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18  
19 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEVADA**

20  
21 STATE OF NEVADA,  
Plaintiff,  
22 vs.  
23 UNITED STATES; UNITED STATES  
DEPARTMENT OF ENERGY;  
24 RICK PERRY, in his official capacity as  
Secretary of Energy; NATIONAL  
NUCLEAR SECURITY  
25 ADMINISTRATION; and LISA E.  
GORDON, in her official capacity as  
26 Administrator of the National Nuclear  
Security Administration and  
27 Undersecretary for Nuclear Security,  
Defendants.

Case No. \_\_\_\_\_

**COMPLAINT**

1 The State of Nevada (Nevada) complains as follows:

2 **I. INTRODUCTION**

3 1. This matter arises out of a final agency action by the National Nuclear  
4 Security Administration (NNSA), a semi-autonomous agency within the United States  
5 Department of Energy (DOE), that fails to comply with the National Environmental  
6 Policy (NEPA), 42 U.S.C.A. §§ 4321, *et seq.*, implementing regulations promulgated by the  
7 Council on Environmental Quality at 40 C.F.R. § 1502.9(c)(1), and DOE NEPA  
8 regulations at 10 C.F.R. § 1021.314(a). The final agency action at issue is NNSA's  
9 Supplement Analysis, dated July 2018 (attached hereto as Exhibit A), for its Final  
10 Complex Transformation Supplemental Programmatic Environmental Impact Statement  
11 (DOE/EIS-0236-S4). This programmatic environmental impact statement (EIS), prepared  
12 ten years ago, addressed other federal actions related to NNSA's efforts to transform the  
13 nuclear weapons complex into a smaller and more responsive, efficient and secure entity  
14 in order to meet national security requirements. NNSA's Supplement Analysis (SA)  
15 claims that no EIS supplement is required for a new proposed action described in the SA  
16 and below because it is addressed in previous DOE environmental impact statements,  
17 including DOE/EIS-0236-S4.

18 2. Defendants' new proposal is to ship one metric ton (about 2,200 pounds) of  
19 plutonium from DOE's Savannah River Site, which is located in the State of South  
20 Carolina, to the DOE's Nevada National Security Site (NNSS), which is located  
21 approximately 90 miles northwest of the City of Las Vegas, Nevada. According to the SA,  
22 it is possible that Defendants may also ship the same plutonium between DOE's Pantex  
23 Site, which is located in the State of Texas, and NNSS. SA at 10. The plutonium would  
24 be "staged" (essentially stored) at the NNSS for an indefinite period of time before further  
25 shipment to Los Alamos National Laboratory, which is located in the State of  
26 New Mexico, where it will be used in nuclear weapons production. SA at 10-11. All such  
27 shipments will be in DOT-certified "9975-96" shipping containers "or equivalent."  
28 SA at 12. The shipping containers are described as 35-gallon stainless steel drums

1 containing fiber-board insulation, lead radiation shielding, and nested primary and  
2 secondary containment vessels fabricated from stainless steel pipe. SA at 12. The mode  
3 of transport would be trucks travelling in accordance with DOE's Secure Asset  
4 Transportation Program. SA at 16. The SA was prepared pursuant to DOE's NEPA  
5 regulation at 10 C.F.R. § 1021.314(c), which requires an SA "[w]hen it is unclear whether  
6 or not an EIS supplement is required." The SA purported to justify NNSA's decision not  
7 to prepare any supplemental environmental impact statement for the proposed action.

8         3. Plutonium is a heavy metal and therefore toxic to humans. Plutonium-239  
9 (Pu-239) is a radioisotope of plutonium with a half-life of 24,100 years. It decays by  
10 emitting an alpha particle (a helium atom). Alpha particles can be dangerous when they  
11 directly impact cells in the human body via ingestion or inhalation. Inhalation of Pu-239  
12 particles of about 10 microns is particularly risky. Particles of this size can be inhaled  
13 and deposited in the lung—allowing the alpha particles to directly impact lung cells. The  
14 deposition of alpha emitting Pu-239 particles in the lung can raise the risk of cancer in an  
15 individual; the level of risk is increased with increased exposure. *See* Affidavit of  
16 Timothy A. Frazier, Exhibit B.

