

**RECENT LITIGATION IN FEDERAL COURTS RELATED  
TO THE DEPARTMENT OF ENERGY'S  
FAILURE TO ACCEPT SPENT NUCLEAR FUEL**

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**ABSTRACT**

The Department of Energy (DOE) failed to meet its legal obligation to begin accepting spent nuclear fuel (SNF) from nuclear electric utilities by January 31, 1998. The DOE's obligation -- and failure to meet it -- has been and continues to be the subject of substantial litigation in federal courts. Difficulties with the Department's management and disposal program for SNF and other high-level radioactive wastes resulted in two significant decisions by the U.S. Court of Appeals for the District of Columbia Circuit in a period of less than two years. The first decision, *Indiana Michigan Power Co. v. DOE*, established the unconditional nature of the DOE's legal obligation to commence accepting SNF from utilities on or before January 31, 1998. The second decision, *Northern States Power Co. v. DOE*, addressed the question of whether or not the DOE could excuse its delay as being "unavoidable," regardless of its judicially-determined obligation to begin accepting SNF by the January 1998 deadline. In the *Northern States Power* case, which ultimately reached the U.S. Supreme Court, the Court of Appeals held that the DOE could not excuse its failure to perform -- and, as a result, escape legal liability -- by maintaining that default was "unavoidable."

The DOE's failure to commence accepting spent fuel will result in considerable additional burdens for utilities. These include both the need to expand SNF storage capacity, and to maintain custody of SNF longer than would otherwise have been necessary had DOE met its obligation. In certain cases, utilities will be required to provide spent fuel storage well beyond the time the power plant is permanently shutdown and decommissioned.

Eleven utilities have now filed actions in the U.S. Court of Federal Claims to recover, in the aggregate, more than \$4 billion in damages. One projection predicts that damages claimed for all 103 of the nation's nuclear plants will eventually amount to between \$31 billion and \$53 billion. The decisions of the U.S. Court of Appeals in *Indiana Michigan* and *Northern States Power* and the record of pending cases in the Federal Claims Court indicate that recovery from the government will be a difficult process. However, in view of DOE's flagging repository program, damages are likely to be the only benefits utilities can expect to see for some time. Accordingly, the results of litigation will be significant insofar as the DOE program is concerned, and important to the utility industry.

**INTRODUCTION AND BACKGROUND**

On January 31, 1998, the Department of Energy (DOE) failed to meet its legal obligation to commence accepting spent nuclear fuel (SNF) from nuclear electric utilities for disposal. The DOE's obligation -- and failure to meet it -- has been and continues to be the subject of substantial litigation in federal courts. In effect, court action has become a significant aspect of

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the DOE's SNF management and disposal program, and the outcome of this litigation will determine the only benefits likely to be received by the generators of SNF from the government with respect to spent fuel for the foreseeable future.

The Nuclear Waste Policy Act of 1982, as amended (NWPA), provides a comprehensive program for the management and disposal of SNF generated by civilian-operated nuclear power plants. Under the scheme established by Congress, electric utilities generating SNF are primarily responsible for interim storage prior to its acceptance by the DOE. However, in return for the utilities' payment of fees into a special account in the U.S. Treasury, known as the Nuclear Waste Fund (NWF), DOE is ultimately obligated to accept and dispose of all SNF from the utilities in a geological repository.

### **UTILITY CASES AGAINST DOE**

#### ***The Indiana Michigan Power Co. and Northern States Power Co. Decisions***

Problems with DOE's management and disposal program for SNF and other high-level radioactive waste (HLW) resulted in two significant decisions by the U.S. Court of Appeals for the District of Columbia Circuit in a period of less than two years. The first decision, *Indiana Michigan Power Co. v. DOE*, established the unconditional nature of the DOE's legal obligation to commence accepting SNF from utilities on or before January 31, 1998. (1) The second decision, *Northern States Power Co. v. DOE*, addressed the question of whether or not the DOE could excuse its delay as being "unavoidable," regardless of its judicially-determined obligation to begin accepting spent fuel by the January 1998 deadline. (2) In the *Northern States Power* case, which ultimately reached the U.S. Supreme Court, the Court of Appeals held that DOE could not excuse its failure to perform -- and, as a result, escape legal liability for resulting damages -- by maintaining that default was "unavoidable."

