

## EcoLaw and Entergy will face off at Plymouth Zoning Board of Appeals meeting

By Frank Mand

**Wicked Local Plymouth**

Posted Jun 08, 2013 @ 10:00 AM

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What's this?

PLYMOUTH — It won't have the lurid attraction of the Whitey Bulger trial, but next Wednesday's Zoning Board of Appeals hearing on Entergy's "right" to build dry cask storage units at the Pilgrim Nuclear Power Station should have more than its fair share of legal maneuvers, dramatic moments, and impassioned pleas.

EcoLaw's appeal of the decision by Plymouth Director of Inspectional Services Paul McAuliffe that Entergy could build concrete waste storage units "as of right" – without having to obtain a special permit – is interesting from many perspectives, including the fact that EcoLaw insists it supports the project, with conditions.

EcoLaw says yes to the concept of dry cask storage, yes to granting a special permit for construction off Rocky Hill Road of those dry cask storage units, but no to treating the project as if Entergy were simply adding on to its beachfront property.

That's essentially what Entergy has argued to date, that the \$150 million dollar project, which could house radioactive spent fuel for hundreds of years at the Plymouth site, is an accessory use, and therefore does not require a special permit.

In its brief to the Appeals Board dated June 5, Entergy's legal representative – the Plymouth-based law firm Winokur, Serkey & Rosenberg – uses a different metaphor.

"Conceptually," Entergy's representatives write, "(switching to dry cask storage) is no different than the replacement of an attached garage by a free-standing garage at a single family home."

Entergy also asserts that the federal government, namely the Nuclear Regulatory Commission, has "governance" over Pilgrim.

"Under federal law," Entergy's brief states, "every nuclear power reactor licensee is, by virtue of their license, simultaneously licensed to store spent fuel in an ISFSI at the reactor site."

Entergy's brief seems to claim that the license to operate the plant, which is issued by the NRC, trumps any local zoning bylaws.

When the NRC re-licensed Pilgrim in 2012, attorney Richard Serkey writes for Entergy, by "operation of the law it also authorized the placement of an ISFSI at Pilgrim. I am sure that (the town of Plymouth)

does not want to re-plow the same ground."

Is it the same ground, though?

NRC spokesman Neil Sheehan told the *Old Colony* this week that while Pilgrim does not need to seek approval for the use of a specific dry cask system that has been generically approved by the NRC, "plant owners have to comply with local land use requirements. The NRC does not have a role to play in that review process."

Initially, EcoLaw and other plant critics were simply standing on the sidelines, waving their hands, and urging the town to get more involved with the project.

Plant critics attended hearings of the Board of Selectmen and the Nuclear Matters Committee and warned that without the community's involvement the town would not be able to have any input into siting or security concerns or obtain financial protections for what could be a facility that is operating long after the plant has stopped generating power.

At the same time Entergy was insisting, despite evidence of construction on the plant grounds, that the dry cask project – what is formally called an ISFSI (Independent Spent Fuel Storage Installation) – had not actually begun.

But when the *Old Colony* reported that EcoLaw attorney Meg Sheehan had shown the Plymouth Board of Selectmen aerial photographs of the construction that was underway, the very next day Entergy filed a formal a request with the building inspector for a construction permit.

Only when McAuliffe made the decision that a special permit for the project was not needed, citing an opinion from Town Counsel Kopelman & Paige, did EcoLaw file its appeal.

Court is still the last resort, EcoLaw says, and it appears that will only happen if the town rejects its appeal of McAuliffe's decision.

Entergy's brief suggests that the opposite will happen, that EcoLaw is against granting a special permit and will take the town to court *if* a special permit is granted

EcoLaw's real goal, Entergy's brief declares, is to "make it as difficult as possible for Energy to continue operating Pilgrim in a safe and responsible manner by delaying the construction of the NRC-approved ISFSI."

The attorney for Entergy lists a series of costly consequences – mostly legal costs – for the town that would occur, they argue, if there

were even a special permit hearing.

But in its brief EcoLaw, ironically, says it wants the town's appeals board to focus on the town's regulations.

"The issue before this Board is whether a by-right zoning permit was properly issued on the ground that outside storage was a "by-right" accessory use, or whether Entergy should be required to obtain a new or amended special permit for its planned," EcoLaw wrote in its legal brief, filed earlier this week with the town, in preparation for Thursday's hearing.

"The current issue is not whether Entergy should be granted a special permit," the introduction for the EcoLaw brief continues. "Entergy needs a special permit to do what it proposes, and we do not say that a special permit should not be granted.