17         4. Pu-239, the subject of the shipments at issue here, is a fissile material that  
18 can fission and release large amounts of energy. Pu-239 metal is used in the fabrication  
19 of nuclear weapon "pits." A pit is the component of the nuclear weapon that is imploded  
20 by conventional explosives to a super-critical mass and then bombarded by neutrons  
21 to create the huge release of energy and an explosion. In thermonuclear weapons,  
22 this energy is used to drive the explosion of a secondary pit—made of  
23 highly-enriched uranium—and an even larger release of energy and explosion. Pu-239  
24 metal particles or tailings (from machining) can ignite in the presence of moist air. There  
25 have been two fires at the Rocky Flats Plant outside Denver, Colorado—which made  
26 Pu-239 pits—resulting from finely divided Pu-239 particles. The fires resulted in a  
27 release of Pu-239 into the environment. *Id.*

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1 **III. JURISDICTION**

2 12. Jurisdiction is proper in this Court pursuant to 28 U.S.C.A. §§ 1331 and  
3 1346(a)(2) since this action involves the United States as a defendant and arises under  
4 the laws of the United States. Jurisdiction is also proper in this Court pursuant to  
5 28 U.S.C.A. § 1361 since Plaintiff seeks to compel Defendants to perform a duty under the  
6 laws of the United States.

7 **IV. CAUSE OF ACTION**

8 13. 5 U.S.C. § 702 gives Nevada the right to seek judicial review of NNSA's SA,  
9 and 5 U.S.C. § 706(2)(A) provides specifically that the reviewing court shall hold unlawful  
10 and set aside agency action, findings and conclusions found to be arbitrary, capricious, an  
11 abuse of discretion, or otherwise not in accordance with law.

12 **V. VENUE**

13 14. Venue is proper in this Court pursuant to 28 U.S.C.A. §§ 1391(b)(2), (e)(1)(B)  
14 and (e)(1)(C) since a substantial part of the events or omissions giving rise to the claims  
15 set forth herein occurred in this judicial district, since the NNSS is located in this judicial  
16 district, and since the Plaintiff resides in this judicial district.

17 **VI. STANDING**

18 15. There will be an injury to the NEPA decision-making process that is  
19 incapable of repair if the plutonium shipments are allowed to proceed without  
20 preparation of draft and final supplemental environmental impact statements. This is  
21 because once the plutonium is transported out of South Carolina to the NNSS, Nevada  
22 will forever lose the ability to formally comment upon safety and environmental concerns  
23 related to the shipments. *See* Affidavit of Robert J. Halstead, Exhibit C. Moreover,  
24 DOE officials have refused to assure Nevada that the shipments will be made in certified  
25 "Type B" packages, which are packages designed to withstand severe accidents in transit,  
26 *see, e.g.*, 10 C.F.R. § 71.51, or even that the shipments will be made with the same safety  
27 and security protections that apply generally to other shipments of weapons-grade  
28 plutonium. Affidavit of Pam Robinson regarding DOE meeting, Exhibit D; Halstead

1 Affidavit, Exhibit C. Without this information, Nevada is unable to evaluate the safety or  
2 security of the proposed shipments, and is unable to assure its citizens that they will be  
3 safe or to discharge its sovereign duty to be prepared to assist responders if an accident  
4 occurs. *See* Halstead Affidavit, Exhibit C, ¶¶ 7-8, 10-18.

5 16. Finally, the proposed action will result in increased radiation doses to  
6 Nevada citizens and would, in some circumstances, lead to contamination of the lands  
7 and the groundwater of Nevada with radioactive materials. Nevada's sovereign interests  
8 are injured because, under Nevada law, all water, both surface and underground, is  
9 owned by the people of Nevada and administered by the State of Nevada. *See* Halstead  
10 Affidavit, Exhibit C, ¶ 8.

## 11 VII. LEGAL BACKGROUND

### 12 A. Order of the South Carolina Court

13 17. The State of South Carolina filed a complaint in U.S. District Court in  
14 South Carolina alleging that all of the same Defendants here failed to adhere to statutory  
15 obligations contained in 50 U.S.C.A. § 2566. *See South Carolina v. U.S.*, 2017  
16 WL 7691885 (D.S.C. Dec. 20, 2017), *aff'd*, 907 F.3d 742 (4th Cir. 2018). Facts underlying  
17 that complaint that are relevant to the matters at issue here are summarized below.

