

FAX COVER PAGE

TO: Margaret Federline
FAX: 301-415-0508

FROM: James Salsman
PHONE: 650-793-0162

DATE: August 11, 2006

eight pages including this one

Dear Ms. Federline:

I hope that we can resolve our differences next week before it becomes necessary for me to file the following complaint.

Sincerely,
James Salsman

James Salsman
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Mountain View, CA 94043
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Pro Se Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JAMES SALSMAN,

Plaintiff,

vs.

Margaret Federline, Paul Goldberg, and
Vincent Holahan, as employees of the Nuclear
Regulatory Commission, an agency of the
UNITED STATES OF AMERICA,

Defendant.

Case No.: _____

COMPLAINT

DEMAND FOR JURY TRIAL

1. **Jurisdiction.** This court has jurisdiction over this action because it is a federal question, in accordance with 28 U.S.C. § 1331, and because the United States is the defendant, in accordance with 28 U.S.C. § 1346.
2. **Venue.** The Northern District of California is the proper venue because it is the judicial district in which the plaintiff resides, in accordance with 28 U.S.C. § 1402.
3. **Intradistrict Assignment.** Plaintiff is a resident of Santa Clara County, so this action should be assigned to the San Jose Division.

4. **Cause of Action.** This action arises under the Due Process Clause of the Fifth Amendment to the U.S. Constitution, as it applies to the right to petition for redress of grievances under the First Amendment to the U.S. Constitution; the health and safety provisions of the Atomic Energy Act relating to the processing, transfer, and use of depleted uranium (DU; a/k/a “byproduct material”) at 42 U.S.C. 2114; the felony reporting requirements of 18 U.S.C. § 4 with regard to falsification of material facts and concealment of material facts in violation of 18 U.S.C. § 1001; and the *qui tam* provisions of the False Claims Act (31 U.S.C. § 3729 *et seq.*), under which declarative relief is sought.

5. **Plaintiff.** James Salsman is a U.S. citizen who has submitted three petitions to the Nuclear Regulatory Commission (NRC): a petition to modify depleted uranium weapons licenses under 10 CFR 2.202, submitted and amended in 2005, which was granted in part, requiring licensees to report incidents and exposures in excess of NRC requirements, and denied in all other parts; a petition for rule-making under 10 CFR 2.802, noticed at 70 FR 34699-34700 and designated NRC-PRM-20-26, asking that the reproductive harm of uranium be considered in the determination of acceptable exposure limits, which is still pending before the commission, and a second petition under 10 CFR 2.202, submitted July 12, 2006 (attached), asking that depleted uranium weapons licensees be explicitly required to report all depleted uranium weapons use, measure the amount of uranium trioxide (a/k/a uranyl oxide) gas produced from uranium combustion, determine the extent of reproductive and developmental toxicity from uranium combustion product inhalation, and to publish and confirm their findings with anonymous bidding for replication and publication in the peer-reviewed medical or scientific literature.

6. **Defendants.** The NRC is an agency of the U.S. federal government which has convened a Petition Review Board (PRB) to respond to plaintiff's 10 CFR 2.202 petition submitted July 12, 2006, in accordance with NRC Management Directive Handbook 8.11, “Review Process for 10 CFR 2.206 Petitions,” Part III. The PRB was chaired by NRC Office of Nuclear Material Safety and Safeguards

(NMSS) Deputy Directory Margaret Federline, and included NMSS Petition Coordinator Paul Goldberg and NRC Office of Nuclear Regulatory Research, Division of Fuel, Engineering and Radiological Research employee Vincent Holahan, along with several other NMSS and other personnel, who for the most part did not speak with plaintiff in the PRB teleconferences.

7. On August 7, 2006, the PRB convened a meeting with plaintiff to discuss the petition. Plaintiff provided the PRB with phone number and email address for Dr. Carl Alexander, who has more than 45 years experience publishing peer-reviewed scientific papers on the subject of uranium trioxide gas, a poisonous substance produced when uranium burns, which causes birth defects when inhaled. Plaintiff also provided the PRB with the phone number of Dr. Han Kang, an Veterans Administration epidemiologist in Maryland (very near the NRC offices) who has reported an increasing incidence of birth defects in the children of February, 1991 Gulf War combat veterans (GWVs), who were likely to have inhaled uranium combustion products, amounting to a 80% increase in 2000, and a 120% increase in 2003 for “moderate to severe” birth defects in the children of male GWVs, and a 200% increase for such birth defects in the children of female GWVs. The meeting was recorded and is being transcribed.

8. On August 8, 2006, Petition Coordinator Paul Goldberg and his subordinate contacted plaintiff to inform him that the PRB had recommended that the petition be rejected because the concerns in the petition could be addressed in the NRC proceeding pertaining to plaintiff's rule-making petition, and because the petition did not present any “significant new information.” Plaintiff was offered and accepted an additional teleconference with the PRB to comment on the recommendations.

9. On August 10, 2006, another PRB teleconference was held, which was also recorded and is being transcribed. During the second PRB teleconference for the July 12, 2006 petition, the defendants made false statements of material facts concerning the petition and refused to answer several questions, concealing material facts concerning the petition.

10. During the second PRB teleconference, the defendants falsely claimed that the concerns in the July 12, 2006 petition could be addressed in the NRC proceeding pertaining to plaintiff's rule-making petition. Because the rule-making proceeding is unable to modify NRC licenses as requested in the July 12, 2006 petition, the defendants' false statement violated 18 U.S.C. § 1001.

