practice. Currently, she is a partner at Herrera, Long, Pound & Komer in Santa Fe, NM. She has also served on the Santa Fe City Council and on the University of New Mexico's Board of Regents. Mrs. Herrera has served with distinction in all of these positions.

I urge my fellow Senators to support her nomination.

**Sen. Orrin Hatch [R-UT]**: Mr. President, I rise today to express my strong support for the confirmation of Judith Herrera, who has been nominated to the United States District Court for the District of New Mexico.

Ms. Herrera is an exceptional nominee and has a distinguished record of service in both the private and public sectors. After graduating from Georgetown Law School, Ms. Herrera worked as an Assistant District Attorney in Santa Fe, New Mexico where she prosecuted a variety of misdemeanor and felony offenses. She later entered the private sector and practiced in the areas of education and employment law.

Ms. Herrera distinguished herself as one of the most effective advocates in New Mexico for employers defending wrongful discharge and discrimination cases. She later founded her own law firm, and currently serves as shareholder and president of that firm. Ms. Herrera has also served the local community of Santa Fe in a variety of ways. She was a member of the Santa Fe City Council, the Board of Trustees for St. Vincent Hospital, and the Board of Regents for the University of New Mexico. Ms. Herrera's broad experience as a trial attorney and her many hours of community service have prepared her for the challenges she will face as a Federal judge. I am confident that she will make a fine addition to the federal bench in the District of New Mexico.

I yield the floor.

**Sen. Patrick Leahy [D-VT]**: Today the Senate is proceeding to confirm Judith Herrera to the U.S. District Court for the District of New Mexico. Ms. Herrera is a partner with the Santa Fe firm of Herrera, Long, Pound & Komer, which she co-founded in 1987. She appears in court frequently on

behalf of employers, and their insurance companies, serving as defense counsel in employment discrimination and wrongful discharge cases. Before starting this practice, she handled education cases and also served briefly as a local prosecutor. She also previously served on the Sante Fe City Council. She has the support of both of her home-state Senators.

Petitioners submit that the above paragraph, spoken by Senator Patrick Leahy is followed by several more, which a reasonable person might interpret as Senator Leahy having some objection to President Bush appointing so many judges, and might assume that Senator Leahy is asking Why Judith Herrera, when so many others have been overlooked.

SOURCE: <http://www.govtrack.us/congress/record.xpd?id=108-s20040603-18>

#### **EXHIBIT D, ITEM 4**

An internet web page has an article entitled: “So How Will Hatch Spend All That Cash?” Deseret News > Salt Lake City > December 12, 2006 says: “ And [Senator Orin Hatch] had to refund contributions from some well-known Utahns who donated in excess of FEC rules, including banker Spence Eccles (\$3,800), and the son of Steve Creamer (\$800), head of EnergySolutions, formerly Envirocare.

Source: [http://findarticles.com/p/articles/mi\\_qn4188/is\\_/ai\\_n16906755](http://findarticles.com/p/articles/mi_qn4188/is_/ai_n16906755)

#### **EXHIBIT D, ITEM 5**

According to an web page entitled: “NEWS MEAT AMERICA'S MOST POPULAR CAMPAIGN DONER SEARCH ENGINE,” **Senator Orin Hatch received a campaign contribution of \$1,000.00 from Charles Judd of Envirocare** in 1999.

Source: [http://www.newsmeat.com/fec/bystate\\_detail.php?zip=84101&last=Judd&first=Charles](http://www.newsmeat.com/fec/bystate_detail.php?zip=84101&last=Judd&first=Charles)

A web page entitled: “CampaignMoney.com” says that the **Hatch Campaign Committee received \$500.00 from Kenneth Lee Alkema of Envirocare** in 2000.

Source: [http://www.campaignmoney.com/political/contributions/utah\\_layton\\_84040.asp?cycle=00](http://www.campaignmoney.com/political/contributions/utah_layton_84040.asp?cycle=00)

An internet web page has an article entitled: “Envirocare owner assumes positions of president, CEO ,” Deseret News > Salt Lake City > July 17, 2003 says: “**Envirocare owner Khosrow B.**

**Semnani has assumed the positions of president and chief executive officer of the company.**

Semnani takes over from Dwayne Nielson, who has resigned as president and CEO effective immediately, according to a company statement Tuesday. Nielson has accepted a position on the Envirocare board of directors. **Semnani will continue to serve as chairman of the Envirocare board, as well as president of SK Hart Management and the Semnani Foundation.”**

