



OFFICE OF THE
GENERAL COUNSEL

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

FACSIMILE COVER SHEET
OGC LEGAL COUNSEL/SOLICITOR

DATE: 3-17-05

TO: Roxane G. Ashe, 9th Cir. Mediator

FAX NUMBER: 415-556-9725

FROM: Jared K. Heck

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NUMBER OF PAGES INCLUDING COVER 3

COMMENTS
Response to 3-3-05 order
in No. 05-70718



UNITED STATES
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March 17, 2005

OFFICE OF THE
GENERAL COUNSEL

Roxane G. Ashe
Circuit Mediator
U.S. Court of Appeals
for the Ninth Circuit
P.O. Box 193939
95 Seventh Street
San Francisco, CA 94119-3939

Re: *Farmer v. NRC*, No. 05-70718 (filed Feb. 11, 2005)

Dear Ms. Ashe,

I recently received an Order dated March 3, 2005, directing counsel for all parties in the above-referenced case to inform you of their clients' views on whether mediation of this case is possible or desirable. I am answering the Order on behalf of the respondent Nuclear Regulatory Commission.

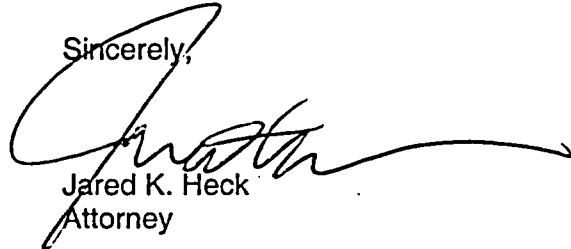
This case is rooted in a dispute between Mr. Farmer and his former employer, the Alaska Department of Transportation and Public Facilities. The case began when Mr. Farmer alleged to the NRC that Alaska was violating NRC regulations governing the safe storage and use of radioactive materials. The NRC investigated Mr. Farmer's allegations, and found that Alaska had not only violated materials-safety regulations, but that it had retaliated against Mr. Farmer for raising radiation-safety concerns.

The NRC decided to take enforcement action against Alaska for the radiation-safety violation and for retaliating against Mr. Farmer. But when Mr. Farmer tried to intervene in the latter NRC enforcement proceeding, the Commission denied his request, concluding that he lacked standing to seek penalties against Alaska different from those sought by the NRC. The Commission's decision was based on well-established Commission precedent that has been approved by the United States Court of Appeals for the District of Columbia Circuit.

The Commission's conclusion that Mr. Farmer lacked standing is the narrow legal issue on appeal in this case. This purely legal conclusion is not a matter appropriate for mediation; the Commission sees only a limited role for itself in any settlement talks. But settlement may be possible between the State of Alaska and Mr. Farmer. If the State and Mr. Farmer can resolve their differences or agree to an appropriate remedy through the proposed mediation, there is a possibility this case could be dismissed.

I have spoken with counsel for the State, who informed me that the State plans to seek intervention in this case and is actively pursuing a mediated settlement of Mr. Farmer's grievances. So, although the Commission itself expects to play only a limited role, this case does seem appropriate for inclusion in the mediation program.

Sincerely,

A handwritten signature in black ink, appearing to read "Jared K. Heck", with a long horizontal flourish extending to the right.

Jared K. Heck
Attorney