

ADJUDICATORY ISSUE
(Information)

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SECY-00-0170

FOR: The Commission

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SOLICITOR: LITIGATION REPORT - 2000 - 5

Natural Resources Defense Council, Inc. v. NRC, No. 99-1383 (D.C. Cir., decided July 14, 2000)

This lawsuit challenged the Commission's implementation of new Sunshine Act rules, first promulgated in 1985 but not put into effect until last summer. The new rules give the Commission more flexibility to gather as a group, and to discuss general agency business, without triggering the Sunshine Act's procedural requirements. Under the new rules, the Commission can conduct "non-Sunshine Act meetings" where the discussions are not "focused on discrete proposals or issues" and are "not likely to cause the individual participating members to form reasonably firm positions."

Petitioners attacked the new rules as inconsistent with the Sunshine Act's definition of "meeting" and as containing insufficient procedural protections against Sunshine Act violations. The court of appeals (Edwards, CJ, Garland & Randolph, JJ) rejected both arguments. The court held that the "Commission has done nothing more than adopt, verbatim, the Supreme Court's own interpretation of the meaning of 'meeting' under the Act," and that a requirement of additional Sunshine Act procedures would run afoul of the Supreme Court's "injunction against imposing non-statutory procedural requirements on agency decisionmaking." See Slip op. at 2.

Petitioners have 45 days to seek rehearing or rehearing en banc before the court of appeals, and 90 days to seek Supreme Court review.

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F.A.C.T.S. (For A Clean Tonawanda Site), Inc. v. NRC, No. 98-CV-0354E(H) (W.D.N.Y., decided June 23, 2000)

Plaintiff in this lawsuit sought, among other things, a judicial order requiring the NRC to exercise regulatory jurisdiction over radiological waste at DOE sites in Tonawanda, New York. Pursuant to Congressional directive, the Army Corps of Engineers is currently cleaning up the sites under the so-called "FUSRAP" program. Two years ago, the district court issued an order transferring plaintiff's claim against the NRC to the court of appeals and dismissing the remainder of the suit (i.e., claims against DOE and the Corps of Engineers). Both plaintiff and the NRC sought reconsideration.

The district court (Elfin, J) did reconsider, and on June 23 issued an order dismissing the suit in its entirety. The court pointed out that the Corps was conducting the Tonawanda clean-up pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which flatly prohibits any judicial interference in ongoing CERCLA clean-ups. Because "no federal court may exercise jurisdiction over plaintiff's declaratory judgment action until the response at the Tonawanda Sites is completed," the district court found a transfer to the court of appeals "inappropriate," and accordingly dismissed the case.

Plaintiff has sixty days to appeal.

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Maxima Corps. v. NRC, No. 98-18580-pm (Chapter 11), Adversary No. 0-1371-pm (D. Md., Bkrptcy Ct., filed June 23, 2000)

This lawsuit, the offshoot of an ongoing Chapter 11 bankruptcy proceeding, seeks from the NRC approximately \$50,000 in allegedly overdue payments under contracts for computer services. The plaintiff is the bankruptcy trustee. We are working with the United States Attorney's Office and our Office of Administration in developing an answer to this claim.

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