18 18. In early 2000, DOE decided to construct and operate a mixed plutonium-  
19 uranium oxide nuclear fuel fabrication facility ("MOX Facility") at the Savannah River  
20 Site as a means of disposing of excess plutonium. By statute, if DOE's MOX production  
21 objective is not achieved by January 1, 2014, then "the Secretary shall remove" from  
22 South Carolina "not less than one metric ton of defense plutonium" by no later than  
23 January 1, 2016. 50 U.S.C.A. § 2566(c)(1). The statute requires the removal of the  
24 defense plutonium to be consistent with NEPA and other applicable laws. Defendants  
25 conceded that there is no dispute that the MOX production objective was not achieved by  
26 January 1, 2014, or thereafter, and also conceded that the Secretary of Energy did not  
27 remove from South Carolina one metric ton of defense plutonium by January 1, 2016.

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1           19.     The court rejected Defendants’ argument that the court should only impose a  
2 target or estimated date for removal. Defendants argued that there was no indication  
3 that other removal methods would be faster than their favored down blending method.  
4 *South Carolina v. U.S.*, 2017 WL 7691885 at \*2. Because an option involving down  
5 blending (diluting) and then disposing of the diluted plutonium could result in the  
6 removal of one metric ton of material no earlier than 2025, Defendants asserted that a  
7 two-year deadline would be impossible to meet. *Id.* Defendants requested an injunction  
8 that did not require them to remove a single metric ton until 2025. *Id.* at \*3. The court  
9 rejected this argument and ordered that Defendants had two years from the date of the  
10 injunctive order, or at most until January 1, 2020, to remove the one metric ton of defense  
11 plutonium. *Id.* at \*5. The court declined to direct Defendants on how they must obtain  
12 funding for the removal. *Id.* at \*3.

13           20.     South Carolina requested that the court require Defendants, if necessary for  
14 removal, to initiate a NEPA review within 60 days after the injunction was ordered and to  
15 take all steps necessary to complete the NEPA review and comply with any other  
16 applicable laws. *Id.* at 8. The court declined to issue such an order and instead elected to  
17 simply abide by the language of the statute and ordered that the Secretary of Energy  
18 must, *consistent with the NEPA and other applicable laws*, remove from South Carolina  
19 for storage or disposition elsewhere one metric ton of defense plutonium. Specifically, the  
20 court ordered:

21                     Within two years from the date of the entry of this injunctive order (or at  
22                     the latest by 1/1/2020), the Secretary of Energy shall, consistent with the  
23                     National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321, *et seq.*,  
24                     and other applicable laws, remove from the State of South Carolina, for  
                          storage or disposal elsewhere, not less than one metric ton of defense  
                          plutonium or defense plutonium materials, as defined by 50 U.S.C.  
                          § 2566.

25 *Id.* at 10.

26           21.     DOE delivered its first required Progress Report dated June 13, 2018 (filed  
27 June 15, 2018) (attached here as Exhibit E), asserting that down blending of plutonium is  
28 the “only viable methodology for long term disposal of surplus defense plutonium.”

1 DOE Progress Report at 2. DOE said it also re-examined a possible alternative method—  
2 “shipping and staging outside of South Carolina.” *Id.* at 4. As far as conducting the  
3 required NEPA analysis, DOE said “the NEPA analysis for movement of material could  
4 possibly be completed by the fall of 2018.” *Id.* at 5. The subject NEPA analysis is the SA,  
5 which, amazingly, DOE was able to complete the very next month (July 2018).

6 22. On October 26, 2018, the U.S. Court of Appeals for the Fourth Circuit,  
7 on consideration of DOE’s appeal of the District Court’s decision and injunction,  
8 affirmed the District Court’s injunction. *South Carolina v. U.S., et al.*, 907 F.3d 742  
9 (4th Cir. 2018).

## 10 **B. National Environmental Policy Act**

11 23. Federal agencies that have prepared an environmental impact statement  
12 (“EIS”) cannot simply rest on the original document as circumstances change or new  
13 actions are taken over time. Rather, federal agencies must prepare a Supplemental EIS if  
14 there are substantial changes to the proposed federal action that are relevant to  
15 environmental concerns, or if there are significant new circumstances or information  
16 relevant to environmental concerns and bearing on the actions or its impacts. 40 C.F.R.  
17 § 1502.9(c); 10 C.F.R. § 1021.314. The SA at issue here purports to document that the  
18 proposed action does not represent a substantial change, relevant to environmental  
19 concerns, to actions addressed in previous EISs, or present any significant new  
20 circumstances or information relevant to environmental concerns and bearing on the  
21 actions or its impacts. As will be explained below, the SA utterly fails to do so, and is  
22 arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

