



DEFENSE NUCLEAR AGENCY
TEST COMMAND
KIRTLAND AIR FORCE BASE, NEW MEXICO 87115

TCCOM

10 AUG 1971

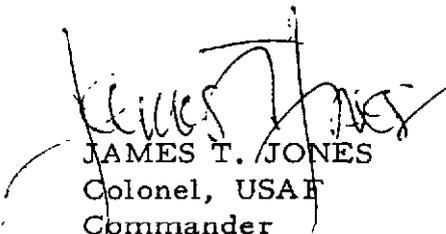
SUBJECT: Litigation on Underground Testing

DNA1.941108.011

Director
Defense Nuclear Agency
ATTN: DDST (Dr Smith)
Washington, D. C. 20305

1. Attached for your information is the NVOO Memorandum on the complaint filed in US District Court by Utah residents seeking injunction against further underground testing at NTS. Test Command has no information that would add to the documentation already in the hands of NVOO and will therefore make no reply to the request.
2. Hq DNA may be able to provide input for AEC use in this litigation. If so, suggest direct comment to NVOO or DMA. Test Command would appreciate a copy of any such comment.

1 Incl
as


JAMES T. JONES
Colonel, USAF
Commander

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JAMES T. JONES
Colonel, USAF
Commander



Nelson vs. Seaborg 1-210

UNITED STATES
ATOMIC ENERGY COMMISSION
NEVADA OPERATIONS OFFICE
P. O. BOX 14100
LAS VEGAS, NEVADA 89114

August 5, 1971

Those on Attached List

NIELSON ET AL VS. DR. GLENN T. SEABORG AND THE UNITED STATES OF AMERICA

Attached hereto is a copy of the subject complaint filed in the United States District Court, Salt Lake City, Utah, on July 29, 1971.

The Nevada Operations Office will be required to furnish facts for inclusion in the AEC's Litigation Report to the Department of Justice which will represent the AEC. It is requested that you furnish Thomas O. Fleming, NVOO Chief Counsel, with information in your possession, control and knowledge relative to any statements in the complaint.

It appears that, at a minimum, NVOO will be expected to furnish information relative to paragraphs 3, 4, 5, 6 and 7. Obviously, we will be glad to receive information and/or comments on any remaining paragraphs. Paragraphs 8, 12, 13 (standards), 15 (health and safety dangers), 16, 19b and 19c appear to be of considerable concern to NVOO.

May we have your input, or notice of when it can be furnished, not later than August 16 so as to permit us to prepare NVOO's portion of the litigation report for transmittal to Headquarters by c.o.b. August 19.


For Robert E. Miller
Manager

Enclosure:
Complaint, Nielson vs. Seaborg

Addressees:

Robert H. Thalgott, Test Manager, NV
Roger Ray, Assistant Manager for Operations, NV
H. G. Vermillion, Dir., Office of Public Affairs, NV
T. H. Blankenship, Dir., OPNE, NV
E. M. Douthett, Dir., Effects Evaluation
W. J. Larkin, Dir., Office of Safety
Dr. J. E. Carothers, LLL, Livermore, Calif
Dr. W. E. Ogle, LASL, Los Alamos, NMex
C. F. Bild, Org. 9100, Sandia Laboratories
Albuquerque, NMex
Col. J. T. Jones, Commander, TC, DNA
Kirtland AFB, NMex
Dr. M. W. Carter, Dir., Western Environmental
Research Lab., EPA, Las Vegas, Nev
P. W. Allen, Chief, NOAA/Air Resources
Laboratory, Las Vegas, Nevada

Attorneys for Plaintiffs
1309 Descott Building
Salt Lake City, Utah 84111

Telephone: 322-0524

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
Central Division

HELI NIELSON; JARED NIELSON;
VALERI NIELSON, minors, by
FRANCIS J. NIELSON and JEANNE H.
NIELSON, their parents and general
guardians; FRANCIS J. NIELSON;
JEANNE H. NIELSON, on behalf of
themselves; and, ALL OTHERS IN THE
STATE OF UTAH SIMILARLY SITUATED,

Plaintiffs,

vs.

DR. GLENN T. SEABORG, Chairman of
The Atomic Energy Commission; and
THE UNITED STATES OF AMERICA,

Defendants.

