

JUNE 21, 1996

For: The Commission
 From: John F. Cordes, Jr. /s/
 Solicitor
 Subject: LITIGATION REPORT - 1996 - 5

Citizens Awareness Network v. NRC, No. 96-1302 (1st Cir., appeal dismissed, June 3, 1996)

This petition for review challenged two Director's Decisions issued under [10 C.F.R. § 2.206](#). Those decisions (which the Commission ultimately affirmed) declined to take enforcement action against the Yankee Atomic Electric Company (YAEC) for undertaking certain minor decommissioning activities at its shut-down Yankee Rowe reactor in advance of final NRC approval of YAEC's decommissioning plan. The validity of that plan currently is being contested in an NRC adjudicatory proceeding.

In early May, after reviewing extensive pleadings filed by petitioners, as well as by YAEC and the NRC, the court of appeals denied petitioners' motion for an emergency stay halting all YAEC activities. Several weeks later petitioners decided to withdraw their lawsuit, apparently because their failure to obtain a stay made it unlikely that the court of appeals would issue a final merits decision before YAEC completed its minor activities.

CONTACT: Charles E. Mullins
 415-1618

Construction Products Research, Inc. v. United States, No. 95-2007 (U.S. Supreme Court, petition for certiorari filed June 13, 1996)

The government brought this lawsuit to enforce an NRC subpoena. As reported in Litigation Report 1996-1, [SECY-96-041](#), both the federal district court in Connecticut and the United States Court of Appeals for the Second Circuit have found the subpoena valid and enforceable. Petitioners nonetheless continue to contest the subpoena and now have brought their grievance to the Supreme Court.

The petition for a writ of certiorari contends in essence that, to enforce the NRC subpoena, the courts must first resolve the question whether the NRC has ultimate enforcement jurisdiction to penalize or sanction non-licensee nuclear "suppliers." The NRC has contended, successfully so far, that this question need not be answered until and unless the NRC actually institutes an enforcement action.

We will work with Civil Division and Solicitor General attorneys at the Department of Justice in opposing petitioners' request for Supreme Court review. The Court is likely to act on the petition when it returns from its summer recess in October.

CONTACT: Charles E. Mullins
 415-1618

John F. Cordes
 Solicitor

DISTRIBUTION:
 Commissioners
 OGC
 OCAA
 OIG
 OPA
 OCA
 ASLBP
 EDO
 SECY

[ATTACHMENT 1](#)

Citizens Awareness Network v. NRC

[ATTACHMENT 2](#)

Construction Products Research, Inc. v. United States