

William D. (Bill) Peterson
300-year SNF disposal solution
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In The
United States Court of Appeals
District of Columbia Circuit
333 Constitution Avenue NW, Room 5423
Washington D.C. 20001
Tel 202-216-7280

William D. (Bill) Peterson	!	APPEAL from DOE Rejection Letter
Petitioner	!	
	!	Form-95 Claim DOE Case No. ES 2004-001902
	!	Ref AIMS No 2004-00178
U.S. Department of Energy (DOE)	!	Isiah Smith Jr.
Respondent	!	NSG - DOE Counsel
	!	Ref: Alex Bailey 202-586-8618

APPEAL from DOE rejection of claims

1. Peterson respectfully appeals for the Appellate Court's review of the Department of Energy's August 26th, 2005, rejection of Peterson Form-95 Claim for damages, Federal Tort Claim Action, DOE Case No. ES 2004-001902, from AIMS No. 2004-00178, from a denial letter of Isiah Smith Jr. NSG – DOE Counsel, see Isiah Smith August 26, 2005, letter and "4405 Contract" copies attached, in DOE Office Ref Alex Bailey Tel 202-586-8618.

2. Peterson respectfully requests permission to bring this complaint and its appeal per the allowance given by the Federal Tort Claim act. Peterson pleads this permission be granted.

3. For over a dozen years Peterson with help from the best scientists the U.S. has, has been hard working to make a disposal solution for spent nuclear fuel (SNF), and they succeeded.

4. October 19, 1998, Peterson submitted a license application to the Nuclear Regulatory Commission (NRC) for license of the Pigeon Spur Fuel Storage Facility (PSFSF) on a section of ground

(640 acres) in the Western part of Box Elder County, Utah, 12 miles east of the Utah-Nevada border and 45 miles south of the Utah-Idaho border.

5. To process his license NRC application Peterson is required to pay NRC expenses estimated to be around \$1.5 million. Peterson's estimated his total cost would come up to around \$4 million. Peterson was short that \$4 million.

6. PECO Energy called Peterson and stated intentions to financially back one of three then options: Peterson (PSFSF), Owl Creek in Wyoming, or Private Fuel Storage (PFS) in Tooele County, Utah. PECO backed out of PFS. Only PFS and Peterson had NRC license applications, NRC Docket No. 72-22 and NRC Docket No. 72-23. So ultimately Peterson was told that PECO CEO Corbin McNeil would fly to Utah and give Peterson a check for \$4 million to pay the cost of the license application. It would not of have to be repaid.

7. But while Peterson and PECO were dealing, the U.S. Department of Energy (DOE) was dealing with PECO for storage at Peach Bottom. DOE had not removed SNF from PECO's utility plant sites as contracted and PECO was getting into trouble without sufficient on-site storage capacity. With PECO in trouble DOE offered a contract and deal, but it was not a fair deal.

8. In duress, without storage disposal relief for SNF, which threatened ongoing operations, PECO had to agree to DOE's bad terms to store SNF at Peach Bottom. It was a bad contract. It set a bad precedent for the entire nuclear industry v DOE relationship. The contract was so bad other utilities (not parties in the contract) banded together, brought suit, and got the contract voided.

9. DOE did not have authority to do such storage outside of Yucca Mountain (YM).

10. What the DOE attempted to do and did was illegal.

11. The illegal DOE – PECO Peach Bottom Contract messed up the PECO – Peterson planned deal so then after the Peach Bottom mess the PECO – Peterson effort was spoiled.

12. So DOE's unlawful contract with PECO caused Peterson's loss of the \$4 million funding he was to get, which he needed to finance the cost of doing the PSFSF NRC license application.

13. Then and since Peterson and DOE are not able to access the Nuclear Waste Deposit Fund (NWDF), \$3 million + per day, that the government collects from the utilities to pay for SNF disposal. President Clinton rerouted this money to have it go into the general fund. So Peterson, the nuclear utilities, and all the U.S. people who need this SNF disposal solution are now the losers. To pay for Peterson's losses, to get Peterson's SNF solution happening, for Peterson to do the work, Peterson needs to be paid his \$4 million loss plus another \$4 million more for interest.

