



POLICY ISSUE

(Information)

January 24, 2023

SECY-23-0007

FOR: The Commissioners

FROM: Andrew P. Averbach
Solicitor

SUBJECT: ANNUAL REPORT ON COURT LITIGATION (CALENDAR YEAR 2022)

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 28, 2022 (SECY-22-0006). It includes cases filed through the end of 2022 but reflects the status of NRC cases in court as of January 20, 2023.

During the reporting period (Calendar Year 2022), the Commission or NRC officials were not sued in the courts of appeals and were sued three times in federal district court.¹ During this same period, five cases were closed.² Federal litigation during the calendar year primarily centered on the licensing of spent fuel storage facilities and on employment-related cases.

CONTACT: Andrew P. Averbach, OGC
(301) 415-1956

¹ *Aguirre v. NRC*, 22-cv-0080-JAH (BLM) (S.D. Cal.); *Franovich v. Hanson*, 22-cv-01008-GJH (D. Md.); *Kelly v. Dorman*, 22-cv-00071-TWP-KMP (S.D. Ind.).

² *Berka v. NRC*, 21-1134 (D.C. Cir.); *Braxton v. Hanson*, 20-cv-1126-AGB (N.D. Ga.); *Ohngo Gaudadeh Devia v. NRC*, 05-1419, 05-1420, 06-1087 (D.C. Cir.); *Criscione v. NRC*, 19-cv-02087-CBD (D. Md.), *aff'd*, 20-2320 (4th Cir.), *cert. denied*, 21-813 (S. Ct.); *Peck v. Department of Labor*, 20-1154 (4th Cir.), *cert. denied*, 21-813 (S. Ct.).

The number of new filings in 2022 is lower than the number of cases filed in recent years, particularly at the appellate level. There were 19 new lawsuits filed in 2021, 10 in 2020, 10 in 2019, 4 in 2018, 3 in 2017, 4 in 2016, 11 in 2015, 6 in 2014, 5 in 2013, and 5 in 2012, for an average of 7.7 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 employees or in which the United States and/or its agencies or employees have been named as third-party defendants.³ Much of this work has involved responding to requests for documents related to the activities of both the NRC and/or licensees and NRC employees, 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 three 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

Enclosure:
Litigation Status Report

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

³ *United States v. Tetra Tech*, 3:13-cv-03835-JD (N.D. Cal.) (consolidated); *McCraney v. Progressive Paloverde Ins. Co.*, 22-4524 (E.D. La.) (state court action removed to federal court as action against United States).

SUBJECT: ANNUAL REPORT ON COURT LITIGATION (CALENDAR YEAR 2022) DATED
JANUARY 24, 2023

DISTRIBUTION:

- A. Averbach_Chron
- M. Zobler_Chron
- B. Ammon
- M. Spencer
- T. Campbell
- C. Scott
- J. Bielecki
- S. Vraforetis
- M. Lemoncelli
- P. Moulding
- R. Baum
- T. Stokes
- B. Harris
- D. Roth
- C. Kanatas
- L. Baer

**ADAMS Accession Nos.: Pkg: ML23023A277, SECY Paper: ML23023A279,
Enclosure: ML23023A278 * via e-mail**

OFFICE	OGC/SOLICITOR*			
NAME	A Averbach			
DATE	1/24/2023			

OFFICIAL RECORD COPY