## 23 **VIII. FACTUAL ALLEGATIONS**

24 24. As noted, the Defendants propose to ship one metric ton (~2,200 pounds)  
25 of plutonium from DOE’s Savannah River Site, which is located in the State of  
26 South Carolina, to the DOE’s NNSS, which is located approximately 90 miles northwest  
27 of the City of Las Vegas, Nevada, and it is possible that Defendants may also ship the  
28 same plutonium between DOE’s Pantex Site, which is located in the State of Texas, and



1 NNSS. By its nature, the SA skirts the question of whether the proposed action is a  
2 major federal action that will or may significantly affect the environment. Instead DOE  
3 claims that the proposed action does not constitute a significant change from actions  
4 previously analyzed in various EISs and does not present any significant new  
5 circumstances or information relevant to environmental concerns and bearing on the  
6 actions or their impacts not evaluated previously. SA at iii and 8, Exhibit A.

7 25. The SA is manifestly deficient in a number of critical respects. First, neither  
8 the SA nor any of the referenced DOE environmental impact statements discuss  
9 alternatives to the proposed action, except the “no-action” alternative, which is rejected in  
10 the SA because DOE asserts that a court order requires it to ship one metric ton of  
11 plutonium out of the Savannah River Site in South Carolina by January 1, 2020.  
12 SA at 10. There is no mention or evaluation of at least five viable alternatives:  
13 (1) shipping to the Y12 National Security Complex in Oak Ridge, Tennessee; (2) shipping  
14 to the Pantex Plant in Amarillo, Texas; (3) shipping to the Sandia National Laboratory in  
15 Albuquerque, New Mexico; (4) shipping to the Kirkland Air Force Base in Albuquerque,  
16 New Mexico; and (5) shipping to the Los Alamos National Laboratory in Los Alamos,  
17 New Mexico (LANL). Any of these alternatives should pose less risk and less  
18 environmental impacts than shipping the one metric ton of plutonium to the NNSA for  
19 eventual shipment to LANL. *See* Affidavit of Timothy A. Frazier, Exhibit B, ¶ 8.

20 26. None of these alternatives is precluded by the South Carolina Court’s  
21 decision. The alternatives would avoid the significant environmental impacts associated  
22 with shipping the material hundreds of extra miles west to the NNSS in the State of  
23 Nevada and then again shipping the material hundreds of extra miles back east to  
24 Los Alamos National Laboratory, its ultimate destination.

25 27. The SA fails to provide crucially important information needed for  
26 comparing the transportation impacts of alternatives to the proposed action, specifically,  
27 the nominal shipping distance for direct transportation of plutonium from SRS to  
28 Los Alamos National Laboratory (LANL). This information is not provided in the

1 relevant SA tables (Tables 3-4, 3-5, and 3-14, SA at 25, 36). One of the SA references (but  
2 not the SA itself), DOE 2015, Table E-1 (attached here as Exhibit F) provides this  
3 distance as 2,798 kilometers, or 1,739 miles. According to the same table, the nominal  
4 distance between SRS and NNSS is 3,879 kilometers, or 2,410 miles. The nominal  
5 distance between NNSS and Los Alamos National Laboratory (LANL) is 1,250 kilometers,  
6 or 777 miles. Shipping plutonium from SRS to LANL by way of NNSS results in a  
7 combined nominal shipment distance of 3,187 miles (5,129 kilometers), about 1,448 miles  
8 longer than direct shipment from SRS to LANL (1,739 miles), an increase of about  
9 83 percent. *See* Affidavit of Robert J. Halstead, Exhibit C, ¶¶ 19-25.

10 28. The requirement to consider alternatives lies at the heart of NEPA. The fact  
11 that alternatives are not addressed in any of the referenced prior DOE EISs establishes  
12 that the proposed action at issue here constitutes a substantial change, relevant to  
13 environmental concerns, to actions addressed in previous EISs.

14 29. Second, the SA fails to consider significant new transportation  
15 circumstances in Nevada, and fails to provide any new information relevant to current  
16 and near-term transportation environmental concerns in Nevada. Under the proposed  
17 action, shipments of plutonium from SRS or Pantex to NNSS, upon reaching the State of  
18 Nevada, would use some combination of the highway routes to NNSS identified in the  
19 2013 NNSS Site-wide EIS. However, the information regarding the Las Vegas  
20 metropolitan area used for transportation impact evaluations and risk calculations in the  
21 2013 NNSS Site-wide EIS is now out of date. New information for the evaluation of  
22 transportation impacts is required because of massive recent and ongoing highway  
23 construction projects in the Las Vegas metropolitan area, and because of significant  
24 changes in population and population density, location of schools and other difficult-to-  
25 evacuate facilities, commodity flows (including hazardous materials), daily traffic counts,  
26 and accident and incident rates. The 2013 NNSS Site-wide EIS can no longer be used for  
27 route selection, safety and security planning, or for transportation impact evaluations,

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1 including risk assessment. None of the other DOE EISs referenced in the SA provide this  
2 new information. *See* Affidavit of Robert J. Halstead, Exhibit C, ¶ 24.

