

ADJUDICATORY ISSUE INFORMATION

March 2, 2004

SECY-04-0034

FOR: The Commission

FROM: John F. Cordes, Jr. /RA/
Solicitor

SUBJECT: LITIGATION REPORT - 2004 - 01

Connecticut Coalition Against Millstone v. NRC, No. 04-0109 (2d Cir., filed Jan. 6, 2004)

This lawsuit challenges a Commission adjudicatory decision (CLI-03-14) that turned down a request for a hearing in a Millstone license amendment proceeding. The amendment arose out of Millstone's effort to revise its technical specifications to take advantage of new "source term" information. The Licensing Board upheld petitioner's standing, but found no admissible contention. On appeal, the Commission affirmed the Licensing Board's decision.

The court of appeals has not yet set a briefing schedule, but the NRC's brief likely will be due in May or June.

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State of Oklahoma v. NRC, No. 04-9503 (10th Cir., filed Jan. 8, 2004)

This lawsuit challenges a Commission adjudicatory decision (CLI-03-15) approving the reclassification of waste at the Sequoyah Fuels Corporation site in Gore, Oklahoma. The Commission viewed the waste as properly classified as 11e(2) byproduct material. Petitioner, the State of Oklahoma, believes otherwise and has filed this suit.

The NRC's brief is due on April 24.

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Citizens Awareness Network v. NRC, No. 04-1145 (1st Cir., filed Jan. 26, 2004)

This lawsuit challenges the NRC's recent changes in its adjudicatory rules (10 C.F.R. Part 2). The petition for review says that the changes violate section 189 of the Atomic Energy Act, and

various other laws, including the Administrative Procedure Act and the Due Process and Equal Protection clauses of the Constitution. The National Whistleblower Center and the Nuclear Energy Institute have moved to intervene in this lawsuit.

There is no briefing schedule yet, but the NRC's brief likely will be due late in the spring.

CONTACT: Steven F. Crockett
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Khoury v. Meserve, No. 03-1865 (4th Cir., Jan. 23, 2004)

This is a Title VII lawsuit claiming gender and national origin discrimination in employment. The district court ruled for the NRC, dismissing some claims and entering summary judgment on others. The United States Court of appeals affirmed in a short (unpublished) opinion.

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In re ATG, Inc., No. 03-4758 (U.S. Bankruptcy Ct., N.D. Cal., filed Nov. 7, 2003)

In this bankruptcy case, the bankruptcy trustee is trying set aside about \$40,000 in user fees paid by a bankrupt company to the NRC. The bankrupt company apparently held an NRC materials license. The theory of the complaint is that transfers of assets on the eve of bankruptcy (within the last 90 days before bankruptcy) are voidable, with the transferred assets to be returned to the trustee.

We are working with the United States Attorney's office in San Francisco in defending this case.

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