The NWPA establishes a framework for contracts between utilities and DOE concerning the acceptance and disposal of SNF. In particular, the NWPA contains two important prescriptions involving provisions of the Standard Contract governing rights and obligations of the parties; *i.e.*, the DOE and the utility. The first, sometimes referred to in the *Indiana Michigan Power* decision as "subsection (A)," requires the Standard Contract to provide that: ". . . following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel involved as expeditiously as practical upon the request of the generator or owner of such waste or spent fuel." (3)

The second provision, sometimes referred to as "subsection (B)," directs that the Standard Contract specify that: ". . . in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent fuel involved as provided in this subtitle". (4)

The Standard Contract adopted by the DOE in 1983, provides that, "[t]he services to be provided by DOE under this contract shall begin after commencement of facility operations, not later than January 31, 1998 and shall continue until such time as all SNF . . . from the civilian nuclear power reactors . . . has been disposed of." Over time, following separate signings of the Standard

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Contract, utilities became increasingly concerned about DOE's ability to meet its obligations. Progress with the repository program was slow. Furthermore, DOE failed to establish a monitored retrievable storage facility (MRS) for interim storage as provided in the NWPA. Concern was raised considerably when the Secretary of Energy, Hazel O'Leary, stated in an internal DOE memorandum, dated February 18, 1994, that meeting the objective of accepting SNF from the utilities by 1998 was not likely.

At about the same time, the issue of the DOE's view concerning its own legal obligations under the NWPA, or lack of them, became disturbing. The DOE was specifically requested to address its responsibilities under the NWPA and the January 31, 1998 deadline. In response, the DOE's Director of the Office of Civilian Radioactive Waste Management (OCRWM) stated in a letter that the DOE

does not have a clear legal obligation under the [NWPA] to accept [SNF] absent an operational repository or other facility. . . . [Similarly, DOE Secretary O'Leary indicated that,] while at the time NWPA was enacted the DOE envisioned that it would have a waste management facility in operation and prepared to begin acceptance . . . in 1998, [the] DOE subsequently concluded it did not have a clear legal obligation under the NWPA to accept SNF absent an operational repository or other facility constructed under the [NWPA]. (5)

On May 25, 1994, the DOE addressed the issue formally by publishing a "Notice of Inquiry" (NOI) to initiate a proceeding and consider the views of affected parties concerning the continued storage of SNF by utilities at nuclear power plant sites beyond 1998. (6) The NOI also presented DOE's preliminary legal finding that it had no statutory obligation to accept SNF beginning in 1998 in the absence of an operational repository or other facility constructed under the NWPA. The DOE did note, however, that the terms of the Standard Contract might have created such an expectation.

In May of the following year, the DOE finally concluded the NOI proceeding with the publication of its "Final Interpretation." (7) In the Final Interpretation, the DOE determined -- consistent with its preliminary finding -- that, in the absence of either a repository or interim storage facility constructed under the NWPA, it had no unconditional statutory or contractual obligation to begin accepting SNF on or before January 31, 1998. Utilities, states, and state agencies promptly filed suit challenging the DOE's Final Interpretation.

The fundamental issue addressed in *Indiana Michigan Power* was the DOE's contention that the language of subsection (B) did not, in fact, require it to begin disposing of SNF by January 31, 1998. Rather, the DOE contended the obligation was conditioned on the availability of either a geologic repository or other facility authorized, constructed, and licensed in accordance with the NWPA .

In reviewing the DOE's construction, the court rejected the Department's argument that the obligation of subsection (B), to accept spent fuel no later than January 31, 1998, was tied to a condition precedent, based on subsection (A), of repository operation. Said the court:

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In [subsection] (B), Congress . . . directed the beginning of the Secretary's duty as "not later than January 31, 1998," *without qualification or condition*. The *only* limitation placed on the Secretary's duties under (B) is that that duty is "in return for the payment of fees established by this section." The Department's treatment of this statute is not an interpretation but a rewrite. It not only blue-pencils out the phrase "not later than January 31, 1998," but destroys the quid pro quo created by Congress . . . . Under the plain language of the statute, the utilities anticipated paying fees "in return for [which] the Secretary" had a commensurate duty. She was to begin disposing of the high-level radioactive waste or SNF by a day certain. The Secretary now contends that the payment of fees was for nothing. At oral argument, one of the [court] panel compared the government's position to a Yiddish saying: "Here is air; give me money," and asked counsel for the Department to distinguish the Secretary's position. He found no way to do so, nor have we.

