

CONNECTICUT COALITION AGAINST MILLSTONE
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REVERSED!
**CT SUPREME COURT REVERSES SUPERIOR COURT;
CLEARS PATH FOR ACTIVISTS TO
NULLIFY MILLSTONE WATER DISCHARGE PERMIT**

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The Connecticut Supreme Court has reversed a lower court decision on the Millstone nuclear power station Clean Water Act permit, clearing the path for activists to nullify the permit on environmental grounds at an upcoming hearing.

The Waterford CT nuclear power plant's Units 2 and 3 cannot legally operate without a valid discharge permit under the federal Clean Water Act, which is administered by the state DEEP.

Without a valid water discharge permit, Millstone would be forced to shut down.

The unanimous decision, authored by Chief Justice Chase P. Rogers, is to be officially released on December 13, 2016 in the case of Nancy Burton v. Commissioner of Environmental Protection, SC 19664. <https://www.jud.ct.gov/external/supapp/Cases/AR0cr/CR323/323CR10.pdf>

Nancy Burton, director of the nuclear watchdog group Connecticut Coalition Against Millstone, brought the appeal after the Superior Court failed to hold a hearing under the Connecticut Environmental Protection Act as ordered by the Supreme Court in an earlier decision it had decided in Burton's favor in 2009. Burton v. Commissioner of Environmental Protection, 291 Conn. 789.

The Superior Court defied that remand order and, instead of conducting the hearing as ordered by the state's highest court, dismissed Burton's case as moot.

"The plaintiff [Burton] contends on appeal that the trial court improperly granted the defendants' motion to dismiss because this action is not moot," Chief Justice Rogers wrote.

[Or

"We agree," she wrote.

Chief Justice Rogers continued:

"Because a determination [at an upcoming hearing] that the renewal proceeding was inadequate to protect the rights recognized under the state's [Environmental Protection]

act, could result in the invalidation of the 2010 permit under which Millstone is operating, the claims are not moot.”

In court papers, Burton argues that DEEP acted unlawfully in its review and approval of Millstone’s application to renew its Clean Water Act Permit by failing to conduct a fair hearing by stipulating in secret in advance with Dominion, Millstone’s owner, to approval of a renewed permit on terms Dominion advocated, including allowing it to continue to operate indefinitely with its once-through cooling system.

Among other issues, Burton claims that DEEP failed to consider the environmental benefits of Millstone conversion to closed cooling from its once-through cooling system – despite federal mandates that it do so - and that its action was driven by Dominion’s refusal in secret negotiations to consider conversion to closed cooling.

In support of such contention, Burton presented excerpts from Dominion representatives’ own sworn testimony during the contested permit renewal proceedings in 2009 to such effect.

DEEP, which had previously agreed that closed cooling was environmentally and legally required, drafted a decision to such effect, but reversed itself during the secret negotiations with Dominion at Dominion’s insistence, Burton’s court filings assert.

Burton hailed the Supreme Court decision as an “outstanding recognition by the state’s highest court of the supremacy of the law to protect the fragile environment from unnecessary and harmful degradation.”

A closed cooling system would virtually eliminate Millstone’s use of waters of the Long Island Sound for cooling and discharges of toxic and radioactive contaminants in addition to a constant thermal plume, Burton said.

The stunning Supreme Court victory came eighteen (18) years after Burton successfully brought suit to shut Millstone Unit 2 for 10 days during the peak of native Niantic River winter flounder larvae migration to the Long Island Sound. Annually, larvae were sucked by the millions into Millstone’s intake structures and destroyed.

That case, Fish Unlimited v. Northeast Utilities, was initiated at the behest of Joseph Besade, former Millstone pipefitter-turned Millstone whistleblower who spearheaded Fish Unlimited’s campaign in Connecticut.

In Fish Unlimited, the plaintiffs sought conversion of Millstone to closed cooling. The Supreme Court dismissed the case on grounds the plaintiffs had to seek their remedy through administrative proceedings before the DEEP which had not yet begun rather than obtain direct relief in the Superior Court.

In Fish Unlimited, the Supreme Court opined that DEEP would be sure to follow the letter of the Clean Water Act to weigh whether closed cooling was legally required.

Instead, in the proceedings at issue in the appeal just decided by the Supreme Court, DEEP secretly stipulated with Dominion to evade the requirements of the Clean Water Act, Burton said.

The case now returns for further proceedings on whether DEEP complied with the state's Environmental Protection Act and whether the permit DEEP issued in 2010 should be nullified.