

January 28, 1999

SECY-99-030

FOR: The Commission

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

SUBJECT: ANNUAL REPORT ON COURT LITIGATION (CALENDAR YEAR 1998)

PURPOSE: To Inform the Commission of the Status of Litigation in the Courts

DISCUSSION:

Attached is a report updating events in NRC court litigation since my last report dated February 4, 1998 (SECY-97-019). This report reflects the status of NRC cases in court as of January 28, 1999.

During the reporting period (calendar year 1998), the Commission or its officials were sued four times in the courts of appeals,<sup>1</sup> five times in federal district courts,<sup>2</sup> once in state court,<sup>3</sup> and once in the United States Court of Federal Claims.<sup>4</sup> In addition, the Commission participated as amicus curiae in one United States Supreme Court case.<sup>5</sup> During this same one-year period twelve cases were closed.<sup>6</sup> The twelve new cases in 1998 compare to just four in 1997, ten in 1996, and sixteen in 1995.

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<sup>1</sup> Envirocare of Utah, Inc. v. NRC, Nos. 98-1426 & 98-1592 (D.C. Cir.); National Whistleblower Center v. NRC, No. 98-1581 (D.C. Cir.); American Public Power Ass'n v. NRC, No. 98-1219 (D.C. Cir.).

<sup>2</sup> Del Core v. Jackson, No. 3:98CV1011 (D. Conn.); F.A.C.T.S. v. NRC, No. 98-0354E(H) (W.D.N.Y.); Fields v. NRC, No. 1:98CV01714 (D.D.C.); Grand Canyon Trust v. Babbitt, No. 2:98CV 0803S (D. Utah); Unte Che v. Jackson, No. AW-98:3610 (D. Md.).

<sup>3</sup> Dolford v. United International Investigative Service, Civ. No. AW-98-3984 (D. Md.) (removed from Maryland state court).

<sup>4</sup> United International Investigative Services, Inc. v. United States, No. 98-729 C (U.S. Court of Federal Claims).

<sup>5</sup> El Paso Natural Gas Co. v. Neztosie, No. 98-9 (Supreme Court).

<sup>6</sup> American College of Nuclear Physicians v. NRC, No. 94-1787 (D.C. Cir.); American Public Power Ass'n v. NRC, No. 98-1219 (D.C. Cir.); Citizens Awareness Network v. NRC, No. 97-4368 (2d Cir.); City of Benton v. NRC, No. 95-1402 (D.C. Cir.); Del Core v. Jackson, No. 3:98CV1011 (D. Conn.); Ibrahim v. Jackson, No. 97-1269 (4<sup>th</sup> Cir.); General Atomics v. NRC, Nos. 95-70710 & 95-70842 (9<sup>th</sup> Cir.); Jones v. Jackson, No. 97-C-3087 (N.D. Ill.); Nejfelt v. Jackson, Nos. 96C-3081 & 96C-629 (N.D. Ill.); Texas Instruments, Inc. v. United States, No. CV12812WGY (D. Mass.)

We also handled ten requests (so-called "Touhy" requests) for NRC testimony, depositions or other evidence for use in private litigation in 1998. The ten Touhy requests in 1998 is the lowest number in recent years: there were twenty in 1997, twenty-nine in 1996, and thirty-six in 1995.

John F. Cordes, Jr.  
Solicitor

Attachment: Litigation Status Report

LITIGATION STATUS REPORT  
As of January 28, 1999

ACTIVE CASES

Dienethal v. NRC No. 99-1001 (D.C. Cir., filed Jan. 4, 1999)

This lawsuit challenges a Licensing Board decision terminating a license amendment proceeding (for the shutdown Zion reactor) for lack of standing. The lawsuit appears to be premature, as the same Board decision currently is before the Commission on appeal. We likely will seek dismissal of the lawsuit.

CONTACT: John F. Cordes  
415-1600

Dolford v. United International Investigative Service, Civ. No. AW-98-3984 (D. Md., removed Dec. 4, 1998)

In this case, a group of ex-employees of our former security guard contractor filed suit in Maryland state court (Montgomery County) against the contractor and claimed that they were wrongfully fired. Their argument is that they lost their jobs because of non-compliance with height/weight requirements that they consider unreasonable and violative of the federal Americans with Disabilities Act. The security guard contractor has filed a "third party" action against the NRC on the ground that the contractor was simply following NRC-required height/weight standards. The contractor seeks NRC indemnification for any liability to its ex-employees.

