

THE SEABROOK NUCLEAR POWER PLANT AND
THE ENVIRONMENTAL PROTECTION AGENCY

The law which governs the design of the Seabrook cooling system and sets forth the standards by which the EPA must approve or disapprove it, is the Federal Water Pollution Control Act. The FWPCA (Sec. 316a) allowed the EPA to set a standard for thermal discharges - heat pollution - which would "assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is made". In other words, as former EPA Regional Administrator McGlennon says, "Congress established a goal of environmental quality which should not be compromised."

The EPA, noting the extreme sensitivity of marine life to temperature changes, established a standard permitting no heat discharges at all. The law does, however, provide that if an applicant can prove that a less stringent limitation would still "assure the protection and propagation...", an exemption may be granted. Public Service Company of New Hampshire (PSC) is applying for such an exemption for the Seabrook plant. Nevertheless, in all cases, the applicant is required to prove to the satisfaction of the Regional Administrator that the environmental standards of the FWPCA will be met by the proposed design. THE BURDEN OF PROOF IS ON THE APPLICANT.

On August 2, 1974, PSC asked for an exemption for the proposed Seabrook plant, to allow for construction of a once-through ocean cooling tunnel system for the planned reactors. In response, the EPA did make Seabrook an exception to its regulations, on June 24, 1975, and gave the tunnel system "conditional approval" pending further evaluation.

On the strength of the EPA's "conditional approval" of the cooling system, the Nuclear Regulatory Commission's Safety and Licensing Board in July 1976, issued PSC a "preliminary construction permit" for the Seabrook plant, conditional upon final EPA approval of the cooling tunnels. The Licensing Board vote was 2-1, the first split decision on a domestic nuclear plant construction permit in NRC (and before it, AEC) history. Dr. Ernest Salo, a marine biologist, dissented from the decision, questioning possible damage to marine life, need for the power, desirability of the site, and the cost/benefit balance.

The Licensing Board made quite clear to PSC that the permit was only preliminary, and any decision to begin construction under that permit would be made at the Company's own financial risk, since there was no assurance of final approval from either the EPA or the NRC.

Having already begun construction, PSC sought a permanent exemption from the thermal discharge prohibition, requesting final approval for the once-through cooling tunnels. EPA's New England Regional office (Region 1, Boston) conducted nine months of hearings and deliberations, and commissioned extensive studies by a team of independent expert scientists.

On November 9, 1976, Regional Administrator John McGlennon ruled that the ocean tunnel design was an unacceptable potential environmental danger, and, importantly, that PSC had failed to carry its burden of proof. McGlennon said:

1. Conclusions Concerning the Thermal Discharge

Evidence presented of the expected impact of the thermal discharge is inadequate in that there is little evidence concerning what the total direct, lethal or sub-lethal, impacts of the heated water discharge will be on affected organisms, including plankton, or of what numbers of such organisms will be exposed to such impacts. ...In addition, there is inadequate information on what the indirect effect on overall population size will be, and inadequate information to define the geographical distribution and size of affected populations in receiving waters. I thus find it impossible to make a reliable prediction based on the evidence presented as to the overall impact on the marine ecosystem which will be caused by the thermal discharge. When the effects of the discharge are considered together with potential effects caused by the intake structures, the difficulties are compounded. I therefore conclude generally that PSC has failed to demonstrate that the proposed thermal discharge will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in on the affected coastal waters.

Following McGlennon's ruling, the NRC suspended the construction permit in January, 1977 but allowed "limited" work to continue.

Meanwhile, as TIME reports:

"The utilities took their case to a new EPA administrator, Douglas Costle. He ignored an EPA study, made just before he took office, in which three experts from outside the agency concurred with McGlennon's decision. Costle convened a new panel, drawn entirely from within the Agency.

This might be compared to a judge, after all proceedings in a trial had been concluded, soliciting additional prosecution testimony, without notifying the defense or giving them any chance to cross-examine. The new panel disagreed with the independent studies commissioned by the Regional Office and the decision of the Regional Administrator, and recommended approval of PSC's application for cooling tunnels.

