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Environmental Law

ENVIRONMENTAL LAW

Environmental Defense Fund v. Nuclear Regulatory Commission, 866 F.2d 1263

Author: Judge Logan

Plaintiff, Environmental Defense Fund (“EDF”), challenged defendant, Nuclear Regulatory Commission’s (“NRC”), order which established criteria regulating mill tailings at active uranium and thorium mill sites. EDF argued that the NRC lacked authority to issue a license which does not comply with Environmental Protection Agency (“EPA”) standards. Alternatively, EDF argued that the EPA’s concurrence was necessary in order to validate such an issued license.

The Tenth Circuit found that the Atomic Energy Act (“AEA”) § 84(c) permits the NRC to approve licensee-proposed site-specific alternatives which are less stringent than EPA standards, when the contrary is not practicable because of language in 84(c) allowing proposed alternatives when such are “equivalent to, to the extent practicable. . . level which would be achieved” by Commission standards and those of the EPA.

In affirming the NRC’s order, the court held that the AEA allows the NRC to approve licenses containing site-specific alternatives to the EPA’s standards. Moreover, the court stated that such power exists when literal compliance with such standards is not practicable, and that EPA’s concurrence is not necessary in order for NRC’s approval of such licenses.

Quivera Mining Co. v. Nuclear Regulatory Commission, 866 F.2d 1246

Author: Judge Logan

Plaintiff, Quivera, challenged regulations promulgated in 1985 by defendant, Nuclear Regulatory Commission (“NRC”). These regulations established standards to be followed by the NRC in licensing uranium mills and mill tailing sites.

Finding that the NRC’s cost determinations bore a reasonable relationship to the benefits under the guidelines proposed, the Tenth Circuit affirmed, holding that: (1) the NRC conducted cost-benefit rationalization before promulgating the criteria of 1980; (2) the revised criteria were adequately supported by cost-benefit analysis; (3) the statutory “site-specific flexibility” requirement for individual licensing decisions was met; (4) the thorium criteria were adequately supported by cost-benefit analysis; (5) the promulgation of the thorium criteria was properly conducted as rulemaking; (6) criterion which established a minimum charge to cover the costs of long-term surveillance of each tailing site was a proper implementation of the Uranium Mill Tailings Radiation Control Act, 42 U.S.C. § 2201(x) (1978).

