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Keep Yellowstone Nuclear Free  
Environmental Defense Institute  
Mary Woollen  
John Peavey  
Debra Stansell

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO  
EASTERN DIVISION

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KEEP YELLOWSTONE NUCLEAR FREE, :  
ENVIRONMENTAL DEFENSE INSTITUTE, :  
MARY WOOLLEN, JOHN PEAVEY, DEBRA : Case No. 07-36  
STANSELL :  
 : **COMPLAINT**  
 :  
Plaintiffs, :  
 :  
 :  
- vs. - :  
 :  
 :  
THE UNITED STATES DEPARTMENT OF :  
ENERGY, and SAMUEL W. BODMAN, :  
SECRETARY, UNITED STATES DEPARTMENT :  
OF ENERGY, :  
 :  
 :  
Defendants. :  
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## **COMPLAINT**

Plaintiffs, Keep Yellowstone Nuclear Free, Environmental Defense Institute, Mary Woollen, John Peavey and Debra Stansell, by and through their attorney, Katherine Ellsworth of Katherine Ellsworth P.C., for their Complaint in this action, allege as follows:

### **INTRODUCTION**

1. This is an action arising under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.* (“NEPA”), and its implementing regulations adopted by the Council on Environmental Quality (“CEQ”) and applicable to all agencies, 40 C.F.R. Parts 1500-1508 (the “CEQ NEPA Regulations”), and the Department of Energy’s NEPA Implementing Procedures, 10 C.F.R. Part 1021 (the “DOE NEPA Regulations”). Judicial review is sought pursuant to the Administrative Procedure Act, 5 U.S.C. § 701-706 (the “APA”), which authorizes judicial review of all agency actions. Plaintiffs seek to compel the Defendants Department of Energy and Samuel W. Bodman, Secretary of the Department of Energy (collectively, the “DOE”) to comply with NEPA with respect to the Advanced Test Reactor Life Extension Program (the “LEP”).

2. Without performing any environmental review whatsoever, and in violation of NEPA, the DOE has embarked on the LEP, a ten-year, \$200-million dollar program that would extend the operating life of the Advanced Test Reactor (“ATR”), a 250 megawatt nuclear reactor located at the Idaho National Laboratory (“INL”). The ATR is already close to 40 years old and well beyond its design life expectancy. Nonetheless, the DOE intends to extend its operation to 2040 and beyond.

3. Due to neglect, antiquated equipment, poor design, and many years of

what the DOE has termed “budget austerity,” the ATR poses a threat to public health and safety. Absent major safety upgrades and very significant expenditures, extending the ATR’s operation poses unacceptable risks to the residents of southeastern Idaho and western Wyoming and endangers two of the nation’s most cherished national parks, Yellowstone National Park and Grand Teton National Park. Extending the life of the ATR will also generate significant quantities of radioactive waste, much of which has no identified path for disposal. This waste poses a threat to the environment and public health.

4. Plaintiffs therefore seek: (1) an order directing the DOE to meet its obligations under NEPA by preparing an environmental impact statement (“EIS”) for the LEP; and (2) a permanent injunction prohibiting the DOE from operating the ATR until such time as it has completed the EIS and implemented those components of the LEP that are critical to ensuring the safe continued operation of the ATR, including completion of the Design Basis Reconstitution Program and the Material Condition Assessment, elimination of the engineering work backlog, and the replacement of those essential structures, systems and components of the ATR that are determined to be inadequate, including, but not limited to, the ATR’s emergency core cooling system.

#### **JURISDICTION AND VENUE**

5. This action arises under NEPA, and this Court has jurisdiction under 28 U.S.C. §§ 1331 (federal question) and 1361 (mandamus), as well as the APA, 5 U.S.C. §§ 701-706.

6. This court has authority to issue declaratory relief, injunctive relief, and any additional relief, pursuant to 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. §§ 705, 706.

7. Venue is appropriate in this district under 28 U.S.C. § 1391(e)(2) because this suit is an action against officers and employees of the United States government acting in their official capacity and a substantial part of the events or omissions giving rise to the claim occurred, and the property that is the subject of this action is situated in, eastern Idaho.

