LITIGATION STATUS REPORT
As of January 27, 2005

ACTIVE CASES[5]

Cheh v. Diaz, No. 8:03-cv-02414-AW (D. Md.)

This personnel lawsuit complains of discrimination and reprisal. The district court entered summary judgment for the NRC. Plaintiff has appealed to the Fourth Circuit. NRC lawyers are working with the United States Attorney's office in Baltimore on this case.

CONTACT: Marvin L. Itzkowitz
415-1550

Dean v. Diaz, No. 8:04-civ-02686-RWT (D. Md.)

This is a employment discrimination case in which the government has sought summary judgment. The court has not yet acted on the motion. NRC lawyers are working with the United States Attorney's office in Baltimore on this case.

CONTACT: Marvin L. Itzkowitz
415-1550

Citizens Awareness Network v. United States, Nos. 04-1145 & 04-1359 (1st Cir., decided Dec. 10, 2004)

In these consolidated cases various advocacy groups challenged the NRC's new Part 2 hearing process. One of the cases, *Public Citizen v. NRC*, originally was filed in the D.C. Circuit, but was transferred to the First Circuit by operation of law (28 U.S.C. § 2112). The First Circuit rejected our motion to transfer all the cases back to the D.C. Circuit. The consolidated cases then proceeded to briefing and oral argument in the First Circuit.

Petitioners' chief claim was that the NRC is required by law – the Atomic Energy Act (AEA) and the Administrative Procedure Act (APA) – to provide formal, "on-the-record" adjudicatory hearings in reactor licensing cases. Without reaching that question, the court of appeals (*Selya* & Howard, JJ., Lipez, J., concurring) agreed with our argument that the NRC's new procedures meet the APA's requirements for "on-the-record" hearings. The court explicitly left open the question whether the AEA's hearing requirement (§ 189) requires such hearings or, as the NRC has argued, leaves room for the agency to provide a less formal process.

The court addressed the subjects of discovery and cross-examination in some detail. The court said that the APA does not mandate discovery of any kind and that, in any event, the new rules' requirement of "mandatory disclosure" seemingly compensates for the loss of "traditional discovery." As for cross-examination, the court pointed out that the NRC's new rules do not bar cross-examination outright but, like the APA, allow cross-examination when necessary to

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[5] For statistical purposes, we list as "active" any case that was pending before a court as of January 1, 2005. The narratives accompanying each listed case include post-January 1 developments.

complete an adequate record. The court brushed aside as "meritless" petitioners' constitutional arguments for additional procedures at NRC hearings.

The court, and particularly the concurring Judge, expressed some concern that the NRC had taken the position that its new rule satisfied APA requirements "belatedly," thus forcing an extended and unnecessary debate during the Part 2 rulemaking on the NRC's authority to depart from the APA. But in the end the judges agreed that "we cannot say that the Commission's desire for more expeditious adjudications is unreasonable, nor can we say that the changes embodied in the new rules are an eccentric or plainly inadequate means for achieving the Commission's goals."

An intervenor on petitioners' side, the National Whistleblower Center, has sought rehearing *en banc*.

CONTACT: Steven F. Crockett
415-2871

Long v. Meserve, No. 1:03-cv-00142-BBM (N.D. Ga.)

This is a employment discrimination case in which the government has sought summary judgment. The court has not yet acted on the motion. NRC lawyers are working with the United States Attorney's office in Georgia on this case.

CONTACT: Marvin L. Itzkowitz
415-1550

Massachusetts General Hospital v. United States, No. 01-434 C (U.S. Court of Federal Claims)

This is one of three companion Price-Anderson lawsuits seeking government reimbursement for damages, attorney's fees, and costs incurred in a private tort suit. Millions of dollars in Price-Anderson claims are at stake in the three cases.

The underlying private tort suit, *Heinrich v. Sweet*, arose out of alleged medical misuse of an NRC-licensed research reactor at MIT. The reactor was used (decades ago) for "boron neutron capture therapy," which allegedly harmed rather than helped cancer patients. The United States Court of Appeals for the First Circuit ruled in 2003 that plaintiffs were not entitled to damages, and the Supreme Court denied *certiorari*. Invoking a 1959 Price-Anderson indemnity agreement between MIT and the Atomic Energy Commission, Massachusetts General Hospital claims reimbursement from the government for the substantial legal fees and costs it incurred in defending the *Heinrich* lawsuit.

