

**COMMENTS ON NRC PROPOSED RULE REGARDING DESIGN BASIS THREAT FOR  
PROTECTION OF NUCLEAR FACILITIES AGAINST  
SABOTAGE AND THREAT OF STRATEGIC SPECIAL NUCLEAR MATERIAL**

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**To: Secretary, U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001**

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**Attn: Rulemaking and Adjudications Staff**

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OFFICE OF SECRETARY  
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ADJUDICATIONS STAFF

**January 2006**

The following comments regard the U.S. Nuclear Regulatory Commission's ("NRC's") proposed rule entitled "Design Basis Threat" ("DBT"), RIN 3150-AH60. The proposed rule was published in the Federal Register on November 7, 2005, at 70 Fed. Reg. 67,380. For the reasons stated below, we find the proposed rule unacceptable, and we unreservedly support the more precise comments submitted by the San Luis Obispo Mothers for Peace and the Union of Concerned Scientists.

The proposed rule is the first NRC security-related rulemaking since the terrorist attacks of September 11, 2001, and we find it grossly deficient. The Commission promised the public a complete re-evaluation of its security regulations over four years ago, and this belated proposal is unclear, incomplete, and dishonest.

The NRC has failed to meet the challenges of the post-9/11 environment, for the revised DBT excludes the crucial adversary characteristics of the 9/11 attackers: the ability to operate as more than two teams or the capacity to carry out an airborne attack. By failing to include any proposal for protecting nuclear facilities from these characteristics, the NRC makes it clear that it has no plans to ensure that the public will be protected from a 9/11-style terrorist attack. Moreover, despite its claims to have "enhanced" the "adversary characteristics" of the pre-9/11 DBT, the NRC has actually weakened the standard for protection of strategic special nuclear material against theft by reducing the maximum number of hypothetical adversary teams from three to two.

We are also concerned that the NRC appears to have relied on unlawful cost considerations to limit the scope of the DBT by stating that a licensee should only have to defend against a DBT "which a private security force could reasonably be expected to defend." NRC safety and security regulations must be based on a determination of what is necessary to protect public health and safety, not a judgment of what is affordable to the licensee. And if the NRC has relied on some considerations other than costs, it has failed to explain its rationale, which constitutes a violation of the Administrative Procedure Act. Furthermore, it appears that the NRC's limitations on the scope of the DBT are based on secret comments from the nuclear industry which the NRC has not summarized for the general public. This is also a violation of the Administrative Procedure Act.

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