

# GREENPEACE

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**DOCKET NUMBER**  
**PROPOSED RULE PR 73**  
**(70FR 67380)**

COMMENTS ON 10 CFR PART 73:  
DESIGN BASIS THREAT PROPOSED RULE  
RIN 3150- AH60, Proposed Rule 70 FR 76,380

February 22, 2006

103

NRC's proposed rule on the Design Basis Threat is inadequate to address the known threat to nuclear power plants and fails to meet the requirements of the Energy Policy Act of 2005.

On August 8 2005, President Bush signed the Energy policy Act of 2005. The Act required the NRC to conduct a rulemaking on the Design Basis Threat. Congress stated that, when conducting its rulemaking, the Commission SHALL consider the following, but are not limited to:

1. the events of September 11, 2001;
2. An assessment of physical, cyber, biochemical, and other terrorist threats;
3. The potential for attack on facilities by multiple coordinated teams of a large number of individuals;
4. The potential for assistance in an attack from several persons employed at the facility;
5. The potential for suicide attacks;
6. The potential for water-based and air-based threats;
7. The potential use of explosive devices of considerable size and other modern weaponry;
8. The potential for attacks by persons with a sophisticated knowledge of facility operations;
9. The potential for fires, especially fires of long duration;
10. The potential for attacks on spent fuel shipments by multiple coordinated teams of a large number of individuals;
11. The adequacy of planning to protect the public health and safety at and around nuclear facilities, as appropriate, in the event of a terrorist attack against a nuclear facility; and
12. The potential for theft and diversion of nuclear material from such facilities.

(Energy Policy Act of 2005, Subtitle D, Section 170 E, Design Basis Threat Rulemaking)

Congress and the President intended that the NRC rulemaking required by the Act would force the nuclear industry to adequately defend against the level and sophistication of attack that occurred on 9-11. NRC has either ignored or undermined congressional intent. Rather than promulgate a rule that adjusts security requirements in light of the known threat, the NRC's proposed rule

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unreasonably limits the terrorist threat to that which a private security force could reasonably be expected to provide protection. This change in emphasis is neither trivial nor unintentional. It is another in a series of instances, where the NRC has acquiesced to industry pressure and placed financial considerations ahead of the NRC's statutory duty to protect the public health and safety. Our specific comments on NRC's failure to comply with the Act follow:

#### The Events of September 11, 2001

Unfortunately, more than four years after the events of September 11, 2001, NRC has failed to protect the nation's 103 nuclear reactors in a manner commensurate with the known threat. The NRC's proposed rule is devoid of specifics. The sheer and utter lack of substance in the rulemaking raises the question whether the agency has complied with the Administrative Procedure Act or made a mockery of notice and comment rulemaking.

Despite the absence of a meaningful information in the rulemaking, the public is well aware of the fact that the NRC does not require the nuclear industry to defend against the number of terrorists that struck the US on September 11. The NRC has bowed to industry pressure and will only consider whether the DBT is reasonable for a private security force to defend against. As stated in NRC's Proposed Rule:

The NRC's DBT takes into consideration actual demonstrated adversary characteristics as well as pertinent intelligence information applicable to domestic threats and a determination as to those characteristics **against which a private security force could reasonably be expected to provide protection.**

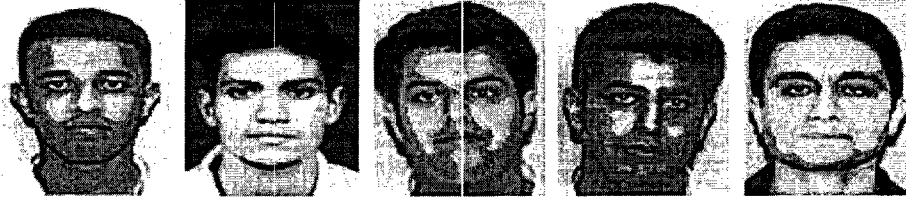
Nowhere in Energy Act does it say that NRC may qualify security requirements based upon what the nuclear industry can defend against. In fact the act states that the agency, "shall conduct security evaluations at each licensed facility...to assess the ability of a private security force of a licensed facility to defend against any applicable design basis threat."