(Emphasis added.)

The court concluded: "[W]e hold that section 302(a)(5)(B) [of the NWPA, or "subsection(B)"] creates an obligation in the DOE, reciprocal to the utilities' obligation to pay to start disposing of the SNF no later than January 31, 1998." Beyond its determination concerning the DOE's obligation, however, the court found it "premature to determine the appropriate remedy," stating that, as of the time of its decision, "DOE has not yet faulted upon either its statutory or contractual obligation." The court concluded by vacating the DOE's Final Interpretation and returning the matter to the DOE for further action consistent with its decision, thus leaving the matter of a remedy for another day.

Despite the court's opinion in *Indiana Michigan Power*, DOE did not move to develop an aggressive plan to meet the January 31, 1998 deadline. Rather, the DOE responded by announcing it anticipated that it would be unable to begin acceptance of SNF for disposal in a repository or interim storage facility by January 31, 1998. DOE recognized that utilities would be affected by the DOE's delay and by the uncertainty as to when it would be able to begin SNF acceptance, and invited the views of contract holders on how the delay could best be accommodated. (8)

On January 31, 1997, one year before the 1998 deadline, utilities and numerous state entities separately petitioned the U.S. Court of Appeals for the D.C. Circuit for a writ of mandamus, which would compel DOE compliance with the court's earlier, *Indiana Michigan Power* decision. In addition, the petitioners requested authority to escrow NWF fee payments unless and until the DOE met its obligation to dispose of SNF. They also asked the court to prohibit the DOE from taking any punitive action toward those suspending payments into the Fund.

Following the initiation of the lawsuits, in a letter dated June 3, 1997, the DOE responded to comments submitted by contract holders as a result of its earlier invitation for views on how the DOE's delay in accepting SNF might best be accommodated. (9) As summarized by the court in the *Northern States Power* decision, the DOE recognized the requirement of subsection (B), holding that "contracts shall provide the Department to begin to dispose of spent fuel not later than January 31, 1998." The DOE expressed its belief, however, that the Standard Contract

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adopted by the DOE pursuant to the NWPA specified the available remedies in the event the deadline was missed. The DOE asserted that under Article IX of the Standard Contract, the DOE was “not obligated to provide a financial remedy for the delay because the delay, in the Department’s estimation was ‘unavoidable.’”

Following a discussion of developments since its *Indiana Michigan Power* decision, and expressing dismay at the DOE’s lack of a constructive response, the court noted that the remedy of mandamus is “a drastic one.” The court enumerated the appropriate conditions for the application of such a writ. “Mandamus is proper,” said the court, “only if ‘(1) the plaintiff has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is not other adequate remedy available to the plaintiff.’”

The court then proceeded to find that the petitioners had, indeed, established a clear right to relief. The court noted the finding in *Indiana Michigan Power*, that the payment of fees into the NWF is the only limitation on the Secretary of Energy’s duties in the NWPA. While the owners and generators of SNF “have dutifully complied with the NWPA, pouring billions of dollars of payments into the Fund with the expectation that the DOE would live up to its end of the bargain,” said the court, “[t]he Department on the other hand, has tersely informed the parties that it ‘will be unable begin acceptance of spent nuclear fuel for disposal in a repository or interim storage facility by January 31, 1998.’” The utility petitioners’ “full compliance with the requirements of the NWPA, taken in conjunction with the DOE’s failure to perform its reciprocal duties,” stated the court, “compels the conclusion that petitioners have established a clear right to relief in the case.”

