

January 22, 1996

SECY-96-013

For: The Commissioners

From: John F. Cordes, Acting Director /s/
Office of Commission Appellate Adjudication

Subject: ANNUAL REPORT ON COMMISSION ADJUDICATION

Purpose:

To provide the Commission a perspective on the adjudicatory caseload and the Commission's role in adjudication from January through December 1995.

Introduction:

As part of OCAA's monitoring role over adjudicatory matters, I am providing the Commission this report on agency adjudications for calendar year 1995. This report updates information contained in the last report (SECY-95-196, July 26, 1995) and is based on the information compiled in the attached charts. The first three charts cover various aspects of the Commission's adjudicatory work during 1995. Chart 1 presents information regarding the seventeen substantive decisions (CLIs) issued by the Commission during this period, Chart 2 identifies the thirteen final decisions of the Atomic Safety and Licensing Board ("ASLBP" or "Board") in 1995, and Chart 3 lists and describes the four new proceedings that have been referred to the ASLBP during that year.

I am also attaching three charts which provide an overview of agency adjudication for the 4½ years following the creation of OCAA in July 1991. Chart 4 provides information about all proceedings which the Commission has referred to the ASLBP during that period, Chart 5 provides a numerical breakdown of those same proceedings, divided into substantive and procedural categories, and Chart 6 provides a breakdown of Commission decisions issued after June 1991, divided into substantive and jurisdictional categories.

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Discussion:

A. General Observations and Trends

Over the past 4½ years (July 1991 through December 1995), the Commission has referred 62 new proceedings to the ASLBP. As measured by the number of final decisions issued by the Board (17, 8, 14, and 13 in 1992, 1993, 1994, and 1995, respectively), the Board's workload over the last two years has risen slightly. However, as measured by the number of significant Commission decisions, the Commission's adjudicatory workload has declined somewhat over the last two years -- 22, 26, 16, and 17 in 1992, 1993, 1994, and 1995, respectively.

In addition, the number of new adjudicatory proceedings has declined significantly during 1995 compared to the number in the previous three calendar years. Only 4 new proceedings were referred to the Licensing Board in 1995 as compared to the 18, 11, 20 new proceedings referred in 1992, 1993 and 1994, respectively. It is hard to pinpoint any particular reason for this decline in new proceedings. The decline may reflect merely a fluctuation in caseload or may represent a new trend.

The caseload continues to shift away from reactor licensing matters and toward enforcement. Enforcement proceedings account for 28 of the 62 proceedings referred the ASLBP since July 1991. The next largest portion of the caseload is composed of materials licensing proceedings, although the number is much smaller (16 cases). Consistent with this shift, three-quarters of proceedings (44 cases) are (or were) subject to formal adjudicatory procedures in Subpart G to 10 C.F.R. Part 2, in part because enforcement proceedings are currently subject to the formal rules. The 16 materials licensing proceedings are (or were) subject to the informal hearing procedures in 10 C.F.R. Part 2, Subpart L, and the two program fraud adjudications were governed by Part 13 of the Commission's regulations.

Of the 62 proceedings referred to the ASLBP since July 1, 1991, 49 have been concluded. Twenty-five were terminated after settlement, 7 after voluntary withdrawal of the hearing request, 6 after involuntary dismissal, and 3 after denial of a request for hearing. The remaining 8 closed cases were decided on the merits. Thirteen of the cases referred to the Board after July 1, 1991 and one case referred prior to that date remain pending¹ -- 3 before the Commission, 10 before the Board, and 1 with portions before both the Commission and the Board.

¹ This does not include the thirteen cases currently held in abeyance, *i.e.*, the nine radon proceedings, the two WPPSS cases, Big Rock Point, and Hydro Resources.

During the 4½-year period from July 1991 through December 1995, the Commission has taken significant action in 76 instances on various motions, petitions, appeals, or other requests for relief, and took sua sponte action in 11 instances. Thirteen of the 87 Commission decisions involved appeals or petitions for review of the ultimate merits of a proceeding.

B. Adjudication in 1995

1. Commission Actions

As shown in Chart 1, the Commission in the last year issued seventeen substantive decisions. Six of these decisions responded to appeals or petitions for review of Licensing Board orders. University of Missouri, CLI-95-01, Sequoyah Fuels Corp., CLI-95-02; Dr. James Bauer, CLI-95-03; Babcock & Wilcox, CLI-95-04; Kenneth Pierce, CLI-95-06; Louisiana Energy Services, CLI-95-07. Five others addressed motions for reconsideration of earlier Commission decisions or motions for stays. Georgia Power, CLI-95-05, -09; University of Missouri, CLI-95-08, -11, -17. In addition, the Commission issued two decisions pursuant to its original jurisdiction, to address a court decision's effect on the decommissioning of the Trojan and Yankee Nuclear Power Stations. Portland General Electric Co., CLI-95-13, and Yankee Atomic Electric Co., CLI-95-14, both responding to the ruling in Citizens Awareness Network v. NRC, 59 F.3d 284 (1st Cir. 1995).

Two more decisions involved discretionary interlocutory appeals -- one regarding a provision of a protective order, Sequoyah Fuels Corp and General Atomics, CLI-95-16, and the other concerning the soundness of a Board ruling compelling the licensee to produce its attorney's notes on communications with one of the licensee's employees, Georgia Power Co., CLI-95-15. Another decision addressed interlocutory appeals filed by staff and the licensee "as of right" regarding the admissibility of a contention and the granting of standing. Georgia Institute of Technology, CLI-95-12. Last, in Georgia Institute of Technology, CLI-95-10, the Commission exercised its sua sponte authority to issue a decision lifting a housekeeping stay on discovery and taking certain other procedural steps to advance the proceeding.

Of these seventeen decisions, only University of Missouri (CLI-95-01) involved Commission review of the ultimate merits of a proceeding. In that lengthy and complex decision, the Commission essentially affirmed the Presiding Officer's grant of a license for possession and use of material by the University in its TRUMP-S experiments. In addition, the parties in that proceeding filed an unprecedented three rounds of reconsideration petitions. All Commission decisions other than those in University of Missouri either denied petitions for review or

resolved interlocutory matters.