3 30. Third, the SA does not include any independent analysis of the  
4 environmental impacts from the new plutonium shipments to Nevada. Instead, since the  
5 purpose of the SA is to show that these impacts are adequately addressed in prior  
6 DOE EISs, the SA cites specifically to five tables of transportation environmental impacts  
7 contained in two of its previous EISs. There are no other references, so this Court is  
8 entitled to look to those five tables to determine whether, in fact, the new plutonium  
9 shipments constitute a substantial change, relevant to environmental concerns, to actions  
10 addressed in previous EISs, or present significant new circumstances or information  
11 relevant to environmental concerns and bearing on those actions or their impacts not  
12 discussed therein.

13 31. Some of the listings in the tables apply only to transporting low-level  
14 radioactive waste, not the Pu-239 at issue here, which will be used to fabricate pits for  
15 nuclear weapons. Therefore, those listings are not relevant.

16 32. For radiological impacts associated with transportation accidents, the SA  
17 first refers the reader to Table E-6 of DOE's 2015 Final Surplus Plutonium Disposition  
18 SEIS (DOE EIS-0283-S2) (DOE's 2015 EIS (*see* Exhibit G). SA at 26. Table E-6 of  
19 DOE's 2015 EIS includes only two entries that could conceivably be relevant: (1) the  
20 entry under "All STA Routes, PCDF at F Area at SRS," and (2) the entry under "All STA  
21 Routes, PF-4 at LANL."<sup>1</sup> However, Table E-6 does not describe the specific non-waste  
22 radioactive materials being shipped or whether the shipments go through urban areas  
23 like Las Vegas. In addition, DOE concedes that the actual highway routes to be used for  
24 the proposed Pu-239 shipments to NNSS may differ from those analyzed in the  
25 2015 Analysis. SA at 21. Further, Table E-5 of the 2015 EIS, entitled, "Risk Factors per  
26

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27 <sup>1</sup> "STA" refers to secure transportation asset. "PCDF" refers to pit conversion and disassembly and  
28 conversion facility. "SRS" refers to the Savannah River Site, the origin of the plutonium at issue in this  
Complaint. "PF-4" refers to plutonium facility. "LANL" refers to the Los Alamos National Laboratory, the  
ultimate destination of plutonium at issue in this Complaint.

1 Shipment of Radioactive Material and Waste” (attached hereto as Exhibit H), contains no  
2 entry for shipments of the specific plutonium at issue here. The specific material that  
3 DOE proposes to ship to NNSS (and/or Pantex) is described as “plutonium materials  
4 identified for use in future pit production at LANL.” This material is already “packaged  
5 in 3013 containers” and “would be retrieved from the storage array” in the K-Area at SRS.  
6 SA at 12. Therefore, the SA does not show that the environmental impacts of these  
7 specific new plutonium shipments were covered in the DOE’s 2015 Analysis. Accordingly,  
8 the EA does not establish that the proposed action constitutes no substantial change,  
9 relevant to environmental concerns, to actions addressed in Table E-6, and does not  
10 establish that the proposed action presents no significant new circumstances or  
11 information relevant to environmental concerns.

12 33. The entries in Table E-6 also contain a significant defect, even if they could  
13 be deemed relevant to this proposed new action. NEPA requires that the frequencies (or  
14 probabilities) of accidents and their associated consequences *both* be disclosed. Table E-6  
15 presents only risk numbers which, in the case of transportation accidents, are the  
16 multiplication products of three terms: (1) the assumed accident frequency or  
17 frequencies; (2) the calculated radiological impacts of transportation accidents measured  
18 in rems (a common measure of radiation dose); and (3) the correlation between rems and  
19 premature cancers. The second term—calculated radiological impacts—is not disclosed.  
20 Therefore, Table E-6 in the DOE 2015 Analysis provides no useful information about the  
21 actual environmental impacts from any Pu-239 transportation accidents in the State of  
22 Nevada, let alone Las Vegas, assuming they occur. Without this information, it simply  
23 cannot be determined whether the impacts from transportation of one metric ton of  
24 plutonium are addressed in the 2015 EIS. Therefore, once again, the EA does not  
25 establish that the proposed action constitutes no substantial change, relevant to  
26 environmental concerns, to actions addressed in Table E-6, and does not establish that  
27 the proposed action presents no significant new circumstances or information relevant to  
28 environmental concerns.