"However, we do say that Entergy needs a special permit to do what it proposes. Entergy, like any other party, must abide by the rules. The Plymouth Zoning Bylaw requires Entergy to request a special permit, and at a public hearing its citizens and Entergy will be heard."

EcoLaw's brief details 10 specific instances in the past in which Pilgrim officials requested special permits for far less involved projects, including separate special permits for construction of a service shop, expansion of its administrative building, erection of a meteorological tower, construction of a medical facility, security station and others.

In the summary of its legal brief EcoLaw also asserts that while the Plymouth Zoning Bylaw permits some accessory uses in some zoning districts – even without a special permit – the Light Industrial zoning district in which Pilgrim is located is not one of them.

"In the Light Industrial zoning district, any "accessory use" requires a special permit," EcoLaw states.

In terms of allowed uses in that same zone, the storage of dry casks of radioactive spent fuel assemblies is not listed as an allowed use.

EcoLaw points out that the plans and specifications that Boston Edison (Entergy's predecessor) submitted with its application for a special permit 45 years ago, are listed as conditions of the special permit that the ZBA issued in 1967.

"That special permit allows, and is limited to, the structures and uses that those plans and specifications describe." EcoLaw points out that outside storage of dry casks of radioactive fuel assemblies was not included in that special permit.

Again, Entergy's attorney's focus on what they say is EcoLaw's real agenda: shutting Pilgrim down.

"This agenda-driven litigation would constitute a huge waste of time and money for the Town, the Courts, and Entergy," Attorney Richard Serkey wrote, on behalf of the Louisiana-based owner of Pilgrim.

EcoLaw's brief concludes by reasserting that the only issue now before the ZBA is whether a by-right Zoning Permit was properly issued, or whether Entergy should be required to obtain a new or amended special permit.

"The Appellants respectfully submit that the Zoning Permit was improperly issued," EcoLaw states, "that the Request for Enforcement was improperly denied, and that Entergy (like its predecessor Boston Edison Co.) must apply for and obtain a special permit before proceeding with this Project. "

Ecolaw's appeal is scheduled to be reviewed by the Plymouth Zoning Board of Appeals in the Mayflower Room on the first floor of Plymouth Town Hall (11 Lincoln St.) Wednesday, June 12, beginning at 7:45 p.m.

Follow Frank Mand on Twitter @frankmandOCM

**Comment or view comments »**

Comments (16)

WHbeachbum

2 months ago

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ECO law is wasting Plymouth's time and money. The real issue is should a nuclear plant be situated in Plymouth. That should have been well thought about many years ago when the town allowed them to build the plant. Current town officials are powerless to restrict anything Entergy wants to do.

FrankMandLies

2 months ago

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Frank is on google every day trying to find something to write about the plant, Because he is the author I believe half of it to be true. Usually this time of year he's more focused on the beach, and telling us ( with help from his friend Cate Muther); how cute the plovers are and that the beach should be closed. Well it is closed till July and not one article from Frank or this paper. While all the regular beach goers will be stopped at day parking; Frank will have a special pass to go to one

of Cates cottages for her yearly 4th of July party.

wwinslow

2 months ago

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Frank Mand spent 6 years active duty as the Chief of Operations on a nuclear destroyer in the US Navy, holds a Bachelor of Science in Nuclear Technology from Worcester Polytechnical Institute, two Master of Science degrees from Stanford - one in Nuclear Propulsion Systems and one in Atomic Power Generation, and he holds a PhD from Rensselaer in Nuclear Fuels Processing. Frank was Director of Operations at Vermont Yankee, and Chief of Engineering at Seabrook.

The more Frank learned about nuclear power, the more it scared him, until he decided to become a journalist to report on the industry.

Before joining the OCM, he was a reporter for Newsweek. After receiving death threats to him and his family, he refused to go into federal witness protection, and instead moved to Plymouth, taking a job as a local beat reporter.

I'd trust his word over and anonymous poster on these boards.

FrankMandLies

2 months ago

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Winslow, i have been reading Franks articles for over a year now and have found them to be inaccurate or bias. Hence the name Frankmandlies, I don't know where you got your info about Franks background but I question it . I could be wrong but I do know that his facts are not always accurate, and as I said he has not yet reported about the beach being closed to the residents of Plymouth.

bosenlaw

2 months ago

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I am one of the attorneys representing abutters petitioning the ZBA in this matter. I normally do not comment on press reports concerning any pending matter, but I can not help but do so here where Entergy has impugned the motives of the petitioners by stating that we have a hidden agenda designed to abuse the Zoning Appeals process in order to simply tie up Entergy in endless litigation to prevent them from getting their fuel out of the dangerous pool where it now lies on the second story of the reactor room and, instead into safer, air-cooled dry casks outside the building.