Four cases were under active Commission review at the end of 1995. The first, Kerr-McGee Chemical Corp., involves a long-standing dispute between Kerr-McGee, the City of Chicago and the State of Illinois regarding Kerr-McGee's license amendment application to dispose of uranium mill tailings by on-site burial at the licensee's West Chicago Rare Earths facility. Kerr-McGee no longer intends to pursue those disposal plans and consequently all parties now agree that the case is moot. The only remaining issue is whether the Commission should vacate a 1991 Appeal Board decision (ALAB-944) on the disposal issue.

In Cleveland Electric Illuminating Co. (LBP-95-17), the Licensing Board ruled that the approval process under 10 C.F.R. Part 50 Appendix H, § II.B.3 for changes to a licensee's reactor vessel surveillance capsule withdrawal schedule violates the notice and hearing provisions of Section 189a of the Atomic Energy Act. The NRC staff and the licensee have sought review of LBP-95-17, arguing that Appendix H does not require prior NRC approval of any change to a withdrawal schedule. In addition, the licensee claims that this decision has far-reaching consequences and may result in numerous approvals required under NRC regulations being treated as license amendments.

The Commission also has before it petitions for review of the Board's approval of a settlement agreement between the NRC staff and the Sequoyah Fuels Corporation (SFC). Sequoyah Fuels Corp. and General Atomics, LBP-95-18. The proceeding stems from a staff enforcement order holding SFC and its parent, General Atomics, jointly and severally liable for decontamination and decommissioning of the SFC facility near Gore, Oklahoma. The petitioners object to the settlement's provisions exempting SFC from certain funding requirements. The staff and SFC argue that the settlement is a favorable arrangement because SFC has agreed to commit all of its present and future assets and revenues to clean up of the SFC facility.

Finally, Georgia Institute of Technology was, at the end of 1995, technically still pending before the Commission. However, the Board has issued a memorandum and order denying the petition to intervene; the petitioners have chosen not to seek Commission review of that order; and the period for Commission sua sponte review expired on January 2, 1996, without Commission action.

2. ASLBP Actions

The ASLBP issued thirteen final orders in 1995. Only three of these orders -- Babcock & Wilcox, Kenneth Pierce, Cleveland

Electric Illuminating Co. -- were decisions on the merits.² In Kenneth Pierce, the Board conducted an evidentiary hearing pursuant to Subpart G and found that the staff had failed to substantiate the charges alleged in its enforcement order. As a result, the Board lifted all sanctions imposed against Mr. Pierce by the staff's order. The Commission later denied the staff's petition for review of the Board's order. Babcock & Wilcox was a Subpart L proceeding in which the Presiding Officer authorized renewal of a license to use nuclear materials at a repair and maintenance facility in Parks Township, Pennsylvania. The Commission denied the intervenors' petition for review of the Presiding Officer's final order. In Cleveland Electric Illuminating Co., the licensee sought approval for a license amendment to remove from the Perry Nuclear Power Plant's technical specifications the schedule for the withdrawal of reactor vessel material surveillance specimens. The Board approved the amendment and the intervenors have sought Commission review. As noted in the preceding section, review is pending.

All four of the new proceedings which the Commission referred to the Licensing Board during the last year (listed on Chart 3) are ongoing. Advanced Medical Systems is subject to the informal hearing procedures in Subpart L. This proceeding involves renewal of the license for possession of material at the licensee's London Road facility in Cleveland, Ohio. The other two proceedings are enforcement actions involving orders imposing civil penalties. Oncology Services Corp. and Radiation Oncology Center at Marlton. These cases are subject to the formal hearing procedures in Subpart G. Although the enforcement proceedings are separate actions involving separate licenses, they may be tangentially interrelated because of an asserted overlap in ownership. Finally, Northeast Nuclear Energy Co. is a reactor license amendment proceeding subject to the Commission's Subpart G procedures. This case concerns a proposed amendment that would permit the licensee routinely to offload its entire core fuel load into the spent fuel pool during refueling outages.

In addition to the pending cases identified on Chart 3, the other active proceedings currently before the ASLBP are:

Georgia Power Co. (Vogtle) (transfer of ownership)
Gulf States Utilities Co. (River Bend) (transfer/merger)
Louisiana Energy Services (uranium enrichment facility)
Sequoyah Fuels Corp. & General Atomics (decomm'n funding)
Sequoyah Fuels Corp. & General Atomics (organiz'l change)
Georgia Institute of Technology (license renewal)

² The other decisions addressed only threshold or procedural issues, or approved settlements or withdrawals.

Energy Fuels Nuclear (materials license amendment)³

If the Commissioners would like additional information concerning this memorandum or the accompanying charts, I would be pleased to provide it. The next report will be provided in July 1996 and will cover the first half of calendar year 1996.

Enclosures: Charts 1-6

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³ This does not include cases held in abeyance, i.e., the nine radon proceedings, the two WPPSS cases, Big Rock Point, and Hydro Resources. Nor does it include Yankee Atomic Electric Co. which the Commission referred to the Board on January 16, 1996.

| COMMISSION ADJUDICATORY DECISIONS, JANUARY - DECEMBER 1995 | | | | | |
|--|--|--|------------------------------|---|---|
| Decision Number/Date | Case Name | Type of Proceeding | Decision Being Challenged | Relief Sought | Commission Action |
| 1. CLI-95-01 41 NRC 71 (2/28/95) | Curators of the University of Missouri | Materials License Amendment Application | LBP-91-31, 34 NRC 29 | Intervenors sought reversal of final Initial Decision granting license. Licensee sought removal of conditions imposed. | Commission denied Intervenors' Appeal; granted in part licensee's appeal; modified and added additional conditions. |
| 2. CLI-95-02 41 NRC 179 (3/9/95) | Sequoyah Fuels Corp. | License Renewal - Materials | LBP-93-25, 38 NRC 304 (1993) | Intervenors petitioned for reversal of Board decision permitting Sequoyah Fuels to withdraw its license renewal application. | Board order affirmed. |
| 3. CLI-95-03 41 NRC 245 (4/5/95) | Dr. James Bauer | Enforcement - Prohibiting Involvement in NRC-licensed activities | LBP-94-40, 40 NRC 323 (1994) | Dr. Bauer sought reversal of the Licensing Board's denial of his request to eliminate certain bases upon which staff relied on its enforcement order. | Commission denied interlocutory review. |
| 4. CLI-95-04 41 NRC 248 (4/28/95) | Babcock & Wilcox | License Renewal - Special Nuclear Material | LBP-95-1, 41 NRC 1 (1995) | Intervenors petitioned for review of Presiding Officer's Initial decision authorizing license renewal. | Commission denied petition for review. |
| 5. CLI-95-05 41 NRC 321 (5/11/95) | Georgia Power Co. | Transfer of Operating Authority | CLI-93-15, 38 NRC 1 (1993) | Georgia Power requested clarification of CLI-93-15 as to whether it prevented staff from issuing the amendments to transfer operating authority. | Commission clarified that nothing in CLI-93-15 prevented staff from issuing the amendments. |

