

POLICY ISSUE
Information

February 17, 2016

SECY-16-0015

FOR: The Commissioners

FROM: Andrew P. Averbach */RA/*
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SUBJECT: ANNUAL REPORT ON COURT LITIGATION (CALENDAR YEAR 2015)

PURPOSE:

To inform the Commission of the status of litigation in the courts.

DISCUSSION:

Enclosed is a report updating court litigation since the last annual report dated January 30, 2015 (SECY-15-0016). It includes cases filed through the end of 2015 but reflects the status of the Nuclear Regulatory Commission (NRC) cases in court as of February 11, 2016.

During the reporting period (Calendar Year 2015), the Commission or NRC officials were sued 10 times in the courts of appeals, and one time in federal district court.¹ During this same one-year period, three cases were closed.² The number of new filings in 2015—which is largely

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¹ *Beyond Nuclear, Inc. v. NRC*, 15-1173 (D.C. Cir.); *Missouri Coalition for the Environment v. NRC*, 15-1114 (D.C. Cir.); *Blue Ridge Environmental Defense League v. NRC*, 15-1258 (D.C. Cir.); *Blue Ridge Environmental Defense League v. NRC*, 15-1259 (D.C. Cir.); *Blue Ridge Environmental Defense League v. NRC*, 15-1260 (D.C. Cir.); *Nuclear Information and Resource Service v. NRC*, 15-1261 (D.C. Cir.); *Sustainable Energy & Economic Development Coalition v. NRC*, 15-1262 (D.C. Cir.); *Beyond Nuclear, Inc. v. NRC*, No.15-1263 (D.C. Cir.); *Vermont v. NRC*, 15-1279 (D.C. Cir.); *Southern Alliance for Clean Energy v. NRC*, 15-1427 (D.C. Cir.); *Beyond Nuclear, Inc. v. NRC*, 15-1427 (D.C. Cir.); *Thompson v. NRC*, 1:15-01302-RDB (D. Md.).

² *Shieldalloy Metallurgical Corp. v. NRC*, No. 13-1259 (D.C. Cir.); *New Jersey v. NRC*, No. 11-3228 (3rd Cir.); *Budzynski v. Burns*, 12-cv-3174 (D. Md.).

driven by challenges in individual licensing proceedings to the Commission's Continued Storage Rule—is larger than the number of new filings over the last few years, though consistent with most of the years during the most recent 10-year period. There were 6 new lawsuits (including cases filed in federal district court) in 2014; 3 in 2013; 5 in 2012, 11 in 2011, 9 in 2010, 8 in 2009, 13 in 2008, 11 in 2007, 8 in 2006, and 11 in 2005, for an average of 8.5 new lawsuits per year over the prior ten years.

We continue to handle a steady stream of discovery demands in lawsuits brought by or against the United States or in which the United States and/or its agencies have been named as a third-party defendant. The descriptions of cases set forth in the enclosed report include the more significant cases of this type (though they are not included in the count of cases filed against the Commission). Much of this work involves responding to requests for documents related to the activities of the Atomic Energy Commission (AEC) and/or its licensees. This work also includes working with the Department of Justice to review pleadings and implementing litigation holds for materials that may be relevant to ongoing litigation.

During this reporting period we also handled 1 new "Touhy" request for NRC testimony, depositions, or other evidence for use in private litigation. See Title 10 of the *Code of Federal Regulations* § 9.200 *et seq.* Over the last several years, our largest discovery-related endeavor has related to Touhy requests issued by both sides in litigation between Georgia Power Co. and Westinghouse Electric Company Co. in the United States District Court for the Southern District of Georgia (No. 1:12-00167-JRH-JEG). That case was settled during calendar year 2015.

Enclosure:
Litigation Status Report

cc: SECY
ASLBP
CFO
OEDO
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OCAA
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OIG
OPA
REGIONS

LITIGATION STATUS REPORT

(As of Feb. 11, 2015)

ACTIVE CASES¹

Atlantic Richfield Co. v United States and the Pueblo of Laguna, No. 1:15-cv-00056 (D.N.M.)

This is a lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) seeking recovery for cleanup efforts at the Jackpile mine site in New Mexico. All defendants moved to dismiss the case, and the Court stayed discovery while it considered the motions. On February 9, 2016, the Court dismissed the United States as a party, but the case is still proceeding with respect to other parties. The Nuclear Regulatory Commission (NRC) has been asked to locate and retain any relevant documents.