### **THE PARTIES**

8. Plaintiff Keep Yellowstone Nuclear Free (“KYNF”) is a not-for-profit organization that seeks to protect the Greater Yellowstone region from contamination from activities conducted by the DOE at INL. KYNF is based in Jackson, Wyoming. KYNF actively seeks and disseminates information about ongoing DOE activities at INL in an effort to inform the public and help ensure safe operation of INL. KYNF’s Directors live in the Jackson, Wyoming area, and have an interest in the use, enjoyment, preservation and protection of the national parks and national forests of Idaho, Wyoming and Montana that make up the Greater Yellowstone ecosystem. KYNF has suffered legal wrong because of the DOE’s failure to comply with NEPA with respect to the LEP and has been adversely affected or aggrieved by the DOE’s failure to comply with NEPA.

9. Plaintiff Environmental Defense Institute (“EDI”) is a not-for-profit organization that is actively involved in the collection and dissemination of information relative to the health, safety, and environmental aspects of INL. EDI is based in Troy, Idaho. Several of EDI’s Directors live in Idaho and Wyoming, and have an interest in the use, enjoyment, preservation and protection of the national parks and national forests of Idaho, Wyoming and Montana. EDI has suffered legal wrong because of the DOE’s failure to comply with NEPA with respect to the LEP and has been adversely affected or

aggrieved by the DOE's failure to comply with NEPA.

10. Plaintiff Mary Woollen is the Executive Director of KYNF, a Director of EDI, and a resident of Wilson, Wyoming. Mrs. Woollen and her family actively use and enjoy the national parks and national forests of Idaho, Wyoming and Montana that comprise the Greater Yellowstone ecosystem and have an interest in the preservation and protection of such areas. Mrs. Woollen has suffered legal wrong because of the DOE's failure to comply with NEPA with respect to the LEP and has been adversely affected or aggrieved by the DOE's failure to comply with NEPA.

11. Plaintiff John Peavey is a resident of Carey, Idaho. Mr. Peavey was an Idaho State Senator for 21 years. Mr. Peavey and his family have owned and operated a 28,000 acre sheep and cattle ranch located at 421 Flat Top Road in Carey for approximately 75 years. Mr. Carey is the third generation of his family to run the ranch, and both his son and grandson participate in ranch management. Thus, five generations of the Peavey family have been involved in the Carey ranch. The ranch is located approximately 45 miles from the Idaho National Laboratory. Mr. Peavey has suffered legal wrong because of the DOE's failure to comply with NEPA with respect to the LEP and has been adversely affected or aggrieved by the DOE's failure to comply with NEPA.

12. Plaintiff Debra Stansell is a resident of Aberdeen, Idaho, approximately 50 miles from the Idaho National Laboratory. Mrs. Stansell is the grand-daughter of an Idaho sheep rancher, and she and her husband raised their three children in Aberdeen. Mrs. Stansell avoids Idaho National Laboratory, and surrounding public lands which she might otherwise visit, including the Craters of the Moon National Monument, for fear of

exposure to radiation and other health threats. Mrs. Stansell regularly visits Jackson Hole and the Greater Yellowstone area with her family for sightseeing and recreation. Mrs. Stansell has suffered legal wrong because of the DOE's failure to comply with NEPA with respect to the LEP and has been adversely affected or aggrieved by the DOE's failure to comply with NEPA.

13. Defendant DOE is an agency of the United States government. Among other things, the DOE owns INL, an approximately 890-square mile multipurpose laboratory complex where DOE conducts research and development on a wide variety of subjects, including nuclear energy. The ATR is located at INL.

14. Defendant Samuel W. Bodman is the Secretary of the Department of Energy.

#### **THE ATR LIFE EXTENSION PROGRAM**

15. The ATR is a 250 megawatt nuclear reactor located at the Idaho National Laboratory.

16. The ATR was designed in the 1950s and began operation in 1967. It has therefore been in operation for nearly 40 years, and is based on a design that is approximately 50 years old.

17. The ATR, and INL as a whole, are owned by the DOE, but operated by Batelle Energy Alliance ("BEA") pursuant to a ten-year contract worth approximately \$4.8 billion. Upon information and belief BEA is owned by the Batelle Memorial Institute, which is based in Columbus, Ohio.

18. Of a total of 52 nuclear reactors built and operated at INL, the ATR is one of three reactors still in operation. Of the other reactors once operated at INL, dozens

suffered catastrophic meltdowns, which were either deliberately triggered for testing purposes or the result of an accident.