We are working with the Department of Justice on the defense of the hospital's Price-Anderson lawsuit, along with two companion suits (*MIT v. United States* and *Sweet v. United States*). In 2002, the Claims Court (Firestone, J.) rejected our argument (set out in a summary judgment motion) that Price-Anderson does not cover what are, in essence, medical malpractice claims. Further proceedings in the case was delayed to await Supreme Court action on the petition for a writ of certiorari in the underlying tort case, *Heinrich v. Sweet.*

We now are litigating questions concerning the amount of damages (legal fees and costs expended in the tort cases), if any, that plaintiffs can collect. Ultimately, after the court renders final judgment, the government may appeal the Claims Court's threshold ruling that Price-Anderson applies to cases like this.

CONTACT: Marjorie S. Nordlinger
415-1616

Massachusetts Institute of Technology v. United States, No. 00-292 C (United States Court of Federal Claims)

This lawsuit, a companion to *Sweet v. United States* and *Massachusetts General Hospital v. United States*, seeks Price-Anderson reimbursement of attorney's fees and costs incurred in defending a tort suit, *Heinrich v. Sweet*, arising out of alleged medical misuse of a research reactor at MIT. The Claims Court judge rejected our argument that such claims fall outside Price-Anderson. As explained above (in the discussion of *Massachusetts General Hospital*), the Claims Court rejected our threshold argument on Price-Anderson's applicability, and we currently are pursuing other defenses.

CONTACT: Marjorie S. Nordlinger
415-1616

Nuclear Information and Resource Service v. NRC, No. 04-71432 (9th Cir.)

Petitioners in this case seek judicial review of recent NRC amendments to its transportation safety regulations (10 C.F.R. Part 71). The court of appeals originally held the suit in abeyance to await completion of a related rulemaking at the Department of Transportation. Once DOT issued its regulations, petitioners brought suit against DOT in federal district court in San Francisco. Invoking a rarely-used provision of the Hobbs Act (28 U.S.C. § 2347(b)), petitioners then moved to transfer its lawsuit against the NRC from the court of appeals to the district court. We have opposed the transfer motion. The court has not yet acted on it.

CONTACT: Grace H. Kim
415-1607

Public Citizen v. NRC, No. 04-1293 (D.C. Cir.)

This lawsuit challenges recent Commission security orders directed against licensees who transport spent nuclear fuel. As in an already-pending lawsuit now held in abeyance (*Public Citizen v. NRC*, No. 03-1181 (D.C. Cir.)), petitioner likely will maintain that the NRC's security order ought to have been promulgated through notice-and-comment rulemaking. To avoid jurisdictional issues, petitioner also made its notice-and-comment claim in a hearing request filed with the NRC. The court of appeals thus held this case in abeyance. The Commission recently turned down petitioner's hearing request, a decision that may lead to withdrawal of this lawsuit and initiation of a fresh suit.

CONTACT: Jared K. Heck
415-1623

Public Citizen v. NRC, No. 03-1181 (D.C. Cir.)

This lawsuit argues that the Commission unlawfully imposed new "design basis threat" requirements through orders it issued in 2003 without prior notice and public comment. Petitioners claim that the Commission may not alter agency rules without invoking the rulemaking process. After briefing and oral argument, the court of appeals held this case in abeyance pending an expected NRC "design basis threat" (DBT) rulemaking.

We recently reported to the court that the NRC staff intends to submit a proposed DBT rule to the Commission this June.

CONTACT: Jared K. Heck
415-1623

San Luis Obispo Mothers for Peace v. NRC**,** No. 03-74628 (9th Cir.)

This lawsuit challenges two Commission adjudicatory decisions in a proceeding to license an ISFSI at Diablo Canyon. The first decision declined to suspend ISFSI licensing proceedings to await NRC security enhancements, and the second rejected contentions demanding an environmental impact statement considering the potential effects of terrorism. Petitioners maintain, among other things, that the threat of terrorism is sufficiently tangible to require a NEPA review and that the Commission erred in simply following a prior NEPA-terrorism ruling (in the *PFS* litigation) rather than adjudicating the issue anew. The case has been fully briefed and is awaiting oral argument.

