



POLICY ISSUE

(Information)

January 28, 2022

SECY-22-0006

FOR: The Commissioners

FROM: Andrew P. Averbach
Solicitor

SUBJECT: ANNUAL REPORT ON COURT LITIGATION (CALENDAR YEAR 2021)

PURPOSE:

To inform the Commission of the status of litigation in the courts.

DISCUSSION:

Enclosed is a report detailing the current status of cases brought in federal court against the NRC or its officials. It updates the last annual report dated January 22, 2021 (SECY-21-0007). It includes cases filed through the end of 2021 but reflects the status of NRC cases in court as of January 24, 2021.

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During the reporting period (Calendar Year 2021), the Commission or NRC officials were sued eighteen times in the courts of appeals² and one time in federal district court.³ During this same period, six cases (including some cases that were filed separately but were consolidated) were closed.⁴ The number of new filings in 2021 is higher than the number of cases filed in recent years. There were 10 new lawsuits filed in 2020, 10 in 2019, 4 in 2018, 3 in 2017, 4 in 2016, 11 in 2015, 6 in 2014, 5 in 2013, 5 in 2012, and 11 in 2011, for an average of 7.5 new lawsuits per year over the prior ten years.

We have also continued to participate in lawsuits brought by or against the United States and/or its agencies or in which the United States and/or its agencies have been named as a third-party defendant.⁵ Much of this work has involved responding to requests for documents related to the activities of both the NRC and/or licensees, working with the Department of Justice to draft and review pleadings, and implementing and maintaining litigation holds for materials that may be relevant to ongoing litigation.

Finally, during this reporting period we handled two new "Touhy" requests for NRC testimony, depositions, or other evidence for use in private litigation. See 10 C.F.R. § 9.200 et seq.

Andrew P. Averbach
Solicitor

²*Balderas v. NRC*, No. 21-9593 (10th Cir.); *Berka v. NRC*, No. 21-1134 (D.C. Cir.); *Don't Waste Michigan v. NRC*, No. 21-1048 (D.C. Cir.) (consolidated with *Sierra Club v. NRC*, No. 21-1055, *Beyond Nuclear v. NRC*, No. 21-1056, *Fasken Land and Minerals, Ltd. v. NRC*, No. 21-1179, *Sierra Club v. NRC*, No. 21-1227, *Beyond Nuclear v. NRC*, No. 21-1230, and *Don't Waste Michigan v. NRC*, No. 21-1231); *New York v. NRC*, No. 21-1037 (D.C. Cir.) (consolidated with *Riverkeeper, Inc. v. NRC*, No. 21-1080 and *Town of Cortlandt v. NRC*, No. 21-1084); *Ohio Nuclear-Free Network v. NRC*, No. 21-1162 (D.C. Cir.); *Sierra Club v. NRC*, No. 21-1104 (D.C. Cir.) (consolidated with *Fasken Land & Minerals Ltd. v. NRC*, No. 21-1147 and two petitions filed by Beyond Nuclear and Don't Waste Michigan in 2020); *Sierra Club v. NRC*, No. 21-1229 (D.C. Cir.); *Texas v. NRC*, No. 21-60743 (5th Cir.) (consolidated with *Fasken Land and Minerals, Ltd. v. NRC*).

³ *Balderas v. NRC*, No. 1:21-cv-00284-JB-JFR (D.N.M.).

⁴ *Aguirre v. NRC*, Nos. 19-cv-495-BAS-BLM, 19-cv-587-BAS-BLM, 19-cv-1102-BAS-BLM (S.D. Cal.), *aff'd*, No. 20-15777 (9th Cir.); *Friends of the Earth v. NRC*, No. 20-1026 (D.C. Cir.); *New York v. NRC*, No. 21-1037 (D.C. Cir.) (consolidated with *Riverkeeper, Inc. v. NRC*, No. 21-1080 and *Town of Cortlandt v. NRC*, No. 21-1084); *Nuclear Energy Institute v. NRC*, No. 19-1240 (D.C. Cir.); *Public Watchdogs v. NRC*, No. 3:19-cv-01635-JLS-MSB (S.D. Cal), *aff'd*, No. 19-56531 (9th Cir.), *cert. denied*, No. 20-1676 (S. Ct.); *Public Watchdogs v. NRC*, No. 20-70899 (9th Cir.)

⁵ *Five Point Holdings v. Tetra Tech*, No. 3:20-cv-14810-JD (N.D. Cal.); *Spina v. Liu*, No. 20-cv-9368 (S.D.N.Y.).

The Commissioners

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Enclosure:
Litigation Status Report

cc: SECY
ASLBP
CFO
OEDO
OGC
OCAA
OCA
OIG
OPA
REGION I
REGION II
REGION III
REGION IV

SUBJECT: ANNUAL REPORT ON COURT LITIGATION (CALENDAR YEAR 2021)
JANUARY 28, 2022

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