

Environmentalists launch "Green Lawfare" campaign against U.S. defenses

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Just two weeks before the 9/11 terrorist attacks, environmental groups filed a lawsuit against the Pentagon seeking to halt production of ground-based missile defenses in Alaska that protect the U.S. against attacks by rogue nations and terrorists who might gain control of nuclear weapons.

The importance of this facility has been heightened recently by North Korea's belligerent posture, which Defense Secretary Robert Gates acknowledged when he visited the Alaska facility in June and discussed U.S. missile defense capabilities.

"If there were a launch from a rogue state such as North Korea, I have good confidence we would be able to deal with it," he said. The visit occurred just a few weeks after the communist country tested a nuclear weapon.

But the silo housing the 16 anti-missile interceptors in Alaska that have become so crucial to America's strategic posture, would now be shut down had environmentalists won in court. Greenpeace, the National Resources Defense Council (NRDC) and Physicians for Social Responsibility tried to halt production of the missile defense site in August 2001 when they filed suit in the U.S. District Court for the District of Columbia.

The lawsuit argued that an Environmental Impact Statement (EIS) has to be submitted under the 1969 National Environmental Policy Act (NEPA) before any missile testing could take place. Greenpeace, NRDC and other green groups asked a federal judge to issue an injunction blocking construction of the test range.

The suit against the Alaska missile defense facility was part of a larger effort to pressure federal courts to accept a new legal standard known as "The Precautionary Principle," said Bonner Cohen, a senior fellow with the National Center for Public Policy Research (NCPPIR).

This standard has been cited to justify European regulatory practices for many decades, but was embraced by the U.S. environmental movement beginning in the 1990s. The environmentalists see the concept as particularly useful to them because it requires that all allegations that specific activities harm the environment, even if credible evidence to demonstrate such a cause and effect relationship is not fully established scientifically.

Lawrence Kogan, chief executive officer of the Institute for Trade, Standards and Sustainable Development (ITSSD), a non-profit legal research organization, said the Precautionary Principle is being used by environmental extremists, trans-nationalists, and even foreign countries to diminish America's military prowess and economic standing. Their efforts amount to a "Green Lawfare" <<http://itssdjournalunclost.blogspot.com/2009/05/httpro.html>> campaign against America, he added.

Although the U.S. Navy secured an important victory last year, when the U.S. Supreme Court, in a 6-3 decision, vacated lower court ruling that imposed restrictions on sonar training exercises, environmental groups remain poised to file additional suits that use precautionary language, Kogan said.

Writing for the majority in *Winter v. Natural Resources*, Chief Justice John Roberts found that national security initiatives should trump unsubstantiated environmental allegations. In his opinion, Roberts also noted that antisubmarine warfare is a top priority for the Pacific Fleet, since potential adversaries are using technology that run almost silent.

In 40 years of sonar training off the coast of California, no instance of harm to marine mammals has been documented, Navy officials said in court papers. Yet federal judges still saw fit to impose environmental restrictions that the Navy said greatly undermined anti-submarine exercises.

Likewise, the suit filed against the Alaska facility made a number of unsubstantiated claims meant to delay action on military assets with special relevance in the post 9/11 era, Cohen said. "Think about what was done with hijacked 757s and 767s and now think about what would happen if terrorists had access to ballistic missiles that could be aimed at New York or Washington D.C.," Cohen said. "This is very real possibility in a time of proliferation."