19. The DOE has acknowledged that the DOE-evaluated worst-case accident at the ATR would result in a lethal dose of radiation for anyone within 19.4 kilometers of the facility.

20. The same worst-case accident scenario would require the evacuation of areas within 105 kilometers of the facility, a radius that would include all of Idaho Falls, Rexburg, and Pocatello as well.

21. According to the DOE's Joel M. Trent, an engineer and manager within INL's Security and Emergency Management Division, were such an accident to occur, the "long term consequences, including the cleanup itself, loss of livelihood, damage to the environment, and the resulting impacts to markets and public confidence are difficult to quantify, but they would be significant."

22. The ATR is not designed or operated for power generation purposes. It is a "test" reactor used by DOE and BEA to perform materials testing and isotope production.

23. The LEP is summarized in the Advanced Test Reactor Life Extension Program Plan prepared by BEA and dated March, 2006 (the "LEP Plan"). That LEP Plan was then updated in September, 2006.

24. The LEP is already underway.

25. The September, 2006 LEP Plan states that "INL has embarked on a major project to extend the life of the ATR to the year 2040."

26. The LEP is intended to extend the life of the ATR through at least 2040 by addressing, among other things, longstanding deficiencies in the safety basis for the ATR

and a massive engineering work backlog.

27. As the DOE has stated, “The LEP Plan is the confluence of all programs, operations, and issues that impact, or that have the potential to impact, the long-term mission and operation of the ATR.”

28. The LEP Plan outlines a suite of actions today known to be necessary to extend the life of the ATR, including the following:

(1) Material Condition Assessment (“MCA”). If the ATR were to operate through 2040, it will reach a 71-year operating life. As the March, 2006 LEP Plan states “it is unlikely that, at the time of the original design, the design lifetime was evaluated for this length of service.” Therefore, no one knows if the essential systems, structures and components (“SSCs”) of the ATR will safely operate for this period of time. The MCA is intended to determine the remaining functional service life of every ATR SSC, and to develop a process for the monitoring, testing and, as necessary, replacement of SSCs.

(2) Design Basis Reconstitution Program (“DBRP”). As the March, 2006 LEP Plan states, “The original safety basis for the ATR was documented in a Safety Analysis Report (SAR) dated April 1965 and was not maintained beyond the first few years.” Furthermore, “many facility modifications were made during the long periods when the 1965 SAR was not kept current.” Therefore, no one knows what the as-built configuration of a multitude of ATR SSCs may be, or the reasonableness of assumptions made regarding the safety of critical systems at the ATR. As the LEP states, “This history and progression of facility modifications and the facility SAR result in a safety basis that has a potential for gaps between the facility and the safety basis and inconsistent approaches to accident analyses.” In fact, such safety gaps are more than a



mere potentiality. The DBRP, which is underway, has already identified 71 such safety gaps.

(3) Probabilistic Risk Assessment (“PRA”). The ATR PRA was last published in 1994. Since that time the facility has been modified several times, but the PRA has not been kept current. The PRA is used to determine the probability of occurrence, and the potential severity of, specific accident scenarios. Because the PRA is not up-to-date, no one knows with any certainty what the probability or consequences of certain types of ATR accidents may be.

(4) Seismic Qualification Updates. The ATR’s seismic design is based on the 1961 Uniform Building Code. Since that time, the applicable code has changed, and the facility has been modified many times. ATR Seismic Category I SSCs (those most critical to ensure safety) have not been audited for seismic hazards. As the LEP Plan states “the goal of the assessment plan is to provide adequate assurance that seismic hazard mitigation will be provided for the essential nuclear safety functions of the ATR facility.” Thus, although DOE and BEA officials have repeatedly sought to reassure the public that the facility is safe and will not suffer catastrophic failure in the event of a major earthquake, no one knows if the essential SSCs of the ATR can withstand a major seismic event.

(5) Work Backlog. The ATR work backlog, as of July, 2006, including deferred maintenance and an engineering backlog, totaled nearly 115,000 man-hours. Reducing and eliminating this work backlog is one component of the LEP and critical to facility safety.