Nothing could be further from the truth.

A number of us have fought for years to get all this fuel into safer dry cask storage. We supported legislation filed by Ed Markey to do the same and urged our Attorney General, State delegation, and Governor to push the NRC to require it ASAP, which they all have since done even as recently as last week.

For Entergy to insinuate, as here above quoted, that our aim is to actually tie it up in court while we and other concerned citizens of the area continue to languish endlessly in the exposure pathway of a spent fuel accident waiting to happen is either ignorant, cynical, or both.

But, seeing as Entergy does not even have the decency, after all it has burdened us with for over 40 years, to include this community's voice in securing its own future after it is long gone and we are left holding the bag with all of its spent fuel rods, assassinating the character of those who would speak up for some smidgen of local control over the manner in which it is left is just one more easy and contemptuous next step .

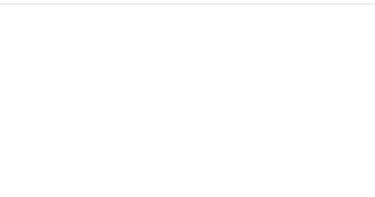
Theodore Bosen

MegSheehan

2 months ago

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I'm glad to see that the NRC agrees with EcoLaw and not Entergy:

'NRC spokesman Neil Sheehan told the Old Colony this week that while Pilgrim does not need to seek approval for the use of a specific dry cask system that has been generically approved by the NRC, plant owners have to comply with local land use requirements. The NRC does not have a role to play in that review process.

Mr. Sheehan (no relation to me) is right: Pilgrim is located in Plymouth only because the Zoning Board of Appeals gave it a permit in 1967. The Town still has the same authority over Pilgrim, and Entergy can't hide behind the NRC on this one.

Dry cask needs to be done right and the Town has the duty to protect its inhabitants and their property.

nomandsmand

2 months ago

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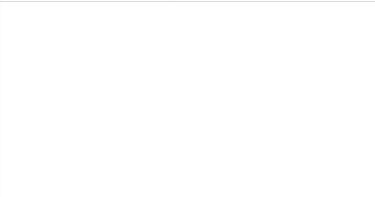
Gosh, FrankMandLies - and WWinslow - I am blushing. Unfortunately, someone is prevaricating here, especially as regards my education and professional background. I don't usually looking look at the comments, but someone saw the claims about my education and wondered if it were true. Alas, no. I don't have a scientific background. I have a BA from Boston College in English, an MBA from Northeastern, and certificates in Web Management from Emerson and Professional Publishing from Stanford. I was also, for nearly five years, the Executive Editor of the Journal of Nuclear Medicine. But thanks for trying to make me sound more credible. Nuclear power is incredibly complex, and I could use the help.

The Howard Beale Show

2 months ago

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wwinslow you must have been smoking some pretty strong stuff to come up with a far out story like that. Frank's also an spy for the CIA and likes his martinis shaken and not stirred. LOL

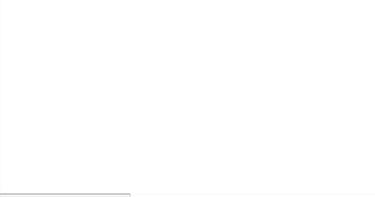
Guess you lost all credibility, you dope.

watcherwatcher

2 months ago

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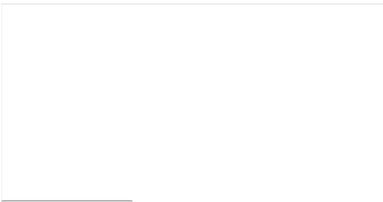
lol i did have a bond - james bond feel to it .lol

Bagel Man

2 months ago

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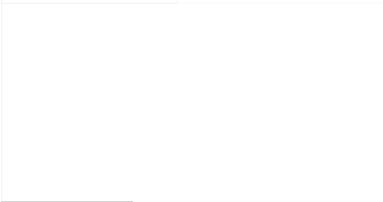


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I thought winslow's post was pretty funny. I guess Beale's kind of like Frankenstein, and doesn't understand humor. Weirdo.

windshift  
2 months ago  
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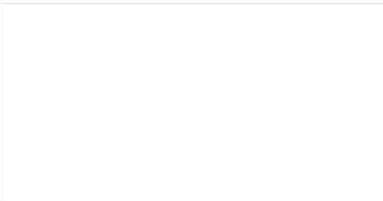
For once I agree with Frank Mand and the substance of this article. I also appreciate his honesty re. his true background. Though, having read many of his previous articles, it is apparent that he has little nuclear or scientific background. -- But, as usual, the tone of the article leaves no doubt where his sympathies lie. So an article which this time, I believe, contains mostly facts is tainted by the way it is written - and becomes commentary, not news. So, can I trust the 'facts'?!?! Frank and his editors, should understand that the public the OCM serves does not need slanted reporting. We should be presumed to be smart enough to form our own opinions, pro or con, without bias. Trust me, I'm much more interested in accurate reporting, than I am in your opinions.