1           34. The SA also refers the reader to Table E-8 and Table E-12 of DOE's 2015  
2 Analysis (attached hereto as Exhibit I). SA Table E-7 at 28, Table E-10 at 33, and  
3 Tables E-11 and E-12 at 34. However, Table E-12 does not address any transportation  
4 accidents involving the specific material that DOE would ship under the proposed action,  
5 plutonium intended for future pit production at LANL. Table E-8 applies only to  
6 transportation risks for the MOX Fuel Alternative (rejected by DOE), and in any event, is  
7 similar to Table E-6 discussed above—it provides only risk numbers and offers no useful  
8 information about the actual environmental impacts from transportation accidents in the  
9 State of Nevada, or Las Vegas, assuming they occur. Without this information, it simply  
10 cannot be determined whether the impacts from transportation of one metric ton of  
11 plutonium in Nevada, including Las Vegas, are addressed in the 2015 EIS. Therefore,  
12 once again, the EA does not establish that the proposed action constitutes no substantial  
13 change, relevant to environmental concerns, to actions addressed in Table E-8, and does  
14 not establish that the proposed action presents no significant new circumstances or  
15 information relevant to environmental concerns.

16           35. The SA further refers the reader to Table E-13 and Table E-14 of yet another  
17 document, DOE's 2013 Final Site-Wide Environmental Impact Statement for the  
18 Continued Operation of the Department of Energy/National Nuclear Security  
19 Administration Nevada National Security Site and Off-Site Locations in the State of  
20 Nevada (DOE-EIS-0426) (DOE's 2013 EIS) (attached here as Exhibit J). SA at 28, 33.  
21 Neither of these tables specifically addresses any transportation impacts involving the  
22 specific material that DOE would ship under the proposed action, plutonium intended for  
23 future pit production at LANL. Table E-13 of DOE's 2013 EIS is irrelevant because it  
24 addresses only the transportation of radioactive waste, not Pu-239. Table E-14 of  
25 DOE's 2013 EIS is potentially relevant because it contains entries for transportation of  
26 special nuclear material and all forms of plutonium are special nuclear material, but  
27 again this is not the specific material that would be shipped under the proposed action.  
28 However, like Tables E-6 and E-8 of DOE's 2015 Analysis discussed above, Table E-14 of

1 DOE's 2013 EIS presents only risk numbers—impacts from transportation accidents are  
2 not disclosed. Therefore, once again, the EA does not establish that the proposed action  
3 constitutes no substantial change, relevant to environmental concerns, to actions  
4 addressed in Table E-14, and does not establish that the proposed action presents no  
5 significant new circumstances or information relevant to environmental concerns.

6 36. The SA's failure to refer to any specific EIS wherein the consequences of  
7 transportation accidents for Pu-239 shipments in Nevada (including Las Vegas) are  
8 disclosed is an especially serious defect. Tables L-8 and L-9 in DOE's 1999 Final  
9 Plutonium Disposition Environmental Impact Statement (DOE-EIS-0283) (DOE's  
10 1999 EIS) (attached here as Exhibit K) show that (1) an individual located 300 feet away  
11 from a transportation accident site involving plutonium dioxide would receive a radiation  
12 dose as high as 684 rems, which more likely than not will be lethal; (2) the total radiation  
13 dose to an exposed urban population from transportation accidents involving plutonium  
14 dioxide will be 228,760 rem, resulting in 114 cancer fatalities; and (3) the total radiation  
15 dose to an exposed urban population from transportation accidents involving plutonium  
16 pits will be 31,960 rem, resulting in 16 cancer fatalities. These very large radiation doses  
17 assume that only ten percent of the contents of the truck shipments are released at  
18 ground level in a transportation accident. Obviously, the consequences will be much more  
19 severe if the accident causes more materials to be released.

20 37. Fourth, the Pu-239 to be transported to the NNSS will be "staged" at the  
21 NNSS for an indefinite period of time, and the SA assumes that the existing facilities and  
22 safety procedures at NNSS are adequate for that purpose and will be in place for an  
23 equally indefinite period of time. The referenced EISs do not address what the  
24 environmental impacts would be if, at some indefinite time in the future, the facilities  
25 used at NNSS to "stage" the plutonium deteriorate or if there is an inadequate  
26 compliance with safety procedures. Accordingly, the proposed action would give rise to  
27 significant new information relevant to environmental concerns and bearing on those  
28 actions or their impacts.

