

**June 22, 1998**

**SECY-98-143**

**For:** The Commission

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

**Subject:** LITIGATION REPORT - 1998 - 2

American Public Power Association v. NRC, No. 98-1219 (D.C. Cir., filed April 21, 1998)

Petitioners in this lawsuit attack the NRC's Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, 62 Fed. Reg. 44071 (1997), insofar as it suggested that the NRC in some future circumstances might impose joint and several liability for nuclear plant costs on minority owners. We recently filed a motion to the lawsuit as "unripe." We are awaiting the court of appeals decision.

Contact: Peter G. Crane  
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Del Core v. Jackson, No. 3:98cv1011 (RNC) (D. Conn., filed June 1, 1998)

Plaintiff, a former employee at the Millstone nuclear power reactor and now "involved in the gathering and dissemination ... of information concerning the operations of Millstone Station," complains of the denial of access to NRC records. Plaintiff expresses particular interest in agency records of meetings between Commissioners and a Millstone consultant. Plaintiff invokes 42 U.S.C. § 1983 -- which establishes a cause of action for certain acts taken "under color of state law" -- rather than the usual remedy for denial of access to agency records, the Freedom of Information Act (FOIA). He simultaneously is pursuing an administrative FOIA appeal within the NRC.

Although plaintiff has not formally served his complaint on the NRC or on the Department of Justice (he has 120 days to do so), we are consulting with the United States Attorney's office on the advisability of filing a prompt motion to dismiss the complaint for failure to state a valid claim for relief. We are drafting the necessary papers.

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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.

We are working with Department of Justice lawyers in defending this suit.

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International Committee on Microwave Weapons v. United States, No. 08-0939 (GK) (D.D.C., filed on or about April 15, 1998)

This lawsuit charges, in part, that several federal government agencies, including the NRC, have failed unlawfully to promulgate regulations implementing the so-called "Common Rule," which governs some forms of research involving human subjects. Plaintiffs claim that the various agencies' failure to promulgate the Common Rule violates a 1997 Presidential memorandum issued to all agencies.

We are working with the United States Attorney's office in defending this lawsuit. We have provided that office a letter that, among other things, explains that the Presidential directive on

the Common Rule covers only agency-sponsored classified research involving humans. Our letter points out that the NRC is involved in no such research.

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John F. Cordes  
Solicitor

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