

December 29, 1998

SECY-98-301

For: The Commission

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

Subject: LITIGATION REPORT - 1998 - 6

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.

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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. We likely will seek consolidation of the two cases in the court of appeals.

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