We have removed the lawsuit from state court to federal court, and filed a motion to dismiss the third-party claim against the NRC. We are working with the United States Attorney's office..

CONTACT: Grace H. Kim  
415-3605

El Paso Natural Gas Co. v. Neztosie, No. 98-9 (Supreme Court, amicus curiae brief filed Dec. 8, 1998)

This private lawsuit, not involving the government, seeks millions of dollars in tort damages in tribal court for exposure to radiation from uranium mining on Indian tribal lands. The defendant in the tribal court action, El Paso Natural Gas, sought a federal court injunction against tribal court proceedings on the ground that the federal Price-Anderson Act prescribes the exclusive means for obtaining damages for, among other things, the radioactive properties of source material. Both the federal district court and the court of appeals (Ninth Circuit) ruled that El Paso must first exhaust tribal court remedies before seeking federal court relief. Earlier this fall, the Supreme Court granted certiorari to consider the case.

Because the contours of both the tribal exhaustion doctrine and the Price-Anderson Act are of considerable importance to the government, the Solicitor General decided to file an amicus curiae brief in the Supreme Court. As we had urged (after informal consultation with the Commission), the government's amicus brief takes the view that the Price-Anderson Act

remedial scheme is exclusive and preempts tribal law remedies. We worked closely with Department of Energy lawyers and with the Solicitor General's office in drafting the Price-Anderson portions of the brief. A decision is expected by the end of the current Supreme Court term in June, 1999.

CONTACT: Marjorie S. Nordlinger  
415-1616

Envirocare of Utah, Inc. v. NRC, No. 98-1426 (D.C. Cir., filed Sept. 15, 1998)

This petition for review challenges a Commission adjudicatory decision, CLI-98-11, rejecting Envirocare's standing to pursue a Licensing Board hearing on the NRC's grant of a license to Quivira Mining Company, a competitor of Envirocare in the waste disposal business. Envirocare claims that the NRC did not require Quivira to satisfy the same costly environmental and safety standards applied to Envirocare. According to Envirocare, the NRC's lenient review of the Quivira application leaves unanswered significant safety and environmental questions and also gives Quivira an unfair competitive advantage in the marketplace.

Citing judicial concepts of standing that the Commission historically has followed, the Licensing Board dismissed the request for a hearing, and the Commission affirmed, on the ground that only persons who themselves suffer health and safety or environmental harms have an "interest" sufficient for intervention under section 189a. The Board and the Commission ruled that Envirocare, whose facility lies hundreds of miles from Quivira's, was claiming purely economic injury from increased competition and that such injury does not fall within the "zone of interests" protected by the AEA or NEPA.

The case has been consolidated with another case brought by Envirocare, No. 98-1592. The two cases will be briefed and argued together later this year.

CONTACT: Grace H. Kim  
415-3605

Envirocare of Utah, Inc. v. NRC, No. 98-1592 (D.C. Cir., filed Dec. 21, 1998)

This lawsuit challenges a Commission decision (CLI-98-23) holding that Envirocare lacked standing to intervene in a materials licensing proceeding. The proceeding concerns the application of International Uranium (USA) Corporation for a license amendment permitting it to process certain radioactive waste material at a site IUSA owns in Utah. The State of Utah has successfully intervened in the proceeding and is challenging the lawfulness of the IUSA amendment. The proceeding remains pending before the ASLBP.

Envirocare claimed standing to intervene on the sole ground that it competes with IUSA in the waste disposal business and will suffer competitive harm from the NRC's alleged leniency in licensing the IUSA facility. The Commission held, as it had in a similar recent case, Quivira Mining Co. (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1 (1998) (petition for review pending), that competitive harm, unlinked to safety or environmental harm, is not within the "zone of interests" protected by the Atomic Energy Act or the National Environmental

Policy Act, and therefore cannot serve as the basis for standing to intervene in NRC licensing proceedings.

Envirocare disagrees with the Commission's view, and has filed a lawsuit identical to its earlier-filed suit in Quivira. The two cases have been consolidated and will be briefed and argued together later this year.