The court then focused on the second requirement for a writ of mandamus. It found the DOE’s obligations were clear. The court noted the holding in *Indiana Michigan Power* that DOE’s earlier position that its obligations under the NWPA were contingent upon the existence of a repository or interim storage facility was inconsistent with the text of the NWPA “which clearly demonstrates a Congressional intent that the Department assumed a contractual obligation to perform by the 1998 deadline ‘without qualification or condition.’” The court continued:

[The] DOE’s duty to take the materials by the 1998 deadline is also an integral part of the Standard Contract, which provides that the Department “shall begin” disposing of the SNF by January 31, 1998. 10 C.F.R. § 961.11, [a]rt. II. The contractual obligations created consistently with the statutory contemplation leave no room for the DOE to argue that it does not have a clear duty to take the SNF from the owners and generators by the deadline imposed by Congress.

The court, however, found the third condition for mandamus less than fully satisfied. Accordingly, it declined to issue the broad writ of mandamus sought by petitioners “because they are presented with another potentially adequate remedy.” Turning to Article IX of the Standard Contract, upon which the DOE had attempted to excuse its delay as being “unavoidable” in the June 3, 1997 letter, the court stated that, while the NWPA does not prescribe a particular remedy in the event of the DOE’s failure to perform on time, the Standard Contract outlines how the parties are to proceed should one be unable to fulfill its obligations in a timely manner. The court observed that under Article IX, unavoidable delays are treated differently than avoidable delays. As provided in the Contract, a failure to perform is considered “unavoidable” only if

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such failure arises out of causes beyond the control and without the fault or negligence of the party failing to perform. "If a party's delay is avoidable," noted the court, "the charges and schedules in the contract must be equitably adjusted to reflect additional costs incurred by the other party."

Within this context, the court remained unconvinced that petitioners had made a sufficient showing that the scheme provided under the Standard Contract was inadequate to deal with DOE's delay in accepting SNF. The court concluded:

Petitioners have suggested that the contractual processes are inadequate, claiming that they will "suffer additional billions of dollars in additional costs if DOE fails to meet its January 1998 obligations," . . . and that they will not be able to recover these costs in the contract proceedings because the Department is excusing its own default. . . . Such costs may in fact ensue if [the] DOE fails to perform on time, but there is no reason to believe that these additional expenses will not be taken into account if the contractual processes operate as Congress intended. . . . Accordingly, we conclude that petitioners must pursue the remedies provided in the Standard Contract in the event that DOE does not perform its duty to dispose of the SNF by January 31, 1998.

Nevertheless, the court found a limited writ of mandamus was required. As stated by the court, "[g]iven [the] DOE's repeated attempts to excuse its delay on the ground that it lacks an operational repository or interim storage facility, we find it appropriate to issue a writ of mandamus to correct the Department's misapprehension of our prior ruling." The court continued:

Accordingly, we order [the] DOE to proceed with contractual remedies in a manner consistent with NWPA's command that it undertake an unconditional obligation to begin disposal of the SNF by January 31, 1998. More specifically, we preclude [the] DOE from concluding that its delay is unavoidable on the ground that it has not yet prepared a permanent repository or that it has no authority to provide storage in the interim.

On August 3 and September 1, 1998, states and federal government, respectively, petitioned the U.S. Supreme Court for review of *Northern States Power*. The state petition was based on the position that *Northern States Power* court had improperly restricted review by failing to fully remedy what was characterized as "[the] DOE's refusal to comply with its statutory duty to dispose nuclear waste." (10) In the view of the state petitioners, by not going further in *Northern States Power* and providing a remedy, the court had failed to properly discharge its role to review the DOE action and inaction under section 119 of the NWPA.

The government petition, on the other hand, took the position that the court, in *Northern States Power*, had exceeded its authority. In particular, the petition raised the specific question of "[w]hether the Court of Appeals' order prohibiting [the] DOE from invoking the 'unavoidable delays' provision of the Standard Contract intrudes impermissibly upon the jurisdiction of the Court of Federal Claims, which has exclusive authority . . . to adjudicate actions founded on a contract with the United States." (11)

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On November 30, 1998, however, the Supreme Court denied both requests for review. (12) Accordingly, the *Northern State Power* decision stood as it was issued.