| Decision Number/ Date | Case Name | Type of Proceeding | Decision Being Challenged | Relief Sought | Commission Action |
|---|--|---|----------------------------------|---|---|
| 6. CLI-95-06 41 NRC 381 (6/1/95) | Kenneth Pierce | Enforcement - Prohibiting Involvement of Individual | LBP-95-04, 41 NRC 203 (1995) | Staff petitioned for review of the Licensing Board's decision in favor of Mr. Pierce and that lifted all sanctions originally imposed by Staff's enforcement order. | Commission denied staff's petition for review. |
| 7. CLI-95-07 41 NRC 383 (6/8/95) | Louisiana Energy Services | Uranium Enrichment Facility Application | Memorandum & Order (3/2/95) | Intervenor petitioned for interlocutory review of Licensing Board denial of waiver of certain regulations pertaining to land disposal of waste. | Commission denied Intervenor's petition for interlocutory review. |
| 8. CLI-95-08 41 NRC 386 (6/22/95) | Curators of the University of Missouri | Materials License Amendment Application | CLI-95-1, 41 NRC 71 (2/28/95) | Intervenors and licensee petitioned for reconsideration. | Commission denied Intervenors' petition; granted licensee's petition to modify conditions on license. |
| 9. CLI-95-09 41 NRC 404 (6/22/95) | Georgia Power Co. | Reactor License Amendment to Transfer Operating Authority | -- | Licensee moved to stay a parallel investigation being conducted by the Office of Investigations | Commission denied motion for stay. |
| 10. CLI-95-10 42 NRC 1 (7/26/95) | Georgia Institute of Technology | License Renewal -- Research Reactor | LBP-95-6, 41 NRC 281 (1995) | N/A | Commission lifted its temporary housekeeping stay of discovery, remanded security contention to Board, and vacated portions of Board's order regarding security contention. |
| 11. CLI-95-11 42 NRC 47 (8/22/95) | Curators of the University of Missouri | Materials License Amendment Application | CLI-95-8, 41 NRC 386 (1995) | Licensee requested reconsideration of condition imposed in prior Commission order (CLI-95-8) | Commission denied reconsideration and imposed an additional condition <u>sua sponte</u> . |

| Decision Number/ Date | Case Name | Type of Proceeding | Decision Being Challenged | Relief Sought | Commission Action |
|---|--|---|--|---|--|
| 12. CLI-95-12 42 NRC 111 (10/12/95) | Georgia Institute of Technology | License Renewal - Research Reactor | LBP-95-6, 41 NRC 281 (1995) | Georgia Tech and NRC staff appealed Licensing Board's decision granting intervention and admitting two contentions | Commission denied appeals and affirmed Board order. |
| 13. CLI-95-13 42 NRC 125 (10/12/95) | Portland General Electric Co. | Decommissioning of power plant | N/A | Petitioners sought cessation of all decommissioning activities at power plant | Commission, with one exception, precluded utility from conducting any further "major dismantling" of power plant. |
| 14. CLI-95-14 42 NRC 130 (10/12/95) | Yankee Atomic Electric Co. | Decommissioning of power plant | N/A | Petitioners sought cessation of all decommissioning activities at power plant | Commission precluded utility from conducting any further major dismantling or decommissioning activities until final approval of its decommissioning plan after a hearing. |
| 15. CLI-95-15 42 NRC __ (11/21/95) | Georgia Power Co. | Reactor License Amendment to Transfer Operating Authority | Board's oral ruling (9/6/95) compelling production of utility attorney's notes | Utility moved to vacate the Board's ruling | Commission vacated the Board's ruling. |
| 16. CLI-95-16 42 NRC __ (12/14/95) | Sequoyah Fuels Corp./General Atomics | Enforcement Action regarding joint and several liability | LBP-95-05, 41 NRC 253 (1995) | Staff petitioned for the Commission to vacate a portion of the Licensing Board's protective order | Commission reversed, in part, LBP-95-05 and ordered the Board to revise a portion of the protective order. |
| 17. CLI-95-17 42 NRC __ (12/14/95) | Curators of the University of Missouri | Materials License Amendment Application | CLI-95-11, 42 NRC 47 (1995) | Intervenors requested reconsideration of certain safety issues; challenged Chairman's authority to issue CLI-95-11. | Commission denied reconsideration. |

CHART 2

| FINAL LICENSING BOARD DECISIONS,⁴ JANUARY - DECEMBER 1995 | | | | | | |
|---|--------------------------------|--------------------------|--|---|---------------------------------------|--|
| Decision Number/ Date | Case | Referred to Board | Type of Proceeding | Nature of Decision | Appeal Taken | Commission Action |
| 1. LBP-95-01, 41 NRC 1 (1/3/95) | Babcock & Wilcox | 1/7/94 | Special Nuclear Material License (Subpart L) | Initial Decision Resolving Hearing in Favor of License Renewal | Intervenor's petitioned for review | CLI-95-4 (4/26/95) review denied |
| 2. LBP-95-03 41 NRC 195 (3/13/95) | Advanced Medical Systems | 1/20/95 | Renewal - Material License (Subpart L) | Order Ruling on Petitions for Intervention; 3 granted, 1 denied | No | |
| 3. LBP-95-04 41 NRC 203 (3/27/95) | Kenneth G. Pierce | 5/25/94 | Enforcement Action (Subpart G) | Initial Decision exonerated all charges against Pierce | Staff petitioned for review | CLI-95-06 (6/1/95) review denied |
| 4. LBP-95-08 41 NRC 409 (6/1/95) | Innovative Weaponry, Inc. | 10/21/94 | Byproduct Material License (Subpart L) | Terminating Proceeding | No | No <u>sua sponte</u> review (7/3/95) |
| 5. LBP-95-11 41 NRC 475 (6/23/95) | Daniel J. McCool | 11/28/94 | Enforcement Action (Subpart G) | Dismissing Proceeding | No | No <u>sua sponte</u> review (8/2/95) |
| 6. LBP-95-16 42 NRC 99 (9/19/95) | Hartsell D. Phillips, Jr. | 4/12/94 | Enforcement Action (Subpart G) | Terminating Proceeding | No | No <u>sua sponte</u> review (10/30/95) |