C O M P L A I N T

Civil No. C-170-71

Plaintiffs complain of Defendants and for cause of
action, allege as follows:

FIRST CAUSE OF ACTION

1. This is a civil action brought by the Plaintiffs,
and all others in the State of Utah similarly situated, to
enjoin the United States of America and Dr. Glenn T. Seaborg,
Chairman of the Atomic Energy Commission, from further nuclear
testing and detonations at the Nevada test site and for damages.
This action arises under and involves the interpretation of the
following Acts of Congress: The Federal Tort Claims Act,
28 USC, Sec. 1346(b), 2671 et seq., as hereinafter more fully
appears; the National Environmental Policy Act of 1969; Public
Law 91-190, approved January 1, 1970; 83 Stat 852; Chapter 9
of Title 5 of the USC; Title 42 USC 4321, 4331-4335, 4341-4347,
and all other pertinent sections of the aforementioned Act; the
Atomic Energy Act of 1954; and 42 USCA, Sec. 2011, et seq., as
amended; the Administrative Procedure Act, 5 USCA 550, 702; in
conjunction with the Atomic Energy Act of 1954, Sec. 1, et seq.;
42 USCA, Sec. 2011, et seq.

Of White, Arnovitz & Smith
Attorney: or Plaintiffs
1309 Deseret Building
Salt Lake City, Utah 84111

Telephone: 322-0524

U. S. MARSHAL
ROYAL K. FAYERS
Served: 12/19/71

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
Central Division

HELI NIELSON; JARED NIELSON;
VALERI NIELSON, minors, by)
FRANCIS J. NIELSON and JEANNE H.)
NIELSON, their parents and general)
guardians; FRANCIS J. NIELSON;)
JEANNE H. NIELSON, on behalf of)
themselves; and, ALL OTHERS IN THE)
STATE OF UTAH SIMILARLY SITUATED,)
Plaintiffs.)

S U M M O N S

vs.)

DR. GLENN T. SEABORG, Chairman of)
The Atomic Energy Commission; and)
THE UNITED STATES OF AMERICA,)
Defendants.)

Civil No. 71

TO THE ABOVE NAMED DEFENDANTS: DR. GLENN T. SEABORG, Chairman
of the Atomic Energy Commission, and, THE UNITED STATES OF
AMERICA;

You are hereby summoned and required to serve upon
Alvin I. Smith and Francis J. Nielson, Plaintiffs' attorneys,
whose address is 1309 Deseret Building, Salt Lake City, Utah
84111, an answer to the Complaint which is herewith served upon
you, within sixty (60) days after service of this Summons upon
the United States Attorney for the District of Utah, exclusive
of the day of service. If you fail to do so, Judgment by
default will be taken against you for the relief demanded in
the Complaint.

Clerk of the Court

Deputy Clerk
(Seal of the Court)

Date: 12/19/71

2. Plaintiffs are citizens of the United States and residents of the State of Utah. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars (\$10,000.00).

3. The Atomic Energy Commission has developed a nuclear testing site at Mercury, Nye County, Nevada, located 120 miles northwest of the southwest Utah and Nevada border. The said Commission has conducted more than 330 nuclear detonations, both underground and atmospheric, since 1961 at the said Nevada test site, and intends to continue to conduct nuclear detonations at the above mentioned location. As a result of inherently dangerous conditions and prevailing hazards connected with these tests, and because of the negligent manner in which Defendants conduct the detonations of nuclear devices, large amounts of deadly radio-active materials are released into the atmosphere which permeate and saturate the environment, thus affecting all of the Plaintiffs and greatly interferes with the enjoyment, comfort and safety of the Plaintiffs. The prevailing winds and the climactic conditions at the Nevada test site carry upon Plaintiffs and their environment, radio-active materials in sufficient quantities such as to present a continuing nuisance and hazard to the Plaintiffs. The radiation doses to the population in and about the project site have exceeded the standards established by the Atomic Energy Commission and the Federal Radiation Council, found in the Atomic Energy Act of 1954, Sec. 31(d); 42 USCA, Sec. 2051(d), and said doses present a threat to public health and safety, and said radiation protection standards are not reasonably adequate to protect lives, health and safety of Utah Plaintiffs.

Plaintiffs will suffer irreparable damage if further testing is not enjoined.

