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Yamada/EPA [Environmental Protection Agency] Letter - NEPA [National Environmental Policy Act]
EDF [Environmental Defense Fund] Versus Massey February 26, 1993

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 26 1993

OFFICE OF
GENERAL COUNSEL

Peter R. Steenland
Acting Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice (Room 2339)
9th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: EDF v. Massey, Civ. No. 91-5278 (D.C. Cir. Jan 29, 1993)

Dear Mr. Steenland:

This responds to your recent request for EPA's views on whether the government should petition for rehearing and suggestion of rehearing en banc in the above-referenced case. EPA agrees with the court's decision that NEPA applies to federal activities in Antarctica and opposes seeking a rehearing.

EPA believes that the court's decision in Massey is sound as a matter of law and policy. Given the unique status of Antarctica as a sovereignless continent and the United States' legislative control over activities there, EPA agrees with the court that this case presents no issue of extraterritoriality. In that regard, we note that the court's holding is very narrow. The court expressly stated that it did "not decide . . . how NEPA might apply to actions in a case involving an actual foreign sovereign or how other U.S. statutes might apply to Antarctica." Slip op. at 17. Accordingly, EPA does not view the decision as a precedent for requiring the government to apply NEPA to federal actions affecting sovereign nations.

EPA strongly believes that the policy benefits to applying NEPA's clear, proven procedures in Antarctica are substantial. In contrast to Executive Order 12114, the NEPA review process provides for a more meaningful environmental review by federal agencies, including an opportunity for public comment. EPA's view is that federal decisions affecting the environment of the global commons warrant the same level of review that NEPA requires for actions affecting our own environment.

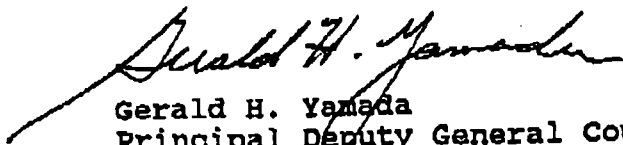
For the reasons above, EPA recommends that the government not petition for rehearing in this case.

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If you would like to discuss this matter, please call me or call Howard Corcoran of my staff at 260-5317.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gerald H. Yamada". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Gerald H. Yamada
Principal Deputy General Counsel

cc: Carol M. Browner
Scott Fulton
Alan Hecht