



## Oyster Creek Stands By Closure Plan Despite Federal Court Ruling

'No similarities' between Vermont ruling and Lacey nuclear plant's planned shutdown, DEP says

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By Elaine Piniat



Credit Courtesy of Oyster Creek

Oyster Creek will stick to the plan to close in 2019 after a federal judge ruled that the Vermont Yankee nuclear plant could remain open beyond its scheduled shutdown date, plant spokesperson Suzanne D'Ambrosio said.

"We made a commitment to our regulators and to the public," she said. "Our commitment and our plan is to retire Oyster Creek in 2019. That's the plan."

A U.S. district judge in Brattleboro, Vt., ruled Thursday that the Vermont Yankee nuclear plant could remain open beyond its scheduled shutdown date this year, the Washington Post reported. The state had originally ruled against Vermont Yankee's federal operating license, which gives the plant 20 more years to operate.

Entergy, the operator of the plant, argued that the state acted on concerns over plant safety, which is the Nuclear Regulatory Commission's jurisdiction, the Washington Post reported. The judge ruled in Entergy's favor.

Advocates opposed to Oyster Creek have showed concerns that this federal decision could impact the Forked River-based nuclear plant's closure date.

"I think it's my worst fears coming true," said Jeff Tittel, Director of the New Jersey Sierra Club. "We are very concerned about federal pre-emption over state agreements. Federal law trumps state law."

The DEP and an environmental attorney, however, say jurisdictional issues over safety and water quality mean the Vermont Yankee ruling has little impact on the agreement to close Oyster Creek.

### **Nuclear Safety a Federal Concern**

The decision to shut down Oyster Creek early was made in December 2010 as a result of "economic conditions" and "changing environmental regulations" causing Oyster Creek's value to decline, said Chris Crane, president and chief operating officer of Exelon Corp, the plant's owner.

Factors leading to the plant's closure include low market prices and demand, and the plant's need for continuing large capital expenditures, Crane previously said. The closure of Oyster Creek was also a part of Gov. Chris Christie's 10-point plan to restore the Barnegat Bay.

The state Department of Environmental Protection was poised to require the plant to install cooling towers to recirculate cooling water instead of drawing more than a billion gallons of water from Barnegat Bay each day. The project would run up substantial costs and to design, permit and construct a system would take at least seven years.

Due to Exelon's decision to retire the plant early, the DEP will not require the company to install cooling towers.

"Exelon has provided the NRC with formal notification of its intentions to adhere to that plan and that timeline for Oyster Creek," Nuclear Regulatory Commission (NRC) spokesperson Neil Sheehan said.

The Vermont Yankee litigation was centered on whether the state was pre-empted by the federal Atomic Energy Act from seeking a shutdown of the plant, Sheehan said. The Atomic Energy Act says that safety is a province of the NRC.

The subject of pre-emption was not raised in Oyster Creek's license renewal application, Sheehan said.

"If you look at what happened, Vermont Yankee agreed to abide by whatever the state decided," Tittel said. "They reneged on their deal and went to federal court to make sure the deal was invalidated. A federal permit trumps any state agreement."

The Vermont Yankee case and issue with Oyster Creek are two different situations, DEP spokesperson Larry Hajna said.

"In New Jersey, with Oyster Creek, you have a company that is willing and cooperating in the closure of the plant under a reasonable time frame," he said. "The Vermont case evidently involves legislative action to block the company from looking to extend its license. There are no similarities."

But Tittel does not trust Exelon, the owner and operator of Oyster Creek, he said.

"If Exelon wanted to go to court, the state couldn't do anything about it," he said. "I do not trust Exelon now and I do not trust them with the future of Barnegat Bay. Whatever they say, they can always change their minds."

William de Camp, Director of Save Barnegat Bay, has been interacting with the nuclear industry for at least 15 years.

“I have come not to trust them,” he said. “Anything could happen.”

But the settlement that Exelon came to with Gov. Chris Christie was voluntary, he said.

“It would tend to follow that there would not be a precedence resulting from what happened in Vermont,” he said.

“One thing that could theoretically happen is that Exelon could one day go to court and argue that Chris Christie twisted their arm and this wasn’t really a voluntary decision.”

### **Water Quality, Cooling Towers**

The concerns of Save Barnegat Bay and the Sierra Club originate from the need for cooling towers.

“Our huge concern with Oyster Creek is the tremendous harm they’re doing to the bay by not having a cooling tower,” de Camp said.

Every day Oyster Creek strains 1.4 billion gallons of bay water through its cooling system, he said. The bay only has 60 billion gallons of water. The strain Oyster Creek puts on the bay is equivalent to 2.4 percent of the bay’s water each day and 800 percent each year.

“It’s just a gargantuan death machine as far as fish eggs and plant larva,” de Camp said.

Exelon is closing the plant because they do not want to fix the issue with cooling towers, Tittel said, which could prove to be a problem because just as the Nuclear Regulator Commission regulates safety, it also regulates environmental and economic issues, he said.

“If the market starts growing or the economy changes, I don’t think there is anything the state can do to stop Exelon,” Tittel said.

**Environmental issues, such as water quality in the case of Oyster Creek, are regulated by the U.S. Environmental Protection Agency unless the state delegates a program, as is New Jersey, said Richard Webster, Environmental Enforcement Attorney of Public Justice.**

“Vermont Yankee has made it very clear that nuclear safety is a federal domain that the state can’t regulate,” he said. “The Oyster Creek agreement was not based on a safety assessment. It was on improving water quality. Basically the Vermont Yankee decision doesn’t affect the validity of the settlement here.”