CONTACT: Charles E. Mullins
415-1618

Skull Valley Band of Goshute Indians v. Nielson, No. 02-4149 (10th Cir., decided August 4, 2004), *cert. pending,* No. 04-575 (S.Ct.)

In this case the United States Court of Appeals for the Tenth Circuit (*Henry*, McConnell & Seymour, JJ), affirmed a federal district court decision striking down various Utah laws regulating storage and transportation of spent nuclear fuel.

The court of appeals found the Utah laws -- enacted to make difficult or impossible the proposed Private Fuel Storage (PFS) facility for interim storage of spent nuclear fuel -- preempted by federal law. PFS-related health and safety issues, the court reasoned, are for the NRC, not the state, to decide. The court stressed that Utah's concerns "have been considered in the extensive regulatory proceedings before the NRC." The court said that it was "hopeful that Utah's concerns -- and those of any state facing this issue in the future -- will receive fair and full consideration there."

In its opinion the court expressed its agreement with *Bullcreek v. NRC,* 359 F.3d 536 (D.C. Cir. 2004), where the D.C. Circuit rejected Utah's argument that the Nuclear Waste Policy Act prohibited the NRC from licensing an away-from-reactor spent fuel storage facility. The court also agreed with the government's *amicus curiae* brief that issues relating to NRC licensing authority cannot be litigated in ordinary federal district court litigation, but only through the

special judicial review scheme (direct review in the court of appeals) established by the Atomic Energy Act and the Hobbs Act.

Utah has sought certiorari in the Supreme Court. Utah maintains that PFS's (and the Skull Valley Band of Goshutes') preemption-based challenge to Utah's laws is unripe and in any event invalid. The Court has asked the Solicitor General to file a brief for the United States. We are collaborating with DOJ on that brief.

CONTACT: Grace H. Kim
415-1607

Sweet v. United States, No. 00-274 C (U.S. Court of Federal Claims)

This lawsuit, a companion to *Massachusetts General Hospital v. United States* and *MIT v. United States,* arises out of medical research and treatment, known as "boron neutron capture therapy," conducted by Dr. William Sweet decades ago. Dr. Sweet, like MIT and Mass General, seeks from the government Price-Anderson reimbursement for his legal fees and costs. As noted above (in the discussions of the *Massachusetts General* and *MIT* cases), the Claims Court rejected our argument that medical malpractice-type claims lie outside Price-Anderson. In consultation with DOJ, we currently are pursuing other defenses.

CONTACT: Marjorie S. Nordlinger
415-1616

Toro v. Meserve, No. 1:03-cv-00988-WMN (D. Md.)

This is a employment discrimination case in which the government unsuccessfully sought summary judgment. The case is currently in pre-trial discovery. NRC lawyers are working with the United States Attorney's office in Baltimore on this case.

CONTACT: Marvin L. Itzkowitz
415-1550

Westinghouse Electric Co. v. United States, No. 4:03-CV-00861 (DDN) (E. D. Mo.)

This is a lawsuit for government contribution under CERCLA for cleanup of the Hematite site in Missouri. We are working with the Justice Department in defending the suit.

CONTACT: Charles E. Mullins
415-1618

CLOSED CASES

In re ATG, Inc., No. 03-4758 (U.S. Bankruptcy Ct., N.D. Cal., settled in 2004)

In this bankruptcy case, the bankruptcy trustee wished to set aside about $40,000 in user fees paid by a bankrupt company to the NRC. The bankrupt company held an NRC materials license. The theory of the complaint was that transfers of assets on the eve of bankruptcy

(within the last 90 days before bankruptcy) are voidable, with the transferred assets to be returned to the trustee. We worked with the United States Attorney's office in San Francisco in defending this case, and ultimately settled it for about $23,000..

CONTACT: Maria E. Schwartz
415-1888

Bullcreek v. NRC, Nos. 03-1018 & 03-1022 (D.C. Cir., decided Feb. 24, 2004)

These consolidated lawsuits, brought by the State of Utah and a group of Goshute Indians opposed to the proposed Private Fuel Storage facility in Utah, argued that the NRC lacks authority to license an away-from-reactor spent fuel storage facility. Petitioners argued that the Nuclear Waste Policy Act, in effect, prohibits such facilities. The vehicle for the lawsuits was the NRC's rejection of Utah's rulemaking petition asking the agency to withdraw its current rules (10 C.F.R. Part 72) authorizing away-from-reactor storage.