Source: [http://findarticles.com/p/articles/mi\\_qn4188/is\\_20030717/ai\\_n11407438](http://findarticles.com/p/articles/mi_qn4188/is_20030717/ai_n11407438)

CampaignMoney.com published that **Khosrow B. Semnani of SK HART**

**MANAGEMENT contributed \$1,750 to the Hatch Election Committee, contributed \$1,000 to**

**Bush for President Inc., and contibuted \$200.00 to McCain 2000 Inc. in 2000.**

Source:

[http://www.campaignmoney.com/political/contributions/utah\\_salt\\_lake\\_city\\_84111.asp?cycle=00](http://www.campaignmoney.com/political/contributions/utah_salt_lake_city_84111.asp?cycle=00)

A web page entitled: “ST. GEORGE, UT Political Contributions by Individuals” publishes the following:

1981 / 1982 Contributions:

R STEVE CREAMER (CREAMER NOBLE), (Zip code: 84770) \$500 to FRIENDS OF ORRIN HATCH COMMITTEE on 02/19/82

K REED NOBLE (CREAMER NOBLE), (Zip code: 84770) \$500 to FRIENDS OF ORRIN HATCH COMMITTEE on 02/19/82

Source: <http://www.city-data.com/elec2/elec-ST--GEORGE-UT.html>

### **EXHIBIT E**

Exhibit E is submitted to the Court to provide information which makes evident that

Representative Steve Pearce is culpable for this matter, and to show how his behavior, and how his relationship with Judge Judith Herrera's political activities, causes here to have conflict of interest with the Respondents of this case.

### **U.S. plan for nuclear cartel faces reality check**

Expense, technical challenges threaten to keep GNEP in starting gate

...Politicians in other communities that received GNEP grants also expressed eagerness to cash in on what they believe could be an economic bonanza. "These nuclear fuel recycling facilities would firmly establish our state as the leader in this field," said Republican Rep. Steve Pearce of New Mexico, where the DOE awarded two study grants. "This is an exciting opportunity for East Tennessee," echoed Republican Rep. Zach Wamp, whose district includes Oak Ridge National Laboratory, another potential GNEP site.

Source: <http://www.msnbc.msn.com/id/16304749/>

Pearce strongly supports more nuclear power. He advocates more aggressive efforts to prepare Yucca Mountain for waste storage and to increase fuel reprocessing to lower the amount of waste generated.

Source:

<http://albuquerque.bizjournals.com/albuquerque/stories/2008/10/27/newscolumn3.html?b=1225080000%5E1722163>

### **EXHIBIT F**

Exhibit F is submitted to provide information which makes evident Judge Judith Herrera's appearance of conflict of interest, caused by her political relationship with reprocessing nuclear waste in the United States, by showing how the Republican Party's platform includes the goal of making it possible to reprocess nuclear waste in the United States, the same threatening goal of the Respondents from which the Petitioners are seeking injunctive relief..

Exhibits A, B, C, and E, of reprocessing nuclear waste as being a part of the Republican platform.

Republican Reprocessing Excerpt 1: Republican Platform of 1980: Nuclear power development requires sound plans for nuclear waste disposal and storage and reprocessing of spent fuel. Technical solutions to these problems exist, and decisive federal action to choose and implement solutions is essential. The Democratic-controlled Congress and Administration have failed to address the spent fuel

problem. A Republican Congress and Administration will immediately begin to implement plans for regional away away-from-reactor storage of spent fuel with the goal of implementation of a program no later than 1984....Republicans are committed to the rapid development of permanent storage facilities for nuclear wastes. Since waste disposal is a national responsibility, no state should bear an unacceptable share of this responsibility. Republicans will also move toward reprocessing of spent fuel...”

Source: <http://www.presidency.ucsb.edu/ws/index.php?pid=25844>

Republican Reprocessing Excerpt 2: 2004 Republican Platform: “Nuclear power provides America with affordable, emissions-free energy. We believe nuclear power can help reduce our dependence on foreign energy and play an invaluable role in addressing global climate change. President Bush supports construction of new nuclear power plants through the **Nuclear Power 2010 initiative...**”

Source: [www.gop.com/images/2004platform.pdf](http://www.gop.com/images/2004platform.pdf)

Republican Reprocessing Excerpt 3: “New baseload nuclear generating capacity is required to enhance U.S. energy supply diversity and energy security, a key *National Energy Policy (NEP)* objective. **The Nuclear Power 2010 program**, unveiled by the Secretary on February 14, 2002...”

