

**ADJUDICATORY ISSUE**  
(Information)

June 3, 2002

SECY-02-0099

FOR: The Commission

FROM: John F. Cordes, Jr. */R/*  
Solicitor

SUBJECT: LITIGATION REPORT - 2002 - 01

State of Nevada v. NRC, No. 02-1116 (D.C. Cir., filed April 11, 2002)

The State of Nevada (joined by Clark County, Nevada, and the City of Las Vegas) filed this petition for judicial review. It challenges 10 C.F.R. Part 63, a rule the NRC issued last November that established criteria and requirements for licensing the proposed Yucca Mountain repository for high-level radioactive waste. Petitioners apparently intend to argue that Part 63 violates the Nuclear Waste Policy Act in various respects.

Joined by the Justice Department (representing the United States), we recently filed a motion to dismiss the lawsuit as untimely. Petitioners filed suit more than five months after the NRC's issuance of Part 63. Our position is that petitioners' suit falls under the Hobbs Act, which has a 60-day deadline for petitions for review. Petitioners invoke the Nuclear Waste Policy Act, which has a 180-day judicial review period. Our motion argues, however, that the NRC issued Part 63 under the Atomic Energy Act, not the Nuclear Waste Policy Act.

The court of appeals likely will act on the motion later this summer.

CONTACT: John F. Cordes  
415-1956  
Steven F. Crockett  
415-1622

Sarrion v. NRC, No. 02 Civ. 2474 (LMM) (S.D.M.Y., filed April 1, 2002)

This lawsuit sought issuance of NRC rule requiring anti-aircraft defenses at the Indian Point power reactors in New York and at other reactor sites nationwide. Plaintiffs alleged that the Department of Defense has available "electronic shield" technology that would "obliterate" aerial threats to nuclear facilities before a "destructive result" took place.

Acting through the United States Attorney's office in New York, we informed plaintiffs' lawyer that federal courts of appeals, not federal district courts, have jurisdiction to review NRC rulemaking action (or inaction). We also informed plaintiffs' lawyer that the NRC has in place a petitioning process that allows citizens to bring their concerns to the NRC's attention without going to court prematurely.

Plaintiffs subsequently withdrew their lawsuit voluntarily.

CONTACT: Grace H. Kim  
415-3605

Center for Biological Diversity v. Abraham, No. 02-0027 (N.D. Cal., filed Jan. 2, 2002)

A group of environmental organizations brought this lawsuit against nearly every government agency, including the NRC. Plaintiffs seek to enforce a requirement in the Energy Policy Act of 1992 that a certain percentage of federal agency vehicles be "alternative fuel vehicles." As a small agency, the NRC has minimal, if any, responsibilities under the Act. We are working with the Department of Justice on the case and are providing the necessary background facts and law applicable to our agency.

CONTACT: Marjorie S. Nordlinger  
415-1616