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Brodsky v. NRC, No. 15-1330 (2d Cir.)

This lawsuit challenges fire-protection exemptions that NRC granted to Indian Point. The case was originally brought in the court of appeals (Second Circuit) but that court found that it lacked jurisdiction. Petitioners (now plaintiffs) then re-filed their case in federal district court. The district court ruled for NRC on both grounds raised in the complaint. Plaintiffs appealed and, on January 7, 2013, the court of appeals for the Second Circuit issued a decision that upheld the district court's conclusion concerning the validity of the exemption. However, the court remanded the case back to the district court, with instruction that it remand the case back to the Commission, so that the Commission could either articulate, within 120 days of the issuance of the appellate court's mandate, why public participation was not required prior to the issuance of an environmental assessment and a finding of no significant environmental impact relating to the exemption, or for other appropriate action. The appellate panel "retained jurisdiction for the purpose of ruling, if necessary, on any timely appeal from the district court's final judgment." In response to the court's order, the Commission circulated a draft environmental assessment (EA) and finding of no significant impact (FONSI) related to the exemption. On August 27, 2013, the Commission published in the Federal Register a final EA and FONSI and issued its determination that the exemption should remain in place. On February 15, 2014, Mr. Brodsky filed a brief before the district court, challenging the NRC's actions on remand and, among other things, asserting that the EA supporting the exemption was invalid because it did not address the possible consequences of a terrorist attack. The U.S. Attorney filed its responsive brief on behalf of the NRC on April 11, 2014, and, on February 26, 2015, the court granted the agency's motion for summary judgment. The court ruled that the agency satisfied NEPA's public participation requirements by issuing the draft EA for comment and responding to the comments, and that no additional hearing was required. The court also rejected a number of additional arguments raised by Mr. Brodsky on the ground that they had already been ruled in prior phases of the litigation, including arguments related to the effects of a potential terrorist attack. Mr. Brodsky appealed this decision to the Second Circuit, asserting that the NRC's

¹ For statistical purposes, we counted as "active" any case pending before a court, or still subject to further judicial review, as of January 1, 2016. However, the narratives accompanying the cases listed in this report include any post-January 1 developments.

issuance of the exemption did not comply with NEPA because the agency failed to consider the effects of terrorism when it issued the exemption. Briefing is now complete. The court of appeals previously stated that it would decide any appeal following remand without oral argument; the agency awaits a decision.

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Commonwealth of Pennsylvania. v. Lockheed Martin Corp., No. 09-cv-00821 (M.D. Pa.)
The Commonwealth has filed a CERCLA case against Lockheed Martin over the cleanup of the Quehanna site in central Pennsylvania. Lockheed Martin, in turn, has sued the United States for contribution, alleging that the waste left at the site was due to activities performed pursuant to government contracts, including contracts that involve the activities of the Atomic Energy Commission.

The Department of Justice filed a motion for summary judgment in late 2014 and the district court denied the motion. The parties have now commenced informal settlement negotiations.

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El Paso Natural Gas Company, v. United States, No. 07-cv-905 (D.D.C.)
El Paso Natural Gas filed this lawsuit to compel the United States to clean up two sites associated with the Tuba City Mill: the Tuba City Dump, and the Highway 160 site. NRC is a named defendant in the lawsuit, along with other federal agencies and the United States. All defendants are represented by the Department of Justice.

The suit asserts a number of theories of liability including the Administrative Procedure Act (APA), CERCLA, the Resource Conservation Recovery Act (RCRA), and the Uranium Mill Tailings Radiation Control Act (UMTRCA). The Navajo Nation has intervened as a plaintiff. The district court dismissed the APA and UMTRCA claims against the Department of Energy and issued a partial judgment allowing El Paso to appeal on those issues to the D.C. Circuit. That court affirmed the district court's dismissal order. *El Paso Natural Gas Co. v. United States*, 632 F.3d 12721 (D.C. Cir. 2011). The United States then moved for dismissal of the remaining claims and the district court granted that motion as well.

Both plaintiffs appealed and the D.C. Circuit affirmed the dismissal of most of the claims with two exceptions. *El Paso Natural Gas Co. v. United States*, 750 F.3d 863 (D.C. Cir. 2014). First, the Court of Appeals agreed that one of the plaintiffs' claims should have been dismissed "without prejudice" instead of "with prejudice." Second, the Court re-instated the plaintiffs' RCRA claims relating to groundwater contamination at the Highway 160 site and remanded them to the District Court for further proceedings.

