

**News from Beyond Nuclear**  
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**Beyond Nuclear considers appeal to U.S. Supreme Court  
after D.C. Circuit panel rules against challenge to Fermi 3 license**

***Environmental groups cite 'shocking and dangerous gutting of National  
Environmental Policy Act'***

Washington, D.C.—In a [ruling](#) issued today, the U.S. Court of Appeals for the District of Columbia Circuit denied a challenge brought by Beyond Nuclear against the U.S. Nuclear Regulatory Commission (NRC) approval of Detroit Edison's (DTE) combined Construction and Operation License Application (COLA) for the proposed new Fermi 3 atomic reactor in Frenchtown Township, Monroe County, Michigan. Beyond Nuclear, its legal counsel, and its environmental coalition partners have 60 days to file an appeal to the United States Supreme Court.

"We are seriously considering an appeal to the U.S. Supreme Court, given the shocking and dangerous gutting of the National Environmental Policy Act (NEPA) today's ruling allows to stand," stated Kevin Kamps, radioactive waste specialist at the national watchdog group Beyond Nuclear in Takoma Park, Maryland.

Beyond Nuclear [previously posted comprehensive background information](#) about the significant precedent this ruling will represent, and the scandalous revolving-door origin of NRC's excusing itself from NEPA.

Regarding the NEPA appeal, Terry Lodge, the Toledo-based attorney representing the environmental coalition in its decade-long challenge (2008-2017, and counting) to the proposed Fermi 3 reactor, offered these observations:

*The Appellants, who are grassroots intervenors are, of course, disappointed by the Court of Appeals' decision.*

*First DTE Energy in its Environmental Report, then NRC itself in its Draft and Final Environmental Impact Statements (EIS), failed to include the 29-mile long corridor for transmission lines leading from the proposed Fermi 3 reactor to a connection with the national grid in the EIS. More than a thousand acres of Michigan countryside, including forested wetlands – critical habitat for Eastern Fox Snakes and numerous other endangered and threatened plant and animal species -- would be affected by construction, operation and ongoing clearance and maintenance activities. The critical legal principle we asserted to the appellate court was that, even if advocates on*

*one side of a case pending before the NRC are late in raising a criticism of the agency's compliance with the National Environmental Policy Act, the agency is obligated, once there is verification of the criticism, which happened here, to comply with NEPA.*

*Here, the NRC's Atomic Safety and Licensing Board (ASLB), the equivalent of the trial court, ruled in a lengthy decision based on extensive motion arguments buttressed by evidence, that the intervenors were too late in raising the transmission corridor exclusion problem and so were barred. But the ASLB further ruled that the inherent responsibility of the agency to comply with NEPA must predominate, and the NRC staff must thus supplement the Final EIS. The commissioners of the NRC overruled the ASLB and merely held that the intervenors forfeit the contention because of filing too late, but the Commission did not provide any convincing reasoning to address the inherent responsibility aspect. The Court of Appeals decision does not deal with the inherent responsibility argument.*

*The fact that the transmission corridor was excluded from the FEIS was glaring and obvious. The effect of the court's decision is to create a rule that it always falls on underfunded, mostly volunteer citizen intervenor groups to identify and prosecute all issues related to non-compliance with NEPA. Even when there is overt or all-but-admitted evidence of a lack of compliance with the law, the only thing that can cure it is whether the weakest party in the proceeding - the public - makes the case, by an arbitrarily short deadline.*

Michael Keegan, Monroe-based board member of Don't Waste Michigan and four-decade long watchdog on the Fermi nuclear power plant, warned about the risks of the three-judge panel's ruling against Beyond Nuclear's Atomic Energy Act safety challenge.

"Quality assurance (QA) violations go right to the heart of the safety risks at the proposed new Fermi 3 reactor," Keegan said. "The foundational seismic data is suspect. In the aftermath of the Fukushima nuclear catastrophe, as well as the cancellation of the mostly-built Midland nuclear power plant, ignoring QA violations and seismic risks invites financial, or even radioactive, disaster."

[See the coalition's October 31, 2013 press release, as well as additional background information](#), regarding its QA challenge NRC ASLB oral hearings in Monroe, Michigan.

The twin-reactor Midland nuclear power plant in Michigan was abandoned, at a loss of billions of dollars, when NRC whistleblower and other testimony revealed safety-related buildings were literally sinking into the ground, due to a bad pour of the concrete foundations.

The environmental coalition that filed its first legal challenge to Fermi 3 on March 9, 2009 includes Beyond Nuclear, Citizens Environment Alliance of Southwestern Ontario, Citizens for Alternatives to Chemical Contamination, Don't Waste Michigan, and Sierra Club Michigan Chapter.