CONTACT: Grace H. Kim  
415-3605

F.A.C.T.S. (For a Clean Tonawanda Site), Inc. v. NRC, No. 98-0354E(H) (W.D.N.Y., filed June 2, 1998)

Plaintiff, a citizens group with members living in or near Tonawanda, New York, seeks an injunction halting further cleanup of the "FUSRAP Tonawanda Site." "FUSRAP" refers to the Department of Energy's "Formerly Utilized Sites Remedial Action Program." Pursuant to a Congressional directive, the Army Corps of Engineers currently is performing the FUSRAP decontamination work. Plaintiff's lawsuit names the NRC, DOE, and the Corps of Engineers as defendants.

Insofar as it involves the NRC, plaintiff's complaint alleges that the NRC should exercise regulatory jurisdiction over the disposition of radioactive material at the Tonawanda site. Plaintiff seeks a declaratory judgment that the NRC has regulatory jurisdiction. Plaintiff also seeks injunctive relief against the Corps of Engineers prohibiting further Corps of Engineers activity until the NRC exercises its jurisdiction.

The district court dismissed the case as to the Corps, but ordered the claims against the NRC transferred to the court of appeals. Working with Department of Justice lawyers, we are seeking reconsideration in the district court.

CONTACT: Susan G. Fonner  
415-1629

Farley v. Kerr-McGee, No. SR-CV-04-95 (Navajo Nation District Court, Shiprock District, 3d party complaint filed July 10, 1996)

This suit, filed in a Navajo Nation court, seeks damages from several corporations for injury and death allegedly resulting from radiation at a uranium milling facility near Shiprock, New Mexico. The corporations, in turn, have filed a third-party complaint impleading the federal government, including the NRC, in an effort to obtain indemnification for any damages that are assessed.

The third-party complaint rests on the argument that the Shiprock mill operated as part of an Atomic Energy Commission procurement program. It is not clear why the third-party complaint names the NRC as a party, because DOE, not the NRC, succeeded the now-defunct AEC in areas like uranium procurement. It also is not clear that a Navajo Nation court possesses jurisdiction to adjudicate claims against the federal government.

The United States Attorney's office has submitted a letter to the tribal court denying any tribal

court jurisdiction over the United States government. As yet, however, the case has reached no final resolution.

CONTACT: Marjorie S. Nordlinger  
415-1616

Fields v. NRC, 1:98CV01714 (D.D.C., filed July 9, 1998)

Plaintiffs in this lawsuit, filed under the Privacy Act, were licensed operators at the Crystal River Nuclear Plant in Florida. In 1994, after becoming frustrated by their management's inattention to an alleged safety problem at the plant, plaintiffs conducted their own "experiment" to substantiate their safety concerns. Plaintiffs' concerns turned out to be well-founded, and led to the NRC's imposition of a large civil penalty (\$500,000) against Crystal River's operator, Florida Power Corporation. The NRC took no enforcement action against plaintiffs for their unilateral actions but in correspondence pointed out that their actions violated the law, and that the "ends do not justify the means." Plaintiffs lost their positions as licensed operators at Crystal River.

Plaintiffs demanded correction of their records under the Privacy Act. The NRC refused to alter the records, and plaintiffs have now sought relief in federal district court. We are working with the United States Attorney's office in defending this lawsuit. In the meantime, plaintiffs are seeking relief as "whistleblowers" before the Department of Labor. Plaintiffs lost in their initial effort, but now are before the United States Court of Appeals for the Eleventh Circuit seeking reinstatement of their grievance.

CONTACT: Catherine M. Holze  
415-1560

Grand Canyon Trust v. Babbitt, No. 2:98CV0803S (D. Utah, filed Dec. 16, 1998)

This lawsuit, brought by Utah environmental groups and individuals, claims that the Secretary of the Interior and the NRC have violated the Endangered Species Act in allowing the Atlas Corporation to continue to store radioactive mill tailings near the Colorado River and in considering a reclamation plan that will leave the mill tailings in place. The NRC staff has not yet taken licensing action to permit the reclamation plan, but is expected to do so shortly. We have moved to dismiss the suit against the NRC on the ground that exclusive jurisdiction for judicial review of NRC licensing-related activities lies in the courts of appeals. The district court has not yet acted on the motion.

We are working with Department of Justice attorneys on the case.

CONTACT: Marjorie S. Nordlinger  
415-1616

Little v. United States, No. L-94-2824 (D. Md., filed Oct. 12, 1994)

This is a Federal Tort Claims Act suit filed by a person claiming injuries resulting from the NRC's "failing to properly place and maintain . . . concrete furniture [at its White Flint facility] such that it was safe to use and . . . failing to warn of the hazard in using said furniture."

