

We Win One

Court Strikes Down National Nuclear Waste Confidence Rule

By Louis Zeller

On June 8, 2012 the US Court of Appeals ruled in favor of the Blue Ridge Environmental Defense League and two other public interest groups on nuclear waste disposal.ⁱ The court nullified the Nuclear Regulatory Commission's Waste Confidence Rule, clearing the way for a variety of challenges at scores of commercial nuclear power reactors in the United States. "Waste confidence" is all about high-level nuclear waste, produced by nuclear reactors, generated in the reactor core and highly radioactive.

The Court pointed to the failure of the US Nuclear Regulatory Commission on waste disposal, stating: "The Commission apparently has no long-term plan other than hoping for a geologic repository. If the government continues to fail in its quest to establish one, then [nuclear waste] will seemingly be stored on site at nuclear plants on a permanent basis." In the same decision, the Court ruled for the State of New York that the NRC's analysis of temporary spent fuel storage at reactor sites was insufficient because of the potential danger of leakage and catastrophic fires.

The impact of the decision is immediate. The court's ruling invalidated a broad federal regulation which supports all US nuclear power plant licenses: 10 CFR Section 51.23. Without the general rule's assumption that waste would go to a repository someday, there is no longer any legal basis for nuclear power plant operators avoid environmental assessments of long-term irradiated nuclear fuel storage at nuclear power reactors in fuel pools or dry storage.

For example, in 2008 BREDL submitted a contention which raised this issue in its petition opposing Duke Energy's license for a new nuclear plant near Gaffney, South Carolina.ⁱⁱ In refusing to admit BREDL's original waste confidence contention, the Atomic Safety and Licensing Board concluded, "In light of the plain language of the rule and its regulatory history, the Waste Confidence Rule applies to this proceeding."ⁱⁱⁱ That conclusion is no longer justified. Under the National Environmental Policy Act, a federal agency must look at both the probabilities of potentially harmful events and the consequences of those events. Duke Energy and scores of other nuclear utilities will now have to go back to the drawing board.

In 2011 the Blue Ridge Environmental Defense League helped set this challenge in motion with our interventions in nuclear power plant licenses. We provided standing and evidence from our license interventions at Bellefonte (AL), WS Lee (SC), North Anna (VA) and Vogtle (GA). The other two clients were Southern Alliance for Clean Energy, and Riverkeepers, Inc. We are grateful to Diane Curran of Harmon Curran Spielberg and Eisenberg, LLP in Washington, DC who provided us with legal representation *pro bono publica*; i.e., free.

Meanwhile, we are not wasting any half-lives. On June 18, two dozen groups and individuals including BREDL petitioned the Nuclear Regulatory Commission to ensure that the environmental analysis directed by the Court of Appeals is now incorporated into the licensing of nuclear power plants across the nation. Then, on July 9 we filed new arguments challenging specific power plant licenses across the country. BREDL and its chapters targeted three in our service area: Bellefonte in Alabama with BEST (Bellefonte Efficiency and Sustainability Team and Mothers Against Tennessee River Radiation), William States Lee in South Carolina with SAFE Carolinas and North Anna in Virginia with the People's Alliance for Clean Energy. These are legal steps necessary to hold the electric power companies' feet to the nuclear fire.

It is important to build upon the recent federal court victory striking down the Nuclear Regulatory Commission's patently ridiculous Waste Confidence Rule, which should now be enshrined in Blackstone's dictionary along with other legal fictions. For years we have had no confidence in NRC's claims on about nuclear waste and we have not been silent about it. Finally, the courts have agreed with us. We look forward to injecting some sanity into the debate on nuclear power.

ⁱ *State of New York v. NRC*, USCA Case No. 11-1045, Argued March 16, 2012; Decided June 8, 2012.

ⁱⁱ See Petition for Intervention and Request for Hearing by the Blue Ridge Environmental Defense League, June 27, 2008

ⁱⁱⁱ LBP-08-17 (September 22, 2008)