

September 13, 1999

SECY-99-228

FOR: The Commission
FROM: John F. Cordes, Jr. /s/
Solicitor
SUBJECT: LITIGATION REPORT - 1999 - 5

Grand Canyon Trust v. NRC, No. 99-70922 (9th Cir., filed July 22, 1999)

This lawsuit challenges the NRC's handling of a radioactive tailings pile near the Colorado River at the Atlas site in Moab, Utah. The petitioners are a coalition of individuals and organizations who seek removal of the tailings pile. The petition for review challenges an NRC decision under 10 C.F.R. § 2.206 refusing to grant immediate relief and the NRC's issuance of a license amendment approving a reclamation plan for the Atlas site. Petitioners apparently intend to argue that these NRC decisions violated the Endangered Species Act.

Many of the same petitioners are seeking Endangered Species Act relief before the NRC's hearing tribunal, the Atomic Safety and Licensing Board Panel, and before a federal district court in Utah. Those proceedings remain pending. The court of appeals has set the case for briefing later this autumn.

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Envirocare of Utah, Inc. v. NRC, No. 99-1294 (D.C. Cir., filed July 29, 1999)

This lawsuit challenges the NRC's handling of a petition filed by Envirocare under 10 C.F.R. § 2.206. The petition claimed, among other things, that the NRC failed to satisfy the National Environmental Policy Act (NEPA) both when it issued generic guidance on uranium mill feed material and when it granted license amendments to International Uranium (USA) allowing it to process and dispose of certain low-level waste. The NRC staff responded to the petition with a letter maintaining that Envirocare's NEPA claims were not cognizable under section 2.206 and that, in any event, the NEPA claims lacked merit.

This case may well implicate "competitor's standing" issues similar or identical to those now awaiting decision by the court of appeals in Envirocare of Utah, Inc. v. NRC, Nos. 98-1426 and 98-1592 (D.C. Cir., argued on September 8, 1999). The court of appeals has not yet set a briefing schedule for Envirocare's latest suit.

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