The District Court has held the case in abeyance at the parties' request. The Department of Justice and the Department of Energy, the primary agency defendant in the case, are engaging in settlement discussions with the plaintiffs.

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El Paso Natural Gas Co. v. United States, No. 3:14-cv-08165-DGC (D. Az.)

This is the second lawsuit by the El Paso Natural Gas Co. against the United States. This CERCLA lawsuit seeks the cleanup of waste resulting from mining at 19 mines in New Mexico and Arizona between the late 1940's and the 1960s. The Department of Justice has filed an answer to the initial complaint and has requested NRC's assistance locating potentially relevant documents concerning the mines. The parties have started discovery and the NRC is reviewing documents maintained in its files for potentially relevant materials.

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EPEC Polymers, Inc. v. NL Industries, Inc., No. 3:12-cv-03842 (D.N.J.)

The United States is defending against a third-party complaint alleging that the Army Corps of Engineers is responsible for environmental response costs under CERCLA because it dredged thorium-containing materials from the Raritan River in New Jersey and disposed of them on a site now owned by the plaintiff. The plaintiff alleges that the thorium was discharged from a facility owned by defendant NL Industries, Inc., in Sayreville, New Jersey. NL in turn alleges that the thorium is traceable to the activities of Tenneco Chemicals, Inc., the holder an AEC license, and that the NRC performed a field team investigation and approved the decommissioning of plaintiff's site in the late 1990s or early 2000s. OGC attorneys have coordinated with the Department of Justice in obtaining documents related to the AEC license and the field team investigation.

The United States has completed its document production and is awaiting document production by the original parties. The Plaintiffs have submitted a cost demand and the parties are discussing the possibility of mediation.

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Friends of the Earth v. NRC, No. 14-1213 (D.C. Cir.)

On October 28, 2014, Friends of the Earth filed a petition for review of the Commission's approval of an update to the final safety analysis report (FSAR) for Diablo Canyon, asserting that this update should not have taken place without interested parties being afforded the opportunity for a hearing. On December 10, 2014, the NRC and the United States moved to dismiss the petition, asserting that (1) because of the pendency of the same issue in an adjudication before the Commission (in which Friends of the Earth makes the same argument, relying on the same FSAR update that it identified in the court of appeals), no final order has been issued that is reviewable under the Hobbs Act; and (2) Friends of the Earth had not exhausted its administrative remedies. PG&E, which has intervened in the case, supported the motion; Friends of the Earth opposed it; and NRC filed a reply on January 8, 2015. On February 20, 2015, the court referred the motion to the merits panel. NRC then moved to defer

briefing on the case, noting that, because the same issue was still pending for the agency, its attorneys had no Commission position to defend with respect to the argument raised by Friends of the Earth -- whether there has been a de facto license amendment. NRC requested that briefing be deferred until a final decision has been made with respect to this issue by the Commission. Friends of the Earth also moved to supplement the administrative record so as to include an internal licensee document concerning the decision under review. The NRC opposed, asserting that the document was not before the agency as part of the decision-making process. On April 13, 2015, the court granted NRC's motion to defer briefing pending resolution by the Commission of Friends of the Earth's request for a hearing on the asserted de facto license amendment. On May 21, 2015, the Commission issued an order referring the request in part to the Atomic Safety and Licensing Board Panel. NRC has advised the court of the referral of the hearing request to the Licensing Board, and it filed status reports at 60-day intervals concerning the status of the proceedings. On September 15, 2015, NRC filed a motion to continue to hold the case in abeyance pending resolution of the hearing request by the ASLBP and, if necessary, the Commission, which Friends of the Earth opposed. On December 9, 2015, the court granted the motion to continue to hold the case in abeyance and directed the parties to file motions to govern further proceedings on or before February 26, 2016.

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Friends of the Earth v. NRC, No. 16-1004 (D.C. Cir.) [filed in January 2016]

Friends of the Earth seeks review of a Commission decision (CLI-15-21) that denied its attempt to intervene in an ongoing NRC administrative proceeding related to the renewal of the Diablo Canyon operating licenses. Friends of the Earth argued before the Commission that the operating licenses for Diablo Canyon Units 1 and 2 may not be renewed until the agency explores, in an evidentiary hearing, the impact of the certain seismic information on the safe operation of the plant; the Commission affirmed the dismissal of its contentions and denial of its related waiver request. We await a briefing schedule from the Court.