4. The nuclear detonations by Defendants at the Nevada test site and the subsequent venting of radio-active materials which were carried into Utah, resulted in marked

difference. in accumulation of Iodine 31 (I^{131}) in Utah milk and Utah residents. Research measuring I^{131} in numerous dairy farm products and in the persons residing on said farms, situated in different geographical and ecological areas, found that the total body and thyroid contents of I^{131} in the persons tested paralleled the I^{131} levels in the milk produced on their farms and that after venting and the resultant atmospheric fallout, there was an increase in body and thyroid content of I^{131} . Thereupon, the United States Department of Health suggested that the contaminated milk from those certain farms be diverted to the production of chodse, powdered milk or condensed milk in order to reduce exposure. Plaintiffs believe that the milk they have consumed and will consume has and will contain increased amounts of I^{131} , thus increasing levels of this radio-active element in their bodies and thyroid glands. Plaintiffs have, are and will be subjected to the hazards of developing cancer and other serious diseases as a result of the increased levels of I^{131} and other radio-active elements. The damage to the minor Plaintiffs is greater because young children are more susceptible to I^{131} radiation damage, because of the smaller size of the child's thyroid gland, its presumed greater sensitivity to irradiation at this stage, and the long post irradiation life-span during which delayed effects could appear.

5. Following the announcement, by the United States Atomic Energy Commission, that the underground nuclear detonation of April 25, 1966, had vented, a radio activity surveillance was carried out and a series of samples of green vegetation in Utah were collected on April 29 and 30, 1966. Samples were analyzed three days after collection. Increased levels of I^{131} and Zirconium-95 were detected in all of the samples collected at that time. Virtually every green vegetable and other growing matter consumed by the Plaintiffs in Utah have been periodically exposed to deadly radio-active materials, in varying amounts, carried from nuclear detonations at the Nevada

test site. Plaintiffs must consume foods, not knowing whether or not it is contaminated, and as a consequence, have been exposed to conditions hazardous to their health and well being by ingesting foods containing dangerous levels of radiation. Plaintiffs are fearful that continued consumption of such irradiated foods will reduce their tolerance to diseases related to radiation exposure and will be detrimental to their health.

6. Similar research has confirmed that as a result of Defendants' tests and subsequent atmospheric contamination caused by venting, the level of all radio-active elements have increased greatly. The resultant increase of such elements in the food and atmosphere necessary for the sustenance of residents of Utah is a present danger and hazard to the health and physical welfare of Plaintiffs and the levels of said elements will, during their life-time, result in irreparable injury and disease.

7. Analysis of the lungs of Utah deer, after fallout activity caused by Defendants, revealed an increase of the element Plutonium-239 and Zirconium-95 in the lungs of these mammals. Plaintiffs are forced to inhale polluted air containing levels of the same magnitude of these elements, which may result in serious radiation-related diseases.

8. Research by Dr. Ernest J. Sternglass, Department of Radiology and Radiation Health, University of Pittsburgh, and by others, demonstrates that radiation which originated from the Nevada test site has reduced and will continue to reduce infants' ability to resist disease and has increased infant mortality where the fallout has descended, by diminishing the infants' resistance to respiratory infections, influenza and pneumonia.

Further studies and research have linked congenital malformation and increased mortality attributed to leukemia and cancer to persons in Utah who have been subjected to fallout from nuclear fission.

SECOND CAUSE OF ACTION

9. Plaintiffs hereby refer to Paragraphs 1 through 8 of their first cause of action and incorporate said paragraphs herein.

10. Plaintiffs second cause of action is brought to enforce the provisions of the National Environmental Policy Act cited heretofore in this Complaint.

11. In 1970, in response to public demand, the National Environmental Policy Act was approved and an order pursuant thereto was passed: "...to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and bio-sphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the nation; and to establish a council on environmental quality." The purpose and intended effect of this Act is set forth in Section 101(A): "Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high density urbanization, industrial expansion, resource exploration, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the federal government in cooperation with state and local governments and other concerned public and private organizations to use all practicable means and measures including financial and technical assistance in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony and fulfill social, economic, and other requirements for present and future generations of Americans."

said Act was passed for the benefit of Plaintiffs, as well as others.

12. Defendants' continued testing at the Nevada test site is in contravention of the policy and purposes and intended effect of said Act in the following particulars:

a. Increase of radio-active elements is disruptive of the natural environment;

b. Damage to the environment is being increased instead of prevented or eliminated;

c. Plaintiffs' health and welfare are affected detrimentally;

d. The environment will be further polluted, natural resources will be poisoned with radio-active substances and the environment may become lethal;

e. Nuclear disruption results in an imbalance of living conditions, destructive of harmony, perilous to family health, social welfare and economic well being of all Americans subjected to this peril.

