

[New York State Seal]

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January 24, 2005

Honorable Annette Vietti-Cook
Secretary
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Docket No. PRM-73-12:
In the Matter of Proposed Amendments to 10 C.F.R. 73 -
Upgrading the Design Basis Threat Regulations for
Protection Against Terrorist Attacks on Nuclear Reactors

Dear Secretary Vietti-Cook:

Attached please find for filing the Comments of ELIOT SPITZER, Attorney General of the State of New York, LISA MADIGAN, Attorney General of the State of Illinois, RICHARD BLUMENTHAL, Attorney General of the State of Connecticut, TERRY GODDARD, Attorney General of the State of Arizona, BILL LOCKYER, Attorney General of the State of California, PEG LAUTENSCHLAGER, Attorney General of the State of Wisconsin, and MIKE BEEBE, Attorney General of the State of Arkansas, in Support of Upgrading the Standard for Defending Nuclear Power Plants Against Terrorist Attack.

Thank you for your attention and consideration.

Very truly yours,

L.S.
Charlie Donaldson
Assistant Attorney General
Telecommunications and Energy Bureau

**Before the
UNITED STATES NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
)	
PROPOSED AMENDMENTS TO 10 C.F.R. 73 -))	
Upgrading the Design Basis Threat Regulations)	Docket No. PRM-73-12
for Protection Against)	
Terrorist Attacks on Nuclear Reactors)	
)	

**COMMENTS OF
ELIOT SPITZER, ATTORNEY GENERAL OF THE STATE OF NEW YORK,
LISA MADIGAN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS,
RICHARD BLUMENTHAL, ATTORNEY GENERAL OF THE
STATE OF CONNECTICUT,
TERRY GODDARD, ATTORNEY GENERAL OF THE STATE OF ARIZONA,
BILL LOCKYER, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,
PEG LAUTENSCHLAGER, ATTORNEY GENERAL OF THE
STATE OF WISCONSIN, AND
MIKE BEEBE, ATTORNEY GENERAL OF THE STATE OF ARKANSAS,
IN SUPPORT OF UPGRADING THE STANDARD
FOR DEFENDING NUCLEAR POWER PLANTS AGAINST TERRORIST ATTACK**

Summary

ELIOT SPITZER, Attorney General of the State of New York, LISA MADIGAN, Attorney General of the State of Illinois, RICHARD BLUMENTHAL, Attorney General of the State of Connecticut, TERRY GODDARD, Attorney General of the State of Arizona, BILL LOCKYER, Attorney General of the State of California, PEG LAUTENSCHLAGER, Attorney General of the State of Wisconsin, and MIKE BEEBE, Attorney General of the State of Arkansas, submit these comments in support of upgrading the defenses of nuclear power plants against terrorist attack. Despite the tragically demonstrated ability

of terrorists to attack by air, water or land, to mobilize significant numbers, and to use a wide variety of weapons, the standard defining the threat against which owners must protect nuclear power plants remains essentially what it was in the 1970's - a land attack by no more than four men. The Nuclear Regulatory Commission ("NRC") sets the standards for nuclear power plant defenses, including the "design basis threat" that such defenses must be able to repel. The NRC should upgrade the design basis threat to reflect the realities of 2005, beginning with an immediate recognition of what we all learned on September 11, 2001 ("9/11") and earlier - terrorists may attack by air or water and in numbers greater than four.

I. INTRODUCTION

The United States has over one hundred active and retired nuclear power plants containing thousands of tons of highly radioactive and toxic fuel, waste and equipment. Some of these facilities are close to major population centers where tens of millions of people live. Any significant release of radiation from such nuclear power plants could cause unimaginable human injury and economic loss.

The Atomic Energy Act of 1954¹ assigns the NRC responsibility for ensuring the safety of our nuclear power plants, including the protection of these facilities from sabotage by terrorists.

¹ 42 U.S.C. §§2011 *et seq.*, as amended.

The NRC does not itself safeguard nuclear power plants, but rather sets the safety standards that nuclear plant owners must meet. These standards include those for plant security against terrorist attack.² A major component of the security standards is the “design basis threat,” the designation of the nature, number and scale of terrorist attacks a plant owner must be capable of defeating.³

The design basis threat that nuclear plant owners must prepare against dates back to the 1970's.⁴ While the design basis threat adopted 25 years ago may have been appropriate at the time, it clearly does not reflect today's reality. Although the NRC has issued a series of confidential “Orders Modifying Licenses” that reportedly make undisclosed changes to security at individual plants,⁵ the only publicly announced change to nuclear plant security is the addition of truck bombs to the design basis threat, a change made 17 months after the February 1993 vehicle intrusion at Three Mile Island and terrorist truck bomb attack on the World Trade Center.⁶

II. THE RULEMAKING PETITION

The Committee to Bridge the Gap (“CBG”), a private advocacy group, has filed a petition for rulemaking (“CBG Petition”) with the NRC asking that the design basis threat

² 10 CFR Part 73 - Physical Protection of Plants and Material.

³ 10 CFR §73.1 - Purpose and Scope.

⁴ *See, e.g.*, 44 Fed. Reg. 68,168 (1979).

⁵ *See, e.g.*, NRC Order EA 03-086, published at 68 Fed. Reg. 24,517 (2003).