11. During the second PRB teleconference, the defendants falsely claimed that the July 12, 2006 petition presented no significant new information, again in violation of 18 U.S.C. § 1001. The July 12, 2006 petition included nine new scientific and medical references which were not available for the preparation of plaintiff's 2005 petition, one of which (Hindin, R., D. Brugge, and B. Panikkar (2005) "Teratogenicity of depleted uranium aerosols: A review from an epidemiological perspective" *Environmental Health* 4:17, <http://www.ehjournal.net/content/4/1/17>) includes over seventy scientific and medical references, and concludes, "In aggregate, the human epidemiological evidence is consistent with increased risk of birth defects in offspring of persons exposed to DU." The petition also cited a Department of Defense *Environmental Exposure Report* confirming that uranium trioxide is a combustion product of uranium, and a personal communication from Dr. Alexander which confirms that the UO₃ gas "is quite stable," proving the licensees negligence in failing to measure the gaseous combustion products as alleged in the petition. Finally, the July 12, 2006 petition included citations to three additional published reports in the peer-reviewed scientific medical literature confirming the neurotoxicity of uranium, of which the defendants were unaware before plaintiff brought the first peer-reviewed report of uranium's neurotoxicity to their attention in his 10 CFR 2.206 petition of April, 2005.

12. During the second PRB teleconference, the defendants initially refused to stipulate to the *American Heritage Dictionary's* primary meaning of "significant" ("meaningful") within the phrase "significant new information" in their Management Directive Handbook 8.11. When pressed, defendant Margaret Federline made up three different arbitrary definitions which bore no relation to

any dictionary definition of the word “significant” or to any definition or glossary in any NRC documentation. Ms. Federline's arbitrary definitions of the word “significant” which she imposed upon the PRB were capricious because they were simply designed to deny plaintiff's petition in violation of his due process rights under amendments five and one to the U.S. Constitution.

13. During the second PRB teleconference, the defendants refused to respond to several questions about their qualifications which might have served to help determine if they had any experience with the chemistry or thermodynamics of uranium trioxide gas, airborne uranium oxides, uranium combustion, teratogens, epidemiology, or the increasing birth defect rate described by Dr. Kang. When pressed, Ms. Federline would only say that she once managed an industrial hygiene company. By refusing to answer any of the questions which would have determined defendants' ability to understand the petition and its implications, defendants concealed material facts in violation of 18 U.S.C. § 1001.

14. Defendants later indicated that they were upset about the fact that they had no experience with the chemistry or epidemiology involved. However, they indicated that they made no effort to reach Dr. Alexander or Dr. Kang with the contact information plaintiff provided. Therefore, defendants' refusal to review the petition was arbitrary and capricious, and denied plaintiff's due process rights.

15. The defendants were not aware of the neurotoxicity of uranium, the fact that uranium produces uranium trioxide gas when it burns, and apparently even the fact that uranium compounds are teratogenic (causing birth defects; even though this fact was established in the scientific literature as early as 1954) before plaintiff brought these facts to their attention in his initial April, 2005 petition. Defendants made no effort to deny this explain why they, the regulators charged with protecting the public health and safety from non-radiological hazards associated with the transfer and use of depleted uranium in accordance with 42 U.S.C. 2114, were unaware of these facts, other than to say that they

had a background in radiation protection instead of chemistry and epidemiology.

16. The use and transfer of depleted uranium munitions puts the health and safety of civilian and military personnel and the health of the environment at risk.

17. Empirical measurement of the amount of uranium trioxide gas produced from uranium combustion is necessary to determine the extent of the risk involved. Until these measurements are made, uranium combustion product exposure tests may remain limited to urine isotope ratio tests, which do not properly measure the extent of uranium trioxide gas inhalation.

18. By failing to review plaintiff's July 12, 2006 petition, defendants violated 42 U.S.C. 2114 through reckless gross negligence and arbitrary and capricious disregard of material facts, and through false statements of material facts and concealing material facts.

19. The civilian manufacturer of depleted uranium weapons and NRC licensee, ATK Tactical Systems Company, LLC, of Edina, Minnesota, bears the financial responsibility for determining the health and safety implications of their product, and not their customers in the U.S. government or the regulators at the NRC.

20. During the second PRB teleconference, the defendants suggested that the health and safety implications of depleted uranium combustion products must be determined before the rule-making process associated with plaintiff's petition designated NRC-PRM-20-26 could conclude, and that rule-making process must conclude before any 10 CFR 2.202 petitions requesting license modifications can be addressed, making another false statement of material facts in violation of 18 U.S.C. § 1001.

21. By failing to review plaintiff's request that the licensees, including the civilian manufacturer, bear the cost of determining the health and safety implications of depleted uranium weapons on false pretenses, defendants conspired to violate the False Claims Act (31 U.S.C. § 3729 *et seq.*) by knowingly making false statements to get a wasteful, fraudulent, abusive, and/or false claim

paid or approved by the U.S. federal government.

22. Plaintiff demands a jury trial of the facts alleged above.

23. **Prayer for relief.** Plaintiff requests injunctive relief against defendant requiring the review of the July, 2006 petition, costs, interest, and such relief as the court deems just and proper.

Respectfully submitted,

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Pro Se Plaintiff

attachment: 10 CFR 2.202 petition of July 12, 2006