⁴Includes all decision or orders deciding the merits of a case, terminating a proceeding, or denying party status to a person.

| Decision Number/ Date | Case | Referred to Board | Type of Proceeding | Nature of Decision | Appeal Taken | Commission Action |
|---|---|--------------------------|--|---|--|--|
| 7. LBP-95-17 42 NRC 137 (10/4/95) | Cleveland Electric Illuminating Co. | 8/27/91 | Part 50 License Amendment (Subpart G) | Terminating Proceeding | Yes | Review pending |
| 8. LBP-95-18 42 NRC 150 (10/26/95) | Sequoyah Fuels Corp./General Atomics | 11/18/93 | Enforcement Action (Subpart G) | Approval of Settlement with Sequoyah Fuels | Intervenors and State of Oklahoma seek Commission review | |
| 9. LBP-95-19 42 NRC __ (10/31/95) (modified 11/1/95) | Georgia Institute of Technology | 11/16/94 | License Renewal - Research Reactor (Subpart G) | Partial Initial Decision rejecting as moot the intervenors' security contention (which had been remanded to Board in CLI-95-10) | No | No <u>sua sponte</u> review (12/11/95) |
| 10. LBP-95-20 42 NRC __ (11/3/95) | Energy Fuels Nuclear Inc. | 5/25/94 | Source Materials License Amendment (Subpart L) | Terminating Proceeding | No | No <u>sua sponte</u> review (12/13/95) |
| 11. LBP-95-21 42 NRC __ (11/13/95) | Dr. James E. Bauer | 6/3/94 | Enforcement Action (Subpart G) | Approving Settlement and Terminating Proceeding | No | No <u>sua sponte</u> review (12/26/95) |
| 12. LBP-95-22 42 NRC __ (11/16/95) | Western Industrial X-Ray Inspection Co. Inc. & Larry D. Wicks | 7/12/94 | Enforcement Actions (Subpart G) | Approving Settlement and Terminating Proceeding | No | No <u>sua sponte</u> review (12/26/95) |

| Decision Number/ Date | Case | Referred to Board | Type of Proceeding | Nature of Decision | Appeal Taken | Commission Action |
|--|---------------------------------------|-------------------|--|----------------------------------|--------------|---|
| 13. LBP-95-23 42 NRC __ (11/22/95) | Georgia Institute of Technology | 11/22/95 | Amendment to Facility Operating License (Conversion of Fuel) | Denying Petition to Intervene | No | No <u>sua sponte</u> review (1/2/96) |

CHART 3

| NEW PROCEEDINGS REFERRED TO THE LICENSING BOARD PANEL, JANUARY - DECEMBER 1995 | | | | |
|--|---|---|--|-------------------|
| Date of Referral | Case Name | Type of Proceeding | Status | Commission Action |
| 1/20/95 | Advanced Medical Systems | Renewal - Materials License - Subpart L | Three petitioners were permitted to intervene. Staff has submitted the hearing file. | |
| 5/25/95 | Radiation Oncology Center at Marlton | Enforcement Order (Materials) - Civil Penalty - Subpart G | Parties filed a joint brief outlining central issues for litigation in August 1995. Staff filed a motion for partial summary disposition 12/22/95. This motion will have to be resolved prior to commencement of discovery or a hearing. | |
| 5/25/95 | Oncology Services Corporation | Enforcement Order (Materials) - Civil Penalty - Subpart G | Parties are engaged in discovery which is scheduled for completion in August 1996. Under this schedule, a hearing is likely to be held in September or October 1996. | |
| 10/13/95 | Northeast Nuclear Energy Co. (Millstone) | Reactor License Amendment - Subpart G | Petitions to intervene are pending | |

PROCEEDINGS DECIDED AND REFERRED TO THE ATOMIC SAFETY & LICENSING BOARD PANEL

| PERIOD | FINAL ASLBP DECISIONS | NEW PROCEEDINGS REFERRED TO THE ASLBP | SUBSTANTIVE TYPES OF NEW PROCEEDINGS | | | | | PROCEDURAL RULES GOVERNING NEW PROCEEDINGS | | |
|------------------|-----------------------|---------------------------------------|--------------------------------------|-------------------|---------------------|-----------------|---------------|--|-----------|---------|
| | | | ENFORCEMENT | REACTOR LICENSING | MATERIALS LICENSING | DECOMMISSIONING | PROGRAM FRAUD | SUBPART G | SUBPART L | PART 13 |
| JULY - DEC. 1991 | 6 | 6 | 4 | 2 | 0 | 0 | 0 | 6 | 0 | 0 |
| JAN. - JUNE 1992 | 11 | 11 | 4 | 2 | 1 | 4 | 0 | 11 ⁵ | 0 | 0 |
| JULY - DEC. 1992 | 6 | 7 | 2 | 3 | 1 | 1 | 0 | 5 | 2 | 0 |
| JAN. - JUNE 1993 | 2 | 5 | 2 | 2 | 0 | 0 | 1 | 4 | 0 | 1 |
| JULY - DEC. 1993 | 6 | 6 | 4 | 1 | 0 | 1 | 0 | 6 | 0 | 0 |
| JAN. - JUNE 1994 | 5 | 12 | 7 | 0 | 3 | 1 | 1 | 7 | 4 | 1 |
| JULY - DEC. 1994 | 9 | 8 | 4 | 1 | 3 | 0 | 0 | 5 | 3 | 0 |
| JAN. - JUNE 1995 | 5 | 3 | 2 | 0 | 1 | 0 | 0 | 2 | 1 | 0 |
| JULY - DEC. 1995 | 8 | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 |

KEY:

- **Enforcement** proceedings include those initiated by orders imposing a civil penalty or orders to modify, suspend, or revoke a license, or orders to individuals.
- **Reactor licensing** proceedings concern applications for a construction permit or operating license, amendments to permits or operating licenses, and applications to transfer a license.
- **Materials licensing** proceedings involve applications to grant an initial license, amend or renew a license for the possession and use of radioactive material in various applications regulated by the NRC.
- **Decommissioning** proceedings involve review and approval of decommissioning plans or related amendments for reactor or materials facilities.
- **Program Fraud** proceedings involve NRC claims made under the Program Fraud Civil Remedies Act.
- Proceedings under **Subpart G** and **Part 13** are conducted according to formal, trial-type procedures; **Subpart L** proceedings are conducted under informal procedures and usually involve materials licensing.