Plaintiff seeks \$500,000 in damages from the government. The district court entered summary judgment for the government, but plaintiff is pursuing an appeal.

We are working with the United States Attorney's office in this case.

CONTACT: Joseph Rutberg  
415-1578

Ma v. Jackson, No. 96-3850-PJM (D. Md., filed December 10, 1996)

Two NRC employees bypassed for promotion filed this lawsuit seeking damages and injunctive relief for alleged age and race discrimination. We are working with the United States Attorney's office on the case and expect eventually to file a motion for summary judgment.

CONTACT: Marvin Itzkowitz  
415-1566

National Whistleblower Center v. NRC, No. 98-1581 (D.C. Cir., filed Dec. 11, 1998)

This lawsuit challenges a decision by an Atomic Safety and Licensing Board (LBP-98-26) to dismiss a petition to intervene in the Calvert Cliffs license renewal proceeding. The Board ruled that petitioner had failed to file timely contentions. Petitioner originally appealed the Board's decision to the Commission. Rather than await the Commission's decision on the appeal, however, petitioner filed this lawsuit challenging the Board decision. Petitioner apparently takes the view that the Commission's failure to act on the appeal within 30 days rendered the Board's decision final agency action.

The Commission recently decided petitioner's appeal and affirmed the Board's decision (CLI-98-25). The Commission decision included a footnote (note 1) pointing out that petitioner's lawsuit was premature and rested on a misunderstanding of Commission rules. We likely will file a motion in the court of appeals to dismiss petitioner's premature suit. Petitioner has filed a fresh suit, No. 99-1002, challenging the final Commission decision.

CONTACT: Marjorie S. Nordlinger  
415-1616

Thermal Science, Inc. v. NRC, No. 4:96-CV-2282 CAS (E.D. Mo., decided June 23, 1998)

This lawsuit, filed in late 1996, seeks an injunction against NRC pursuit of a proposed \$900,000 civil penalty against Thermal Science, Inc. (TSI). The proposed civil penalty results from a series of allegedly misleading statements made by TSI about the effectiveness of its fire retardant product, Thermo-Lag. TSI claims that the proposed civil penalty unlawfully subjects it to double jeopardy (TSI had previously been acquitted of charges that it had misled the NRC about Thermo-Lag) and that it lies outside the NRC statutory authority.

Shortly after the lawsuit was filed, the district judge (Shaw, J.) stayed all proceedings indefinitely pending the outcome of a then-pending Supreme Court case on double jeopardy (Hudson v. United States). After Hudson was decided in the government's favor, the district

court revived the case, considered the parties' briefs and heard oral argument. Both sides also filed post-argument proposed findings of fact and conclusions of law.

On June 23, 1998, the court denied all injunctive relief and dismissed the lawsuit in its entirety. The court reasoned, as we had argued, that the agency had yet to take any "final" action and that TSI was required to exhaust its agency remedies before going to court. The court required TSI to file its response to the proposed civil penalty with the NRC (Office of Enforcement) within fourteen days (or by July 7).

TSI sought a stay of NRC proceedings pending appeal, but both the district court and the court of appeals (Eighth Circuit) denied stay motions. TSI continues to pursue an appeal in the Eighth Circuit, where the case is fully briefed and is awaiting oral argument.

CONTACT: Charles E. Mullins  
415-1618

United International Investigative Services, Inc. v. United States, No. 98-729 C (U.S. Court of Federal Claims, filed Sept. 18, 1998)

This lawsuit challenged the NRC's termination of a contract for security guard services at the NRC's Rockville facilities. The lawsuit argued that the NRC terminated plaintiff's contract in July for failure to possess a Maryland license, but failed to provide plaintiff a ten-day period to "cure" the default, as the contract allegedly required. The lawsuit also maintained that plaintiff was under no obligation to obtain or maintain a state license.

Working with Department of Justice lawyers, we reached a settlement agreement with plaintiff last November. The agreement altered the basis for termination of the security guard contract from a "termination for default" to a "termination for convenience." Under the terms of the settlement, the lawsuit could be revived on limited issues if the parties fail to reach agreement on the "termination for convenience" costs. Periodic status reports are being filed with the court.

