

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No: 01-3772

CITIZENS ADVISORY COMMITTEE ON PRIVATE PRISONS, INC.,

Appellant

v.

UNITED STATES DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF PRISONS

On Appeal from the United States District Court
for the Western District of Pennsylvania
D.C. Civil No. 99-cv-00112
District Judge: Hon. D. Brooks Smith, Chief Judge

Argued: April 8, 2002
BEFORE: McKEE, BARRY & ALARCON

(Opinion Filed: April 25, 2002)

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OPINION OF THE COURT

McKee Circuit Judge.

The Citizens Advisory Committee on Private Prisons, Inc. ("CACOPP"), appeals the district court's grant of summary judgment against CACCOPP and in favor of the United States Department of Justice, Federal Bureau of Prisons. For the reasons that follow we will affirm.

The district court had jurisdiction pursuant to 28 U.S.C. 1331 and 1361, and was empowered to issue the requested declaratory judgment under 28 U.S.C. 2201-2202. We have jurisdiction under 28 U.S.C. 1291 and 1294.

Plaintiff filed this action under The National Environmental Policy Act ("NEPA"), 42 U.S.C. 4321-4327 (1994), in an effort to enjoin construction of a new prison based upon plaintiff's assertion that the defendants violated the requirements of NEPA in awarding the contract for that construction. Our review of the district court's summary judgment rulings is plenary. *Huang v. BP Amoco Corp.* 271 F.3d 560, 564 (3d Cir. 2001). Under the Administrative Procedure Act ("APA"), an agency action can be set aside only if it was "arbitrary, capricious, an abuse of discretion, or otherwise not in

accordance with law." 5 U. S. C. 706(2)(A). More specifically, the arbitrary and capricious standard of review is applied to an agency's decision "to not prepare an EIS based upon a FONSI." Society Hill Towers Owners' Association v. Rendell, 210 F.3d 168, 179 (3d Cir. 2000).

The Honorable D. Brooks Smith, Chief Judge of the United States District Court for the Western District of Pennsylvania, has already set forth the factual background of this lawsuit in his lucid and thoughtful Memorandum Opinion and Order in which he explains his reasons for denying plaintiff the relief it seeks. See Citizens Advisory Committee on Private Prisons, Inc. v. United States Department of Justice, Federal Bureau of Prisons, No. 99-112J, 2001 WL 1841239 (W.D. Pa. Aug. 7, 2001). Inasmuch as we can add little to the analysis set forth by Chief Judge Brooks in that Memorandum Opinion, we will affirm substantially for the reasons set forth therein without further elaboration.

TO THE CLERK:

Please file the foregoing opinion.

By the Court

/s/ Theodore A. McKee
Circuit Judge