Source: Google's cache of <http://www.ne.doe/np2010/nenp2010a.html> September 5, 2008

Republican Reprocessing Excerpt 4: “The *National Energy Policy (NEP)* recommends that the United States "develop reprocessing and fuel treatment technologies...”

Source: <http://www.ne.doe.gov/AFCI/neAFCI.html>

Republican Reprocessing ITEM 5: “In early 1981, President Reagan announced that he was "lifting the indefinite ban which previous administrations placed on commercial reprocessing activities in the United States." Statement Announcing a Series of Policy Initiatives on Nuclear Energy, Pub. Papers 903 (Oct 8, 1981). President Reagan stated that it is "important that the private sector take the

lead in developing commercial reprocessing services...”

Source: <http://www.usdoj.gov/osg/briefs/1988/sg880467.txt>

### **EXHIBIT G**

Exhibit G is submitted to provide information which makes evident the appearance of Judge Judith Herrera's conflict of interest through political and financial relationships with the Respondents, which is as follows.

<b>Semnani, Khosrow Mr.</b> Salt Lake City , UT <a href="#">84101</a> Envirocare of Utah/Owner	UTAH REPUBLICAN PARTY (FEDERAL ACCOUNT) (R)	<b>\$500</b> primary	01/23 /08
<b>Semnani, Khosrow B. Mr.</b> Salt Lake City , UT <a href="#">84101</a> SK Hart Management/President	<a href="#">PAUL, RON</a> (R) President RON PAUL 2008 PRESIDENTIAL CAMPAIGN COMMITTEE	<b>\$500</b> primary	01/16 /08
<b>SEMNANI, KHOSROW</b> SALT LAKE CITY , UT <a href="#">84101</a> S.K. HART MANAGEMENT LLC/BUSINESS O	<a href="#">THOMPSON, FRED DALTON</a> (R) President FRED THOMPSON POLITICAL ACTION COMMITTEE	<b>\$1,000</b> primary	11/28 /07
<b>Semnani, Khosrow MR.</b> Salt Lake City , UT <a href="#">84101</a> Envirocare of Utah/Owner	UTAH REPUBLICAN PARTY (FEDERAL ACCOUNT) (R)	<b>\$5,000</b> primary	06/07 /07
<b>Semnani, Khosrow MR.</b> Salt Lake City , UT <a href="#">84101</a> Envirocare of Utah/Owner	UTAH REPUBLICAN PARTY (FEDERAL ACCOUNT) (R)	<b>\$1,500</b> primary	01/18 /07
<b>Semnani, Khosrow MR.</b> Salt Lake City, UT <a href="#">84101</a> Envirocare of Utah/Owner	UTAH REPUBLICAN PARTY (FEDERAL ACCOUNT) (R)	<b>\$1,500</b> primary	10/31 /06
<b>Semnani, Khosrow MR.</b> Salt Lake City, UT <a href="#">84101</a> Envirocare of Utah/Owner	UTAH REPUBLICAN PARTY (FEDERAL ACCOUNT) (R)	<b>\$1,000</b> primary	10/05 /04
<b>Semnani, Khosrow MR.</b> Salt Lake City, UT <a href="#">84101</a> Envirocare of Utah/Owner	UTAH REPUBLICAN PARTY (FEDERAL ACCOUNT) (R)	<b>\$2,000</b> primary	10/05 /04
<b>Mr. Khosrow Semnani</b> Salt Lake City, UT <a href="#">84101</a> Envirocare of Utah/Owner	UTAH REPUBLICAN PARTY (FEDERAL ACCOUNT) (R)	<b>\$1,500</b> primary	11/06 /03
<b>Mr. Khosrow Semnani</b> Salt Lake City, UT <a href="#">84101</a> Envirocare of Utah/Owner	UTAH REPUBLICAN PARTY (FEDERAL ACCOUNT) (R)	<b>\$1,000</b> primary	04/22 /03