(6) Strategic Issues. The LEP Plan identifies a number of highly complex

“strategic issues,” each with its own significant adverse environmental impacts that must be resolved to extend the life of the ATR. These include, but are not limited to, the procurement of special materials and equipment, including highly specialized beryllium reflector blocks. Such equipment and materials often require long lead times for procurement and present their own complex manufacturing and waste-disposal issues. These “strategic issues” also include identifying a path for disposal of radioactive wastes. Storage space for both low-level radioactive waste and transuranic waste is limited or non-existent. For example, there is currently no identified path for disposal of the highly radioactive beryllium reflector blocks which must be replaced every 8-10 years.

29. According to the March, 2006 LEP Plan, the LEP was budgeted for \$20 million for 2006 alone, and the “rough order of magnitude cost estimates” were projected to be \$20 million for each of the following six years through 2012.

30. According to the September, 2006 LEP Plan, the LEP is now projected to take ten years to complete, at a total cost of approximately \$200 million.

31. The LEP is a “major federal action” that may significantly affect the quality of the human environment within the meaning of NEPA.

32. The LEP therefore requires an environmental impact statement and the attendant public hearings and opportunity for public comment, none of which have been afforded to date.

33. The significant impacts on the human environment that will result from extending the life of the ATR until at least 2040, and which must be considered by the DOE in an EIS for the LEP, include, but are not limited to, the following:

- **Health, socioeconomic, transportation, and cumulative impacts associated with**

**the fuel cycle.** These impacts include “front end” impacts resulting from the production and shipment of nuclear fuel for ATR operation, operational impacts associated with storing nuclear fuel, and “back end” activities associated with the shipping and disposal of spent nuclear fuel. Current disposal and storage practices for ATR spent nuclear fuel rely on the Idaho Nuclear Technology and Engineering Center (“INTEC”), which will not handle the material beyond 2009. Furthermore, commitments made to the State of Idaho require that all spent nuclear fuel be shipped out of the State no later than 2035. Thus, the management of spent nuclear fuel from the ATR poses considerable challenges, and will create a variety of potentially significant environmental impacts.

- **Impacts associated with the generation of long-lived and highly toxic radioactive wastes from operation of the ATR.** Such wastes include transuranic wastes such as beryllium, which presents unique disposal challenges and for which the March, 2006 LEP Plan acknowledges there is today no path for disposal, as well as high-level radioactive wastes and low-level radioactive wastes produced in large quantities at the ATR. Already, according to the March, 2006 LEP Plan, there are 20 beryllium reflector blocks and 55 outer shim control cylinders that contain beryllium “temporarily” stored in the ATR canal, for which there is no permanent disposal site. Furthermore, the Radioactive Waste Management Complex at INL, today used to dispose of low-level waste from the ATR, is scheduled to close in 2009. A path for disposal of all of this material must be identified, and the impacts evaluated.
- **Impacts from the management of other special nuclear material irradiated in the ATR, or materials tested for their durability through irradiation in the ATR.**

This would include neptunium-237, currently being shipped to INL in preparation for irradiation in the ATR necessary to produce plutonium-238.

- **Potentially devastating impacts associated with an accident at the ATR.** These impacts would include health and socioeconomic impacts to the tens of thousands of residents of southeastern Idaho and western Wyoming, and impacts to the environment, including ecosystem-wide impacts to Yellowstone National Park and Grand Teton National Park. An EIS must consider a variety of event scenarios, including earthquakes and simple operator error, their likelihood and the severity of the resulting accident. It must also consider mitigation measures to minimize the likelihood of such accident scenarios or reduce the severity of the impacts of such scenarios.
- **Impacts associated with any refurbishment or physical upgrades determined to be necessary to extend the life of the ATR.** This would include the impacts of manufacturing highly specialized parts for the facility that are today unavailable.

34. An EIS must also consider reasonable alternatives to the LEP. Such alternatives include, but are not limited to the following:

- A “no action” alternative in which the ATR is shut down and decommissioned.
- A new test reactor. DOE must consider constructing a new test reactor, either at INL or another facility, to meet its materials testing and isotope production needs.
- Safety Improvements. DOE must consider a host of safety upgrades that will minimize the likelihood and severity of a nuclear accident at the ATR. Such upgrades will include, among other things, a new emergency cooling system and a containment dome.

- Alternative life spans. The DOE must consider extending the life of the ATR for less than the 40 year period outlined in the LEP Plan, thereby reducing the impact of its program.

