

SPENT NUCLEAR FUEL

Court upholds continued storage rule

Finding that the NRC's rule on spent nuclear fuel storage meets the requirements of NEPA, an appeals court rejected a petition to strike it down.

A federal appeals court on June 3 denied a challenge to the Nuclear Regulatory Commission's 2014 rule on the continued storage of spent nuclear fuel and the generic environmental impact statement (GEIS) that serves as the rule's regulatory basis, stating that the petitioners can take their concerns to the U.S. Congress.

The states of New York, Connecticut, Massachusetts, and Vermont, along with a number of environmental organizations, including the Natural Resources Defense Council (NRDC) and the Prairie Island Indian Community, vfiled petitions with the U.S. Court of Appeals for the District of Columbia Circuit seeking a review of the NRC's continued storage rule and GEIS and arguing that the NRC failed to meet National Environmental Policy Act (NEPA) requirements (NN, Dec. 2014, p. 39). The petitioners specifically claimed that the NRC "did not consider alternatives to and mitigation measures for the continued storage of spent nuclear fuel, miscalculated the impacts of continued storage, and relied on unreasonable as-

sumptions in its environmental impact statement."

In 2012, the court struck down the NRC's 2010 revision of its "waste confidence" decision and rule, directing the agency to consider the possibility that a geologic repository for permanent disposal of spent fuel may never be built, and to further analyze spent fuel pool leaks and fires. As the rule is central to the NRC's ability to license new reactors and to renew the licenses of existing units and spent fuel storage facilities, the NRC suspended licensing decisions while the NRC staff developed the new rule and GEIS. The new rule went into effect in October 2014.

In challenging the new rule, the states and the NRDC argued that it is a major federal action that requires the consideration of mitigation measures and alternatives to reactor licensing. The petitioners requested that the court vacate the rule and the GEIS and remand them back to the NRC for further proceedings. The NRC, however, maintains that the rule is not a licensing action and that the agency is not required to consider alternatives to licensing in the GEIS.

In its 22-page decision, the court agreed with the NRC that the rule is not a licensing action, stating, "While the rule is a 'major federal action' under NEPA, the NRC complied with its NEPA obligations by preparing the GEIS." The court also maintained that contrary to the arguments of the petitioners, the GEIS sufficiently analyzes the impacts of the continued storage of spent fuel and that the assumptions used by the NRC are not "arbitrary or capricious."

The court, however, indicated that while the GEIS cannot be challenged, petitioners may challenge individual, site-specific licensing actions by the NRC. Noting that the NRC has told the court that it considers mitigation measures and licensing alternatives when deciding to issue a site-specific license, the court said, "At this stage, we take the NRC at its word. But should the agency fail to consider a necessary aspect of the problem during site-specific proceedings, the parties might be able to challenge the final licensing decision."

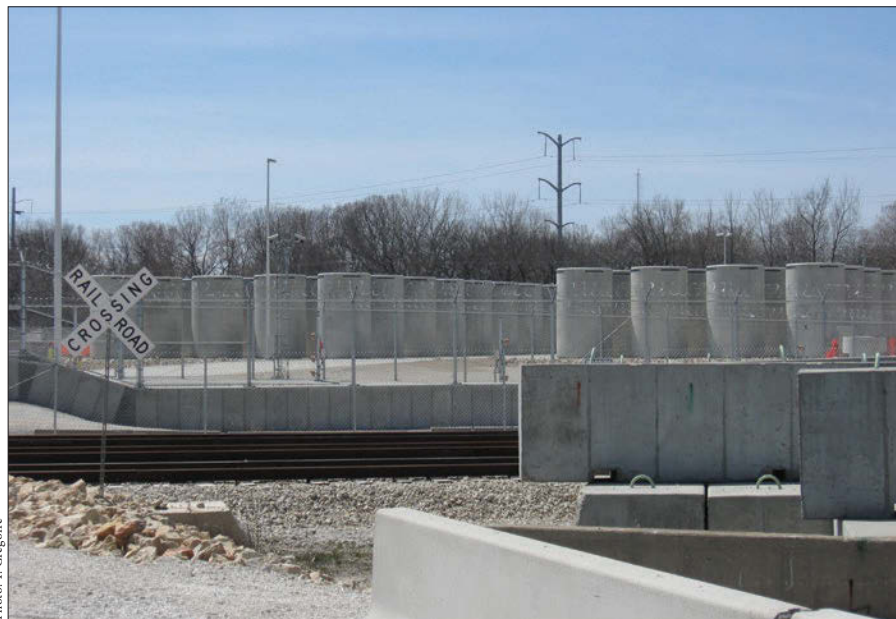


Photo: T. Gregoire

A federal court rejected arguments against an NRC rule allowing the continued storage of spent nuclear fuel at closed reactor sites, such as the Zion nuclear power plant in Illinois, which has moved all of its spent fuel to an independent spent fuel storage installation (above), as the plant is being decommissioned.