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Kandel v. United States, No. 06-cv-872 (Fed. Cl.)

This is a class-action suit brought against the United States by federal retirees seeking additional retirement benefits on account of mishandling of annual leave at the time of retirement. Discovery is underway to determine the how much money may be due to the opt-in claimants and the named plaintiffs.

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Natural Resources Defense Council v. NRC, No. 14-1225 (D.C. Cir.)

On October 31, 2013, the Commission denied NRDC's petition to waive 10 C.F.R. § 51.53(c)(3)(ii)(L) in connection with Exelon's application to renew the operating licenses for Limerick Generating Station, Units 1 and 2. That provision exempts Exelon from including in its Environmental Report a site specific severe accident mitigation alternatives (SAMA) analysis because the NRC Staff previously considered SAMAs in the Final Environmental Statement

supporting issuance of the Limerick operating licenses. The Commission determined that NRDC had not shown that the issues it sought to litigate were unique to Limerick and that, as a result, NRDC's SAMA-related contentions impermissibly challenged section 51.53(c)(3)(ii)(L). NRDC filed a petition for review on December 24, 2013 (No. 13-1311). On February 10, 2014, the NRC moved to dismiss the petition, asserting that the order appealed from was not final (because NRDC still had a waste confidence contention pending) and not ripe for review. On May 8, 2014, the court issued an order deferring consideration of the motion to dismiss until the case was briefed on the merits, and directing the clerk to issue a scheduling order for briefing in the case. On November 5, 2014, following the dismissal of NRDC's waste confidence contention (and thus, entry of a final order denying NRDC party status), NRDC filed a second petition (case No. 14-1225), which it moved to consolidate with its original petition. Prior to oral argument on Case No. 13-1311, which was scheduled for November 21, 2014, the court issued an order that dismissed the first case (apparently accepting the NRC's argument that it lacked jurisdiction over the case), removed the argument from the calendar, and directed the clerk to issue a scheduling order so that the newly filed case could proceed through briefing and argument. NRDC argued that it had been improperly denied a hearing opportunity with respect to its assertion that there was new and significant information relating to SAMAs that should have been considered as part of the license renewal. Oral argument was held on September 17, 2015, before Judges Rogers, Brown, and Kavanaugh; the agency awaits a decision from the court.

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Nevada v. NRC, No. 09-1133 (D.C. Cir.)

This petition for review challenges NRC's "Yucca Mountain Rule," 10 C.F.R. Part 63, which implements an EPA rule establishing standards for reviewing the Yucca Mountain repository application. Given the suspension of adjudicatory proceedings before the Commission related to Yucca Mountain and the uncertainty surrounding the Yucca Mountain project (including the lack of new appropriations from Congress from the Nuclear Waste Fund), the case has been held in abeyance, subject to periodic status reports. In these reports, the parties have advised the court of the resumption of the licensing process following the issuance of a writ of mandamus in *In re Aiken County*. The case remains in abeyance.

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New York v. NRC, No. 14-1210 (D.C. Cir.); ***Prairie Island Indian Community v. NRC***, No. 14-1212 (D.C. Cir.); ***Beyond Nuclear, Inc. v. NRC***, No. 14-1216 (D.C. Cir.); ***Natural Resources Defense Council v. NRC***, No. 14-1217 (D.C. Cir.)

These four consolidated petitions for review, brought by a group of environmental organizations, several states, and an Indian tribe, challenge the agency's Continued Storage Rule, 10 C.F.R. § 51.23, and associated Generic Environmental Impact Statement. The Petitioners claim violations of NEPA and contend, among other things, that the impacts that the agency identified cannot be applied generically; that the agency failed to consider alternatives or to evaluate mitigation; and that the agency made improper assumptions in support of its analysis. Oral argument is scheduled before Judges Kavanaugh, Edwards, and Sentelle on February 22, 2016.