1           38. Fifth, even if it could be assumed that the proposed shipments of plutonium  
2 were included among the actions described and addressed in the prior cited DOE EISs,  
3 those EIS's are inadequate and do not satisfy NEPA because they do not disclose the  
4 consequences of transportation accidents.

5           39. Finally, DOE failed to consider cumulative impacts. The shipment of this  
6 one metric ton of Pu-239 from the Savannah River Site to NNSS cannot be viewed in  
7 complete isolation. The United States has pledged to dispose of 34 metric tons of surplus,  
8 weapons-grade plutonium. The United States had planned to dispose of the plutonium by  
9 irradiating it as so-called MOX fuel—a mixture of plutonium and uranium oxides—in  
10 modified commercial nuclear reactors. However, due to a significant rise in the cost of  
11 such a plan, DOE recently proposed terminating the MOX approach in favor of a dilute  
12 and dispose approach. Under the new dilute and dispose approach, Pu-239 would be  
13 diluted with inert material and then disposed of at DOE's Waste Isolation Pilot Plant  
14 (WIPP) located in the State of New Mexico. However, DOE does not have sufficient space  
15 at WIPP to dispose of all the surplus plutonium. See GAO Report 17-390, "Plutonium  
16 Disposition, Proposed Dilute and Dispose Approach Highlights Need for More Work at the  
17 Waste Isolation Pilot Plant," dated September 2017, "highlights" page (attached here as  
18 Exhibit L).

19           40. Clearly, there is no reasonably foreseeable final resting place or disposal  
20 option for these 34 metric tons of surplus, weapons-grade plutonium. Nevada is rightly  
21 concerned that the one metric ton of plutonium, which is the subject of the SA, is merely  
22 the first step in a series of connected actions that will result in the transportation  
23 of the entire plutonium surplus to the NNSS in Nevada. The statute at issue in the  
24 South Carolina litigation, 50 U.S.C. § 2566(c), provides that in the event of a failure of the  
25 MOX project to process plutonium into reactor fuel, DOE "shall, consistent with the  
26 National Environmental Policy Act of 1969 and other applicable laws, remove from the  
27 State of South Carolina, for storage or disposal elsewhere—(1) not later than January 1,  
28 2016, not less than 1 metric ton of defense plutonium or defense plutonium materials; and

1 (2) not later than January 1, 2022, an amount of defense plutonium or defense plutonium  
2 materials equal to the amount [transferred to the SRS after April 15, 2002, that remains  
3 unprocessed].” Accordingly, the law provides for an additional closely related proposed  
4 action by DOE—the removal and transportation from South Carolina of additional tons of  
5 plutonium. Moreover, given DOE’s refusal to consider viable and reasonable alternatives  
6 to the NNSS for staging (indefinite storage) of the one metric ton of plutonium covered by  
7 paragraph (1) and addressed in the SA, it is reasonably foreseeable that the NNSS will be  
8 used for future staging (indefinite storage) of the additional tons of plutonium required to  
9 be removed from South Carolina by paragraph (2). The SA does not evaluate these  
10 additional necessary DOE actions, much less refer to portions of previous environmental  
11 impact statements where the cumulative environmental impacts of shipping and staging  
12 both the one metric ton and future tons of plutonium were discussed. *See Halstead*  
13 *Affidavit, Exhibit C, ¶¶ 25-26.*

14 There have been information exchanges between DOE and Nevada regarding the  
15 proposed transport of the one metric ton of Pu-239 to the NNSS, but they have been  
16 incomplete and unsatisfactory. These exchanges began in April 2018 when DOE first  
17 informed Nevada of a potential proposal to ship plutonium from South Carolina to  
18 Nevada. On approximately August 28, 2018, DOE informed Nevada that a SA would be  
19 prepared to support the proposed shipment of one metric tons of plutonium to the NNSS  
20 in Nevada. A copy of the SA was posted to the DOE website on August 30, 2018. Nevada  
21 Governor Sandoval addressed his concerns with the proposal in a phone call with  
22 defendant Secretary Perry on September 7, 2018. Governor Sandoval specifically  
23 expressed concerns regarding the adequacy of the SA and the lack of a timeline for  
24 storage and removal. During that phone call, the Governor and the Secretary agreed that  
25 their staffs would schedule a second call to discuss the plan specifics. A second phone call  
26 took place on September 14, 2018. During this phone call, DOE specifically declined to  
27 identify any additional information related to the timeline for the transportation or the  
28 form/type of plutonium to be shipped. *See Affidavit of Pam Robinson, Exhibit D.*





1 43. NEPA requires federal agencies, such as DOE, to prepare an environmental  
2 impact statement for every “recommendation . . . on proposals for major federal actions  
3 significantly affecting the quality of the human environment.” DOE violated this  
4 statutory requirement by not preparing a supplemental environmental impact statement  
5 for this new proposed action.