35. Although the DOE has already committed substantial funding and resources to extend the life of the ATR, and initiated several key components of the LEP, to date the DOE has performed no review of the environmental impacts associated with the extension of the life of the ATR pursuant to NEPA.

36. DOE's failure to perform any environmental review for the LEP is a violation of its obligation, set forth in NEPA, to inform the public of the environmental impact of its actions, and to seek public comment on such actions prior to implementing them.

37. The LEP contemplates \$200 million in expenditures over a period of ten years. This enormous sum, as explained in the September, 2006 revision to the LEP Plan, is necessary to address a massive work backlog and to re-create the safety basis for the facility, which was not maintained beyond the first few years of ATR operation. The September 2006 LEP attributes this neglect to many years of "budget austerity," when the ATR was not a high priority for the DOE.

38. This "budget austerity" has resulted in chronic safety problems at the facility and a long list of uncertainties regarding the seismic safety and material condition of essential ATR SSCs. A partial list of these problems is set forth below.

39. However, it must be recognized that the DOE has withheld critical safety-related documents from KYNF and EDI, and forced those plaintiffs to file an action in

the Wyoming Federal District Court under the Freedom of Information Act seeking the release of those documents. That action is currently pending. Thus, the list below is at best incomplete.

40. Furthermore, Plaintiff KYNF identified these and other concerns in a letter to the DOE dated December 21, 2005. In response, the DOE claimed, in statements to the media, that the facility is safe, but has never responded directly to KYNF, nor demonstrated that any of these concerns have been addressed.

41. Some of the safety deficiencies and concerns at the ATR, all of which are identified in the DOE's own documents, include the following:

- **Concrete Wall Lacks Reinforcement.** According to a November, 2004 report prepared by DOE's consultant, the Ares Corporation (the "Ares Report"), a very large concrete block shielding wall (8 feet tall and 73 feet long) is inadequately braced, and would fail in the event of a major earthquake, crushing the ATR's adjacent primary coolant system lines. The Ares Report states that "Failure of this wall could result in a loss of primary coolant" and that the wall is vulnerable to damage "at relatively low seismic input levels" and "will behave as two rigid bodies pivoting about the top and bottom supports." The Ares Report recommended further evaluation and additional bracing for the wall.
- **Other Concrete Block Walls Unreinforced and Vulnerable.** The shielding wall noted above is by no means the only vulnerable structure in the Test Reactor Area. The Ares Report reviewed the construction drawings for a number of buildings in and around the ATR to determine whether numerous concrete block walls are reinforced. In many cases, the safety of these walls could not be

determined because construction drawings were missing or inadequately detailed, or because it could not be determined if the plans had been followed. In other cases, it was concluded that the walls were not reinforced. As the November, 2004 report states, “the drawing review indicates that the concrete block structures are only lightly reinforced at best.” This includes walls for the deep well pumphouses which would be relied on to supply cooling water to the ATR in the event of the disruption of commercial power, as well as numerous walls through which the critical Emergency Firewater Injection System piping passes.

- **Fire Protection Piping a “Major Concern”.** The Ares Report states that “use of the fire protection system as a safety injection system for ATR is still a major seismic concern.” According to the Ares Report, the fire protection piping is “often supported from unreinforced masonry walls” which are very vulnerable, as described above. Although a minor modification was subsequently made to the Emergency Firewater Injection System (“EFIS”) which would allow an operator to isolate the ATR section of the EFIS from other seismically weak piping, and supports seem to have been added to some piping, more recent reports, including the March, 2006 LEP Plan, continue to maintain that the Emergency Firewater Injection System must be replaced. This major facility upgrade, critically necessary to ensure safety, is not included in the \$200 million figure for the LEP plan.
- **PCS Piping Supports Suspect.** The Ares Report states that assumptions made regarding the size of the primary coolant system supports are likely false, that those supports “appeared to be marginal for the size of the PCS piping” and that

“a re-evaluation of the PCS should be conducted, including an assessment of the supports.” To date, upon information and belief, no such assessment, or improvements, have been performed.

- **Off-Site Substations Vulnerable.** The three substations that provide power to the ATR are all vulnerable to seismic effects, and would likely fail in the event of a major earthquake. This is particularly troubling in light of problems identified in starting the emergency diesel generators, and problems with aging switchgear at the ATR. Without power, the ATR will be without water for cooling purposes.

