UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
GENERAL COUNSEL

July 31, 2000

The Honorable Joe Barton, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

RE: 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)

Dear Chairman:

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.

Sincerely,

John F. Cordes, Jr.
Solicitor

cc: Representative Rick Boucher

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