After these cases were filed, a number of environmental groups filed related petitions for review of the dismissal by the Commission of contentions relating to the Continued Storage Rule. The petitions for review seek to invalidate the issuance of any reactor licenses (or license renewals) that have been issued or may be issued in the future on the basis of the Continued Storage Rule. These cases, which have all been held in abeyance pending the resolution of *New York v. NRC*, are:

- *Missouri Coalition for the Environment v. NRC* (D.C. Cir. No. 15-1114): (Callaway license renewal)
- *Beyond Nuclear, Inc. v. NRC* (D.C. Cir. No. 15-1173) (Fermi Unit 3 combined license)
- *Blue Ridge Environmental Defense League v. NRC* (D.C. Cir. 15-1258) (Sequoyah license renewal)
- *Blue Ridge Environmental Defense League v. NRC* (D.C. Cir. 15-1259) (WS Lee 1 and 2 combined license)
- *Blue Ridge Environmental Defense League* (D.C. Cir. 15-1260) (North Anna 3 combined license)
- *Nuclear Information Research Service v. NRC* (D.C. Cir. 15-1261) (Levy 1 and 2 combined license)
- *Sustainable Energy and Economic Development Coalition v. NRC* (D.C. Cir. 15-1262) (STP 1 and 2 license renewal)
- *Southern Alliance for Clean Energy v. NRC* (D.C. Cir. 15-1427) (Watts Bar 2 operating license)

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***Pueblo of Laguna v. United States*, No. 02-24 (Fed. Cl.); *Jicarilla Apache Nation v. United States*, No. 02-25 (Fed. Cl.)**

In these cases, the plaintiffs (two separate Indian tribes) seek an accounting of the federal government's alleged mismanagement of the tribe's trust funds and other properties. Plaintiffs also seek recovery for monetary loss and damages. The court issued discovery and document preservation orders in both cases and the NRC provided documents to the Department of Justice.

The *Laguna* case has settled and the case was dismissed on December 9, 2013. The *Jicarilla* case was tried on the Tribe's investment claims for the 1972 to 1992 time period in the spring of 2012 and the court issued a decision in favor of the Tribe. The parties in *Jicarilla* were scheduled to litigate Phase 2 of a 3-phase proceeding in 2015, but the court assigned a new judge to the case. The trial is now scheduled to resume on July 1, 2016. In the meantime, the court is considering issuing a formal, partial judgment to allow the parties to appeal the Phase 1 decision to the Federal Circuit.

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Ohngo Gaudadeh Devia v. NRC, Nos. 05-1419, 05-1420, 06-1087 (D.C. Cir.)

This is the caption for three consolidated lawsuits filed by dissident Goshutes and the State of Utah challenging a series of Commission adjudicatory decisions authorizing issuance of a license for the proposed Private Fuel Storage (PFS) spent fuel storage facility. The case is fully briefed, but the court of appeals decided to hold the case in abeyance, as not currently "ripe," because PFS had failed to obtain necessary approvals from Department of the Interior (DOI) sub-agencies. PFS went to federal district court to challenge the other agencies' decisions. PFS prevailed in 2010, obtaining a remand to DOI. Ever since, the parties have filed a series of joint status reports in the D.C. Circuit agreeing that the case should remain in abeyance pending further developments. Although PFS previously moved to terminate its NRC license, it has withdrawn its termination request, and the parties have advised the court that PFS is still awaiting official action on the approvals.

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Thompson v. NRC; 1:15-01302-RDB (D. Md.)

Plaintiffs, employees of an NRC contractor, brought civil rights complaints against NRC employees and the agency. The court granted a motion to dismiss filed by a former employee on the ground that the claims were not properly brought against federal employees and were in any event time-barred; a motion to dismiss filed by the agency and a current employee remains pending.

United Nuclear v. United States, No. 1:15-cv-00411 (D.N.M.)

This is a CERCLA lawsuit seeking recovery for cleanup efforts at the San Mateo mine in New Mexico. The parties have not yet started discovery. NRC has been asked to locate and retain any relevant documents.

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Vermont v. NRC, No. 15-1279 (D.C. Cir.)

On August 13, 2015, the State of Vermont, Vermont Yankee Nuclear Power Corporation, and Green Mountain Power Corporation filed a petition for review of NRC's issuance of an exemption relating to the release of decommissioning trust funds for the management of spent fuel. The petitioners contend that the exemption will lead to the release of funds for improper purposes, thus jeopardizing the ability of the Vermont Yankee plant to decommission safely and/or limiting the amount of money left in the fund following the completion of decommissioning, which is ultimately to be re-distributed back the utility petitioners and the Vermont ratepayers. On November 4, 2015, the petitioners filed a petition with the Commission, seeking review of the issuance of the exemption as well as several issues related to the decommissioning of the Vermont Yankee plant. In NRC's view, this petition renders the agency's issuance of the exemption non-final for purposes of judicial review under the Hobbs Act and, on November 16, 2015, the agency filed a motion to dismiss the petition for review for lack of jurisdiction. Vermont filed a response to the motion on December 11, asserting that the petition before the agency does not render the exemption non-final because the agency has discretion to consider it and there is no guarantee that the petition will, in fact, be considered. On February 8, 2016, the court granted the motion to dismiss, stating that Vermont's petition

had been rendered “incurably premature,” and that Vermont could seek review of the Commission decision on its agency-level position and could raise any arguments concerning the exemption in such a petition.