Contact: Grace H. Kim  
415-3605

Unte Cheh v. Jackson, No. AW-98:3610 (D. Md., filed Oct. 22, 1998)

Plaintiff, an NRC employee, claims various forms of unlawful discrimination and filed this suit under Title VII of the Civil Rights Act of 1964 and under the Americans with Disabilities Act. We are working with the United States Attorney's office in defending the case.

CONTACT: Marvin L. Itzkowitz  
415-1566

CLOSED CASES



American College of Nuclear Physicians v. NRC, No. 94-1787 (D.C. Cir., dismissed April 1, 1998)

This lawsuit, brought by two physicians groups, challenged the “Radiopharmaceutical Rule” issued by the Commission some years ago. Petitioners never articulated their precise grievance with the rule, but asked that the case be held in abeyance pending issuance of regulatory guidance. The court of appeals subsequently issued an order holding the case in abeyance, and requiring the parties to file periodic status reports. Ultimately, petitioners decided to withdraw their lawsuit, and the court of appeals granted their motion on April 1, 1998.

CONTACT: John F. Cordes  
415-1600

American Public Power Ass’n v. NRC, No. 98-1219 (D.C. Cir., decided Aug. 31, 1998)

In a one-page order, the court of appeals (Wald, Silberman & Henderson, JJ.) dismissed a petition for review filed by a trade association of municipal power companies and by other petitioners. Petitioners had challenged the lawfulness of a 1997 NRC policy statement on economic deregulation insofar as the policy statement suggested that there may be circumstances in which the NRC would hold co-owners of nuclear power reactors jointly and severally liable for operating and decommissioning costs. We filed a motion to dismiss the lawsuit as unripe. We pointed out that the policy statement did not state a binding NRC legal interpretation and has never been applied to an actual case.

The court of appeals granted our motion and dismissed the case because the “agency action at issue is not ripe for judicial review at this time.” The court stated that its dismissal was “without prejudice to any right petitioners may have to challenge the agency action at issue in an appropriate circumstance.”

CONTACT: Peter G. Crane  
415-1622

Citizens Awareness Network v. NRC, No. 97-4368 (2d Cir., petition dismissed Feb. 17, 1998)

Late in 1997, petitioners filed this lawsuit seeking to set aside the NRC’s 1996 decommissioning rule insofar as it did not guarantee an opportunity for a pre-decommissioning hearing. Petitioners also asked the court to prevent decommissioning activity at the shut-down Haddam Neck nuclear power reactor pending an agency hearing. The lawsuit followed upon a similar petition filed with the Commission. In response to that petition, the General Counsel sent petitioners a letter informing them of the NRC’s established process for altering agency rules and holding their petition in abeyance pending a further indication whether petitioners intended to seek a rule change.

We immediately filed a motion to dismiss the suit on the grounds that the NRC letter holding the administrative petition in abeyance was not reviewable agency action and that it was too late now to challenge the NRC’s 1996 decommissioning rule. Our motion pointed out that petitioners could obtain a reviewable order if they asked the NRC to modify or rescind its 1996 rule and were turned down. Petitioners subsequently indicated that they would file a petition for rulemaking in lieu of their lawsuit (but they have not). They therefore stipulated to dismissal of

the lawsuit, and the court of appeals duly dismissed the case on February 17, 1998.

CONTACT: Peter G. Crane  
415-1622

City of Benton v. NRC, No. 95-1402 (D.C. Cir., decided (Feb. 27, 1998)

This long-running lawsuit challenged (on antitrust grounds) two NRC license amendments issued in 1995: one to transfer control of the River Bend nuclear power reactor from Gulf States Utilities to Entergy Corporation, and one to transfer operating responsibility of River Bend to Entergy Operations, Inc. Originally, Cajun Electric Power Cooperative joined a group known as Arkansas Cities and Cooperative (ACC) as petitioners, but Cajun ultimately dropped out of the suit as a result of a settlement agreement in bankruptcy proceedings.

The parties initially filed full briefs in the case in 1994. On the eve of oral argument, however, the court of appeals decided to hold the case in abeyance to await the outcome of the then-pending Cajun bankruptcy proceeding. In the summer of 1997, after Cajun withdrew its petition for review, the court reinstated the case to its active docket. The parties then filed fresh briefs. On February 27, 1998, the court (Williams, Sentelle & Henderson, JJ.) dismissed the case in its entirety for lack of jurisdiction.

