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August 24, 1990

(Information)

SECY-90-302

For: The Commission
From: E. Leo Slaggie
Deputy Solicitor
Subject: LITIGATION REPORT 1990-28

Public Citizen, et al. v. NRC, No. 90-1432 (D.C. Cir.)

On August 21, 1990, Public Citizen, along with a large number of other citizen groups from around the country, and the State of Maine joined as co-petitioners in a lawsuit challenging the NRC's recent decision to allow the deregulation of the disposal of radioactive waste. We have not yet received the papers from the Court or the petition for review. A press release from Public Citizen is our source for the following information.

The lawsuit challenges the NRC's "Below Regulatory Concern" (BRC) policy on three grounds: (1) that NRC violated the federal Administrative Procedure Act by failing to publish the BRC proposal in draft form subject to public comment before issuing a final policy; (2) that the BRC policy violates both the 1954 Atomic Energy Act and the 1985 Low-Level Radioactive Waste Policy Amendments Act by seeking to reduce the economic cost of radioactive waste disposal at the expense of public health and safety; and (3) that the NRC acted in an arbitrary and capricious manner by approving a BRC policy which incorporates a health risk standard that is more liberal than is generally accepted.

It does not appear that the petitioners are seeking any form of emergency or preliminary

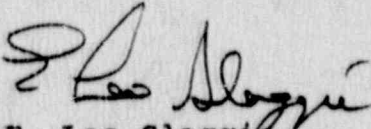
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relief. We shall keep the Commission advised of developments in the case.

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| 2. <u>dtd 8/23/90</u> | 12. <u>" 90-298</u> |
| <u>Com. Rogers' note</u> | |
| 3. <u>sheet on 90-235</u> | 13. <u>" 90-302</u> |
| <u>Com. Curtis' note</u> | |
| 4. <u>sheet on 90-235</u> | 14. <u>" 90-303</u> |
| <u>Com. Remicki's note</u> | |
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| 6. <u>Secy - 90-286</u> | 16. <u>" 90-308</u> |
| 7. <u>" 90-290</u> | 17. _____ |
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