13. The Atomic Energy Act of 1954, as amended, provided that the Commission establish a Division of Radiation Protection Standards which Division was to determine generally applicable environmental standards for the protection of the environment from radio-active material. The standards provided by said Division permit dangerous and unnecessary exposure of the Plaintiffs to radio-active materials, and do not protect the environment as intended by Congress.

The Environmental Protection Agency has been established pursuant to the National Environmental Policy Act. The functions of the Division of Radiation Protection Standards provided for under the Atomic Energy Act of 1954, as amended, have been transferred to the Environmental Protection Agency as a result of the mandate of the National Environmental Policy Act. Under the law, the Environmental Protection Agency now has the obligation and legal responsibility to review present radiation standards and to establish generally applicable environmental standards for the protection of the environment from radio-active material. Until the Environmental Protection Agency exercises its legal

duty to review and readjust present radiation standards to comply with the intent and purposes of the National Environmental Policy Act, the present standards set by the Division of Radiation Standards of the Atomic Energy Commission should no longer remain in effect. Said standards are unrealistic, inadequate and contrary to the intent and purposes of the National Environmental Policy Act. If these standards are not reviewed and subsequently changed, the intent of Congress, as reflected in the National Environmental Policy Act, will be defeated.

The aforementioned standards should be reviewed and changed by the Environmental Protection Agency for the following reasons:

a. The Division of Radiation Protection was established by the Atomic Energy Commission and as such was not an independent body. Its main interest was in assuring that the function of the Atomic Energy Commission did not directly endanger the environment. It has not modified its original standards in light of further scientific research as set forth above.

b. At the time said standards were adopted, the predominant need and purpose of the Atomic Energy test site was to test nuclear devices for defense and protective measures. As a result thereof, the United States has achieved a technological superiority in nuclear instruments of war and defense and any further testing cannot be justified for any of the foregoing purposes.

c. Further underground testing and subsequent venting therefrom, is not required in order to advance the use of atomic energy for industrial and peaceful purposes.

d. Standards required to be adopted by the Environmental Protection Agency cannot be determined until said agency studies, analyzes and collates recent scientific research in this field and more particularly, has the right to examine results in the possession of the Atomic Energy Commission only,

which heretofore have not been available to anyone. In the past, said Commission has kept secretive and clandestine, the effects of its testing on the grounds that this is classified information. Until said results are studied by the new agency, the purpose and intent of the National Environmental Policy Act will be defeated.

THIRD CAUSE OF ACTION

14. Plaintiffs hereby refer to Paragraphs 1 through 8 of their first cause of action and Paragraphs 9 through 13 of their second cause of action, and incorporate said paragraphs herein.

15. Plaintiffs' Third Cause of Action arises under the Administrative Procedure Act and the Atomic Energy Act of 1954, as amended; 5 USCA 559, 702; in conjunction with the Atomic Energy Act of 1954, Sec. 1, et. seq; 42 USCA, Sec. 2011, et seq, which sections provide for judicial review of any agency action under the Atomic Energy Act, pursuant to the Administrative Procedure Act. The Chairman of the Atomic Energy Commission, Dr. Glenn T. Seaborg, has exceeded his authority under the Atomic Energy Act by permitting nuclear testing at the Nevada test site, which endangers the health and safety of the Plaintiffs in and about the test site, as the facts in the foregoing Complaint specifically indicate.

16. Plaintiff property owners will sustain irreparable injury to property from the unsafe release of radio-active materials in the atmosphere and will sustain bodily harm and damage from exposure to radiation unless further testing by the Atomic Energy Commission is stopped, thereby suffering a legal wrong resulting from agency action within the scope of the above mentioned sections, said damages being more specifically alleged in the foregoing paragraphs of this Complaint.

FOURTH CAUSE OF ACTION

17. Plaintiffs hereby refer to Paragraphs 1 through 8 of their first cause of action, Paragraphs 9 through 13 of

their second cause of action, and Paragraphs 14 through 16 of their third cause of action, and incorporate said paragraphs herein.

18. Plaintiffs' Fourth Cause of Action arises under the due process clause of the Fifth Amendment of the United States Constitution and the Atomic Energy Act heretofore cited in the Complaint, as hereinafter more fully appears.