42. Furthermore, the DOE’s Facility Certification Report No. 29 details a startling number of problems at the ATR that demonstrate that the ATR’s age is a significant concern. These problems stand in sharp contrast to the DOE’s repeated reassurances that the facility is “state of the art” and that its age is not a concern because its “core internals” are replaced periodically. Here are some of the troubling signs:

- **Control Rod Problems.** The Facility Certification Report identifies mechanical failures of the control rods in the reactor. There appear to be mechanical and electrical problems, and debris blocking their movement. The control rods are the ATR’s primary shutdown mechanism.
- **Radiation Monitoring System “Frequent Failures”.** The Facility Certification Report states that radiation monitors “should be replaced with an upgraded system due to the equipment age and frequent failures.” Also the High Level Radiation Monitoring System was not working. The report cites “numerous hardware and software problems that have been unable to be corrected.”



- **Spare Parts Unavailable.** The Facility Certification Report states that “spare parts for older systems are increasingly unavailable.”
- **PCS Heat Exchangers Corroded.** One primary cooling system heat exchanger developed a leak. Further investigation revealed pitting corrosion in all of the PCS heat exchangers. The Facility Certification Report states that “the ATR PCS/Secondary Coolant System (SCS) heat exchangers are operating beyond 200% of their 20-year design life” and it suggests that there are serious consequences from failure.
- **Seismic Deficiencies Noted.** Offering little in the way of specifics, the Facility Certification Report states that “Not all of the equipment is qualified to the current seismic design criteria.” That is certainly the case, as demonstrated by the Ares Report, and the LEP Plan.

43. All of these troubling problems must be viewed in light of the fact that the ATR has no containment dome typical of commercial nuclear reactors, which would minimize radioactive releases in the event of a major accident.

44. In recent years the safety of the ATR has been the subject of investigation and reporting by teams of “independent” specialists from the DOE’s Office of Independent Oversight and Performance Assurance (the “OA”).

45. In 2003, an OA team performed a review of essential safety systems at the ATR.

46. That review prompted a months-long reactor shut down to address identified deficiencies in the ATR’s emergency core cooling system.

47. OA teams returned to the facility in 2004, 2005, and 2006, and identified

significant problems in the facility's safety basis and material conditions.

48. The OA teams' reviews prompted the LEP.

### **APPLICABLE LAW**

49. NEPA requires "responsible [federal] officials" to prepare environmental impact statements ("EISs") on proposals for legislation and other "major Federal actions significantly affecting the quality of the human environment."

50. The LEP is a "major federal action" subject to the EIS requirement. Under NEPA, an agency must prepare an EIS when an "action" *may* have significant environmental effect. 40 C.F.R. § 1508.3. The LEP will have significant adverse impacts on the human environment, and therefore, as a matter of law, an EIS must be prepared.

51. NEPA establishes a national policy to "prevent or eliminate damage to the environment and biosphere." 42 U.S.C. § 4321. NEPA recognizes "the critical importance of restoring and maintaining environmental quality," declares that the federal government has a continuing responsibility to use "all practicable means" to minimize environmental degradation and directs that "to the fullest extent possible...the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act." 42 U.S.C. §§ 4331(a), 4332(1). NEPA further recognizes the right of each person to enjoy a healthful environment. 42 U.S.C. § 4331(c).

52. The CEQ has issued regulations binding on all federal agencies for the implementation of the procedural provisions of NEPA. Those regulations (fully entitled

“Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act”) became effective in 1979 and binding upon the DOE as of that date. See 43 Fed. Reg. 55978-56007 (1978), 40 C.F.R. Parts 1500-1508. Each agency was required by the CEQ NEPA Regulations to adopt “procedures” to supplement those regulations. 40 C.F.R. § 1507.3.

53. Pursuant to the CEQ’s directive, DOE adopted 10 C.F.R. Part 1021 (the “DOE NEPA Regulations”). The DOE NEPA Regulations require that the DOE prepare and circulate EISs in accordance with the CEQ Regulations (§ 1021.310), that the DOE publish a notice of intent inviting comments on the scope of the EIS and hold a public meeting on the scope of the EIS (§ 1021.311), provide for a period of public review and comment on a draft EIS, including a public hearing, and prepare and circulate a final EIS that responds to all public comment received on the draft EIS (§ 1021.313).