### Actions Seeking Recovery

With the *Indiana Michigan Power* and *Northern State Power* decisions as a basis, emphasis has shifted to recovery for damages resulting from DOE's failure to meet its SNF disposal obligations. Eleven cases have been initiated in the U.S. Court of Federal Claims to recover, in the aggregate, more than \$4 billion in damages. Eventual damage claims have been estimated by the Nuclear Energy Institute at between \$31 billion and \$53 billion.

Utility cases in the Court of Federal Claims have been filed on a number of bases. These include counts of partial breach of the Standard Contract; breach of an implied contractual duty of good faith and fair dealing by the DOE; the taking of property, for which compensation is due under the Fifth Amendment to the U.S. Constitution; and violation of the NWPA. Thus far, however, court proceedings have concentrated on a threshold, jurisdictional issue which has essentially brought litigation on the merits of pending cases to a standstill.

Specifically, in the case of *Yankee Atomic Electric Co. v. United States*, Judge Merow denied a government motion to dismiss the action based on the argument that DOE, and not the Court of Federal Claims, was the proper forum for seeking damages. (13) In rejecting the government's position the court held, in essence, that -- since Yankee Rowe, the nuclear plant in question, was permanently shut down and, thus, no longer paying NWF fees -- the remedy provided under Article IX of the Standard Contract allowing for equitable adjustment of Standard Contract charges was not available. The court therefore determined that, since a remedy was not available "under" the Standard Contract, initial action for breach in the Court of Federal Claims was appropriate. In addition to the *Yankee Atomic* decision, the court reached similar conclusions in separate cases brought by Connecticut Yankee Atomic Power Co. and Maine Yankee Atomic Power Co. (collectively, the *Yankee* cases).

In another Court of Federal Claims case, *Northern States Power Co. v. United States* (hereinafter *Northern States Power Co.*, not to be confused with the earlier case also brought by the Northern States Power Company but in the U.S. Court of Appeals for the D.C. Circuit), Judge Wiese reached a conclusion contrary to that of Judge Merow in the *Yankee* cases. (14) In his decision, Judge Wiese concluded that DOE's failures were "delays" cognizable under Article IX of the Standard Contract. Unlike Judge Merow, Judge Wiese refused to consider the adequacy of the equitable adjustment remedy provided. Insofar as he was concerned, all that mattered was that the issue of delay was addressed in the Standard Contract, and that a provision was included for dealing with it. Since the utility and DOE had agreed to terms in the Standard Contract, the court was unwilling to change its provisions, regardless of the adequacy of the remedy:

The provisions set forth in the Standard Contract were the product of an extensive notice and comment period. It must be assumed therefore that those provisions -- and the remedies they specify -- accurately reflect the intention of the contracting parties. And, even if those remedies seem unexpectedly to fall short of what the parties originally (but perhaps mistakenly) had envisioned, deference to the

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administrative process dictates that the contracting agency, as the party charged by Congress with fulfillment of the [Nuclear Waste Policy] Act's goals, be given the first opportunity to rectify the problem. It is DOE's decision that was bargained for, not ours. It would therefore be an unwelcome intrusion upon the administrative process – indeed, an unlawful intrusion – were this court to side with plaintiff in saying that the administrative remedy appears unsatisfactory and therefore may be disregarded in favor of a breach action in this court.

Based on this analysis, Judge Wiese concluded that the Northern States Power Company was required to pursue its claims within the DOE by seeking administrative remedies established in the Standard Contract before the Contracting Officer and Board of Contract Appeals and dismissed the case.

The *Yankee* and *Northern States Power Co.* decisions are now on appeal before the U.S. Court of Appeals for the Federal Circuit. Following a decision there, review in the U.S. Supreme Court may well be sought. Thus, it is likely that a final determination concerning the important threshold question of where claims should originally be filed will be delayed until sometime well into the year 2000, and perhaps longer.