19. The Atomic Energy Act of 1954, 42 USCA 2011, et seq., as amended, violates the due process clause of the Fifth Amendment to the United States Constitution in that Plaintiffs are deprived of life and property without due process of law in the following particulars:

a. The Atomic Energy Act does not provide Plaintiffs with a legislative, judicial, administrative, or any other remedy to review, curtail or prevent said deprivation of life and property as stated more particularly in the above Complaint.

b. Nuclear testing permitted by the Atomic Energy Act has been secretive, clandestine, unregulated and uncontrolled such that the activities permitted by said Act constitutes an unlawful government within a government.

c. Legislative, judicial and administrative officers charged with the Constitutional administration of the Atomic Energy Act have been unable to evaluate the harmful or positive results accruing from said testing because helpful information about the activities at the test site have been suppressed. Therefore, responsible officers of the Educational, Judicial and Legislative branches have not been able to evaluate the danger to the populace resulting from said testing as compared to any value received for the country's investment in said testing.

WHEREFORE, Plaintiffs demand:

1. On their First Cause of Action:

a. That the Court issue a preliminary injunction preventing and restraining the Defendants, their agents, officers, attorneys, employees, sub-contractors, successors,

and assigns and all persons acting in concert with them, from conducting any further nuclear testing or detonations at the Atomic Energy Nevada test site during the pendency of this suit and commanding the Defendants, their agents, officers, attorneys, employees, sub-contractors, successors, assigns and all persons acting in concert with them, to comply with the preliminary injunction order, if issued by the Court, during the pendency of this suit.

b. That the Court issue a permanent injunction preventing and restraining the Defendants, their agents, officers, attorneys, employees, successors, assigns and all persons acting in concert with them, from conducting further nuclear testing and detonations at the Atomic Energy Commission's Nevada test site.

c. That the Plaintiffs be awarded the sum of \$100,000,000.00 to be held in a trust fund for the benefit of those Plaintiffs, as a class, whose injuries and damaged health have been caused by Defendants, as well as those whose injuries and damage to health may accrue hereafter and be given all such other, further and different relief as this Court may deem just.

2. On their Second Cause of Action: That the Court issue an injunction requiring the Defendants, their agents, officers, attorneys, employees, sub-contractors, successors, assigns, and all persons acting in concert with them, to comply with the provisions of the National Environmental Policy Act, including the provisions which transfer the functions of the Atomic Energy Commission, under the Atomic Energy Act of 1954, as amended, administered through its Division of Radiation Protection Standards to the Environmental Protection Agency, such that said agents will establish radiation standards for the protection of the general environment from radio-active materials.

Plaintiffs further request the Court to issue an injunction requiring the Atomic Energy Commission to comply with

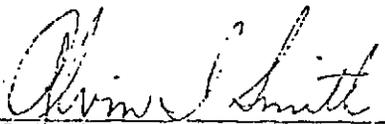
all standards set by the Environmental Policy Act, and that the Environmental Protection Agency should be commanded to review and readjust such standards and establish limits on radiation exposures, or levels, or concentrations, or quantities of radioactive materials in the general environment in order that such standards comply with the Environmental Policy Act.

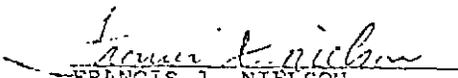
3. On their Third Cause of Action: That the Court exercise its powers of judicial review provided for in the Atomic Energy Act and the Administrative Procedure Act and enjoin Dr. Glenn T. Seaborg and the Atomic Energy Commission from further testing at the Nevada test site and that the Court issue a preliminary injunction restraining the Defendants, their agents, officers, attorneys, employees, sub-contractors successors, and assigns, and all persons acting in concert with them, from conducting any further nuclear detonations at the Nevada test site, during the pendency of this suit.

4. On their Fourth Cause of Action: That the Court declare such sections of the Atomic Energy Act of 1954, 42 US Sec. 2011, et seq., as amended, to be in violation of the due process clause of the Fifth Amendment to the Constitution of the United States and further, that the Court issue an injunction requiring the Defendants to refrain from carrying out such unconstitutional provisions of the Atomic Energy Act which have heretofore authorized Defendants to conduct atomic tests at the Nevada test site.

5. For costs of this action, incurred.

DATED this 28 day of July, 1971.


ALVIN I. SMITH
Attorney for Plaintiff


FRANCIS J. NIELSON
Attorney for Plaintiff

1309 Deseret Building
Salt Lake City, Utah 84111
Telephone: 322-0524