The court of appeals (*Rogers*, Garland & Williams, JJ) agreed with our argument that the NWPA "does not repeal or supersede the NRC's authority under the Atomic Energy Act to license private away-from-reactor storage facilities." The court closely analyzed the key section of the NWPA, section 135(h), 42 U.S.C. § 10155(h), as well as its statutory context and legislative history. Making many of the same points as our appellate brief, the court found "the NRC's interpretation ... more in conformance with the language of § 10155(h) in the context of Subtitle B than that offered by Utah." (Slip op. at 12).

Petitioners sought no further review.

CONTACT: Grace H. Kim
415-3605

Calif. Public Utility Comm'n v. NRC, No. 02-72735 (9th Cir., dismissed May 5, 2004)

This lawsuit challenged a Commission adjudicatory decision in the *Diablo Canyon* license transfer proceeding. The Commission decision had found petitioners' various safety contentions inadmissible. The parties filed briefs in the court of appeals. But before the case was set for oral argument, Diablo Canyon's owner, Pacific Gas & Electric Company, agreed to a bankruptcy settlement that avoided any license transfer. Accordingly, the court of appeals dismissed this case as moot.

CONTACT: Jared K. Heck
415-1623

Citizens Awareness Network v. United States, No. 04-30114-MAP (D. Mass., decided 2004)

This was a Freedom of Information Act suit seeking release of a 1967 OGC note discussion NRC hearing requirements. The NRC previously had released most of the note on an administrative FOIA appeal. While the NRC might have defended withholding the remainder of the document as privileged (attorney-client), we released the entire document after determining (in consultation with the United States Attorney's Office) that extensive litigation over a relatively innocuous 1967 document would not be cost-beneficial.

We then filed a motion to dismiss the suit as moot. Plaintiff opposed our motion on the ground that it wanted to challenge general NRC FOIA policy and practice and also wanted to seek attorney's fees. After briefing and argument, the court (Ponsor, J.) dismissed the case.

CONTACT: Catherine M. Holzle
415-1580

Connecticut Coalition Against Millstone v. NRC, No. 04-3577 (2d Cir., decided Oct. 6, 2004)

Petitioner filed this lawsuit to challenge a Commission decision to apply its "new" Part 2 to the Millstone license renewal proceeding. The Commission turned down petitioner's original petition seeking to apply the "old" Part 2 on the ground that petitioner had filed it before the license renewal adjudicatory proceeding had actually started. Petitioner later sought to intervene in the proceeding when it was officially noticed, but petitioner simultaneously went to the court of appeals to argue that the "old" Part 2 should apply.

Granting our motion to dismiss, the court of appeals (Miner, Cabranes & Miner, JJ.) ruled that it lacked jurisdiction to review the Commission's handling of petitioner's premature challenge to the NRC's choice of hearing procedures.

Petitioner did not seek further review.

CONTACT: Charles E. Mullins
415-1606

Connecticut Coalition Against Millstone v. NRC, No. 04-0109 (2d Cir., decided Oct. 14, 2004)

This lawsuit attacked a Commission adjudicatory decision rejecting petitioner's intervention contentions in a license amendment proceeding. Dominion Nuclear Connecticut sought the amendment to effect changes to safety mechanisms with respect to fuel handling accidents at Millstone. An NRC licensing board, and the Commission itself, found petitioner's contentions overly conclusory and not supported in fact or expert opinion. Although the board and the Commission found that petitioner had standing to intervene, they terminated the proceeding for lack of an admissible contention.

After briefing and oral argument, the court of appeals (Miner, Cabranes & Straub, JJ.) denied the petition for review. The court agreed that it was reasonable for the Commission to terminate the proceeding under NRC hearing rules where petitioner submitted no "fact or expert opinion evidence to contravene Dominion's analysis showing that any increased risk of offsite radiological exposure was well below federal regulatory allowances." In an unusual action, the court noted "a change in the status of counsel" for petitioner – she had been disbarred in Connecticut -- and directed petitioner's counsel to "apprise her clients of her changed status, as well as the means available to bring late-filed contentions."

Petitioner did not seek further review

CONTACT: Geraldine R. Fehst
415-1614

Connecticut Coalition Against Millstone v. NRC, No. 03-4372 (2d Cir. 2003), *cert. petition rejected* (2004).