⁶ 59 Fed. Reg. 38,889 - 38,900 (1994).

be updated to take into account the methods and numbers terrorists have actually used.⁷

As the CBG points out, the current design basis threat requires nuclear power plant owners to withstand nothing larger

⁷ Committee to Bridge the Gap, July 23, 2004 Petition For Rulemaking, noticed for comment at 69 Fed. Reg. 64,690 - 64,692 (2004).

than an attack by four individuals armed with hand-held automatic weapons and a bomb than can fit on a four-wheel drive land vehicle.⁸

The CBG urges the NRC to update the design basis threat to require nuclear plant owners to prepare to repel threats by air, water or land by a group comparable in size to the 19 al Qaeda operatives who carried out the 9/11 attacks, employing more than one unit and using any suitable weapon, vehicle and means of sabotage.⁹ In particular, the CBG urges the NRC to expand the scope of the threat to include the possibility of an attack with a fully-loaded jumbo jet.¹⁰

The NRC has invited public comment on the CBG petition through Monday, January 24, 2005.¹¹

III. COMMENT

The NRC must upgrade the design basis threat to require nuclear power plant owners to defend against attacks that terrorists can realistically be expected to be able to carry out. Determining the full scope of such threats will require the advice of experts on terrorism and security, an opportunity for public comment and careful consideration. At a

⁸ 10 CFR §73.1(a)(1); CBG Petition pp. 6 - 13.

⁹ CBG Petition pp. 23 - 24.

¹⁰ *Ibid.*

¹¹ 69 Fed. Reg. 64,690 (2004).

minimum, the upgraded design basis threat should require defenses against attacks by air, water or land, and by groups at least as large as that involved in the 9/11 attacks.

The fact that no terrorists have yet attacked a nuclear power plant is no reason to believe that such an attack is either impossible or unlikely. Terrorists' capacity to carry out such attacks has been demonstrated. The interest of terrorists in attacking nuclear power plants is also a matter of record. As the CBG has pointed out, the National Commission on Terrorist Attacks Upon the United States reported that Khalid Sheikh Mohammed, the admitted mastermind of the 9/11 attacks, described his original plan as:

A total of ten aircraft to be hijacked, nine of which would crash into targets on both coasts - they included those eventually hit on September 11 plus CIA and FBI headquarters, *nuclear power plants*, and the tallest buildings in California and the state of Washington.¹²

(emphasis added)

We should not take comfort in the fact that on 9/11 no nuclear power plants were attacked. The 9/11 Commission Report noted that the plotters considered targeting particular nuclear power plants that they observed while training for the 9/11 attacks, but that they incorrectly assumed that nuclear power plants had significant air defenses and lacked sufficient symbolic value.¹³ The next group of terrorists may recognize these errors and decide to make damage a priority.

¹² National Commission on Terrorist Attacks Upon the United States, The 9/11 Commission Report, p. 154 (July 22, 2004).

¹³ *Id.* at 245.

All of our nuclear power plants can be reached by air. Several of them, including some close to major population centers, are on the seacoast,¹⁴ along major navigable waterways,¹⁵ or

¹⁴ *E.g.*, Millstone on Long Island Sound near New London, Connecticut; Diablo Canyon on the Pacific near San Luis Obispo, California.

¹⁵ *E.g.*, Indian Point on the Hudson River near New York City; Zion on Lake Michigan near Zion, Illinois.

next to rivers usable by small craft.¹⁶ The updated design basis threat should therefore take into consideration potential terrorist attacks through any avenue.

V. THE NEED FOR AN UPDATED DESIGN BASIS THREAT IS URGENT

Over four years ago terrorists demonstrated in their attack on the USS Cole that they are capable of approaching by water. Over three years ago terrorists showed that they could use large coordinated groups and attack through the air. Given the demonstrated advances in the sophistication of our terrorist adversaries, simple prudence dictates that we require nuclear power plant owners to upgrade defenses to protect the public from possible attacks with truly catastrophic consequences.

VI. CONFIDENTIALITY OF THE DESIGN BASIS THREAT

Upgrading the design basis threat necessarily involves the question of safeguarding key elements of the design basis threat. Yet, certain basic elements of an upgraded design basis threat could be disclosed to reassure the public without compromising security. For example, the maximum number of attackers a nuclear plant owner must prepare to repel is sensitive information. In contrast, stating that owners must be prepared to repel an attack by a minimum of 19 individuals would tell terrorists nothing about the size of the force they would have to field to have any realistic chance of penetrating a plant's defenses, but would show the public that the NRC is adjusting the requirements for nuclear power plant protection to meet today's elevated threats.

¹⁶ *E.g.*, Vermont Yankee on the Connecticut River near Vernon, Vermont.

We urge the NRC to take all due care to safeguard key elements of new design basis regulations, but to provide sufficient detail to confirm to the public that the design basis threat now accurately reflects the challenge posed in defending nuclear power plants from terrorist attack in today's world.

V. CONCLUSION

For the reasons set out above, the undersigned respectfully urge the NRC to amend 10 CFR §73.1(a)(1) to require nuclear power plant owners to prepare to repel air, water or land assaults by a group at least as large as the 19 terrorists who acted on 9/11, attacking at more than one point at the same time and using any appropriate weapons, means of sabotage and vehicles.

Respectfully submitted,

L.S.
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LISA MADIGAN
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