OUR NATION IS ALSO NOW IN TROUBLE

14. Being unable to rightly dispose of SNF is critically preventing our country from proceeding with the development of nuclear-hydrogen. **Energy** is now a very critical item. It has been 35 years since the U.S. could produce oil equal to its consumption. Today, everyone is now running out of oil. The past enormous use of fossil fuels has caused great **environmental** problems. At times, our nation is running short of producing its **electricity**. Such electric power shortage can mean loss of ability to work and perform services, loss of **employment**, and **economic** losses. I call these the **5-Es** troubles. Up to 2400 new power plants are needed in the next 15 years.

15. It is critical that we move to solve the 5-Es troubles as quickly as possible. It is most critical that we develop new nuclear power to replace oil and also coal and have a new clean fuel resource to make electricity. Most necessary and critical for starting new nuclear power is getting a disposal solution for SNF. Note that Yucca Mountain (YM) is only temporary storage for existing SNF from existing plants so it will not work for needed new plants. YM is only SNF storage, and the long storage time stipulations now being required are just not plausible. Now the 300-year solution will work and will meet this most critical need. To begin this we first need to build 300-year storage, this we can do.

16. So most critical to solving the problems of the 5-Es is getting the new 300-year SNF storage happening. And most critical to this is licensing our first site and then three more sites as quickly as possible. By doing this it will not be difficult to show progress which can trigger the industry to start to build new nuclear plants. Peterson needs to be paid for his loss; financial help to do licensing that was foiled by the DOE v PECO Energy Peach Bottom contract incident.

SCIENCE CANNOT BE CHANGED BY POLITICS

Contrary to President Carter, an SNF disposal solution requires chemical reprocessing

17. In his letter of rejection Isiah Smith says he “cannot discern what the Dept. did” to Peterson. DOE does not want to admit that the “44405 Contract” was an unlawful procedure to make a wrong substitute for rightful off site storage that PECO and Peterson were rightly doing. DOE’s having PECO do Peach Bottom foiled Peterson’s doing it right off site. With all the constraints of the Congress and Presidents on the DOE, the DOE cannot achieve any permanent disposal solution for SNF. It is just not possible. Peterson has the Pigeon Spur and the 300-year permanent solution, DOE does not.

18. DOE does not have a permanent disposal solution for SNF. YM is DOE’s only remedy and it is only intermediate storage for SNF, it is only part of the fix. Politically YM was intended to be a solution, but when President Jimmy Carter took the reprocessing chemistry out of the SNF fix, he broke the fix.

19. EPA and the Courts are also frustrated. EPA raised YM storage from 800 years to 10,000 years; the Courts have raised that to a million years. This just forwards the problem and makes it impossible to project. Actually out in time the radiation just gets worse. So politics has put the DOE into an impossible and incomprehensible situation.

20. In 1970 when President Jimmy Carter stopped reprocessing of SNF he stopped the ability for government scientists to permanently dispose of SNF. SNF contains a lot radioactive isotopes. But very uniquely, SNF contains short-half-life material and long-half-life material. Like it goes from zero to 30 years range then jumps to 6,000 years and over range. In 300 years the 0-30 yr half-life isotopes decays 1,000 fold to low-level class-C. The 6,000 plus year isotopes including uranium, plutonium, and other transuranics are going to be radioactive for a long time. But 5-9s separated out from the fission waste, these transuranics isotopes can be used up in new fuel. But because of President Carter's stopping SNF processing order, DOE has not had a chance to see and use this science!

21. But Carter did not stop Peterson. Peterson brainstormed with U Prof. Gary Sandquist, Pittsburgh Prof Barnard Cohen, retired INL chemist fellow Dr. Jerry Christian, and retired physicist Prof Steven Barrowes. Peterson laid out a strategy and it was made to work. It now has been proven that it will work. Argons Labs, INL, and DOE scientists now know that the 300-year disposal solution will work.

22. So the Utilities, DOE, EPA, and the Courts have all been frustrated. Out of this frustration, by the Congress, three fixes are being worked on: YM long term storage, PFS intermediate storage, and now Peterson 300-year permanent disposal solution. Peterson also originally worked on intermediate storage. This is difficult for the Congress to see. So the 300-year solution has not yet been before the Congress, and DOE is restricted to YM so the situation is stuck on an unworkable path.

23. Now there is a unique funding problem. The Congress has the Utilities paying one mill (\$0.001) per kWh for fixing this (amounts to over \$3 million per day), but President Clinton put this money going into the General Fund. All this has caused the Utilities to be filing upwards of \$50 billion in lawsuits where they are stuck with the SNF while trying to operate. So on the whole this is at a boil that can only be fixed with Peterson's 300-year disposal solution. In the middle of all this are the Utah factions who are doing everything they can to make nuclear look scary and bad.