While NRC will likely contend that their inadequate proposed rule some how fits the definition of "any applicable design basis threat." I challenge the NRC to explain why their DBT only posits half the number of terrorists that the DOE DBT requires facilities to defend against. Even if one were to accept the NRC's inadequate standard based upon a private security force, DOE's security force is also private but is expected to defend against twice the number of attackers.

The potential for attack on facilities by multiple coordinated teams of a large number of individuals:

NRC's Proposed DBT is inadequate and does not even require that nuclear corporations defend against the same number of terrorists that have already attacked the US on 9-11.

**American Airlines Flight 11 suspects (World Trade Center)**



Satam M. Al  
Suqami

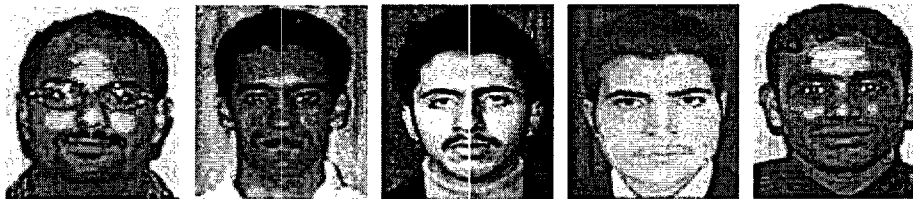
Abdulaziz  
Alomari

Waleed M.  
Alshehri

Wail M.  
Alshehri

Mohamed Atta

**United Airlines Flight 175 suspects (World Trade Center)**



Marwan Al-  
Shehhi

Ahmed  
Alghamdi

Mohand  
Alshehri

Hamza  
Alghamdi

Fayed Rashid  
Ahmed Hassan  
AlQadi  
Banihammad

**American Airlines Flight 77 suspects (Pentagon)**



Khalid  
Almihdhar

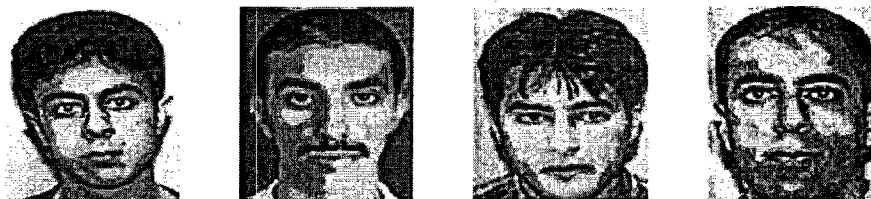
Majed Moqed

Nawaf Alhazmi

Salem Alhazmi

Hani Hanjour

**United Airlines Flight 93 suspects (Pennsylvania)**



Saeed Alghamdi

Ahmad Ibrahim A.  
Al Haznawi

Ahmed Alnami

Ziad Samir Jarrah

## The potential for water-based and air-based threats

The NRC's proposed rule is inadequate to address the known threat posed by air and water based attacks. The NRC Commissioners and staff have repeatedly failed to take the steps necessary to address the threat. Chairman Diaz's blithe assurance that nuclear plants are best defended at the airport is a thorough abdication of his and the NRC's responsibility. The public has little confidence that the agency will actually address the issues designated by Congress. What we have already witnessed in the wake of 9-11 is an agency that will impose as few requirements as possible on the nuclear industry and then hide their inaction behind the cloak of safeguards information and claims that the information could help terrorists.

In the wake of the horrific attacks of 9-11, the nuclear industry and the Nuclear Regulatory Commission (NRC) repeatedly claimed that nuclear plants were not at risk due to the containment domes that surrounded their nuclear reactors. However, both the NRC and the nuclear industry have had to temper their praise for these containments.

