

ADJUDICATORY ISSUE (Information)

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FOR: The Commission

FROM: John F. Cordes, Jr. /RA/
Solicitor

SOLICITOR: LITIGATION REPORT - 2000 - 6

State of Maine v. NRC, No. 00-1476 (D.C. Cir., filed Nov. 9, 2000)

The State of Maine filed this lawsuit to contest the NRC's amendment of Part 72 of its regulations to add the NAC Universal Storage System to the agency's list of approved spent fuel storage casks. Maine also filed a motion seeking to stay the effectiveness of the NAC-UMS rule. Maine's principal argument was that the NRC had not adequately consulted the Department of Energy on the NAC-UMS storage system (which is designed to be a dual-purpose cask covering both on-site dry storage and ultimate transport to a national repository). We opposed the State of Maine's stay motion. The cask manufacturer, NAC, and its potential user, Maine Yankee, intervened in the lawsuit and also opposed the stay motion.

The parties thereafter engaged in settlement talks. With the Commission's approval, we have reached a settlement in principle, which likely will be finalized shortly. In the meantime, the court of appeals has held Maine's lawsuit in abeyance.

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Syms v. Olin Corp., et al., No. 00-CV-732A (SR) (W.D. N.Y., filed Aug. 23, 2000)

Several property owners in upstate New York filed this lawsuit against a private corporation and a number of government agencies and officials, including the NRC. Plaintiffs seek money damages as compensation for their past and future "response costs" in cleaning up radioactive contamination at a former Manhattan Project site near Lake Ontario. Plaintiffs invoke both CERCLA and the Federal Tort Claims Act as the basis for their damages suit.

We are working with Department of Justice attorneys in defending this suit. The government has filed an answer to the complaint.

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National Whistleblower Center v. NRC, No. 00-422 (Supreme Ct., petition for writ of certiorari filed Sept. 13, 2000)

Last spring the United States Court of Appeals for the District of Columbia Circuit upheld a Commission decision terminating the Calvert Cliffs license renewal adjudication. See National Whistleblower Center v. NRC, 208 F.3d 256 (D.C. Cir. 2000). The court of appeals held that the Commission lawfully had toughened its extension-of-time standard and that petitioner had been treated fairly.

After unsuccessfully seeking rehearing, petitioner sought Supreme Court review. Petitioner principally argues that the Commission is required by law to follow the Administrative Procedure Act's requirements for formal, "on-the-record" agency hearings. We maintain in our brief in opposition to certiorari, which I have attached to this report, that the current case does not raise the "on-the-record" issue. We also argue that the court of appeals correctly decided the issue that *is* presented; i.e., the lawfulness of the Commission's handling of the extension-of-time issue.

We expect Supreme Court action on the petition in January.

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