⁵ Including a Subpart L case which was consolidated into a Subpart G proceeding.

CHART 6

COMMISSION DECISIONS ON ADJUDICATORY MATTERS

| PERIOD | REQUESTS FOR RELIEF or SUA SPONTE MATTERS DECIDED | BASIS FOR COMMISSION JURISDICTION | | | | | SUBSTANTIVE TYPES OF CASES | | | | |
|-----------------|---|--|--|-------------------------------------|-----------------------|-------------------|----------------------------|-----------------|-------------------|-----------------|-------|
| | | APPEAL/PETITION FOR REVIEW ON THE MERITS | INTERLOCUTORY APPEAL, AS OF RIGHT (§ 2.714a) | INTERLOCUTORY APPEAL, DISCRETIONARY | ORIGINAL JURISDICTION | SUA SPONTE ACTION | ENFORCEMENT | REACTOR LICENSE | MATERIALS LICENSE | DECOMMISSIONING | OTHER |
| JULY -DEC. '91 | 6 | 0 | 2 | 0 | 2 | 2 | 0 | 5 | 0 | 1 | 0 |
| JAN. -JUNE '92 | 15 | 2 | 5 | 1 | 5 | 2 | 2 | 5 | 1 | 7 | 0 |
| JULY - DEC. '92 | 7 | 1 | 1 | 1 | 3 | 1 | 1 | 2 | 3 | 1 | 0 |
| JAN. - JUNE '93 | 14 | 1 | 3 | 1 | 8 | 1 | 2 | 6 | 2 | 4 | 0 |
| JULY - DEC. '93 | 12 | 2 | 2 | 2 | 3 | 3 | 4 | 7 | 0 | 0 | 1 |
| JAN. - JUNE '94 | 9 | 2 | 0 | 2 | 5 | 0 | 2 | 2 | 1 | 2 | 2 |
| JULY - DEC. '94 | 7 | 0 | 4 | 1 | 1 | 1 | 4 | 2 | 0 | 1 | 0 |
| JAN. - JUNE '95 | 9 | 3 | 0 | 3 | 3 | 0 | 2 | 2 | 3 | 1 | 1 |
| JULY - DEC. '95 | 8 | 2 | 1 | 2 | 2 | 1 | 1 | 5 | 2 | 0 | 0 |

KEY:

- **Original jurisdiction** is exercised by the Commission over, e.g., export licensing matters, motions to quash investigatory subpoenas, reconsideration and some stay motions, requests for hearing in some circumstances, and on motions to reopen closed proceedings.
- Commission **sua sponte action** is taken to provide additional guidance to the staff or the ASLBP on matters of policy or procedure in the exercise of the Commission's inherent supervisory authority over adjudications and other agency business.
- **Enforcement** proceedings include those initiated by orders imposing a civil penalty or orders to modify, suspend, or revoke a license, or orders to individuals; decisions on motions to quash investigatory subpoenas are also included.
- **Reactor licensing** proceedings concern applications for a construction permit or operating license, amendments to permits or operating licenses, and applications to transfer a license.
- **Materials licensing** proceedings involve applications to grant an initial license, amend or renew a license for the possession and use of radioactive material in various applications regulated by the NRC.
- **Decommissioning** proceedings involve review and approval of decommissioning plans or related amendments for reactor or materials facilities.
- **Other matters** include requests for hearing or other relief in export licensing (Part 110) matters or involving regulated activities not subject to an existing proceeding.

NRC PROCEEDINGS REFERRED TO THE ATOMIC SAFETY & LICENSING BOARD PANEL, JULY 1991 - DECEMBER 1995

CHART 4

| Proceeding Name (Docket Number) | Type of Proceeding | Date Referred to ASLBP | Final ASLBP Decision | Comment | Commission & Judicial Review |
|--|--|---------------------------|------------------------------------|---|---|
| Advanced Medical Systems, Inc. (License Renewal) | Part 30 materials license renewal | 1/20/95 | | | |
| Arizona Public Service Co. (Palo Verde) (50-529/530 OLA-3) | Part 50 amendment (removal of automatic closure interlock for shutdown cooling valves) | 12/3/91 | LBP-92-03, 35 NRC 107 (3/4/92) | Dismissal upon withdrawal of intervention petition | No review (4/13/92) |
| Babcock & Wilcox (Apollo site) (70-135 DCOM) | Materials license decommissioning | 8/6/92 | LBP-93-04, 37 NRC 72 (2/5/93) | Intervention denied | No review, CLI-93-09, 37 NRC 190 (3/30/93) terminated proceeding |
| Babcock & Wilcox (Parks Township, PA) (70-364 ML-REN) | Materials license renewal | 1/7/94 | LBP-95-1, 41 NRC 1 (1/3/95) | Initial Decision authorizing license renewal | Petition for Review filed 1/23/95. Review denied CLI-95-4 (4/26/95) |
| Dr. James E. Bauer (IA-94-11) | Enforcement order prohibiting involvement in NRC licensed activities | 6/3/94 | LBP-95-21, 42 NRC __ (11/13/95) | Settlement approved, proceeding terminated | No review (12/26/95) |
| Boston Edison Co. (Pilgrim) (50M-293 OLA) | Part 50 amendment (spent fuel pool) | 6/2/93 | LBP-93-19, 38 NRC 128 (9/13/93) | Dismissal on withdrawal of request for hearing | No review (10/25/93) |
| Cameo Diagnostic Center, Inc. (30-29567 CivP) | Civil penalty (materials) | 12/23/93 | LBP-94-34, 40 NRC 169 (11/1/94) | Granted staff's motion for summary disposition and terminated proceeding | No review (2/21/95) |
| Chemetron Corp. (40- 08724) | Decommissioning order (materials - SDMP listed site) | 4/30/92 | LBP-92-11, 35 NRC 193 (5/12/92) | Settlement approved | No review (6/22/92); Commission issued directive to staff on future publication of enforcement orders. |
| Chemetron Corp. (40- 08724) | Materials amendment (remediation plan & onsite disposal) (Subpart L) | 5/25/94 | LBP-94-30, 40 NRC 135 (9/1/94) | Dismissal following failure to supplement petition | No review (10/11/94) |
| Patrick K.C. Chun, M.D. (30-31570 EA) | Enforcement Order (materials) | 1/9/92 | LBP-92-12, 35 NRC 195 (5/26/92) | Settlement approved | No review (7/6/92) |