The NRC has had to back off its original claims in the wake of 9-11 and now acknowledges that 96% of the reactors in the U.S. were not designed to withstand an airliner attack. (Associated Press, NRC: Nuclear power plants not protected against air crashes, March 29, 2002)

While Sandia Labs stated in the New York Times that the nuclear industry had misused their study in an effort to claim reactors were invulnerable to terrorist attack. When asked whether the study showed that a plane could not penetrate a containment dome the Sandia spokesperson stated that, "We have been trying like heck to shoot down this rumor... (t)hat test was designed to measure the impact force of a fighter jet. But the wall was not being tested. No structure was being tested." (Wald, Matthew, Reactor Vulnerability: Experts Say Nuclear Plants Can Survive Jet Liner Crash, S, New York Times, September 20, 2002.)

Greenpeace agrees with Bennett Ramberg's conclusions published in the New York Times. Ramberg, the author of Nuclear Power Plants as Weapons for the Enemy stated that, "Keeping the terrorists guessing about our defenses was presumably one motivation for the secrecy. However, it might also reflect the commission's desire to play down its acquiescence to the nuclear industry's hubristic view that the plants are nearly invulnerable." (Bennett Ramberg, Nuclear Power Plant Safety or Secrecy?, New York Times, May 20, 2003)

The NRC has also failed to take appropriate action to defend against water based attacks. According to correspondence between Congress Markey and NRC Chairman Nils Diaz, the Millstone nuclear power plant in Connecticut was offered water barriers by the Department of Homeland Security to improve security at the site. It was reported in the press that Dominion power turned down the barriers offered by DHS because they did not want to incur the maintenance costs.

According tot Chairman Diaz:

The waterborne barrier project at Millstone was proposed and funds were obligated for it by the Department of Homeland Security (DHS) in August 2003. ... It is our understanding that Dominion Nuclear ultimately declined DHS's offer to install the waterborne barrier because they had identified other means to achieve compliance with NRC physical security requirements, which include requirements to protect against waterborne attacks.

(US Nuclear Regulatory Commission, Letter from Chairman Diaz to Congressman Markey, April 22, 2005.)

NRC responses to public inquiries attempting to determine how Dominion actually met security requirements at Millstone have been as devoid of substance as the DBT rulemaking. In the absence of substantive information, the public is asked to trust an agency that has time and time again proven itself unworthy of that trust.

Our concern is that the NRC will rely on the "defense in depth" that does not exist. For example, the NRC revealed that the Haddam Neck's emergency core cooling system was undersized and would not performed it function for the 28 years the reactors operated. NRC only reveled this AFTER the nuclear corporation decided to shut down the facility and then claimed the public was never at risk despite the fact that, "it could have caused a failure of the system needed to keep the reactor core cool in the event of an accident." (U.S. Nuclear Regulatory Commission, NRC Proposes \$650,000 Civil Penalty for Northeast Utilities for Alleged Violations at Haddam Neck Nuclear Power Plant, NRC PR 97-52, May 12, 1997.)

The potential use of explosive devices of considerable size and other modern weaponry;

While the public is kept in the dark concerning the contents of the DBT, we have learned what's NOT in the DBT due to the fact that Nuclear Energy Institute (NEI) representatives, just cant seem to keep their mouths shut about safeguards information.

According to NRC, "discussion of matters even not included in the DBT would be considered sensitive since it would begin to draw boundaries around what is in the DBT, and this information could potentially assist an adversary."

(U.S. Nuclear Regulatory Commission, Public Meeting on Nuclear Security Matters, Meeting Summary, August 4, 2004, p. 2.) However, someone at NEI, ostensibly with security clearances since they knew what was and was not in the new DBT, has been discussing "sensitive" information in a public document.