54. For the reasons set forth above, the LEP may have certain significant adverse impacts on the human environment and therefore an environmental impact statement was and is required before the DOE undertakes the LEP.

55. For the reasons set forth above, the LEP will cause irreparable injury to the Plaintiffs, the environment and public health.

56. By letter dated November 1, 2006, KYNF, by its attorney, wrote to Elizabeth Sellers, Director of the DOE’s Idaho Operations Office to inquire whether any NEPA analysis had been performed by the DOE for the LEP, and if not, why the DOE believed it need not perform such a review.

57. In a letter dated November 15, 2006, the DOE, by its Freedom of Information Act officer, responded by claiming that the “the Department’s proposed ATR

LEP is merely a long-term plan undergoing discussions and definition regarding the actual needs for the Department....” that the LEP is “undergoing evaluation....” and that “the program is not ripe for conducting an environmental impact statement.”

58. However, according to the September, 2006 LEP Plan, “INL has embarked on a major project to extend the life of the ATR to the year 2040.”

59. Similarly, in its motion for summary judgment in the pending FOIA action between KYNF (among others) and the DOE, the DOE has stated that “[t]he actual decisions regarding the course of action for upgrading the ATR were finalized into the ATR Life Extension Plan, a document that has been released in full to the plaintiffs.”

60. Thus, by the DOE’s own admissions, the LEP is a major federal action that the DOE “has embarked on” without performing any NEPA analysis whatsoever. This is a clear violation of law.

## **VIOLATIONS OF LAW**

### **COUNT I**

#### **Violation of NEPA -- Failure to Prepare an EIS**

61. Plaintiffs repeat and incorporate by reference each and every allegation contained in paragraph 1 through 60 above.

62. NEPA requires all federal agencies to prepare a detailed EIS on every proposal for a major federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(C). The EIS must always contain a detailed discussion of environmental impacts (40 C.F.R. § 1502.16) and of alternatives (40 C.F.R. § 1502.14).

63. The LEP is a major federal action significantly affecting the quality of the human environment for which the DOE must prepare an EIS.

64. The DOE has failed to perform any environmental review of the LEP.

65. The DOE has prepared no environmental assessment for the LEP, has neither issued a finding of no significant impact (a “FONSI”), nor prepared and circulated an EIS.

66. The LEP does not qualify for a categorical exclusion.

67. The DOE has therefore violated NEPA.

## **COUNT II**

### **VIOLATIONS OF ADMINISTRATIVE PROCEDURE ACT**

68. Plaintiffs repeat and incorporate by reference each and every allegation contained in paragraph 1 through 67 above.

69. Due to the DOE’s knowing and conscious failure to comply with NEPA, Plaintiffs have suffered legal wrongs because of agency action and are adversely affected and aggrieved by agency action within the meaning of the APA, 5 U.S.C. § 702.

70. DOE’s knowing and conscious failure to comply with NEPA is arbitrary, capricious, and an abuse of discretion, not in accordance with the law, in excess of statutory jurisdiction, and without observance of procedure required by law within the meaning of the APA, 5 U.S.C. § 706(2), and the LEP should therefore be declared unlawful and the DOE prohibited from operating the ATR until it has met its obligations under NEPA.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that the DOE's actions in undertaking the LEP without first having prepared a detailed statement of the environmental impacts of and alternatives to the LEP are violations of NEPA and of the APA and therefore null and of no legal force and effect;

2. Issue a mandatory injunction requiring Defendants to cease operation of the ATR and to halt shipments of reactor fuel and all special nuclear material to the ATR, and prohibiting continued operation of the ATR until: (1) the DOE has complied with NEPA by preparing an adequate environmental impact statement for the LEP, including full consideration of all available and reasonable alternatives to the LEP; (2) the DOE has issued a record of decision in light of that EIS determining whether or not to extend the operating life of the ATR; and (3) if the decision is to go forward with the continued operation of the ATR and to extend its operating life, the DOE has implemented those portions of the LEP necessary to ensure that the ATR can operate safely;

3. Allow Plaintiffs to recover the costs of this action, including attorney's fees;

4. Grant such other and further relief as the Court deems just and proper.

Jackson, Wyoming  
January 22, 2007

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