<b>Mr. Khosrow Semnani</b> Salt Lake City, UT <a href="#">84101</a> Envirocare of Utah/Owner	UTAH REPUBLICAN PARTY (FEDERAL ACCOUNT) (R)	<b>\$200</b> primary	12/24 /02
<b>Mr. Khosrow Semnani</b> Salt Lake City, UT <a href="#">84101</a> Envirocare of Utah/Owner	UTAH REPUBLICAN PARTY (FEDERAL ACCOUNT) (R)	<b>\$2,500</b> primary	10/15 /02
<b>SEMNANI, KHOSROW</b> SALT LAKE CITY, UT <a href="#">84101</a> BUSINESS OWNER	<a href="#">CRAIG, LARRY E</a> (R) Senate - ID CRAIG FOR U S SENATE	<b>\$200</b> general	10/08 /02
<b>Mr. Khosrow Semnani</b> Salt Lake City, UT <a href="#">84101</a> Envirocare of Utah/Owner	UTAH REPUBLICAN PARTY (FEDERAL ACCOUNT) (R)	<b>\$1,000</b> primary	05/14 /02
<b>Mr. Khosrow Semnani</b> Salt Lake City, UT <a href="#">84101</a> Envirocare of Utah/Owner	UTAH REPUBLICAN PARTY (FEDERAL ACCOUNT) (R)	<b>\$1,000</b> primary	05/14 /02

### **EXHIBIT H**

**What is GNEP, and why does it cause Petitioners to experience an unreasonable amount of distress, and experience an unreasonable amount of fear of bodily injury, damage to property, and death of Petitioners and all of the people that Petitioners care about?**

The Petitioners understand that the Global Nuclear Energy Partnership is a plan to have one location in the United States where highly radioactive spent nuclear fuel rods will be transported to from all over the world to be reprocessed, apparently for the purposes of providing radioactive materials like plutonium for the nuclear weapons industry, and to provide fuel for nuclear power plants to be shipped from the GNEP site to nuclear power plants all over the world. The facilities that would be operating at the GNEP site are a nuclear waste reprocessing plant and a nuclear waste burner reactor.

The GNEP appears to be just one of several components of the “Nuclear Renaissance.” The Nuclear Renaissance appears to have originated at meeting held

The U.S. Department of Energy and the Respondents claim that nuclear power is clean and safe, as they present their plans of reprocessing nuclear waste. The White House, and the U.S. Department of State, and the U.S. Department of Energy have published web page articles that say that nuclear

power is clean and safe as they promote reprocessing nuclear waste.

Petitioners have searched far and wide to see if there is anything written which says that nuclear power is clean and safe by the U.S Public Health Services, the U.S. Environmental Protection Agency, the Nuclear Regulatory Commission, or by state agencies with similar purposes of protecting the environment and promoting health. Not one such written statement has been found. Petitioners have spent many hours on the telephone with employees of these agencies to find out how close to a nuclear waste reprocessing plant a person could safely live. Several unofficial statements have been made by government employees at these agencies that have equated to saying that a person should live as far away as possible from a nuclear waste reprocessing plant.

As is written in the PETITION FOR EMERGENCY ORDER OF PROTECTION OR INJUNCTION, Charles Miller, Ph.D., Chief, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC) of the US Department of Health told me that Frank McKinnon could quote him as saying that he is not aware of a nuclear waste reprocessing plant that has ever successfully operated without hurting people in surrounding communities.

The only information that Petitioners have been able to find that relates to reprocessing, which has been written and published by an agency of the United States Government gives with apparent duties of protecting the environment and promoting good health, comes from the United States Library of Medicine's TOXNET - Databases on toxicology, hazardous chemicals, environmental health, and toxic releases (<http://toxnet.nlm.nih.gov>). The databases information regarding reprocessing nuclear waste, like they plan to do at the GNEP site, is in the following:

Because the model for the GNEP nuclear waste reprocessing plant is Sellafield, excerpts of articles about Sellafield from <http://toxnet.nlm.nih.gov> are as follows:

Sellafield Excerpt 1: "...The British Nuclear Fuels Ltd nuclear fuel reprocessing plants at Sellafield in Cumbria, UK discharge low level radioactive waste into the Irish Sea... Plutonium-

239+plutonium-240 concentrations in sediment cores samples collected in October 1994 from 9 sites around the intertidal area of the Irish Sea, UK ranged from 2.98 to 265 Bq/kg(4). Vely(7)...”