24. So DOE tried to pull a shenanigan at Peach Bottom, attempting to contract storage at a Utility from where DOE is responsible to remove it. In this duress PECO would agree to anything and did and it was blatant robbery by the DOE. The DOE did an illegal contract.

25. A group of non-party Utilities got the bad DOE-PECO contract broken.

26. By this action, Peterson seeks to start a fix to the broken situation.

27. Peterson is uniquely in a position to bring forth a scuttled NRC license application with unique SNF disposal technology that will start the nation on a nuclear-hydrogen path that otherwise might never happen.

28. In all this frustration, hopefully the court can look carefully at this and come up with a judgment that would allow progress. Otherwise, we are all in a lot of trouble.

29. The 300-year solution will work

30. DOE has no other option.

31. DOE needs to face up to this with the Congress. The President and Congress need to put the SNF fix money back where it will fund the 300-year solution, Peterson's storage and INL's reprocessing.

32. This thing has gone so far awry, maybe at this point only the Courts can fix it, if the Courts can.

Dated this 17th day of January, 2006

Respectfully,

William D. (Bill) Peterson

Attachments which support this action:

Letter from Isiah Smith Jr., August 26, 2005, from which appealing.

"44405 Contract", Amendment to Contract, DE-CR01-83 NE44405 Between

U.S. Department of Energy and PECO Energy Company, 19th day of July, 2000,

SEE PETERSON'S WEB SITES which support this pleading:

<http://www.spentnuclearfuel.com> , <http://www.endofoil.us> , and <http://www.nuclearhydrogen.com>
<http://www.deficitrecovery.com> (this 15 year old site is now under reconstruction).

CERTIFICATE OF DELIVERY

On this day a copy of this pleading was U.S. Postal mailed to Attorney Isiah Smith Jr., Department of Energy, 1000 Independence Ave SW. Room 6A211, Washington, D.C. 20585, and sent by Email to isiah.smith@hq.doe.gov Tel 202-586-8618, 17th January, 2006

William D. (Bill) Peterson, p/nuc/DOE/L/Form95/DCAppeal/Dcappel1176.doc

CERTIFICATE OF E-mail SERVICE where possible / otherwise U.S. mail DELIVERY

Copies of this PLEADING were sent this date by Internet e-mail transmission to (1) Atomic Safety Licensing Board Judge G. Paul Bollwerk, III, Esq., Judge - Dr. Jerry R. Kline, and Judge - Dr. Peter S. Lam, (2) Nuclear Regulatory Commissioners Dr. Peters Lyons and Greg Jaczko, (3) Secretary of Energy Sam Bodman (4) Senate House Energy Committees, (5) OCRWM Director Jeff Williams, (6) EPA Director Betsy Forinash, (7) Governor of Utah Jon Huntsman, via Utah Governor Correspondent Jami Palmer, (8) Utah Governor Correspondent Anna Atwater (9) Utah Energy Adviser Dr. Laura Nelson, (10) Box Elder County Commission, (11) Park Valley Committee for Pigeon Spur SNF Work Employment, and (12) Grouse Creek Committee for Pigeon Spur SNF Work Employment. (13) PFS President John Parkyn, (14) Skull Valley Goshute Indian Chief Leon Bear, (15) Associated Press Writer Paul Foy. (16) Attorney Fred Nelson in Utah Attorney General Office. (17) Denise Chancellor in Utah Attorney General Office, (18) Saturday, mailed to Appellate Court in Washington D.C. (19) Hand delivered to Utah Attorney General office. (20) Emailed to Nuclear Advisory Board, (21) Emailed to Nuclear Solutions Group. (22) Paul Chilton EchoHawk, OHNGO GAUDADEN DEVIA, (23) Jay Eliot Silberg, PRIVATE FUEL STORAGE, (24) Tim Vollmann, Skull Valley Band of Goshute Indians, Chief Leon Bear, (25) NRC Attorney Mrs. Grace Hellen Kim, Solicitor John F. Cordes, and Deputy Solicitor E. Leo Slaggie.

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*Also Scientific Advisers for Private Fuel Storage (PFS)
 Relevant U.S. Patent Nos.: 5448604, 1995, on a railroad transfer system and No. 5862195, 1999, on dry-fluid storage. 300-yr solution Pat Pend. P&A Engineers proprietary and patented designs.

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