| Proceeding Name (Docket Number) | Type of Proceeding | Date Referred to ASLBP | Final ASLBP Decision | Comment | Commission & Judicial Review |
|--|--|---------------------------|-------------------------------------|---|--|
| Cleveland Elec. Illum. Co. (Perry) (50-440 OLA-3) | Part 50 amendment (removal of specimen withdrawal schedule from tech specs) | 8/27/91 | LBP-95-17, 42 NRC 137 (10/4/95) | Granted Intervenor's Motion for Summary Disposition and terminated proceeding | Review pending |
| Curators of the University of Missouri | Materials License Amendment Application | 5/23/90 | LBP-91-31, 34 NRC 29 | Presiding Officer granted application, subject to conditions | Commission modified Presiding Officer's order. CLI-95-1, 41 NRC 71 (2/28/95), CLI-95-8, 41 NRC 386 (6/22/95), CLI-95- 11, 42 NRC 47 (8/22/95), CLI-95-17, 42 NRC ____ (12/14/95). |
| Robert C. Dailey (IA-94- 003) | Enforcement order barring involvement in licensed activities | 5/4/94 | LBP-94-25 40 NRC 88 (8/18/94) | Consolidated with Nuclear Support Services proceeding. Settlement approved and proceeding terminated | No review (9/27/94) |
| Energy Fuels Nuclear (formerly Umetco Minerals Co.) 40-8681-MLA-3 | Materials License amendment (receipt & dispose DOE Monticello project material) (Subpart L) | 5/25/94 | LBP-95-20, 42 NRC __ (11/3/95) | Proceeding Terminated due to withdrawal of amendment application | No review (12/13/95) |
| Georgia Institute of Technology Research Reactor (50-160-Ren) | Facility License Renewal | 11/16/94 | | | Commission remands security contention to Board. CLI-95-10, 42 NRC 1 (7/26/95). Commission affirms standing, management contention. CLI-95-12, 42 NRC 111 (10/12/95). |
| Georgia Institute of Technology Research Reactor (50-160-OM) (R-97) | Amendment to Facility Operating License (Conversion of Fuel) | 07/17/95 | LBP-95-23, 42 NRC __ (11/22/95) | Board denied petition to intervene | No review (1/2/96) |

| Proceeding Name (Docket Number) | Type of Proceeding | Date Referred to ASLBP | Final ASLBP Decision | Comment | Commission & Judicial Review |
|--|--|--|------------------------------------|---|--|
| Georgia Power Co. (Vogtle) (50-424/425 OLA-3) | Part 50 transfer of operating authority | 11/5/92 | | | CLI-93-16, 38 NRC 25 (8/19/93) affirms LBP-93- 05, 37 NRC 96 (2/18/93), on grant of intervention. CLI- 95-05, 41 NRC 321 (5/11/95) (clarifying that earlier Commission order on related 2.206 petition) & CLI-95-09, 41 NRC 404 (6/22/95). CLI-95-15, 42 NRC __ (11/21/95), vacating Board ruling on discovery of attorney work-product. |
| Geo-Tech, Inc. (30-20693 EA) | Revocation order (materials - failure to pay license fee) | CLI-92-14, 36 NRC 221 (10/21/92) | LBP-93-04, 37 NRC 72 (2/5/93) | Dismissal on licensee's default in pursuing hearing request | No review (3/15/93) |
| Gulf States Utilities (River Bend) (50-458 OLA) | Part 50 amendment (change in operating authority and in ownership of Gulf States) | 8/27/93 | | | On appeal, CLI-94-10, 40 NRC 43 (8/23/94) affirms LBP-94-3, 39 NRC 31 (1/27/94), on grant of intervention |
| Hinds, Kelli J. (Ball Memorial Hospital, Muncie, IN)(IA-94-12) | Order Prohibiting Involvement in Licensed Activities (59 FR 28433, 6/1/94) | 6/10/94 | LBP-94-32, 40 NRC 147 (10/3/94) | Settlement Approved and Proceeding Dismissed | No review (11/14/94) |
| Hydro Resources, Inc. (40-8968-ML) | Part 40 License Application - uranium mining | 12/16/94 | | | |
| Indiana Regional Cancer Center (30-30485 EA) | Enforcement order (suspension/modification of materials license to remove Dr. Bauer from licensed activities) | 12/13/93 | LBP-94-36, 40 NRC 283 (11/4/94) | Settlement Approved and Proceeding Dismissed | No review (12/14/94) |
| Indiana University (30-09792 CivP) | Civil penalty (materials) | 3/3/94 | LBP-94-28 40 NRC 117 (8/29/94) | Settlement approved and proceeding terminated | No review (10/11/94) |
| Innovative Weaponry (30-30266 EA) | Enforcement order (materials) barring distribution of gunsights | 7/9/93 | LBP-94-01, 39 NRC 9 (1/11/94) | Dismissal on withdrawal of licensee's request for hearing | No review (2/22/94) |

