

RUTGERS ENVIRONMENTAL LAW CLINIC

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April 11, 2007

BY FEDERAL EXPRESS

Mr. Thomas Asreen, Acting Clerk
United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, N.Y. 10007

Re: Docket No. 07-1276-ag
NJ Env Fed'n vs. US Nuclear Reg Comm
Agency No. PRM-54-02

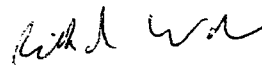
Dear Mr. Asreen:

I enclose the following documents as per your notification letter of April 2, 2007:

1. Acknowledgement letter
2. Corrected Caption page of docket sheet
3. Corrected Parties page of docket sheet
4. Original and copy of the Agency Appeal Pre-Argument Statement

This matter was transferred to the 2nd Circuit because another matter, arising from the same decision of the Nuclear Regulatory Commission is docketed as Spano v. United States Nuclear Regulatory Commission, docket No. 07-0324-ag. The transfer of this case was designed to permit consolidation of these matters. While we do not think a motion is required for the consolidation, we would be amenable to filing one if necessary.

Respectfully submitted,



Richard Webster, Esq.

Enclosures

c.c. Kenneth B. Weckstein, Esq.
Grace H. Kim, Esq.

Carter H. Strickland, Jr., Esq.+
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Date: 4/2/07

Docket 07-1276-ag
Short Title: NJ Env Fndtn v. US Nuclear Reg Comm
Agency Number: PRM-54-02
Agency: Nuclear Regulatory Commission

ACKNOWLEDGMENT LETTER

Dear Delilah Carmona, Deputy Clerk:

This is to acknowledge receipt of your docketing letter in the above case. I acknowledge that I am the (Lead) attorney of record for:

New Jersey Environmental Federation
New Jersey Chapter of the Sierra Club

My NAME, ADDRESS and PHONE NUMBER on your court records is:

Correct Name and Address Correct
 Incorrect. Please amend your record as follows:

Name: _____
Firm: _____
Address: _____
Telephone: (973) 353-5695
FAX: (973) 353-5537
E-Mail: rwebster@kinoy.rutgers.edu

The CAPTION as indicated is:

Correct.
 Incorrect. See attached caption page **WITH CORRECTIONS**.

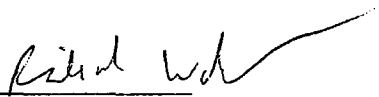
The APPELLATE DESIGNATION (Petitioner or Respondent) assigned to my client is:

Correct.
 Incorrect. My client(s): _____

Should be listed as: _____
 Incorrect. My clients do not wish to participate in this appeal.

I have read the instructions enclosed with the docketing letter.

Sincerely,



(Signature and Print Name)
Richard Webster

Official Caption 1/

Docket No. [s] : 07-1276 -ag

New Jersey Environmental ^{Federation} Foundation, New Jersey Chapter of the Sierra Club,

Petitioners,

v.

United States Nuclear Regulatory Commission, United States of America,

Respondents.

Authorized Abbreviated Caption 2/

Docket No. [s] : 07-1276 -ag

NJ Env ^{Fed'n} Fndtn v. US Nuclear Reg Comm

1/ Fed. R. App. P. Rule 12 [a] and 32 [a].

2/ For use on correspondence and motions only.

New Jersey Chapter of the Sierra Club
Petitioner

Richard Webster Esq.
[ret]
Rutgers Environmental Law Clinic
123 Washington Street
Newark , NJ , 07102
973-353-5695

New Jersey Environmental Federation
Petitioner

Richard Webster Esq.(See above)
[LD ret]

United States Nuclear Regulatory Commission
Respondent

Grace H. Kim Esq.
[LD ret]
Nuclear Regulatory Commission , Office of the General Counsel
1717 H Street, N.W.
Washington , DC , 20555

United States of America
Respondent

Grace H. Kim Esq.(See above)
[LD ret]

