Anti-nuke activist Nancy Burton wins an unlikely victory against the Millstone nuclear power plant
Thursday, June 04, 2009
By Andy Bromage

Judges threw her lawsuits out of court by the dozen. The attorney general said she shouldn't be suing at all. State regulators called her claims "baseless." Critics called her a Quixotic crank.

Against that backdrop, longtime anti-nuke activist Nancy Burton has won the unlikeliest of victories in her decade-long quest to shut down the Millstone nuclear power plant in Waterford.

The state Supreme Court, in a landmark decision, ruled two weeks ago that Burton has legal standing to sue the state for failure to enforce pollution standards set out in the Connecticut Environmental Protection Act.

Millstone sucks water from Long Island Sound to cool its reactors, pulverizing billions of fish and fish eggs in the process. It then pumps the heated water back into the Sound, posing what Burton says is a radioactive hazard to human health.

Burton's win represents a huge victory for the rights of average citizens to protect our air and water from polluters, and from regulators who would look the other way. The state's highest court had flip-flopped on whether citizens have standing to sue a polluter while their permit
application is pending before a state agency. The court mostly held that they must wait until the state had done its thing.

That tied the hands of environmental watchdog groups who could do little but watch while the tediously slow regulatory process would grind on. In Millstone's case, the state has allowed it to run on an expired "emergency" water discharge permit for the past 11 years, and only last fall finally kicked off hearings to grant them a renewed permit.

The court ruling clarifies once and for all that citizens can sue before state regulators are finished, provided they can show reasonable evidence that active polluting is exceeding allowable limits. So for example, if a local coal plant is belching toxic emissions beyond what the Clean Air Act allows and regulators fail to control it, citizens can sue and force the power plant to clean up its act.

In leading the crusade against Millstone, Burton has been dismissed, ridiculed and — after publicly accusing judges of corruption without evidence — disbarred as an attorney. Now as a citizen, Burton has earned the last laugh and secured what no lawyer has been able to get: an unequivocal ruling by the state's highest court restoring citizen environmentalists' right to have their day in court.

For all that, Burton says the court's ruling doesn't surprise her one bit.

"The law is really clear," she says. "I knew that eventually the Supreme Court would have to come to terms with the statute."

Burton alleges the state Department of Environmental Protection has failed to control excess pollution at Millstone and has prejudged Millstone's application by signing a deal with Millstone and an environmental group before public hearings had even begun (more on that in a minute). She also says the DEP hearing officer overseeing the proceedings should be removed because she spent almost a decade working with the nuclear industry at an agency that handled low-level radioactive waste.

Burton wants a judge to intervene in the case and force Millstone's owner, Dominion Nuclear Connecticut, to install a closed-loop cooling system. Those systems recycle water to cool reactors and can reduce fish kills by 90 percent.

Last fall, the DEP struck a three-way deal with Dominion and the Connecticut Fund for the Environment (CFE) meant to expedite the permitting process. The environmental group agreed not to challenge the permit application in exchange for Millstone agreeing to convert its cooling system to whatever the company's newest study concludes is the "best technology available." CFE's expectation is that when the study comes out in 2012, closed-loop cooling will be the best available.

That truce meant Burton was the only one aggressively cross-examining Millstone officials and witnesses during a series of public hearings earlier this year.
"We chose a different route," says Roger Reynolds, an attorney with CFE. "We wanted certain action by the agency within a two or three year time period as opposed to what we thought might be litigating for substantially longer with an uncertain outcome."

Still, Reynolds says Burton's ruling is important for what it does to restore a citizen's right to intervene.

"This gives the court the ability to decide the agency is not doing its job," Reynolds says. "The whole point of the law is to give citizens a check over agencies that may not be acting aggressively enough."

Now Burton can present a court with evidence to back up her claim that Millstone is "a 24-hour fish-killing machine that's illegally dumping waste into Long Island Sound."

DEP Deputy Commissioner Amey Marrella defends the agency's permitting process, noting that reviewing the nuclear plant's application is a "highly complex and complicated issue." Dominion spokesman Jim Norvelle says the company is "disappointed" with the court's decision and is confident that lower courts will back the state's permitting procedure as sufficient to protect the environment.

"We are further confident that the Superior Court will conclude there is no merit to either Ms. Burton's claim of bias on the part of the DEP hearing officer or her claim of prejudgment by the DEP commissioner regarding Millstone's application," Norvelle says.

Norvelle might be right, but Burton's recent triumph shows her adversaries dismiss her at their own peril.

Ask Burton what comes next, and you won't get some convoluted legal road map.

"The next step is to shut Millstone," she says bluntly. "This lets citizens go to the court to close the plant under the Connecticut Environmental Protection Act."

But if Burton's won a battle, her war is just beginning. Her victory only gives her legal standing to present a court with evidence that Millstone is exceeding pollution standards and the state is letting it happen. Now comes the hard sell of persuading a judge that the state is ignoring a serial polluter because regulators are in bed with the nuclear industry.

No easy task, for sure, but Burton sees a ray of hope. Regulators in Virginia recently rejected a new permit for a Dominion-owned nuclear plant there because the discharge was raising a lake's temperature to ecologically destructive levels.

"So there's hope," Burton says.