To complete the picture, in addition to the Court of Federal Claims cases, an action was filed in 1998 by Consolidated Edison and four other utilities in the U.S. Court of Appeals for the District of Columbia Circuit seeking relief based, primarily, on damages resulting from DOE's failure to perform in accordance with requirements of the NWPA and Standard Contract. The case was largely founded on a novel theory of jurisdiction in the U.S. Court of Appeals to hear contract claims under the NWPA. However, it was dismissed in April of 1999. A request for rehearing *en banc* -- *i.e.*, by the entire court, and not just a three-judge panel -- was filed, but denied. Review by the U.S. Supreme Court, however, was sought on November 1, 1999. (15)

Finally, in late October 1999 the Wisconsin Electric Power Company (WEPCO) brought suit in the D.C. Circuit seeking an order requiring DOE to: (a) accept and transport off-site 201 Point Beach SNF assemblies, if necessary to avoid premature plant shutdown; (b) begin, next year, to provide dry storage casks; (c) take title to Point Beach SNF when it is placed in dry storage at an Independent Spent Fuel Storage Installation (ISFSI); (d) take ownership and become licensee for the Point Beach ISFSI no later than January 2004; (e) following permanent shutdown of the Point Beach plant, take title to all remaining Point Beach SNF not later than 5½ years after shutdown; and (f) reimburse costs incurred by WEPCO arising from DOE delay. The WEPCO action, which is still pending, follows the refusal of the DOE to grant, in response to a request filed with the Department in August 1998, basically the same relief the court is now being asked to assure. (16)

## CONCLUSION

In the NWPA, Congress created an extensive program for managing and disposing of SNF. The NWPA required the DOE to develop a comprehensive, federal system for SNF management and disposal, including provisions for packaging, transportation, interim storage, and the development and operation of a geologic repository for SNF disposal.



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Thus far, the Government has collected over \$8.5 billion dollars from utilities, with the current NWF balance standing at more than \$6.9 billion dollars. (17). However, not a single SNF element has been accepted by the DOE under the terms of a Standard Contract.

Most, if not all, utilities value the success of the DOE program and the movement of SNF away from utility sites above all. However, in the face of inaction by the DOE, utilities have been, and will continue to be, forced to seek relief from the courts. By default, litigation -- rather than the actual management and disposal of SNF -- has become one of the most characteristic aspects of the OCRWM program.

### **REFERENCES**

1. Indiana Michigan Power Co. v. United States Dep't of Energy, 88 F.3d 1272 (1996).
2. Northern States Power Co. v. United States Dep't of Energy, 128 F.3d 754 (1997).
3. 42 U.S.C. § 10222(a)(5)(A)(1994).
4. 42 U.S.C. § 10222(a)(5)(B)(1994).
5. Indiana Michigan Power Co., 88 F.3d at 1274.
6. Notice of Inquiry, 59 Fed. Reg. 27,007 (1994).
7. Department of Energy Final Interpretation of Nuclear Waste Acceptance Issues, 60 Fed. Reg. 21,793 (1995).
8. Letter from Robert R. Nordhaus, General Counsel, Department of Energy, to Michael A. Bauser (Jan. 13, 1997).
9. Sample Letter from Beth A. Thomasomi, Contracting Officer, Department of Energy, to Contract Holders.
10. Petition for Certiorari at i, Northern States Power Co. v. United States Dep't of Energy, 128 F.3d 754 (D.C. Cir. 1997) (No. 98-225).
11. United States Dep't of Energy's Petition for Certiorari at i, Northern States Power Co. v. United States Dep't of Energy, 128 F. 3d. 754 (D.C. Cir. 1997) (No. 98-384).
12. Michigan v. United States Dep't of Energy, 119 S. Ct. 538; U.S. Dep't of Energy v. Northern States Power Co., 119 S. Ct. 540.
13. 42 Fed. Cl. 223 (1998).
14. 43 Fed. Cl. 374 (1999).

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15. Consolidated Edison Co. of New York, *et al.*, unpublished Opinion and Order of the U.S. Court of Appeals for the D.C. Circuit, *petition for cert. filed*, 68 U.S.L.W. 3327 (No. 99-766).
16. Wisconsin Election Power Co. v. United States Dep't of Energy, No. 94-1342 (D.C. Cir. filed Aug. 24, 1999).
17. OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT, U.S. DEP'T OF ENERGY, Nuclear Waste Fund Fee Adequacy: An Assessment, p. 3 (DOE/RW-0504 Dec. 1998).