



POLICY ISSUE

(Information)

January 22, 2021

SECY-21-0007

FOR: The Commissioners

FROM: Andrew P. Averbach
Solicitor

SUBJECT: ANNUAL REPORT ON COURT LITIGATION (CALENDAR YEAR 2020)

PURPOSE:

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

DISCUSSION:

Enclosed is a report detailing the current status of cases brought in federal court against the NRC or its officials. It updates the last annual report dated January 29, 2020 (SECY-20-0009). It includes cases filed through the end of 2020 but reflects the status of NRC cases in court as of January 22, 2021.

During the reporting period (Calendar Year 2020), the Commission or NRC officials were sued seven times in the courts of appeals¹ and three times in federal district court.² During this same

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¹ *Massachusetts v. NRC*, No. 20-1019 (D.C. Cir.); *Friends of the Earth v. NRC*, No. 20-1026 (D.C. Cir.); *Beyond Nuclear v. NRC*, No. 20-1187 (D.C. Cir.); *Don't Waste Michigan v. NRC*, No. 20-1225 (D.C. Cir.); *Oglala Sioux Tribe v. NRC*, No. 20-1489 (D.C. Cir.); *Peck v. Department of Labor*, No. 20-1154 (4th Cir.); *Public Watchdogs v. NRC*, No. 20-70899 (9th Cir.).

² *Ki v. NRC*, No. 20-cv-00130-GHH (D. Md.); *Kotzalas v. NRC*, No. 20-cv-02926-PWG (D. Md.); *Braxton v. Svinicki*, No. 20-cv-1126- AJB (N.D. Ga.).

period, four cases were closed.³ The number of new filings in 2020 is higher than the number of cases filed in recent years. There were 10 new lawsuits filed in 2019, 4 in 2018, 3 in 2017, 4 in 2016, 11 in 2015, 6 in 2014, 5 in 2013, 5 in 2012, 11 in 2011, and 9 in 2010, for an average of nearly 7 new lawsuits per year over the prior ten years.

We have also continued to participate in lawsuits brought by or against the United States and/or its agencies or in which the United States and/or its agencies have been named as a third-party defendant.⁴ Much of this work has involved responding to requests for documents related to the activities of both the NRC and the Atomic Energy Commission and/or licensees, and working with the Department of Justice to draft and review pleadings and implementing and maintaining litigation holds for materials that may be relevant to ongoing litigation.

Finally, during this reporting period we handled three new "Touhy" requests for NRC testimony, depositions, or other evidence for use in private litigation. See 10 C.F.R. § 9.200 *et seq.*

Andrew P. Averbach
Solicitor

Enclosure:
Litigation Status Report

cc: SECY
 ASLBP
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 REGION I
 REGION II
 REGION III
 REGION IV

³*Massachusetts v. NRC*, No. 20-1019 (D.C. Cir.); *Massachusetts v. NRC*, No. 19-1198 (D.C. Cir.); *In Re Public Watchdogs* (No.19-72670) (9th Cir.); *Miles v. NRC*, No. 18-cv-04571 (N.D. Ill.).

⁴ *Faller v. Department of Justice*, No. 20-cv-1597 (D.D.C.); *Atlantic Richfield Co. v. United States*, No. 15-cv-00056 (D.N.M.); *Spina v. Liu*, 20-cv-9368 (S.D.N.Y.).

SUBJECT: ANNUAL REPORT ON COURT LITIGATION (CALENDAR YEAR 2020) DATED
JANUARY 22, 2021

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