

# GreenFireReport

Fall 2010

A publication of the New Mexico Environmental Law Center, a non-profit, public interest law firm dedicated to protecting New Mexico's environment and communities.

[nmelc.org](http://nmelc.org)

## Law Center Fights for Pit Rule

Staff Attorney Eric Jantz heads into court on December 10th to defend the Oil and Gas Pit Rule, which is being appealed by oil and gas companies including ConocoPhillips. The Pit Rule, for which the Law Center successfully advocated in 2008, protects groundwater and land from oil and gas drilling wastes, which often contain carcinogens such as benzene and xylene.



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But the appeal is not the only threat that the regulation faces. On the campaign trail, Governor-elect Susana Martinez's vowed to abolish the Pit Rule. Claiming that it costs \$250,000 per pit to comply (the average is closer to \$35,000 per shallow well to \$150,000 per deep well, or roughly 3-5% of the total cost of drilling a well, according to industry experts), Martinez blamed the Pit Rule for slowing the oil and gas industry in New Mexico and driving drillers out of the state.

But Jantz points to a different culprit. "In a recession, there is less demand for oil and gas

and commodity prices fall as a result. When the economy comes back, the drillers will come back. And that is when the Pit Rule will be more important than ever."

Jantz also points to statements from the Oil Conservation Division that, since the Rule was adopted, there have been no leaking pits found in New Mexico. "Keeping these toxic chemicals out of unlined pits means that

"we're keeping them out of the water," he adds.

The oil and gas industry (as a group), after the Republican Governors' Association, were the second most generous contributors to Governor-elect Martinez's campaign.

Other oil and gas threats on the horizon? In addition to a probable

attack on the Pit Rule by legislators, we anticipate that there may be an effort to undermine the ability of counties to enact local zoning regulations like the Santa Fe County Oil and Gas Ordinance. "A lot of people worked with the Law Center to get that ordinance enacted, and we are now working with groups in other counties to help them advocate for similar protections," says Jantz. "We are ready to fight for counties' rights to protect themselves from irresponsible oil and gas drilling."



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### Can New Mexico Save the World?

"Our old familiar globe is suddenly melting, drying, acidifying, flooding, and burning in ways that no human has ever seen. We've created, in very short order, a new planet, still recognizable, but fundamentally different."

—Bill McKibben, author, in his public testimony to the EIB.

— Story on page 3



Residents face down New Mexico's worst neighbor.

— Story on page 4

*"We reached the old wolf in time to watch a fierce green fire dying in her eyes."*

— Aldo Leopold  
*A Sand County Almanac*

# Why Wyoming? And other puzzling questions about our uranium work

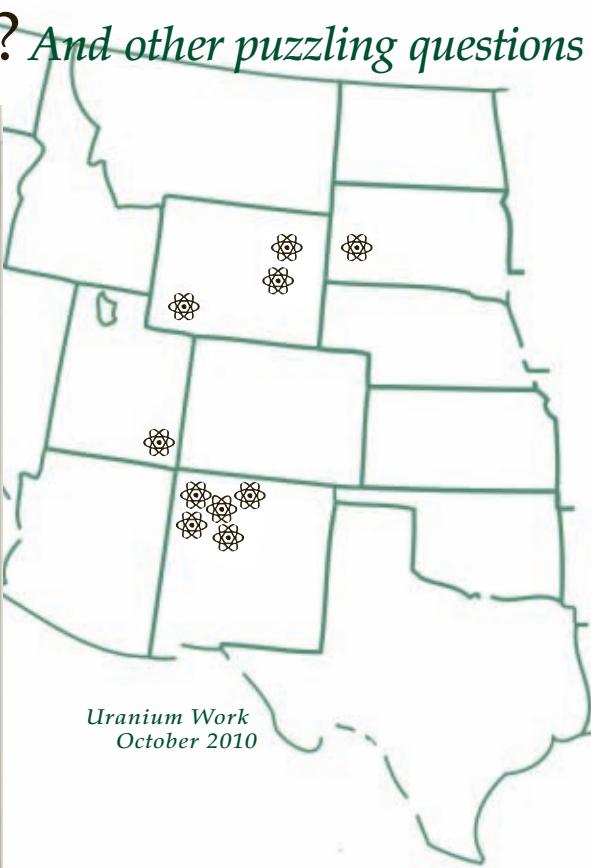


Staff Attorney and lead uranium counsel Eric Jantz answers some of the most frequent questions we receive about our uranium work.