| Proceeding Name (Docket Number) | Type of Proceeding | Date Referred to ASLBP | Final ASLBP Decision | Comment | Commission & Judicial Review |
|---|--|--|--|---|---|
| Innovative Weaponry, Inc. (30-30266-ML-Ren) | Byproduct Material License Renewal | 10/21/94 | LBP-95-8, 41 NRC 409 (6/11/95) | Staff rescinded denial of license renewal upon transfer of the license, proceeding terminated as moot | No review (7/3/95) |
| Kerr-McGee Chemical Corp. (40-2061-ML) | Order Modifying License (onsite burial of mill tailings) | | LBP-89-35, 30 NRC 677 (1989); ALAB- 944 (1991) | | Kerr McGee Motion to Terminate Proceeding and Vacate Underlying Decisions (12/9/93). Commission review period extended indefinitely (12/10/93). Order seeking report on status of proceeding and parties' position on whether to vacate ALAB (10/11/95). Pleadings filed; Commission review pending. |
| Lafayette Clinic (Dr. Sitaram) (30-13204 OM) | Enforcement Order (materials) | 12/4/91 | LBP-92-13, 35 NRC 199 (5/27/92) | Settlement approved | No review (7/6/92) |
| Long Island Lighting Co. (Shoreham) (50-322 OLA- 3) | Part 50 license transfer | 2/26/92 (see CLI-92-04, 35 NRC 47) | LBP-92-14, 35 NRC 207 (6/17/92) | Voluntary dismissal of intervention petitions after settlement | No review (7/27/92) |
| Long Island Lighting Co. (Shoreham) (50-322 DCOM) | Part 50 decommissioning | 4/6/92 | LBP-92-15, 35 NRC 209 (6/17/92) | Voluntary dismissal and settlement approved | No review (7/27/92) |
| Louisiana Energy Services ⁶ (70-3070-ML) | Part 70 License Application for Uranium Enrichment Facility | Notice of Hearing (5/15/91) | | Hearing on Safety Contentions held 7/94. Hearing on Environmental issues held 3/95 | CLI-95-7, 41 NRC 383 (6/8/95) denying interlocutory review of Board denial of waiver of certain regulations pertaining to land disposal of waste |
| B. K. Lunde | Program Fraud Civil Remedies | 6/13/94 | (Board lacks statutory authority to approve settlements) | Settlement approved by OGC | No Commission <u>sua sponte</u> review is permitted by statute |

⁶ This proceeding was referred to the Board prior to July 1, 1991, and is included only because case is still pending.

| Proceeding Name (Docket Number) | Type of Proceeding | Date Referred to ASLBP | Final ASLBP Decision | Comment | Commission & Judicial Review |
|---|---|------------------------|---------------------------------|--|---|
| Daniel J. McCool (IA-94-017) | Order Prohibiting Involvement in NRC-licensed activities (9/9/94) | 11/19/94 | LBP-95-11, 41 NRC 475 (6/23/95) | Filing schedule suspended until April 3, 1995 at McCool's request. McCool never made another appearance. Proceeding terminated | No review (8/2/95) |
| Midwest Inspection Service, Ltd. (30-10749 CivP) | Civil Penalty (materials) | 7/1/91 | LBP-92-09, 35 NRC 189 (5/6/92) | Settlement approved | No review (6/15/92) |
| Midwest Inspection Service, Ltd. (30-10749 OM) | Enforcement Order (Materials) | 10/4/91 | LBP-92-09, 35 NRC 189 (5/6/92) | Settlement approved (consolidated w/ civil penalty case) | No review (6/15/92) |
| Northeast Nuclear Energy Co. (Millstone 2) (50-336 OLA) | Part 50 amendment (spent fuel pool) | 6/18/92 | LBP-93-12, 38 NRC 5 (7/9/93) | Granted licensee motion for summary disposition of sole contention | No review (9/17/93) |
| Nuclear Support Services, Inc. (EA 93-236) (IA-94003) | Enforcement order (security contractor, remove individual from service & review personnel files) | 5/4/94 | LBP-94-25, 40 NRC 88 (8/18/94) | Consolidated w/ Dailey proceeding. Settlement approved and proceeding terminated | No review (9/27/94) |
| Oncology Services Corp. (30-31765 EA) | Enforcement order suspending materials license | 2/5/93 | LBP-94-29, 40 NRC 123 (1994) | Commission review of stay of discovery, CLI-93-17, 38 NRC 44 (8/19/93). Settlement Approved Proceeding Terminated | No review (10/11/94) |
| Oncology Services Corp. (30-31765-CivP) | Enforcement Order (Materials)- Civil Penalty - Stems from same incident that gave rise to suspension order proceeding | 5/25/95 | | | |
| Randall C. Orem, D.O. (30-31758 EA) | Revocation order (materials) | 1/3/92 | LBP-92-18, 36 NRC 93 (8/6/92) | Settlement approved | Comm. takes review <u>sua sponte</u> in CLI-92-15, 36 NRC 251 (11/2/92); settlement permitted to take effect after review, CLI-93-14, 37 NRC 423 (6/4/93) |

| Proceeding Name (Docket Number) | Type of Proceeding | Date Referred to ASLBP | Final ASLBP Decision | Comment | Commission & Judicial Review |
|--|---|---------------------------|-------------------------------------|---|---|
| Pacific Gas & Electric Co. (Diablo Canyon 1 & 2) (50-275/323 OLA-2) | Part 50 amendment - extend operating licenses | 9/1/92 | LBP-94-35, 40 NRC 180 (11/4/94) | Initial Decision affirming issuance of license amendment | No review (2/13/95) |
| Hartsell D. Phillips (Employee at Logan Gen Hosp, W VA) (IA-94-001) | Enforcement order prohibiting involvement in licensed activity | 4/12/94 | LBP-95-16, 42 NRC 99 (9/19/95) | Settlement approved; proceeding terminated | No review (10/30/95) |
| Kenneth G. Pierce (Operator's License/Dresden) (EA-55-30662)(IA 94-007) | Order prohibiting involvement in NRC licensed activities | 5/25/94 | LBP-95-04, 41 NRC 203 (3/27/95) | Licensing Board found in favor of Operator and lifted sanctions | CLI-95-6, 41 NRC 381 (6/1/95) Staff Petition for Review denied |
| Piping Specialists, Inc. (30-29626 OM) | Suspension order (Materials) | 11/13/91 | LBP-92-25, 36 NRC 156 (9/8/92) | Order superseded by subsequent revocation order; sustained after hearing | Petition for review denied, CLI-92-16, 36 NRC 351 (12/1/92) |
| Piping Specialists, Inc. (30-29626 OM-2) | Revocation order (materials) | 4/29/92 | LBP-92-25, 36 NRC 156 (9/8/92) | Consolidated w/ preceding case; revocation sustained | Petition for review declined, CLI-92-16, 36 NRC 351 (12/1/92) |
| Radiation Oncology Center at Marlton (30-32493-CivP) | Enforcement Order (Materials)- Civil Penalty - Related to Oncology Services Corp. | 5/25/95 | | | |
| Jose A. Ruiz-Carlo (Alonzo & Carus Iron Works) (30-20541 OM) | Enforcement order (materials) | 1/15/92 | LBP-92-05, 35 NRC 128 (3/24/92) | Settlement approved | No review (5/4/92) |
| Sacramento Municipal Utility District (Rancho Seco) (50-312 DCOM) | Part 50 Decommissioning | 5/8/92 | LBP-94-23, 40 NRC 81 (8/11/94) | CLI-93-3, 37 NRC 135 (3/3/93), grants discretionary hearing, rev'd & remanded LBP- 92-23, 36 NRC 120 (8/20/92). LBP-94-23, 40 NRC 81 (8/11/94) granting ECO's motion for withdrawal and terminating proceeding | CLI-94-14, 40 NRC 133 (9/2/94) Commission order lifting restriction on staff's ability to issue decommissioning order |
| Safety Light Corp. (30-05980 ML) | Materials License denial (Subpart G) | 3/17/92 | LBP-94-41, 40 NRC 340 (12/28/94) | Approving Settlement terminating Proceeding | No review (2/17/95) |

