

CASE LAW AND ADMINISTRATIVE DECISIONS

CASE LAW

Germany

Judgement of the Federal Administrative Court on the Konrad Repository Project (2007)

In a judgement handed down on 3 April 2007, the German Federal Administrative Court ruled that the former iron ore mine Konrad can become the country's first disposal facility for low and medium-level radioactive waste.

The plan to convert the Konrad site in Lower Saxony was first approved by the State Environment Ministry in 2002 after almost 20 years of proceedings. Local communities and farmers appealed the licensing decision. These lawsuits were dismissed in March 2006, without leave for further appeal (see *Nuclear Law Bulletin* No. 77), but subsequent appeals were made against the denial of leave to appeal. These were finally dismissed on 3 April 2007, exhausting the legal process and rendering the site licence to convert the Konrad mine into a final repository incontestable.

At the time of publication of this *Bulletin*, the text of this Court ruling was not yet available. More detailed comment will be provided in the next edition of the *Nuclear Law Bulletin* (No. 80; December 2007).

ADMINISTRATIVE DECISIONS

Sweden

*Environmental Court Decision on Initial Measures for the Dismantling of Barsebäck (2006)**

On 12 July 2006, the first instance environmental Court of Växjö decided on the initial measures for the dismantling of the two 600 MW boiling water reactors located at Barsebäck. The first reactor at Barsebäck was shut down in November 1999 through a political decision by the Government. The decision was made pursuant to the 1997 Act on the Phasing-out of Nuclear Power (see *Nuclear Law Bulletin* No. 61). Barsebäck-2 was shut down on 31 May 2005, again pursuant to the 1997 Act (see *Nuclear Law Bulletin* No. 75).

* This commentary is in the nature of a corrigendum to the short summary published in *Nuclear Law Bulletin* No. 78 and was kindly provided by Mr. Tomas Israelsson, Senior Legal Adviser at the Swedish Nuclear Power Inspectorate.

In Sweden, all nuclear activities require permits pursuant to both the 1984 Act on Nuclear Activities (see in particular *Nuclear Law Bulletin* Nos. 33, 39, 56 and 63) and the 1999 Environmental Code (see *Nuclear Law Bulletin* No. 63). While the former focuses essentially on nuclear safety issues, the Environmental Code takes a broader view on the overall environmental impact of a certain activity. Pursuant to the Environmental Code, dismantling of a nuclear power plant requires a separate licence. Applications for such licences pursuant to the Code are heard by the Environmental Court.

In this context, it could be of interest to point out that pursuant to the Nuclear Activities Act – for which the Swedish Nuclear Power Inspectorate (SKI) is the regulatory and supervisory authority – there is no need for a separate licence in order to dismantle a nuclear power plant. On the contrary, the owner of a nuclear installation is obliged to dismantle the plant after shutdown. Dismantling is to be done in a safe manner according to the Best Available Technology (BAT) and under the surveillance of the SKI.

In this particular case, the Environmental Code held an open session in which all major involved organisations and institutions were heard. Amongst them were the Swedish Nuclear Power Inspectorate (SKI) and the Swedish Radiation Protective Institute (SSI) – both authorities under the Swedish Government. In the application, Barsebäck Kraft AB, the company that holds the operating licence for the reactors, had not applied for a licence to commence actual dismantling of the plants – but rather had applied only for initial measures. Barsebäck Kraft AB did not wish to commence dismantling until at earliest 2020. SSI, however, together with the municipality of Kävlinge where Barsebäck is located, wanted decommissioning to commence prior to that. Barsebäck Kraft AB, considering that early decommissioning would require a new facility for interim storage of waste products and thus cause a major interruption in the national Programme for Spent Fuel and Radioactive Waste Management, disagreed.

The Environmental Court decided to grant Barsebäck Kraft AB a licence for initial measures for the dismantling until the end of 2012. Before that date, Barsebäck Kraft AB will be required to apply again for a new licence. In the meantime, the Court expects the company to present more analysis and material regarding the possibility or consequences of early dismantling.