This lawsuit challenged a Commission adjudicatory decision rejecting a hearing contention based on Millstone's "loss" of spent fuel rods some years ago. Petitioner had urged the NRC to deny a license amendment expanding Millstone's spent fuel pools. We moved to dismiss the petition for review on the jurisdictional ground that the petition failed to specify the Commission's final adjudicatory order as the order being challenged -- as required by the Federal Rules of Appellate Procedure and the Hobbs Act.

After oral argument, the court of appeals agreed with our position, and in a summary order dismissed the case. The court later denied a rehearing petition.

Petitioner filed a timely petition for a writ of certiorari, but the Supreme Court declined to accept it on technical grounds (it was not signed by member of the Supreme Court bar). Petitioner was given an opportunity to re-file, but it never cured the defect.

CONTACT: Charles E. Mullins
415-1618

Joosten v. Meserve, No.8:02-cv-02668-PJM (D. Md. 2004)

This is a suit claiming unlawful age discrimination in employment. It was removed from state to federal court. The NRC, working with the U.S. Attorney's office, obtained partial summary judgment, and reached a settlement on the remaining portions fo the case.

CONTACT: Marvin L. Iztkowitz
415-1566

Khoury v. Meserve, No. 02 CV 3511 (D. Md.), *aff'd* No. 03-1865 (4th Cir., decided Jan. 23, 2004)

This is a Title VII lawsuit claiming gender and national origin discrimination in employment. The district court ruled for the NRC, dismissing some claims and entering summary judgment on others. The United States Court of Appeals for the Fourth Circuit later affirmed. The NRC worked with the U.S. Attorney's office in this case.

CONTACT: Maryann Grodin, OIG
415-5945

Northern California Power Agency v. NRC, No. 03-1038 & 03-1184 (decided Dec. 28, 2004)

These companion lawsuits challenged (1) a Commission adjudicatory decision rejecting an antitrust-based challenge to a Commission adjudicatory decision on a proposed transfer of the Diablo Canyon license transfer, and (2) an NRC staff decision approving the transfer. Both

cases became moot when a bankruptcy settlement resulted in abandonment of the license transfer proposal. The court of appeals dismissed both cases as moot last April.

Petitioners, however, then asked the court of appeals vacate the underlying Commission adjudicatory decision (on antitrust). After briefing and argument, the court decided to do so. We had argued that the court lacked power to order *vacatur* because it had already issued its mandate returning the case to the NRC. The court, though, found it appropriate to recall its mandate. The court found that petitioners' lawsuit had become moot through no fault of their own, thus depriving them of their opportunity for judicial review. No one is expected to seek further review of the court's ruling on *vacatur* .

CONTACT: Grace H. Kim
415-3605

Pacific Gas & Elec. Co. v. People of the State of Calif., No. 02-16990 (9th Cir. 2003), *rehearing denied* and *certiorari denied* (2004)

In this bankruptcy case we worked with the Justice Department on an *amicus curiae* brief arguing that federal bankruptcy law does not override state or federal laws on the environment or on health and safety. The court of appeals agreed with our position. The court ruled that bankruptcy law does not expressly preempt laws (federal or state) on the environment or on health and safety. The court left open the question whether there may be "implied preemption" in particular circumstances. Usefully, the court decision referred expressly to the problem of preempting the NRC's licensing authority.

Subsequently, the court of appeals denied a petition for rehearing, and the Supreme Court denied a petition for a writ of certiorari..

CONTACT: John F. Cordes
415-1956

Riverkeeper v. Collins, No. 03-4313 (2d Cir., decided Feb. 24, 2004)

In this case, petitioner Riverkeeper sought judicial review of an NRC Director's Decision under 10 C.F.R. § 2.206. The NRC decision had refused to undertake enforcement action against the Indian Point nuclear power reactors to impose more extensive security measures or to shut down the plants. The NRC decision granted 2.206 relief insofar as the agency already had enhanced security at Indian Point (and at other reactors).

In the court of appeals, Riverkeeper acknowledged that ordinarily, under the Supreme Court's decision in *Heckler v. Chaney*, 470 U.S. 821 (1985), petitioners cannot challenge in court agency decisions not to bring enforcement actions. Here, however, according to Riverkeeper, the NRC had "abdicated" its statutory responsibilities by failing to require more extensive security measures at Indian Point enabling a successful defense of the plants against terrorist attacks from the air.