**Q:** In 2010, the Law Center began working on uranium cases in Wyoming and South Dakota. Why?

**A:** First, in addition to New Mexico, the Nuclear Regulatory Commission (NRC) regulates in situ leach (ISL) uranium mining in Nebraska, South Dakota and Wyoming. So what happens in those states impacts what will happen to our water, air and people. Second, the Law Center is the most experienced non-profit law firm in the U.S. working on uranium mining, and we're happy to lend our assistance to other communities facing the threat of mining.

**Q:** Uranium mining has been almost nonexistent for more than three decades. What's going on now?



**A:** In 2006, our uranium docket consisted solely of the Crownpoint Uranium Project. This year, we have worked on 16 uranium cases in New Mexico, South Dakota, Wyoming, Utah and at the national level. Why? Between 1999 and 2008, the nuclear industry spent \$650 million on lobbying and campaign contributions, which has helped nuclear power regain a foothold in Washington. Speculators, riding on the nuclear industry's coattails, have hopes that talk of new power plants will spur new domestic uranium mining.

**Q:** The uranium industry touts ISL mining as 'controllable,' 'safe,' and 'environmentally benign'. How can it say that?

**A:** The industry and regulators describe ISL mining as safe and benign for a couple of reasons. First, there are no underground workers in ISL mines. Second, there are no tailings piles, so ISL mines throw off less radioactive air emissions than mines with tailings. But that is where the truth ends. Our opponents are trying very hard to get investors, and are working to relax

regulations. So they do not talk about the true danger of this mining. ISL mining entails the intentional contamination of aquifers with uranium and other heavy metals – and it's extremely difficult to clean up. In fact, not one mine in the world has been cleaned up to pre-mining condition.

**Q:** You filed the Law Center's first petition to the U.S. Supreme Court. What happened?

**A:** We asked the federal Supreme Court to review the appellate decision that upheld Hydro Resources' license to mine uranium in the aquifer that supplies drinking water to the Crownpoint-Church Rock region. Unfortunately, in November 2010, the justices declined our petition. But this fight is far from over.

**Q:** Any last thoughts?

**A:** I would like to take this opportunity to once again thank our donors and funders who have made this work possible. Our clients have no money to hire lawyers, and they could not mount a successful fight against these mining companies and the federal government without legal help. Without your generosity, I know that new uranium mines would be contaminating the people and environment of New Mexico right now. So please know that your gift has made a difference in the lives of thousands of people. Thank you.

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# Can New Mexico Save the World?



*Law Center Attorney Bruce Frederick (in white) makes the case for climate change solution to the EIB. A battery of opposing attorneys sits to his right.*

It boils down to this: The boat is burning. Should we grab a bucket and start throwing water on the fire, and hope that our shipmates will soon pitch in? Or should we cozy down into deckchairs, grab our s'mores, and hope the coast guard arrives before we go down?

Sound like the climate change debate?

If you're in the fossil fuel industry or a politician, chances are that you've got a marshmallow on your stick, and you're clamoring for national climate change legislation, with all its giveaways, or nothing. You're probably confident that federal laws – even the weak and meaningless kind – will not come along anytime soon.

But if you're a New Mexican who is concerned about less water and more heat, you've probably got your hand on a bucket. You're calling for a climate change proposal that will tackle our state's carbon emissions. And if New Mexico springs into action, maybe other states will, too.

Our client, New Energy Economy, has put forth a simple, flexible 5 page regulation. It would direct our state's power plants, oil refineries and gas processing plants to ratchet down their carbon dioxide emissions from major facilities by 3% each year for 8 years, beginning in 2013. This effort alone would make a serious dent: these facilities contribute about 40% of our annual emissions.

In August, during the first phase of the public hearing on this proposed regulation, we presented technical experts who explained how New Mexicans face a bleak future if no one acts. How our plan would add less than 1% to utility bills every year. How conservation measures could take carbon out of the atmosphere and save money for industries. And how taking on climate change now can position New Mexico at the vanguard of the new green economy.

Law Center Attorney Bruce Frederick, with help from attorneys Mariel Nanasi of New Energy Economy and Laura Sanchez of the Natural Resources Defense Council, faced no fewer than eight attorneys who represented opponents such as PNM, the New Mexico Oil and Gas Association, and the City of Farmington. We anticipate that the EIB will render a decision before the end of the year. It can adopt the regulation as proposed, reject it, or adopt it with changes.