The intervenors appealed the EPA ruling, and the process by which it was made, to the (Federal) First Circuit Court of Appeals in Boston. On February 15, 1978, the Court ruled that Mr. Costle had acted illegally in not permitting the intervenors to cross-examine the in-house panel and in not including independent experts on that panel. Costle's decision was invalidated, McGlennon's decision was again in force, and the Seabrook cooling system was left without approval.

The New England Regional EPA office commissioned a new study, by twelve independent scientists, for this latest round of hearings. This new study again found, as had the earlier Regional studies, that PSC has failed to carry the burden of proof which the law requires it to bear. The Regional Staff said:

There is one salient conclusion of the EPA Region 1 analysis, reiterated by every witness participating in its preparation: the information and analysis submitted by the Public Service Company is insufficient, in and of itself, to show that the protection and propagation of the balanced, indigenous marine community in the Hampton/Seabrook region will be assured. Our analysis has revealed serious deficiencies in both data collection and data analysis for most aspects of the Company's impact evaluation.

The Regional Staff goes on to say that:

In spite of the flaws in the record of evidence submitted by the Company in support of its request, some of the expert witnesses preparing this analysis are of the opinion that the effects of the Seabrook plant will be within acceptable limits. These witnesses emphasize that their opinions are based not so much on the scientific evidence offered by the Company, as on their own personal experiences, observations, and study of the observed environmental effects of operating coastal plants.

These individual opinions ought not, in any way, diminish the company's burden of proof. Further, the new Regional study acknowledges that "there is some as yet indeterminate risk of adverse effects, which may be definable by the collection of reasonable obtainable data", and goes on to offer "a series of recommendations for the redesign of study programs and the initiation of new studies...(because) we believe that it is necessary, at a minimum, to improve the quality of the baseline data..." But, in spite of PSC's failure to prove their case, and the fact that important additional information is reasonably obtainable through new studies, the new Regional report concludes by saying, "Given these ambiguities we explicitly decline at this time to recommend a particular decision in this case."

The NRC suspended the Seabrook construction license, as of July 21, pending final approval of the cooling system by the EPA, to preserve the Commission's "freedom of choice" about Seabrook.

The new round of EPA hearings took place between June 26 and July 6 in Manchester, N.H. At their conclusion, Mr. Perlman, the Administrative Law Judge who had presided, notified the parties involved (PSC and the intervenor groups) that they would have only 10 days in which to file written briefs (on a complete record of thousands of pages), in contrast to the usual 30 days or more. Only three days would be allowed for the filing of reply briefs, to respond to one another's arguments. Finally, Perlman told the intervenors' attorney that the EPA in Washington would begin the process of decision-making on the case even before the briefs were received. This seems to be an unprecedented acceleration of the EPA's part of the regulatory process.

To allow such an unusually and unreasonably short period for the filing of briefs (in such a lengthy, complicated and contradictory case), and so drastically accelerate the decision-making process, again suggests the intrusion of pressures from political and financial interests into the regulatory process. In addition, it threatens to set a very dangerous precedent, which may be repeated in other nuclear and environmental cases.

Certainly the record of repeated internal disagreement (McGlennon-Costle-Region 1..) on both legal and environmental issues leaves considerable question as to the appropriate interpretation of the FWPCA standards, the adequacy of evidence presented by PSC, and the potential environmental dangers of the once-through cooling system. With the Congressional goal (in FWPCA) of protecting the quality of the natural environment and the livelihood of those who depend directly upon it in mind, prudence, at least, would prohibit acceptance of the cooling tunnels at this time, and require extensive new studies and evidence from PSC.

Once again, Seabrook stands not only as a vital concern to the people of New Hampshire and New England, but also as a national symbol of the complex and critical issues of nuclear power.

"The public has a growing sense that those entrusted with ensuring its safety have so far failed in this trust..."

-U.S. House of Rep., Com. on Government Operations
report, "Nuclear Power Costs", April 26, 1978

Protection of the environment as a habitable place for the future and not political or financial pressures should be the sole criteria for review. We urge careful, honest and deliberate attention be given to this decision. THE SEABROOK NATURAL GUARD 347-5590