| Proceeding Name (Docket Number) | Type of Proceeding | Date Referred to ASLBP | Final ASLBP Decision | Comment | Commission & Judicial Review |
|--|---|---------------------------|-------------------------------------|--|---|
| Safety Light Corp., et al. (30-05980 ML-2) | Decommissioning order (Materials SDMP listed site - contingent on sustaining license denial) | 3/17/92 | LBP-94-41, 40 NRC 340 (12/28/94) | Approving Settlement terminating Proceeding | No review (2/17/95) |
| Safety Light Corp. (30-05980 EA) | Enforcement order prohibiting transfer of assets | 2/25/93 | LBP-94-41, 40 NRC 340 (12/28/94) | Approving Settlement terminating Proceeding | No review (2/17/95) |
| St. Joseph's Radiology Associates & Dr. Joseph L. Fisher (30-00320 EA; 999- 90003 EA) | Enforcement order (transfer byproduct material to authorized recipient) | 11/9/92 | LBP-93-14, 38 NRC 18 (7/20/93) | Dismissal on licensee's default | No review (8/30/93) |
| Sequoyah Fuels Corp. (40-08027-MLA) | Materials License Renewal | 10/25/90 | LBP-93-25, 38 NRC 304 (12/15/93) | Granted Licensee's request to withdraw renewal application and terminated proceeding | Petition for review denied, CLI-95-2, 41 NRC 179 (3/9/95) |
| Sequoyah Fuels Corp. (40-0827-MLA-3) | Source Materials License Amendment (Organizational changes) | 8/23/94 | | Intervention petition granted 10/14/94 | |
| Sequoyah Fuels Corp. & General Atomics (40-8027 EA) | Decommissioning funding Order | 11/18/93 | | LBP-94-5, 39 NRC 54 (2/24/94); LBP-94-8, 39 NRC 116 (3/22/94); LBP-94-19, 40 NRC 9 (7/7/94) intervention petitions granted. LBP- 95-18, 42 NRC 150 (10/26/95) approved settlement between SFC & NRC staff | CLI-94-12, 40 NRC 64 (8/23/94) affirmed LBP-94-5 and LBP-94-8. CLI-94-13, 40 NRC 78 (8/23/94), affirmed LBP-94-19. In CLI-95-16, 42 NRC ____ (12/14/95), the Commission reversed and vacated, in part, LBP-95-18. |
| Texas Utilities Electric Co. (Comanche Peak 2) (50-446 CPA) | Part 50 construction permit extension | 8/6/92 8/14/92 | LBP-92-37, 36 NRC 370 (12/15/92) | Intervention petitions denied | Appeals dismissed as moot, CLI-93-10, 37 NRC 192 (3/30/93), review sought and later withdrawn, D.C. Cir. No. 93-1263 (2/24/94) |
| Twin Falls Clinic & Hospital (30-32240 CivP) | Civil Penalty (materials) | 8/26/93 | LBP-93-24, 38 NRC 299 (12/8/93) | Settlement approved | No review (1/18/94) |

| Proceeding Name (Docket Number) | Type of Proceeding | Date Referred to ASLBP | Final ASLBP Decision | Comment | Commission & Judicial Review |
|--|---|---------------------------|--|--|--|
| Umetco Minerals Corp. (40-08681 MLA) | Materials License (Subpart L) | 7/17/92 | LBP-93-07, 37 NRC 267 (4/12/93) | Initial decision affirming issuance of license amendment | No review (11/5/93) |
| Umetco Minerals Corp. (40-08681 MLA-2) | Materials License amendment (Subpart L) | 1/31/94 | LBP-94-07, 39 NRC 112 (3/4/94) | Request for hearing denied as untimely | No review (4/28/94) |
| Umetco Minerals Corp. (40-08681 MLA-3) | Materials License amendment(receive & dispose DOE Monticello project material) (Subpart L) | 5/25/94 | LBP-94-18, 39 NRC 369 (6/30/94) | Denial of intervention/ hearing request; proceeding remains pending on remaining petition. Licensing Bd approves substitution of parties--new party Energy Fuels Nuclear (8/11/94) | No review (8/9/94) |
| Vermont Yankee Nuclear Power Corp. (Vermont Yankee) (50-271 OLA-5) | Part 50 amendment (diesel generators) | 3/2/93 | LBP-93-16, 30 NRC 23 (7/28/93) | Memorandum finding staff's earlier approval of withdrawal of application terminated proceeding | <u>Sua sponte</u> review, CLI-93- 20, 38 NRC 83 (9/16/93), clarified that Board, not staff, had jurisdiction to terminate proceeding |
| Western Industrial X-ray Inspection Company, Inc. (94-131-EA) | Enforcement Order (Byproduct Material) | 7/12/94 | LBP-95-22, 42 NRC __ (11/16/95) | Board approved settlement and terminated proceeding | No review (12/26/95) |
| Larry D. Wicks (IA-94-024) | Enforcement Order Prohibiting Involvement in NRC Licensed Activities | 11/2/94 | LBP-95-22, 42 NRC __ (11/16/95) | Related to Western Industrial X-Ray Inspection Co. Board approved settlement and terminated proceeding | No review (12/26/95) |
| Lloyd P. Zerr (93-01 PF) | Program Fraud Civil Remedies Act (former NRC employee) | 1/6/93 | ALJ-94-1, 39 NRC 131 (3/9/94), recon. denied, ALJ-94-2 (5/4/94) | Charges sustained after hearing | No Commission <u>sua sponte</u> review permitted by statute; no appeal to court |