*Check out New Energy Economy's proposal on our website, nmelc.org.*

*Experts argue that greenhouse gas regulations could catalyze the nation*

**"I don't see a comprehensive [federal] bill going anywhere in the next two years."**

*– Senate Energy and Natural Resources Committee Chair Jeff Bingaman (D-NM), at the Reuters Washington Summit, September 22, 2010*

**"The general basis for climate change science is solid based on basic fundamentals of atmospheric physics."**

*– Dr. David Gutzler, climatologist, UNM faculty, and member of the UN Intergovernmental Panel on Climate Change*

**"Frankly, if every jurisdiction says that 'we, by ourselves, cannot affect an outcome, so we are not going to act,' then nobody is going to act and we are not going to have an answer."**

*– Steve Michel, Western Resource Advocates, in his technical testimony to the EIB*

**"Instead of waiting and asking for a change to be made, why don't we become the change itself and support a carbon cap here in New Mexico?"**

*– Jorge Martinez, Santa Fe Preparatory School senior, in his public testimony to the EIB*

The Climate Change Leadership Institute gave NMELC attorney Bruce Frederick and John Fogarty of New Energy Economy the Climate Courage Award for their joint effort petitioning the NM Environmental Improvement Board to implement statewide limits on human induced climate change pollution.

# Community Takes on One of New Mexico's Worst Neighbors

## *Residents defy company to advocate for clean air*

*"I don't believe I've come across a company that is so unwilling to do the right thing."*

Those aren't the words of our clients, the neighbors who comprise the Mesquite Community Action Committee (MCAC). Those of the words of NMED Secretary Ron Curry, describing the Helena Chemical company.

The Helena Chemical fertilizer blending facility in Mesquite has an extensive track record of air quality and water quality violations. After neighbors fought for years to stop the plant from polluting their community, Helena sued MCAC member Arturo Uribe for defamation. A jury awarded the company \$2 in damages and \$75,000 in punitive damages. (The award has since been reduced, and Uribe continues to appeal.)

Despite the company's heavy-handed tactics, neighbors refuse to back down.

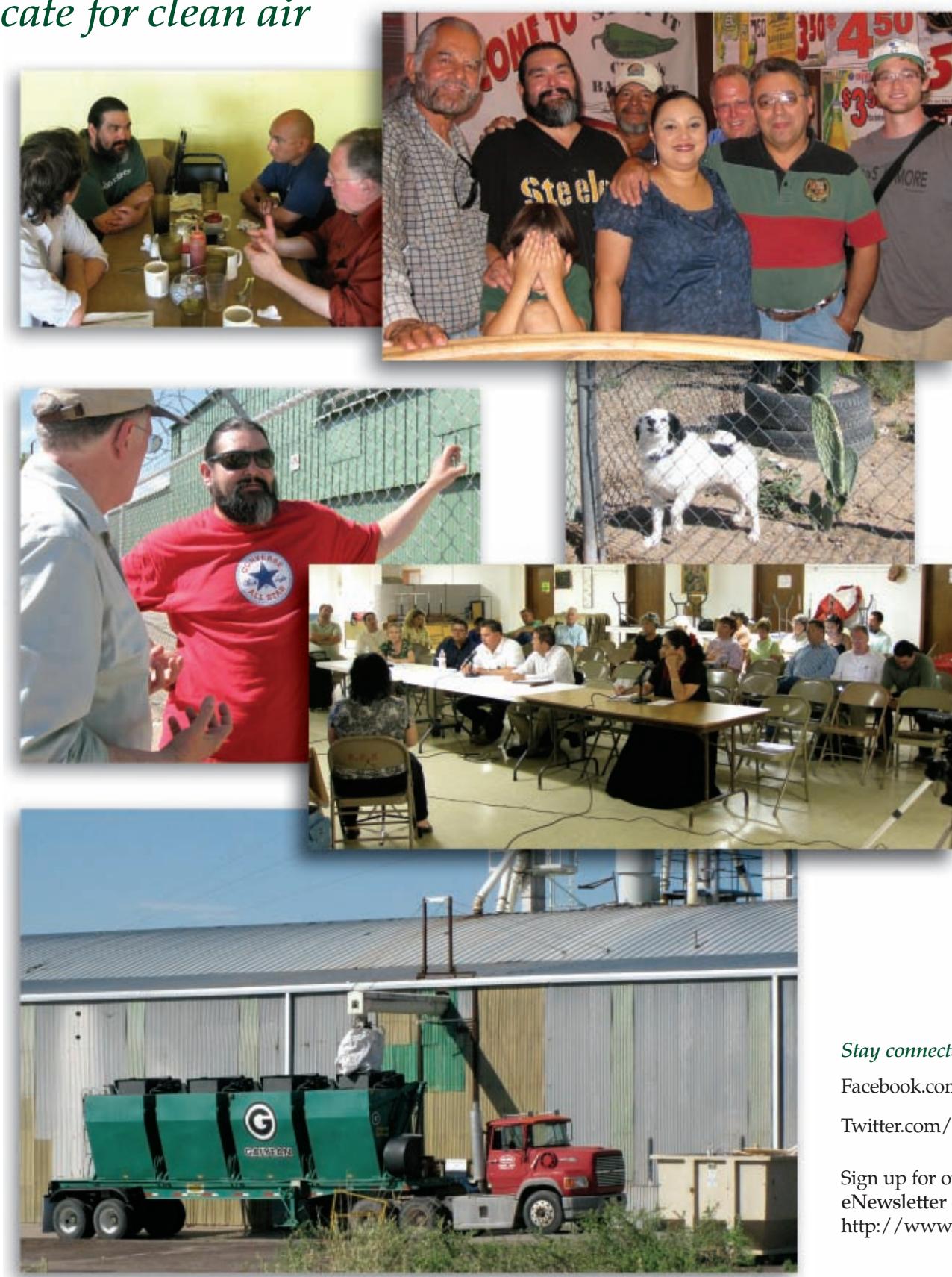
In 2005, the Law Center helped MCAC successfully demand that the company obtain an air quality permit. But three years (and 15 violations) later, the company entered into a fight with NMED, arguing that it does not require the permit. Now the matter is before the Environmental Improvement Board (EIB), which handles air quality permit appeals.