The court of appeals (*Sack*, Van Graafeiland & Raggi) rejected Riverkeeper's position. The court quoted the Director's Decision extensively and noted all that the NRC *had* done to protect against the terrorist threat. While acknowledging that Riverkeeper's issues "are plainly serious

and of pressing concern," the court concluded that the NRC was not required to guarantee "absolute protection."

The NRC cannot be said to "abdicate" its responsibility, the court said, "solely because it has failed to enact the specific licensing requirements requested by Riverkeeper after consulting with military and security agencies and because it has implemented various undisclosed protective measures to address the heightened concerns of terrorist attacks." The court agreed with our argument that holding otherwise would "devour" the *Heckler v. Chaney* non-reviewability doctrine by "permitting federal courts to assert jurisdiction whenever a specific problem is brought to an agency's attention and the agency decides not to order demanded curative steps with respect to it."

Riverkeeper sought no further review.

CONTACT: Jared K. Heck
415-1623

***State of Nevada v. NRC**,* Nos. 02-1116 & 03-1058 (D.C. Cir., decided July 9, 2004)., decided July 9, 2004)

This 100-page opinion from the D.C. Circuit (Edwards, Henderson & Tatel, JJ.) decided numerous Yucca Mountain issues. The opinion resolved some thirteen petitions for review filed against three government agencies, the NRC, EPA and DOE. The Court consolidated all the cases, including the NRC cases, under the caption *Nuclear Energy Institute v. EPA* (and consolidated cases), No. 01-1258 (D.C. Cir.).

Ultimately, the court rejected all but one of the petitioners' claims – their challenge to an EPA-prescribed 10,000 year compliance period. The court found the 10,000 year period inconsistent with a recommendation of the National Academy of Sciences. The court relied on the Energy Policy Act, which required EPA to act consistently with NAS recommendations. Hence, the court vacated EPA's 10,000-year standard and NRC's identical conforming standard.

The court upheld the remainder of the NRC's Yucca Mountain Rule, 10 C.F.R. Part 63. The court disagreed with Nevada's chief argument that geology (rather than engineering) must constitute the "primary" protective barrier at Yucca Mountain. The court ruled that "NRC's detailed analysis supporting its decision to evaluate the performance of the Yucca Mountain repository based on the barrier system's overall performance," rather than barrier-by-barrier performance, was reasonable and permissible. The court brushed aside other Nevada arguments, including claims that Part 63 improperly established a "reasonable expectation" (rather than "reasonable assurance") standard and improperly precluded NEPA claims based on peak dose calculations.

The court also rejected a variety of challenges to the EPA rule and to DOE action. In the EPA cases, the court upheld regulations establishing a controlled area and a separate groundwater-protection standard. In the DOE cases, the court rejected Nevada's constitutional argument that Congress improperly discriminated against Nevada in the development of the nation's high-level-waste-disposal program. The court also held that the President's approval of a congressional resolution in favor of DOE's Yucca Mountain site recommendation established new law, rendering Nevada's challenges to DOE's site-selection process moot.

Finally, the court declared Nevada's challenge to DOE's environmental impact statement unripe because the EIS could be reviewed later. The court said that because Nevada's EIS-based challenges "presumably will not have been passed on by any court prior to relevant NRC proceedings ..., there is no reason to assume that [NRC regulations] will bar consideration of Nevada's substantive claims in the relevant NRC administrative proceedings."

NEI unsuccessfully sought rehearing *en banc.* No party sought Supreme Court review.

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415-1623

State of Oklahoma v. NRC, Nos. 04-9503 & 04-9523 (10th Cir., order issued Dec. 9, 2004)

These petitions for review challenged a Commission adjudicatory decision holding that some waste at Sequoyah Fuels Corporation's Oklahoma site qualifies as 11e(2) byproduct material, and should be regulated as such. These lawsuits, as well as related Licensing Board proceedings, were held in abeyance for many months to accommodate settlement negotiations between Oklahoma and Sequoyah Fuels. Those parties recently reached a settlement agreement and jointly sought dismissal of all pending litigation. The settlement does not bind the NRC in any way, and allows our agency to take any regulatory steps it deems necessary or appropriate.

The court of appeals issued an order dismissing the petitions for review.

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