

MAY 21, 1996

For: The Commission
 From: John F. Cordes, Jr. /s/ Solicitor
 Subject: LITIGATION REPORT - 1996 - 4

Citizens Awareness Network v. NRC, No. 96-1302 (1st Cir., stay denied May 7, 1996)

Petitioners in this lawsuit seek a judicial halt to ongoing activities at the shut-down Yankee Rowe reactor in Massachusetts. Pursuant to a court of appeals decision last summer in a case known as CAN v. NRC, the Commission has prohibited further "major dismantling" pending final NRC approval of the reactor's decommissioning plan, after a hearing opportunity. In March the Licensing Board dismissed petitioners' request for a hearing for lack of a litigable contention, and an appeal currently is pending before the Commission.

In the meantime the licensee has undertaken a number of "minor" decommissioning activities, over the protest of petitioners, who filed a series of complaints with the Commission. Treating petitioners' complaints as requests for relief under [10 C.F.R. § 2.206](#), the Director of NRR issued two decisions finding the minor activities permissible under NRC decommissioning rules. On sua sponte review the Commission issued a decision (CLI-96-06) upholding the Director's view, but stressing that it would not permit any further actions threatening "to eviscerate the SAFSTOR option."

Petitioners filed this lawsuit attacking the two Director's Decisions as violative of CAN v. NRC. Petitioners sought an emergency stay. We opposed the stay, arguing that: (1) the court lacked jurisdiction because petitioners had failed to await final Commission review of the Director's Decisions; (2) petitioners' suit amounted to an impermissible attack on agency enforcement discretion; (3) the § 2.206 decisions reasonably construed NRC decommissioning rules to allow some "minor" activities; and (4) petitioners had not satisfied the traditional equitable standards for an emergency stay.

The court of appeals (Boudin, Campbell & Stahl, JJ.), after first issuing a show-cause order suggesting that it might dismiss the suit on finality grounds, ultimately issued a 3-line order denying the motion for an emergency stay. The court commented simply that it was "[a]ssuming but not deciding that [it] has jurisdiction."

The case now will proceed to briefing and argument later this summer.

CONTACT: Charles E. Mullins
 415-1618

People of the State of Illinois v. NRC, No. 96-1125 (D.C. Cir., filed April 22, 1996)

This lawsuit, brought by the State of Illinois and the City of West Chicago, challenges a Commission decision (CLI-96-02) that terminated an adjudicatory proceeding as moot and vacated underlying Licensing Board and Appeal Board decisions. Petitioners apparently intend to argue that after finding mootness, the Commission ought to have left the underlying decisions intact.

This case likely will be briefed and argued this fall.

CONTACT: Grace H. Kim
 415-3605

Bauman v. State of Ohio, No. 95-CV-242 (Court of Common Pleas, Guernsey County, Ohio, filed April 29, 1996)

A pro se plaintiff in Ohio concerned with the contaminated Shieldalloy facility has amended a complaint against the State of Ohio to include claims against the NRC. Plaintiff seeks an injunction against issuance of an NRC Environmental Impact Statement (EIS) on the Shieldalloy site.

We are working with the United States Attorney's office in Ohio in defending this lawsuit. We have drafted papers, for filing by the U.S. Attorney, arguing that the NRC cannot be sued in state court on regulatory matters, such as issuance of an EIS.

CONTACT: Susan G. Fonner
 415-1629

John F. Cordes
 Solicitor

Attachment: As stated

ATTACHMENT 1

[Citizens Awareness Network v. NRC](#), No. 96-1302 (1st Cir., stay denied May 7, 1996)

ATTACHMENT 2

[People of the State of Illinois v. NRC](#), No. 96-1125 (D.C. Cir., filed April 22, 1996)

ATTACHMENT 3

