

October 13, 2005

BY FEDERAL EXPRESS
Cathy A. Catterson, Clerk
United States Court of Appeals
95 Seventh Street
San Francisco, CA 94103-1526

Subject: *San Luis Obispo Mothers for Peace v. NRC,*
No. 03-74628

Dear Ms. Catterson,

I am writing to respond to a letter from the U.S. Nuclear Regulatory Commission ("NRC") dated October 12, 2005, in which the NRC claims that *Ground Zero Center for Non-Violent Action v. U.S. Department of the Navy*, 383 F.3d 1082 (9th Cir. 2004), supports its position. Among other things, *Ground Zero* affirmed the Navy's conclusion that the environmental impacts of a Trident II missile explosion were remote and speculative, based on quantitative risk estimates showing that the likelihood of such an explosion was less than one in a million.

The NRC claims that *Ground Zero* supports its argument that environmental impacts of terrorist attacks are conjectural. But *Ground Zero* simply holds that an agency may support a conclusion that environmental impacts are not reasonably foreseeable by providing quantitative evidence that the probability of the impacts is "infinitesimal." 383 F.3d at 1090. *Ground Zero* does not address the situation presented here, where the NRC can provide no quantitative justification for its position, nor has it discussed "important qualitative considerations that cannot be quantified." Petitioners' Brief at 39-45, citing 10 C.F.R. § 51.71.

The NRC also argues that *Ground Zero* supports its argument that the National Environmental Policy Act ("NEPA") gives it no additional responsibilities other than to take reasonable measures under the Atomic Energy Act to protect licensed nuclear facilities against a hypothetical terrorist attack. To the contrary, *Ground Zero* supports Petitioners' argument that NEPA's procedural requirements are independent of the

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requirements of the Atomic Energy Act ("AEA"). *See* Petitioners' Brief at 4, 51-52, Reply Brief at 27. The Court held that even if the "maximum protection possible" standard in the Department of Defense's base-planning regulations require consideration of remote and speculative risks, it does not follow that remote and speculative risks must also be considered under NEPA. 383 F.3d at 1090. Here, by analogy, even if the AEA excuses the NRC from protecting nuclear facilities against low-probability terrorist attacks despite their reasonable foreseeability, it does not follow that the AEA also excuses the NRC from NEPA consideration of the environmental impacts of such reasonably foreseeable attacks.

Sincerely,


Diane Curran

cc: Service list

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAN LUIS OBISPO MOTHERS FOR PEACE,
SANTA LUCIA CHAPTER OF THE SIERRA
CLUB, and PEG PINARD, Petitioners

v.

UNITED STATES NUCLEAR REGULATORY
COMMISSION and the UNITED STATES
OF AMERICA, Respondents

No. 03-74628

CERTIFICATE OF SERVICE

I certify that on October 13, 2005, copies of the foregoing letter from Diane Curran to Cathy Catterson were served on the following by Federal Express or first-class mail, as indicated below:

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