As reported by the Parliamentary Office of Science and Technology, Assessing the Risks of Terrorist Attacks on Nuclear Facilities, the Nuclear Energy Institute divulged to the British that **“aircraft attacks and the use of sophisticated military weapons are not included in the Design Basis Threat.”**

(Parliamentary Office of Science and Technology, Assessing the Risks of Terrorist Attacks on Nuclear Facilities, report number 222, July 2004, p. 24.)

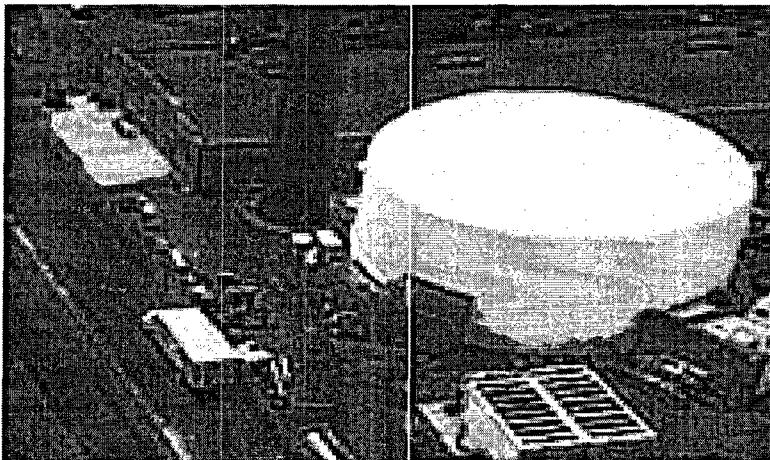
Since NEI has already stated that the revised DBT does not include air attacks & sophisticated weapons, Greenpeace is left to wonder how NRC intends to meet the intent of the Act.

### University & Research Reactors should also be subject to an improved DBT

Since the NRC is not limited by the Energy Act to the dozen items identified by the proposed rule, Greenpeace advocates that an “improved” DBT also be applied to university and research reactors.

The NRC was recently embarrassed by ABC NEWS when they revealed the amazing lack of security at research reactors some containing bomb grade material.

(<http://abcnews.go.com/Primetime/LooseNukes/story?id=1206529&page=1>)



An ABC News producer went unchallenged as he drove down the road in a large rental truck and stopped within 50 feet of MIT's reactor. (ABC News)

The NRC staff had previously assured the public that research reactors' defenses were being upgraded after 9-11. Apparently, NRC sent a letter and did little else. In conversations with NRC staff, Greenpeace was told that NRC was not required to defend against the vulnerabilities revealed in the ABC news story. If that is actually the case, the DBT rule making should be revised to ensure that

these vulnerabilities are addressed. Perhaps NRC is unconcerned with a mock truck bomb parked next to the MIT reactor in down town Boston or the potential that bomb-grade material could be stolen from a university because they are merely following regulations. If that's the excuse, NRC needs to change its regulations and this rulemaking affords the agency that opportunity.

In conclusion, Greenpeace believes that the proposed DBT or what the public has been allowed to comment upon is inadequate to defend the commercial & research reactors from the known terrorist threat. Greenpeace is concerned that the lack of substance in the proposed rule, makes a mockery of notice and comment rulemaking and leaves security in the hands of an industry and an agency that has already proven itself incapable or unwilling to meet the known threat.

Sincerely,

(original signed by)

Jim Riccio  
Nuclear Policy Analyst  
Greenpeace

**From:** Jim Riccio <jim.riccio@wdc.greenpeace.org>  
**To:** <SECY@NRC.GOV>  
**Date:** Mon, Feb 27, 2006 12:10 PM  
**Subject:** DBT comments

Dear SECY,

Attached are Greenpeace's comments on NRC's proposed DBT.

Sincerely,

Jim



**Mail Envelope Properties** (44033263.66A : 3 : 54890)

**Subject:** DBT comments  
**Creation Date:** Mon, Feb 27, 2006 12:08 PM  
**From:** Jim Riccio <jim.riccio@wdc.greenpeace.org>

**Created By:** jim.riccio@wdc.greenpeace.org

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