In July, Law Center Staff Attorney Jon Block traveled to Mesquite to help neighbors prepare testimony for an EIB hearing. At the hearing, residents spoke about dust escaping from the blending facility, about facility doors left open, and about their exasperation from living next door to a company that flouts the law.

We are awaiting a decision from the EIB as to whether or not the company requires the air quality permit. If the EIB rules in favor of the company, we will consult with the MCAC as to whether it wishes to appeal.



Law Center intern Cole Merrick traveled with Jon to document the trip. In addition to his photo documentation of Jon Block, MCAC members (including Arturo, in beard and sunglasses), and the facility (right), Cole submitted an affidavit to the hearing officer detailing his first-hand account of the trip.



## Don't mess with Texas (trash)

Twenty years after he first worked with residents of Sunland Park to fight the Camino Real landfill, Executive Director Douglas Meiklejohn is again opposing the permitting of the facility. In September he filed a motion to the New Mexico Environment Department (NMED) Secretary Ron Curry, asking him to deny Waste Connection's application for a 10 year permit.

"For years, El Paso's trash ended up in Sunland Park, to the tune of nearly 90% of the waste in the landfill. However, in August 2010, the City of El Paso adopted an ordinance that will keep El Paso's waste in El Paso," explains Meiklejohn. "This means that the waste stream to Sunland Park will dry up, and the landfill's representation that almost all of its waste will come from El Paso is not accurate."

Waste Connections responded in late September; Secretary Curry is slated to make his decision about the permit by November 1st.



*Photo courtesy Concerned Citizens of Sunland Park*

## Comings & Goings

The Law Center welcomes two new board members: Harry Browne of Silver City, and Michael Casaus of Albuquerque. Harry served for several years as the Executive Director of the Gila Resources Information Project (GRIP), and Michael is the Sierra Club's Senior Field Organizing Director for New Mexico, Colorado, Utah and Texas. At the same time, we bid farewell to Dale Pontius, an incredible board member and president who injected a great deal of energy into the organization. Finally, thank you to our wonderful summer interns, Cole Merrick and Joel Minor.

## Mount Taylor uranium mine kept on standby by Colorado

The Mount Taylor uranium mine is not going to reopen anytime soon, thanks to a law passed by the State of Colorado this spring. Ore from the Mount Taylor mine, which is owned by General Atomics, was slated to be milled at the company's Cotter mill in Cañon City, CO. But Colorado adopted a law in May 2010 that prevents the mill (which was classified as a Superfund site during the 1980s) from accepting new uranium until it cleans up its existing mess.

In response, General Atomics shut down the Cotter facility in August, 2010.



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