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
AGENCY APPEAL PRE-ARGUMENT STATEMENT (FORM C-A)**

APPLICATION FOR ENFORCEMENT

PETITION FOR REVIEW

1. SEE NOTICE ON REVERSE.

2. PLEASE TYPE OR PRINT.

3. STAPLE ALL ADDITIONAL PAGES

CAPTION: NJ Environmental Foundation, NJ Chapter of the Sierra Club, Petitioners v. United State Nuclear Regulatory Commission, United State of America, Respondents		AGENCY NAME: Nuclear Regulatory Commission		AGENCY NO.: PRM-54-02
		DATE THE ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT WAS ENTERED BELOW: December 2, 2006		ALIEN NO : (Immigration Only) N/A
		DATE THE PETITION OR APPLICATION WAS FILED: January 30, 2007		Is this a cross-petition for review / cross-application for enforcement? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Contact Information for Petitioner(s) Attorney:	Counsel's Name: Address: Telephone No.: Fax No.: E-mail:			
	Richard Webster Rutgers Environmental Law Clinic 123 Washington Street Newark, New Jersey 07102		(973) 353-5695 (973) 353-5537 rwebster@kinoy.rutgers.edu	
Contact Information for Respondent(s) Attorney:	Counsel's Name: Address: Telephone No.: Fax No.: E-mail:			
	Grace H. Kim U.S. Nuclear Regulatory Commission 11555 Rockville Pike Rockville, MD 20852-2738		(301) 415-3605	
JURISDICTION OF THE COURT OF APPEALS (provide U.S.C. title and section):	APPROX. NUMBER OF PAGES IN THE RECORD:	APPROX. NUMBER OF EXHIBITS IN THE RECORD:	Has this matter been before this Circuit previously? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
			If Yes, provide the following: Case Name: 2d Cir. Docket No.: Reporter Citation: (i.e., F.3d or Fed. App.)	
28	USC S2343 S2344 S1391	40	3	
ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; AND (3) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT.				
ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM: (1) THE RELIEF REQUESTED; (2) A LIST OF THE PROPOSED ISSUES; AND (3) THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE.				
PART A: STANDING AND VENUE				
<u>STANDING</u>		<u>VENUE</u>		
PETITIONER / APPLICANT IS: <input type="checkbox"/> AGENCY <input checked="" type="checkbox"/> OTHER PARTY <input type="checkbox"/> NON-PARTY (SPECIFY STANDING):		COUNSEL MUST PROVIDE IN THE SPACE BELOW THE FACTS OR CIRCUMSTANCES UPON WHICH VENUE IS BASED: Transfer from 3rd Circuit		

IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

PART B: NATURE OF ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT
(Check as many as apply)

TYPE OF CASE:

- | | |
|---------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> ADMINISTRATIVE REGULATION/ RULEMAKING | <input type="checkbox"/> IMMIGRATION-includes denial of an asylum claim |
| <input type="checkbox"/> BENEFITS REVIEW | <input type="checkbox"/> IMMIGRATION-does NOT include denial of an asylum claim |
| <input type="checkbox"/> UNFAIR LABOR | <input type="checkbox"/> TARIFFS |
| <input type="checkbox"/> HEALTH & SAFETY | <input type="checkbox"/> OTHER: |
| <input type="checkbox"/> COMMERCE | (SPECIFY) |
| <input type="checkbox"/> ENERGY | |

1. Is any matter relative to this petition or application still pending below? Yes, specify: _____ No

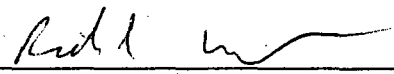
2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:

(A) Arises from substantially the same case or controversy as this petition or application? Yes No

(B) Involves an issue that is substantially similar or related to an issue in this petition or application? Yes No

If yes, state whether "A," or "B," or both are applicable, and provide in the spaces below the following information on the other action(s):

Case Name: *	Docket No. 07-0324	Citation:	Court or Agency: Nuclear Regulatory Agency
Name of Petitioner or Applicant: Andrew J. Spano, County Executive of the County of Westchester			

Date: 3/11/07	Signature of Counsel of Record: 
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NOTICE TO COUNSEL

Once you have filed your Petition for Review or Application for Enforcement, you have only ten (10) calendar days in which to complete the following important steps:

- Complete this Agency Appeal Pre-Argument Statement (Form C-A); serve it upon your adversary, and file an original and one copy with the Clerk of the Second Circuit.
- Pay the \$450 docketing fee to the Clerk of the Second Circuit, unless you are authorized to prosecute the appeal without payment.

PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN TEN (10) CALENDAR DAYS, YOUR PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT WILL BE DISMISSED. SEE THE CIVIL APPEALS MANAGEMENT PLAN OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

ADDENDUM "A"

NATURE OF THE ACTION:

This is an administrative appeal arising from the denial of a rulemaking petition by a federal agency, the Nuclear Regulatory Commission ("NRC"). This appeal is brought pursuant to 10 C.F.R. § 2.802, the Atomic Energy Act, the National Environmental Policy Act, the Administrative Procedure Act.

On July 20, 2005, Mayor Joseph Scarpelli of Brick Township, the New Jersey Environmental Federation, and the Sierra Club New Jersey Chapter submitted a Petition for Rulemaking to the United States Nuclear Regulatory ("NRC") in Agency Case No. PRM-54-02 which requested that the NRC amend certain provisions of its regulations (10 C.F.R. Part 54 *et seq.*) so as to require that applications for renewal of nuclear power plant operating licenses meet all criteria and requirements applicable to and required for approval of initial construction of nuclear power plants and/or initial issuance of operating licenses related thereto. By refusing to amend its regulations and by denying the Petition, the NRC violated 10 C.F.R. § 2.802, the Atomic Energy Act, the National Environmental Policy Act, the Administrative Procedure Act; and abused its discretion.

THE RESULT BELOW:

By Order dated December 2, 2006, the NRC denied the Petition for Rulemaking dated July 20, 2005 in its entirety.

COPIES OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS PETITION FOR REVIEW:

Relevant opinions/orders were annexed to the Petition for Review filed on January 30, 2007 under Docket No. 07-1304 in the 3d Circuit and also to documents filed in *Spano v. United States Regulatory Commission*, Docket No. 07-0324-ag, in this court.

ADDENDUM "B"

RELIEF REQUESTED:

This case does not seek monetary damages. Rather Appellants seek relief, as follows:

1. The Petitioners respectfully request that the Court set aside all of the Nuclear Regulatory Commission's ("NRC's") actions, findings, and conclusions in response to the Petition for Rulemaking dated July 20, 2005, contained in the NRC decision of Agency Case No. PRM-54-02.
2. The Petitioners respectfully request the Court to direct the NRC to initiate rulemaking, pursuant to 10 C.F.R. §2.803, to address the issues raised in the Petition for Rulemaking dated July 20, 2005.
3. Petitioners further request the Court to direct the NRC to provide a hearing on these same issues pursuant to 10 C.F.R §2.803.

PROPOSED ISSUES:

1. Whether the NRC, in denying the Petition for Rulemaking in Agency Case No. PRM-54-02, violated 10 C.F.R. Section 2.802, the Atomic Energy Act, the National Environmental Policy Act, abused its discretion, or acted arbitrarily, capriciously and/or otherwise in a manner not in accordance with law.
2. Whether the NRC erred in denying Petitioners' request for proposed rulemaking to amend the NRC's 1995 license renewal regulations (10 C.F.R. Part 54) by failing to address the impact of factors not previously considered by the license renewal regulations. The factors not previously considered by the NRC include advances in technology since 1995; the need for improved security of nuclear facilities in the wake of the events of September 11, 2001, an important ruling of the 9th Circuit finding the NRC licensing process violated the National Environmental Policy Act by failing to consider the risk of terrorist action, the need for a re-examination of evacuation plans in the light of the well documented failures of evacuation plans for New Orleans and Houston in response to hurricanes, the impact of population growth on the ongoing viability of evacuation plans for nuclear facilities; new federal, state and local regulation; the failure of the NRC's current regulations to allow meaningful challenge to the relicensing of all but one nuclear power plant to date, and public awareness of nuclear safety.
3. Whether the NRC erred in denying Petitioners' request for proposed rulemaking to amend the NRC's 1995 license renewal regulations on the basis that the public has administrative mechanisms available to it other than to petition for rulemaking.

APPLICABLE APPELLATE STANDARD OF REVIEW:

As set forth in 5 U.S.C. §706(2)(a), the standard of review on appeal of an agency's rulemaking action is whether the agency's actions were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Waterkeeper Alliance, Inc. v. United States Environmental Protection Agency*, 399 F.3d 486, 498 (2d Cir. 2005).