Sellafield Excerpt 2: “...A major study was performed on all 14,319 workers (11,635 men) employed at the Sellafield fuel reprocessing plant of British Nuclear Fuels between 1947 and 1975 ... The mortality of these workers was studied up to the end of 1992, and cancer incidence was examined from 1971 through 1986. The study included 5,203 workers who were monitored for exposure to plutonium, of whom 4,609 were assessed for dose. The body burden of most workers was estimated to be < 50 Bq, and only a few had > 1 kBq. ... (In this cohort, the average cumulative doses from plutonium were 712 mSv to bone surfaces, 194 mSv to lung, 91 mSv to liver, and 58 mSv to red bone marrow ... ). The number of deaths /and death rates/ from all cancers in plutonium workers is not excessive ... . The numbers of deaths from cancers of the liver, lung, and bone were not in excess, but there were significant excesses of deaths among plutonium workers when compared with the rates in England and Wales from cancer of the pleura (SMR, 4.71;  $p < 0.001$ ), breast cancer (SMR, 2.36;  $p < 0.05$ ) and cancers of ill-defined and secondary sites (SMR, 1.44;  $p < 0.05$ )...”

Sellafield Excerpt 3: “...Chromosomal aberrations in human peripheral blood lymphocytes are a recognized indicator of exposure to ionizing radiation in vivo. An increase in the frequency of chromosomal aberrations above the background level reflects direct exposure of circulating lymphocytes and also exposure of hematopoietic precursor cells in the bone marrow ... . A banding technique that allows recognition of many symmetrical aberrations which would be missed with conventional staining was used to analyze peripheral blood lymphocytes from 54 plutonium workers from the British Nuclear Fuels facility at Sellafield, United Kingdom. These workers had body burdens in excess of 296 Bq ... all had been exposed at least 10 years before the analysis. These workers had also been exposed to significant levels of external gamma-radiation. The controls were 39 newly hired workers with no known exposure to radiation or known clastogenic chemical ... /The/ ... plutonium workers showed increased frequencies of both symmetrical and asymmetrical chromosomal aberrations

over those in controls. ... Twenty-four of the workers in the above study were still employed at Sellafield and therefore available for resampling 10 years later. Analysis of chromosomes in G-banded peripheral blood lymphocytes was performed on two groups of workers who had 20-50% and >50% of the maximum permissible body burden of plutonium. A significant increase was found in the frequencies of symmetrical aberrations in both groups when compared with workers with similar histories of exposure to mainly external gamma-radiation but with little or no intake of plutonium and with controls with negligible exposure, estimated to be < 50 mSv....”

Because plutonium exposure appears to be a major issue at Sellafield, excerpts from <http://toxnet.nlm.nih.gov> about plutonium exposure are as follows:

Plutonium Excerpt 1: “...There is sufficient evidence in humans that inhalation of plutonium-239 aerosols causes lung cancer, liver cancer and bone sarcoma. Exposure to plutonium-239 also entails exposure to plutonium-240 and other isotopes...”

Plutonium Excerpt 2: “... An operator was adding tungsten carbide bricks to a plutonium assembly when the neutron flux began to increase rapidly. He accidentally dropped a brick onto the center of the assembly and a flash occurred that was easily visible to a guard 12 ft away. For such a glow to be visible, the radiation intensity must have been on the order of 7 million R/s. The operator then removed the last brick with his right hand and partially dismantled the assembly. He was seen at the hospital 30 min after the accident and complained of numbness and tingling of his swollen hands. The operator received an estimated dose of 2 Gy (neutrons) and 1.1 Gy (gamma). He died 24 days post exposure from the acute radiation syndrome (hematological). The guard received 0.08 Gy (neutrons) and 0.001 Gy (gamma). He died at age 62 (32 years post exposure) from acute myeloblastic leukemia. His brother also died of leukemia (and three other siblings are believed to have had cancer), so a familial component may have contributed to the disease...”

Plutonium Excerpt 3: “...The accident occurred ... in a building where processing was being

carried out to recover plutonium from irradiated uranium rods. Transfer of plutonium solution was made between two vessels assuming that one was empty (which was not the case). The vessel became hot, there was a gas release and the solution foamed. The yield was estimated to be about  $2 \times 10^{17}$  fissions. This was not recognized as a criticality accident by the two workers and they continued to carry precipitate and put it back into the filter vessel. Within seconds, /one/ became ill. Within 17 hr after the accident, the specific activity of sodium-24 in the operator's blood was 245 Bq/cu m. This correlated to an estimated dose of about 30 Gy. The operator died 12 days after the accident. There were five other workers in the room, and they received doses upward of 3 Gy and all suffered from radiation sickness but recovered...”

