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Summary

How do you define "routine maintenance?" That's the question being debated in federal court between environmentalists and TVA.

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# Environmentalists, TVA spar in court

By Joel Davis of The Daily Times Staff  
Originally published: June 02, 2009 3:01AM  
Last modified: June 01, 2009 10:30PM

KNOXVILLE -- How routine is "routine"?

That's the million-dollar question for the Tennessee Valley Authority, which skirmished with attorneys for several environmental groups in U.S. District Court on Monday. District Judge Thomas Varlan is hearing the case.

The National Parks Conservation Association, the Sierra Club and Our Children's Earth Foundation pursued a lawsuit against the utility since 2001, seeking to determine if TVA skirted federal emissions limits at its Bull Run steam plant in Clinton.

The Clean Air Act does not require coal plants in service before 1977 to install new air pollution controls unless major physical changes are made to the plant that cause emissions to increase. According to court records, in 1988, TVA performed a "major overhaul" of the boiler used to produce electricity, replacing approximately 58,000 feet, about 26.5 percent, of tubing inside the boiler.

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At the time, the agency did not install new pollution controls. Attorneys for TVA have since argued that the repairs were "routine maintenance" that would not trigger the federal requirements.

"You have to suspend common sense," said Wade Davies, attorney for the plaintiffs. "... This is just not something that can be characterized, using English, as routine."

The plaintiffs allege that TVA has not obeyed appropriate emissions limits at the plant and seek declaratory relief, an injunction and civil penalties.

"A common sense evaluation will show the projects were far from routine maintenance," Davies said.

Frank Lancaster of the TVA General Counsel's Office, during opening arguments, said that the utility had openly made the changes to the plant and -- "for a decade, no one said TVA had done anything wrong."

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The expenditures for the boiler repairs are not large relative to current standards, Lancaster said.

"In comparison to contemporary benchmarks, it's insignificant," he said.

Mike Hekking, an expert witness for the plaintiffs, who retired from TVA after a career that including managing a steam plant for the utility, said that runs counter to his experience at the utility.

"A \$6 million expenditure would have to go to the top of TVA for approval," he said.

Lancaster also tried to cast doubt on a study that the plaintiffs are using to indicate that the boiler changes increased emissions at the plant.

"With no evidence from the right baseline, plaintiffs will have no evidence at all," he said.

Varlan is not expected to issue a ruling for at least six weeks after the end of the trial, which resumes today.

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