Frank Mand, and of course anyone who is opposed to Pilgrim, has the right to express an informed opinion. Frank can even express his own ill conceived opinions on the Op/Ed pages of the OCM. But, a reporter should report unvarnished facts in a NEWS article. And his editor and publisher should make damn sure he does just that. Let the PUBLIC form opinions and take action, if required, based on those facts. That's Journalism 101. --

I think Entergy was wrong, and possibly arrogant, in not seeking special permitting for such a large project - if that's a true depiction. The storage method is approved by the NRC and widely used. But, the town should have buy-in and approval authority regarding site selection and construction.

wedgeb  
2 months ago  
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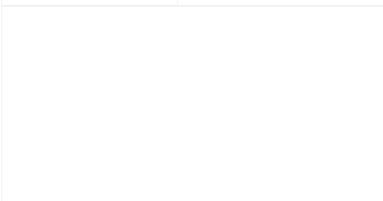


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Isn't it actually getting to the place that anyone that supports Entergy and our nuclear waste dump must either work there or live under a rock. We now have over 40 years of high level nuclear waste here in town that nobody wants... so we are stuck with it. The N.R.C. has relicensed the dump for another 20 years before they even figured out what to do with the waste. Shut this waste making dump down now and get the waste taken care of the best they can. This is getting crazy.

The Howard Beale Show  
2 months ago  
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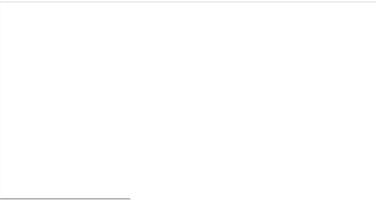
I understand humor Bagel. I just don't see much humor in inflating Mr. Mand's resume. If the post was supposed to be funny, it would have had a joke somewhere in it, which I don't see. On the other hand my post was somewhat humorous. It was obviously an anonymous incorrect biography being proposed as fact, that Frank had to personally deny. What was the point?????????? Your insults were uncalled for.

But if you want to talk about weirdo's..... I would say that about anyone that creates a off the wall yarn that winslow came up with, or anyone that would think that it's very funny.

Now back to Entergy. If the town had to issue a special permit for the plant to be built, then they should issue one for the dry cask storage. This was not an permitted use for the site in the original design of the plant.

FrankMandLies  
1 month ago  
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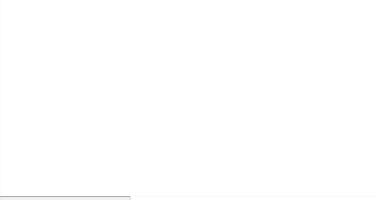
I was just making a point that Frank is quick to write anything about the plant, but when Long Beach is completely shutdown neither him nor his paper write anything about it. Meanwhile Duxbury beach shuts down and it's on all the major news channels. But Frank doesn't want to draw attention to his friends at Goldenrod. While the rest of us are restricted to day parking Cate and her friends will be enjoying 2+ miles of private beach.

Bagel Man

1 month ago

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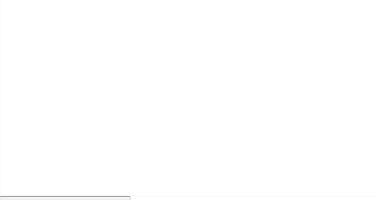
Beale, I think you were the first to sling insults with the 'you dope' comment, but I think the real dope is someone who considers any anonymous commenter on these boards to have 'credibility'. Do you really think anyone considers you credible on here? You dope.

The Howard Beale Show

1 month ago

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Report Abuse

I don't care if people find me creditable or not. I post because I like to. But I can say I never make things up and misrepresent people here. Why do you post Bagel? I would assume since most of your comments seem to be mostly serious you want to be taken as credible. Otherwise you could just troll here and after a while get banned by big brother.

Let winslow defend himself and his comments. It really is not your concern.

Now do you think you could stay on TOPIC??????????



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