Plutonium Excerpt 4: “...The accident resulted from unfavorable geometry in a vessel containing plutonium-bearing organic liquids. There were two critical excursions about 1 hour apart. A 20-L bottle was emptied into a 60-L vessel when the operator saw a flash of light and felt a pulse of heat. He immediately left the area and informed his supervisor. The excursion was estimated to have resulted in about  $3 \times 10^{16}$  fissions. An hour later, a shift supervisor entered the area against instructions and attempted to manipulate the vessel when another excursion occurred. The second excursion yield was estimated at  $1 \times 10^{17}$  fissions. Both men were flown to Moscow for medical treatment. Blood samples (adjusted to the time of exposure) showed 5,000 decays/min/mL (83 Bq/cu m) for the operator and 15,800 decays/min/mL (263 Bq/Cu m) for the shift supervisor. The total absorbed neutron and gamma doses were estimated to be 7 Sv for the operator and 24.5 for the shift supervisor. The shift supervisor had acute severe radiation sickness and he died about a month after the accident. The operator also had acute severe radiation sickness and survived but had to have amputations of both legs and one hand. He was still alive 31 years later...”

Plutonium Excerpt 5: “...The accident occurred in a facility dealing with plutonium metal ingots. In violation of procedures, multiple metal ingots of about 11 kg (in excess of the administrative limit of 4 kg or less) were put into a glove box. Operator A saw a flash of light and noted an instantaneous rise

in the temperature near his hands. As a result of thermal expansion, one ingot was expelled and the operator removed two more. The yield of the excursion was estimated to be  $3 \times 10^{15}$  fissions. The operator received an estimated whole-body dose of 2.5 Gy and more than 20 Gy to the hands and forearms. Ultimately, amputation up to the elbows was necessary. Later he developed cataracts. Seven other workers received doses from 0.05 to 0.50 Gy....”

Plutonium Excerpt 6: “...a worker who had been potentially exposed to external beta- and gamma-radiation and had possibly ingested or inhaled plutonium and other radionuclides /was described/. In three known incidents, his face had been contaminated with plutonium, some of which must have reached the bloodstream. After 24 years of work, the man had developed impaired vision due to cataracts. The estimated radiation dose to the eye, measured by external dosimeters, was approximately 0.8 Sv, which is below the threshold for this effect derived for gamma-radiation in the atomic bomb survivors ... “

Plutonium Excerpt 7: “... accident, criticality occurred in a plutonium sphere when two beryllium hemispheres accidentally surrounded the plutonium mass. The operator was attempting to teach another individual how to do experiments even though there were six other people in the area. Even in a sunlit room, a blue glow was easily visible as criticality occurred. The yield was about  $3 \times 10^{15}$  fissions. The eight people in the room received 15 to 21, 3.6, 2.5, 1.6, 1.1, 0.65, 0.47, and 0.37 Sv, respectively. The operator received an estimated 15 to 21 Gy and died 9 days postexposure from the gastrointestinal type of the acute radiation syndrome. Of the seven initial survivors, one refused to participate in long-term follow-up but was alive as of 1978. Of the others, one patient who received 1 Gy (neutrons) and Gy (gamma) experienced moderate to severe fatigue for 6 months, epilation, and aspermia. He died 20 years later of a myocardial infarction. Another who received 0.51 Gy (neutrons) and 0.11 Gy (gamma) had no acute radiation response but died 29 years later with clinical aplastic anemia and bacterial endocarditis. Another individual who had received 12 rad (neutrons) and

4 rad (gamma) died 18 years later of acute myelocytic leukemia...”

Plutonium Excerpt 8: Deaths among 5,413 workers employed at the Rocky Flats, Colorado, nuclear weapons facility were investigated in order to estimate the risks from exposure to plutonium and external radiation. The cohort consisted of all white men who had been employed at this facility for at least two years between the beginning of operations in 1952 and 1979...A significant excess of benign and unspecified neoplasms was found; all seven cases were intracranial tumors...”

Plutonium Excerpt 9: Prompted by a case of lung fibrosis in a retired plutonium worker, /the authors/ tested the hypothesis that plutonium inhalation increases the risk for developing chest radiograph abnormalities consistent with pulmonary fibrosis. /The authors/ conducted a retrospective study of nuclear weapons workers that included estimating absorbed doses to the lung with an internal dosimetry model. /The/ study population consisted of 326 plutonium-exposed workers with absorbed lung doses from 0 to 28 Sv and 194 unexposed workers. ...The severity of chest radiograph interstitial abnormalities /were compared/ between the two groups using the International Labour Organization profusion scoring system. There was a significantly higher proportion of abnormal profusion scores among plutonium-exposed workers (17.5%) than among unexposed workers (7.2%),  $P < 0.01$ . Lung doses of 10 Sv or greater conferred a 5.3-fold risk (95% CI 1.2-23.4) of having an abnormal chest X ray consistent with pulmonary fibrosis when compared with unexposed individuals after controlling for the effects of age, smoking and asbestos exposure. This study shows that plutonium may cause lung fibrosis in humans at absorbed lung doses above 10 Sv...”