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CLOSED CASES

ABB Inc. v. United States, No. 3:13-cv-01265-CSH (D. Conn.)

ABB and Combustion Engineering (CE) are wholly owned subsidiaries of ABB Holdings. CE owns a site at Windsor, Connecticut, where it conducted contract work on naval reactors for the AEC from 1955 through 1961. CE later conducted licensed operations for commercial entities under both the AEC and the NRC at other areas on the site. The United States subsequently designated that portion of the Windsor location that had been used for Naval Reactor contract work for cleanup under the Formerly Utilized Sites Remedial Action Program (FUSRAP). However, the Corps of Engineers (which performs FUSRAP cleanup) indicated that it would take several years to complete this activity.

ABB and CE decommissioned the portion of the site used for NRC-licensed work and then asked the Corps of Engineers to allow it to decommission the FUSRAP portion under NRC auspices and to sue the government for contribution. The NRC and the Corps agreed to this proposal. ABB and CE have now completed that work and filed this lawsuit under CERCLA, seeking contribution from the United States, which is represented by the Department of Justice. ABB and CE claim that the United States is liable in part because of the AEC ownership and control of the Naval Reactor contract process.

After conducting some discovery, the parties entered into mediation. With the Mediator's assistance, the parties negotiated an agreement. The Department of Justice then drafted a proposed consent decree, which was published in the Federal Register for comment. There were no comments on the consent decree. The court entered the Consent Decree on February 6, 2015, and closed the case.

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Budzynski v. Burns, No. 12-cv-3174 (D. Md.)

Plaintiff, an NRC employee, claims that he was a victim of age discrimination when he was not selected for a position advertised in an NRC vacancy announcement. The NRC assisted the United States Attorney's office in filing two motions for summary judgment. The motions for summary judgment were denied and a trial was held in February 10 through 13, 2015, in the U.S. District Court for the District of Maryland. On February 18, 2015, the Court issued a bench decision in favor of plaintiff. Judgment was entered on March 2, 2015, and no appeal was taken.

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New Jersey v. NRC, No. 11-3228 (3rd Cir.)

In this lawsuit, New Jersey challenged NRC's Decommissioning Planning Rule insofar as that rule assumes a 1% real rate of return on decommissioning funds. At New Jersey's request, the case was held in abeyance pending the outcome of the *Shieldalloy* litigation (discussed below), which concerned the validity of the NRC's transfer of authority to New Jersey as an Agreement State. Once the *Shieldalloy* decision became final, New Jersey voluntarily withdrew its petition for review as moot.

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Shieldalloy Metallurgical Corp. v. NRC, No. 13-1259 (D.C. Cir.);

In response to the D.C. Circuit's decision in *Shieldalloy Metallurgical Corp. v. United States*, 707 F.3d 371 (D.C. Cir. 2013), the Commission issued a memorandum and order, CLI-13-06, reinstating New Jersey's authority to regulate *Shieldalloy*'s Newfield, New Jersey, site, and further explaining why New Jersey's standards governing license termination were consistent with the Commission's. *Shieldalloy* filed a petition for review of the Commission's order, asserting that CLI-13-06 rested upon an inaccurate interpretation of the Commission's regulations and that the Commission's as-low-as-reasonably-achievable (ALARA) principle compelled the use of the decommissioning alternative that yielded the lowest achievable dose of radioactivity. On October 14, 2014, the Court of Appeals denied the petition for review, ruling that the applicable regulation, 10 C.F.R. § 20.1403(a), uses the ALARA principle as an eligibility test that permits licensees to use restricted release decommissioning methods only where it can show that it is not cost-effective to employ unrestricted release. *Shieldalloy* petitioned for panel rehearing, and the court denied the petition on December 10, 2014. *Shieldalloy* did not file a petition for a writ of certiorari and the decision is final.

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