The court held, as we had argued in our brief, that ACC's petition for review was fatally defective for failure to challenge a final agency order. ACC's petition had designated for review the NRC staff's interlocutory finding of no significant antitrust changes rather than the Commission's ultimate order actually granting the license amendments. The court stated that "[i]n a licensing proceeding, it is the order granting or denying the license that ordinarily is the final order," and concluded that "[w]hatever order ACC intended to ask the court to review, it named the wrong order in its petition."

CONTACT: Grace H. Kim  
415-3605

Del Core v. Jackson, No. 3:98CV1011 (RNC) (D. Conn., decided Nov. 6, 1998)

This lawsuit sought access to Millstone-related documents under the Freedom of Information Act and money damages for the Commission's allegedly wrongful and unconstitutional denial of access to information. Working with the United States Attorney's office, we filed a motion for summary judgment seeking dismissal of the suit in its entirety. After oral argument, the district court (Chatigny, J.) ruled from the bench that plaintiff was entitled to no relief. The court entered a one-page order dismissing the suit.

CONTACT: Catherine M. Holzle  
415-1560

Ibrahim v. Jackson, No. 97-1269 (4th Cir., decided March 5, 1998)

This lawsuit claimed gender and age discrimination in the NRC's selection of an applicant for a senior staff scientist position. The district court granted summary judgment to the NRC last year on the ground that the NRC had offered sufficient reasons for its selection decision and that those reasons were not a "mere pretext for discrimination.". Plaintiff appealed to the court

of appeals, which in an unpublished opinion (Russell, Widener & Wilkins, JJ.) concluded that plaintiff had "failed to produce evidence creating a jury issue."

CONTACT: Marvin Itzkowitz  
415-1566

General Atomics v. NRC, No. 95-70710 & 95-70842 (9th Cir., dismissed Feb. 17, 1998)

These petitions for review, filed by General Atomics in the Ninth Circuit and by Sequoyah Fuels Corporation in the Tenth Circuit, challenged a rule that the Commission issued in July, 1995, to clarify decommissioning funding obligations of nonreactor licensees. Petitioners, the subject of an NRC enforcement action arising out of a contaminated site in Gore, Oklahoma, apparently intended to argue that the Commission's 1995 rule unlawfully imposed "new financial assurance requirements" retroactively.

On our motion, the two cases were consolidated in the Ninth Circuit. The court of appeals held the consolidated cases in abeyance for several years because of the pendency at the NRC of administrative enforcement proceedings. In 1997, the Commission issued a final order approving a settlement of those proceedings. Petitioners then decided to withdraw their lawsuit. The court of appeals entered an order dismissing the case on February 17, 1998.

CONTACT: John F. Cordes  
415-1600

Jones v. Jackson, No. 97-C-3087 (N.D. Ill., filed April 29, 1997)

This complaint was filed by an NRC employee for alleged violations of the Age Discrimination in Employment Act and the Rehabilitation Act in a promotion decision. The district court has dismissed the case on the government's motion for summary judgment.

CONTACT: Marvin Itzkowitz  
415-1566

Nejfelt v. Jackson, Nos. 96C-3081 & 96C-629 (N.D. Ill., filed May 23 and September 22, 1996)

These two lawsuits by an NRC employee allege agency violations of the Americans with Disabilities Act and the Rehabilitation Act in conditions of employment. We are working with the United States Attorney's office in defending both suits. The district court granted summary judgment to the government.

CONTACT: Marvin Itzkowitz  
415-1566

Texas Instruments, Inc. v. United States, CV12812WGY (D. Mass., filed Dec. 23, 1997)

Plaintiff brought this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to obtain reimbursement of cleanup expenses incurred at its property in Attleboro, Massachusetts. The suit was filed in December, 1997, but we did not receive notice of it until February 11, 1998. Plaintiff claims, among other things, that they incurred \$27 million for cleanup activities at its Attleboro site "in accordance with NRC

approved plans.” Plaintiff also claims that the old AEC and the federal government in general induced private sector business enterprises to engage in research and manufacturing activities, under contracts and otherwise, related to military and civilian uses of radioactive material.” In the summer of 1998, the parties settled the case on terms that imposed no liability on the NRC.

We worked with Department of Energy and Department of Justice attorneys in defending this suit.

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415-1629