Plutonium Excerpt 10: “...The lung, liver and bone are the organs that receive the largest doses from plutonium, and excess cancers in all three organs have been clearly linked to plutonium exposure...”

Plutonium Excerpt 11: “..... among 666 women hired at the radiochemical and plutonium production plant in 1948-58. ... The number of observed cases (15) was significantly higher than that

expected...”

Plutonium Excerpt 12: "...Peripheral blood from 22 workers at the Rocky Flats plutonium facility, Colorado, was analyzed for the presence of sister chromatid exchange and chromosomal aberrations. These workers were exposed to radiation from internal deposits of plutonium, continuous external irradiation and single or multiple chemicals. ... A significant increase in the frequency of chromosomal aberrations when compared with the control frequency was observed..."

Plutonium Excerpt 13: "...Blood lymphocytes from 17 former plutonium workers (mean age, 71.2 years) with a history of protracted exposure showed a 2.5-fold increase in hypoxanthine phosphoribosyltransferase (HPRT) mutation frequency when compared with unexposed adults of similar age (66-80 years)..."

Plutonium Excerpt 14: "...elevated rates of stable chromosome aberrations were found in lymphocytes of former workers decades after plutonium intakes, providing evidence that chronic irradiation of hematopoietic precursor cells in the bone marrow induces cytogenetically altered cells that persist in peripheral blood..."

Plutonium Excerpt 15: "...An extremely poisonous radioactive material. The permissible levels for plutonium are the lowest for any of the radioactive elements. This is occasioned by the concentration of plutonium directly on bone surfaces, rather than the more uniform bone distribution shown by other heavy elements..."

Plutonium Excerpt 16: "... effects observed after intakes of ... plutonium-239 include significant peritrabecular fibrosis and the formation of a fibrotic layer between the mineralized endosteal bone surface and marrow cells. ... "

Plutonium Excerpt 17: Individuals working at facilities using or processing plutonium or uranium may be exposed to plutonium compounds(1). As plutonium is dispersed throughout the environment due to past atmospheric nuclear weapons testing, the general population will have some exposure to plutonium compounds(SRC). An estimated 50-year dose from plutonium due to

north temperate zone of the earth(1). Individual living near facilities that use or process plutonium may have higher exposures to plutonium compounds than the general population...”

Plutonium Excerpt 18: “...Plutonium-239+plutonium-240 concentrations of 0.00022, 0.00019, 0.00015, 0.00014, and 0.00018 pCi/g in ribs, vertebrae, femur, liver and lungs, respectively, were reported in tissues samples from autopsy cases of individuals living near a plutonium processing plant in Great Britain...”

Plutonium Excerpt 19: “...The radioactivity /of plutonium/ (mainly due to fallout) measured in autopsied human tissues of nonoccupationally exposed persons ranged, at the beginning of the 1980s, from 1 to 10 mBq/kg for lung for populations as different as those of the United States, Finland, Western Europe, and Japan. The values for the liver and vertebra burdens ranged from 10 to 40 and 3 to 40 mBecquerel/kg, respectively. For tracheobronchial lymph nodes, the burden may be as much as 100 mBq/kg...”

Plutonium Excerpt 20: “...An estimated daily ingestion of 0.0045 pCi/day of plutonium-239+plutonium240 was reported for in food in Japan (1978-80) due to atmospheric fallout(1). A mean intake of 0.0044 pCi/day of plutonium was reported in New York City (1974) from all sources including tap water.

Petitioners submit the following articles and excerpts of articles Internet articles related to GNEP.

The Bush administration intended for the Global Nuclear Energy Partnership (GNEP) to jump-start a global nuclear power revival without the attendant proliferation risks. But as the administration comes to a close, the partnership has only heightened proliferation concerns, leaving GNEP's future murky. In this three-part weekly series Leonor Tomero, the director of nonproliferation at the Center for Arms Control and Non-Proliferation, explains how GNEP's stakeholders--both domestic and foreign--will likely move forward even if GNEP does not.

