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Supreme court says no to IDRA

Community group slapped with \$75,000 in punitive costs

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The Inverhuron District Ratepayers' Association (IDRA) is legally at the end of the road after the Supreme Court of Canada announced Mar. 7 that it would not hear an appeal from the community group.

The IDRA filed a leave to appeal with the Supreme Court on Sept. 18, 2001 in an attempt to have earlier rulings against an independent environmental assessment of a nuclear waste facility, currently being constructed at the Western Waste Management Facility (WWMF), overturned. The WWMF is operated by Ontario Power Generation (OPG) on lands historically referred to as the Bruce Nuclear Power Development.

The IDRA lost its first bid for an independent assessment on May 23, 2000 and then a subsequent appeal of that decision in the Federal Court of Appeal on June 20, 2001. In both cases, the courts decided in favour of OPG, Atomic Energy Control Board (AECB), the Minister of Fisheries and Oceans and the Minister of the Environment.

The Supreme Court isn't

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Punitive costs send ominous message says De La Chevrotiere

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required to give reasons for its decision not to hear an appeal and it didn't give any reason for this decision. It did decide to add another \$5,000 in punitive costs to the IDRA bringing the total amount of punitive costs awarded against the community group by all three courts to \$75,000. Of that amount, \$48,000 is to be paid to OPG with \$27,000 slated to go to the federal government. The final bill isn't in yet as OPG still has to decide what its costs are for this latest venture into the legal arena. In addition to the punitive costs, the IDRA has its own legal fees to pay, although some legal services have been donated.

Norman De La Chevrotiere, president of the IDRA which has 300 members who live within 2-4 km of the WWMF, said Mar. 13 he thinks it's "just disgraceful" that an independent environmental assessment of the world's largest nuclear waste disposal site was not only denied, but that punitive damages were also levied against the group for even asking.

"It sends a horrible message to the citizens of Canada. Don't you ever dare to question a decision by a major corporation or government when you may end up paying your court costs plus punitive damages...I have this overwhelming feeling that something is democratically wrong," De La Chevrotiere said. "If the world's largest nuclear waste storage facility doesn't warrant an independent environmental assessment, then what would?"

No negotiation of costs

De La Chevrotiere said he received a letter from OPG dated Mar. 11 demanding pay-

ment of the punitive costs to date now that the leave to appeal has been squashed. Although he wouldn't reveal how much money the IDRA has spent on legal costs or how much money it currently has, De La Chevrotiere said "we're pretty tapped for funds."

De La Chevrotiere said he would be meeting with OPG to try to negotiate a reduction in the sum, but Ted Gruetzner, from OPG media relations in Toronto, said Mar. 14 that there will be "no negotiation".

"We will be going for the full amount of money," he said.

Gruetzner said two previous courts decided the legal process wasn't warranted and OPG was put through a needless process.

Design changed without due public consultation

The impetus behind the quest of the IDRA to earn an independent environmental assessment of the waste storage facility, currently being constructed at the WWMF and capable of storing up to 744,000 bundles of spent fuel when completed, was a concern with safety and public health.

"We didn't do anything that any responsible parent wouldn't have tried to do," De La Chevrotiere said.

During the litigation process, the IDRA was surprised to discover through a paper trail of letters that the design of the original facility was changed and the IDRA doesn't believe the change in the design of the facility was ever rigorously studied by OPG (former Ontario Hydro) or AECB.

A design originally submitted by OPG for public comment and regulatory approval

by AECB for the spent fuel was changed during the public comment period (Sept. 21, 1998 - Nov. 6, 1998), without informing the public, said De La Chevrotiere.

The original facility was to store up to 18,600 tonnes of highly radioactive used fuel bundles in 1,240 containers, designed specifically for Bruce used fuel bundles and referred to as the Bruce Dry Storage Container. Each container when loaded would weigh almost 200,000 lbs. However, subsequent changes in the design meant there would now be 2,000 containers with additional land requirements and the containers, fully loaded with high level radioactive waste that would now travel up to 4.8 km. on roads bordered by steep ditches, and be only temporarily clamped shut (welding, helium backfilling, etc. would be done at the dry storage site versus the reactor buildings).

The federal regulator, AECB, noted the "major" design changes in a Dec. 18, 1998 letter to Environment Canada and stated: "The Atomic Energy Control Board as the responsible authority for this project, in consultation with the Canadian Environmental Assessment Agency and the proponent, has determined that a further public consultation period was warranted."

Hydro responded in a Jan. 25, 1999 letter to AECB that "further review through the Canadian Environmental Assessment Act process would put the in-service date (of the waste facility) at risk."

De La Chevrotiere said Hydro had stated it would be publishing a newsletter for public comment concerning

the design changes, but it wasn't published. No further public comment or study occurred and ultimately the AECB granted a license for the nuclear waste facility.

De La Chevrotiere said "it worries us that there was no detailed study of this design. I would still like to hear from someone other than the proponent about this. Are we going to be able to sleep at night?" he said.

However, Gruetzner believes the safety concerns are unfounded. He said the technology which will be used at the "Bruce site has been used at the Pickering plant for years and is a proven storage method."

The IDRA had also hoped to raise several other issues with the Supreme Court including the academy of science argument (previous courts ruled it isn't up to the courts to decide which science is better), access to justice issues for citizens' groups and "the important question whether environmental assessment legislation requires proponents to provide relevant and recognized scientific data to support the predictions they make about the environmental effects of a particular project."

WWMF in-service date scheduled for September 2002

Kevin Orr, from public affairs for the WWMF, said Mar. 18 that construction of the new facility is progressing and on schedule. Orr said the buildings are up, the special equipment ordered and the floors will be poured in the next few weeks.

"Construction is scheduled for September 2002," he said.