

Industry news ▼

Nuclear Utilities Win Court Case on Spent-Fuel Claims

At the end of August, the U.S. Court of Appeals for the Federal Circuit rejected a government motion to dismiss a suit brought by utility owners of the Yankee family of nuclear power plants against the U.S. Department of Energy for failure to take spent nuclear fuel. In doing so, the court handed the nuclear industry a clear victory in its battle against the Energy Department over spent-fuel storage and disposal.

The ruling means that nuclear utilities can return to claims court to determine the amount of damages the gov-

ernment must pay because of the DOE's failure to begin storing spent fuel in January 1998. That date had been set by Congress years ago in the Nuclear Waste Policy Act. The DOE had maintained that since it currently has no place to store the fuel, it is not bound by the law. The court stated, however, that the DOE had breached its obligations, and that its liabilities extend beyond the specific Yankee cases. The breach involves all the utilities that had signed the standard contract the DOE has with utilities—"the entire nuclear industry," the court ruled.

Estimates of the potential damages faced by the government as a result of the decision vary widely. Total damages, assuming that the government *never* takes possession of the fuel, could run as high as \$50 billion, according to Nuclear Energy Institute (NEI) estimates. Actual damages claimed in lawsuits already filed total more than \$5 billion. This number will undoubtedly rise, however, since utilities that thus far had been reluctant to sue the DOE may now decide to pursue their claims in court. The damage amounts may include not only direct costs that utilities incur in the construction of a spent-fuel storage installation at the plant site, but also costs incurred if utilities with shutdown plants cannot complete timely and cost-effective decommissioning.

At hearings on the topic held in late September, industry executives told the Senate Committee on Energy and Natural Resources that more lawsuits are probably a reality. However, noted Russell Mellor, president and CEO of Connecticut Yankee Atomic Power Co., "an alternative to prolonged litigation is readily at hand. . . . There is no legitimate basis for any further delay. The Nuclear Waste Fund can and should be used to site and operate a central, temporary storage facility. Regardless of where DOE provides for storage, it has the clear authority and ability to begin removing spent fuel from reactor sites."

"It is not necessary to have a completed permanent repository facility in order to fulfill [the DOE's contractual obligation with utilities]," added Marvin Fertel, senior vice president of business operations at NEI. "DOE is, and has been, moving used nuclear fuel safely for years. DOE should begin mitigating potential taxpayer liability as soon as possible instead

of waiting until 2010, when the permanent repository is scheduled to be completed.”

Maine Yankee Abandons Rubblization Option

Giving in to local disapproval and legislative pressure, the Maine Yankee Atomic Power Co. has abandoned plans to bury concrete from demolition of the Maine Yankee nuclear power plant on the plant site. Instead, the utility will ship concrete from demolished structures either to the Envirocare of Utah low-level waste disposal facility or to landfills outside the state of Maine, depending on the radiological contamination of the material.

Maine Yankee had been the first utility to consider the so-called “rubblization” method of disposal, which involved burying the concrete rubble from above-grade buildings within the below-ground foundations of the reactor building and then covering that rubble with soil. The rubble would have been left onsite once the plant was fully decommissioned.

The plant will stick with its original plans to disposal of below-grade building foundations and slabs. These will be cleaned to conform with federal and state site release standards before being backfilled with soils and left in place.

NMED Denies WIPP Temporary Authority To Accept Uncharacterized Waste

The New Mexico Environment Department (NMED) has denied Waste Isolation Pilot Plant officials authority to accept waste that has not been characterized for disposal at the facility.

The U.S. Department of Energy, in an effort to streamline the waste characterization process and accelerate the schedule under which transuranic waste is being shipped to WIPP from sites around the country, had submitted an application to NMED to amend their Resource Conservation and Recovery Act (RCRA) Part B permit to establish a central waste characterization facility. As part of the application, DOE officials sought interim authority to “allow the receipt and storage of waste at WIPP” prior to a determination on the amendment request. That authorization would allow the DOE to “initiate waste characterization activities for the purpose of assur-

ing that the characterization equipment and processes” meet permit requirements.

The NMED, however, rejected the request, stating that such interim authority can be granted only in situations where there is a “one-time, short-term need at the facility.”

This denial will have no impact on ongoing activities at WIPP, the DOE said, since none of the sites envisioned as primary beneficiaries of the new characterization facility are currently characterizing or shipping waste to the disposal site.

Court Dismisses Texas County’s Lawsuit Against Maine, Vermont over LLW Payments

A U.S. District Court judge has dismissed a lawsuit brought against Maine and Vermont by Hudspeth County,

Tex., over payments for “community assistance projects” related to a proposed low-level radioactive waste disposal facility serving the Texas Low-Level Radioactive Waste Compact. The judge ruled that states are protected by the sovereign immunity clause of the Eleventh Amendment to the Constitution, finding that while the Compact language allows for suits between member states, it does not provide for lawsuits by a host county or any other third party.

Hudspeth County had sued Maine and Vermont in September 1999, arguing that the states violated the terms of the Texas-Maine-Vermont compact by their failure to pay the county \$1.25 million each for the community assistance projects. The compact language required the two states to pay the county hosting the LLW disposal facility \$2.5 million each, with \$1.25 million due upon compact ratification and the balance due following approval of an operating license for the facility. But in October 1998, the Texas Natural Resources Conservation Commission (TNRCC) denied a license application for the proposed facility in Hudspeth County, citing inadequate fault characterization. Since Maine and Vermont had not paid the initial \$1.25 million to the county, the county sued; the states, however, claimed sovereign immunity.

In the meantime, TNRCC has since assumed all siting responsibilities from the Texas LLRW Authority and has eliminated the Hudspeth County site from consideration.

DOE Puts WERF Incinerator on Cold Stand-by

The U.S. Department of Energy has decided to place the Waste Experimental Reduction Facility (WERF) incinerator

into cold stand-by and to pursue alternative treatments for mixed low-level waste stored at the Idaho National Engineering and Environmental Laboratory. The WERF incinerator was to cease operations by November 2, 2000.

The shutdown decision was necessitated by an agreement with the U.S. Environmental Protection Agency to cease operations by October 2001 or upgrade the facility to meet new air emission requirements. The decision not to upgrade was based on the small amount of available mixed LLW in the DOE system that requires incineration as the primary treatment and the availability of cost-effective commercial treatments. ■

Oops!

The photo accompanying the descriptions of the **Everest VII Inc.** rigid borescopes on page 70 of the Sept./Oct 2000 issue



(“Marketplace”) was accidentally placed upside down. To view these borescopes correctly, you can either turn your magazine upside down, view it while standing on your head, or, perhaps simplest of all, look above. *Radwaste Solutions* regrets the error.