While the Bush administration has focused much attention on forging an international coalition

stakeholders involved. In particular, to promote and build support for the program, the Energy Department has cultivated relationships with the national laboratories, universities, industry, and local businesses and governments throughout the country. To do so, it has mainly used money, allocating \$328 million in grants to interested domestic parties since the program was officially formed in February 2006.

Source: <http://www.thebulletin.org/web-edition/reports/the-future-of-gnep/the-future-of-gnep-domestic-stakeholders>

Petitioners submit the following information regarding the history of reprocessing nuclear waste, which has come directly from web pages on the internet.

**Why are Petitioners experiencing an unreasonable amount of distress, and serious fear of bodily injury, destruction of property, and death of Petitioners and all of the people that Petitioners care about?**

According to Allan Dobson of EnergySolutions, the model for a nuclear waste reprocessing that the Respondents are planning to use is Sellafield. Petitioners understanding of Sellafield is as follows.

Sellafield has also had the name Windscale and the name Thorp.

Sellafield is a nuclear processing and former electricity generating site, close to the village of Seascale on the coast of the Irish Sea in Cumbria, England. Sellafield was previously owned and operated by British Nuclear Fuels plc BNFL, but is now operated by Sellafield Ltd and, since 1 April 2005, has been owned by the Nuclear Decommissioning Authority (1).

Facilities at the site include the Thorp nuclear fuel reprocessing plant and the Magnox nuclear fuel reprocessing plant. It is also the site of the remains of Calder Hall Magnox nuclear power station, the world's first commercial nuclear power station, which is now being decommissioned, as well as some other older nuclear facilities. In 1981 the site was re-named from Windscale to Sellafield in a bid by the United Kingdom Atomic Energy Authority (UKAEA) to change the public profile of nuclear energy (1).

Sellafield was chosen as the location of the plutonium production plant, with the initial fuel load in the Windscale Piles commencing July 1950. By July 1952 the separation plant was being used to separate plutonium and uranium from spent fuel (2).

The piles were shut down following a fire in Pile 1 on 10 October 1957 which destroyed the core and released an estimated 750 tetrabecquerels (Tbq) (20,000 curies) of radioactive material into the surrounding environment, including Iodine-131, which is taken up in the body by the thyroid. Consequently milk and other produce from the surrounding farming areas had to be destroyed. Following the fire Pile 1 was unserviceable, and Pile 2, although undamaged by the fire, was shut down as a precaution (2).

In the 1990s, the UKAEA started to implement plans to decommission, disassemble and clean up both piles; the decommissioning is now partially complete. However, Pile 1 still contains about 15 tonnes of highly unstable uranium fuel, and final completion of the decommissioning is not expected until at least 2037 (2).

According to the Federation of American Scientists, the British recently awarded the first contracts of 17-18 billion pounds to cover the costs of cleaning up the reprocessing facility at Sellafield (3).

The following is an article published on a web page entitled: **“THE HANDSTAND, Sellafield radioactive leak to cost £300m.”**

SOURCES:

1. <http://en.wikipedia.org/wiki/Sellafield>
2. [http://en.wikipedia.org/wiki/Sellafield#The\\_Windscale\\_Piles](http://en.wikipedia.org/wiki/Sellafield#The_Windscale_Piles)
3. [http://www.fas.org/programs/ssp/nukes/nuclear\\_power\\_and\\_fuel\\_cycle/gnep...](http://www.fas.org/programs/ssp/nukes/nuclear_power_and_fuel_cycle/gnep...)

EXHIBIT F

Congress recently cut the funding for the GNEP with good reason. The following are articles that we have found that tell about how and why Congress has cut funding for the GNEP (nuclear waste

June 2, 2007

## **House panel slashes GNEP funding**

### **DOE inked an international agreement with five nations despite the funding cut**

A subcommittee on energy of the House Appropriations Committee slashed the Department of Energy funding request for the Global Energy Nuclear Partnership ([GNEP](#)). It reduced the line item from a request of \$405 million to a recommendation to the full committee of just \$120 million. Bipartisan congressional skepticism about the program, and its long term costs, runs deep. Subcommittee chairman Peter Visclosky (D-Ind) [put language in the bill](#) requiring the Department of Energy to improve its ability to deliver projects on time and within budget.

Source: <http://djysrv.blogspot.com/2007/06/house-panel-slashes-gnep-funding.html>

### **Yucca funded, GNEP ‘zeroed’**

US legislators have approved an energy and water bill that would see increased support for nuclear power initiatives and fully fund Yucca Mountain, but would cut funding for the Global Nuclear Energy Partnership (GNEP) program to zero.