6 **Second Claim – Defendants Violated the Council on Environmental**  
7 **Quality Regulations**

8 44. The Council on Environmental Quality’s NEPA regulations require agencies,  
9 such as DOE, to prepare a supplemental EIS if (1) the agency makes substantial changes  
10 in the proposed action that are relevant to environmental concerns; or (2) there are  
11 significant new circumstances or information relevant to environmental concerns and  
12 bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9(c)(1). DOE violated this  
13 regulatory requirement by not preparing a supplemental environmental impact  
14 statement for this new proposed action.

15 **Third Claim – Defendants Violated Their Own Regulations**

16 45. DOE’s NEPA regulations require that a supplemental EIS be prepared if  
17 (1) the agency makes substantial changes in the proposed action, or (2) there are  
18 significant new circumstances or information relevant to environmental concerns and  
19 bearing on the proposed action or its impacts. 10 C.F.R. § 1021.314(a). DOE violated this  
20 regulatory requirement by not preparing a supplemental environmental impact  
21 statement for this new proposed action.

22 **X. RELIEF REQUESTED**

23 WHEREFORE, Plaintiff respectfully requests that this Court grant the following  
24 relief:

25 A. A declaration and order that the Defendants’ actions violate NEPA, and  
26 CEQ and DOE implementing regulations;

27 B. An order setting aside and vacating the SA;

28 ///

1 C. An order enjoining the Defendants from authorizing or allowing or otherwise  
2 acting to ship any plutonium, including Pu-239, from the Savannah River Site to the  
3 NNSS, or from Pantex to the NNSS, until Defendants properly comply in full with NEPA  
4 and CEQ and DOE NEPA regulations;

5 D. A declaration and order retaining jurisdiction over this matter regarding  
6 Defendants' compliance with NEPA, CEQ, and DOE regulations, and this Court's orders;

7 E. An order that awards the Plaintiff their costs, expenses, expert witness fees  
8 and reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C.A.  
9 § 2412; and

10 F. An order granting Plaintiff such further or other relief as may be deemed  
11 just, proper, and equitable.

12 DATED this 30th day of November, 2018.

13 ADAM PAUL LAXALT  
14 Attorney General

15 By: /s/ C. Wayne Howle  
16 C. WAYNE HOWLE (Bar No. 3443)  
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26 MARTIN G. MALSCH  
27 Special Deputy Attorney General  
28

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D.	Affidavit of Pam Robinson <i>(To be filed subsequent to the Complaint)</i>	–
E.	DOE Progress Report dated June 13, 2018 (filed June 15, 2018)	6
F.	Table E-1 of DOE's 2015 Final Surplus Plutonium Disposition SEIS (DOE EIS-0283-S2) (DOE's 2015 EIS), entitled "Offsite Transport Truck Transportation Route Characteristics"	1
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J.	Table E-13 and Table E-14 of DOE's 2013 Final Site-Wide Environmental Impact Statement for the Continued Operation of the Department of Energy/National Nuclear Security Administration Nevada National Security Site and Off-Site Locations in the State of Nevada (DOE-EIS-0426) (DOE's 2013 EIS) entitled "Risks of Transporting Radioactive Waste Under Each Alternative – Constrained Case" and "Risks of Transporting Radioactive Materials Under Each Alternative – Constrained Case"	4

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
K.	Tables L-8 and L-9 in DOE's 1999 Final Plutonium Disposition Environmental Impact Statement (DOE-EIS-0283) (DOE's 1999 EIS), entitled "Estimated Dose to the Population and to Maximally Exposed Individuals During the Most Severe Accident Conditions (Plutonium Oxide)" and "Estimated Dose to the Population and to Maximally Exposed Individuals During the Most Severe Accident Conditions (Plutonium Pits)"	2
L.	GAO Report 17-390, "Plutonium Disposition, Proposed Dilute and Dispose Approach Highlights Need for More Work at the Waste Isolation Pilot Plant," dated September 2017, "highlights" page	1