

Status Quo of Principle 10 in Japan

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Acts

concerning principle 10

- * We have many statutes concerning P10.
- * Administrative Information Disclosure Law: Many cases concerning environmental matters were brought to court, seeking for disclosing information.
- * Administrative procedures Act
- * Code of Civil Procedure, Administrative Case Litigation Act, Code of Criminal Procedure
- * Environmental impact Assessment Law
- * City Planning Act(public hearing), River Act(public participation), Waste Disposal and Public Cleansing Act(written comments by interested persons) , Act for Infrastructure Development Plans(Understanding and acceptance by residents. Biodiversity Basic Act
- * Public participation by-law (local level)

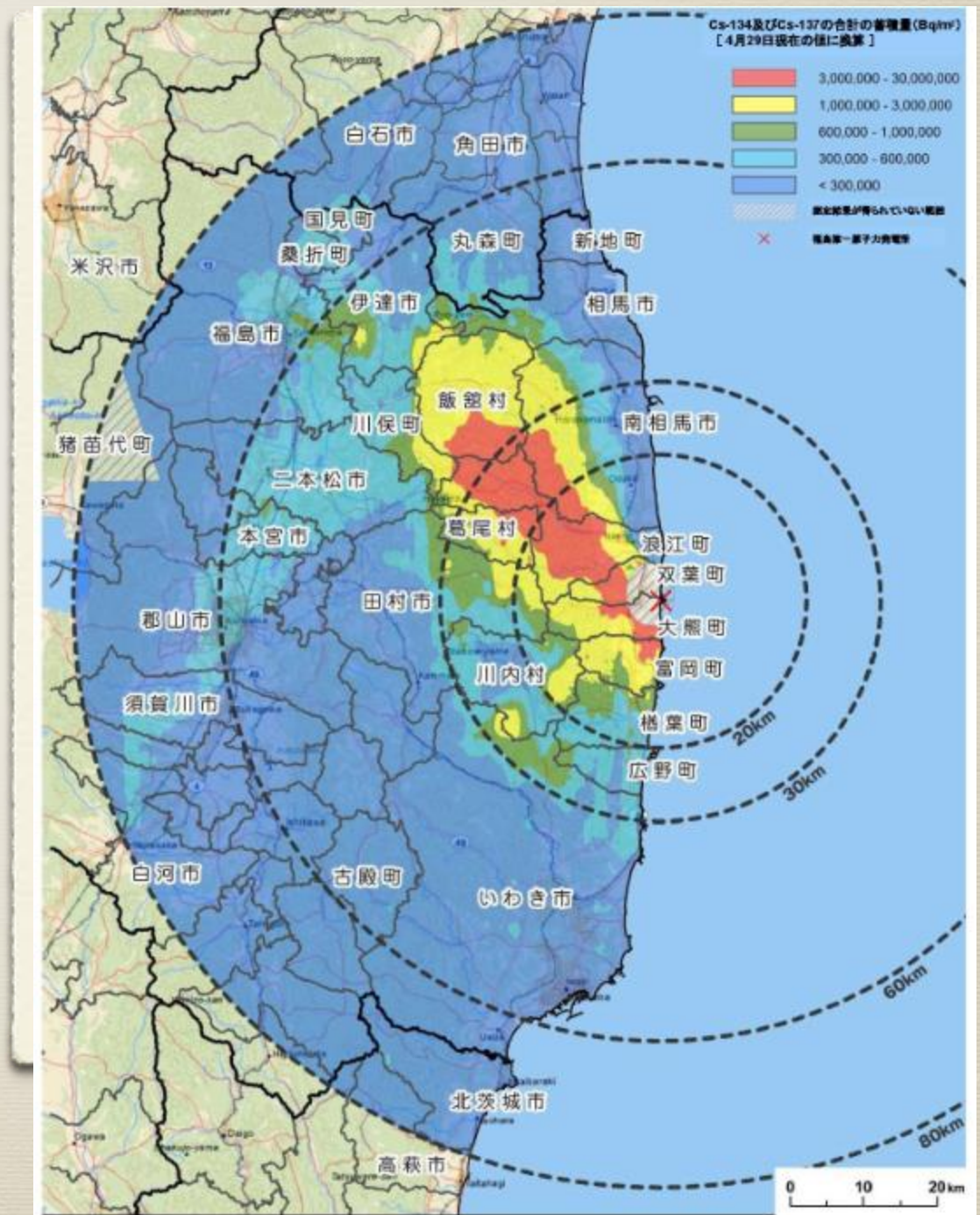
However, people feel frustration about limitation of statutes and attitude of administrative authorities.

Case1

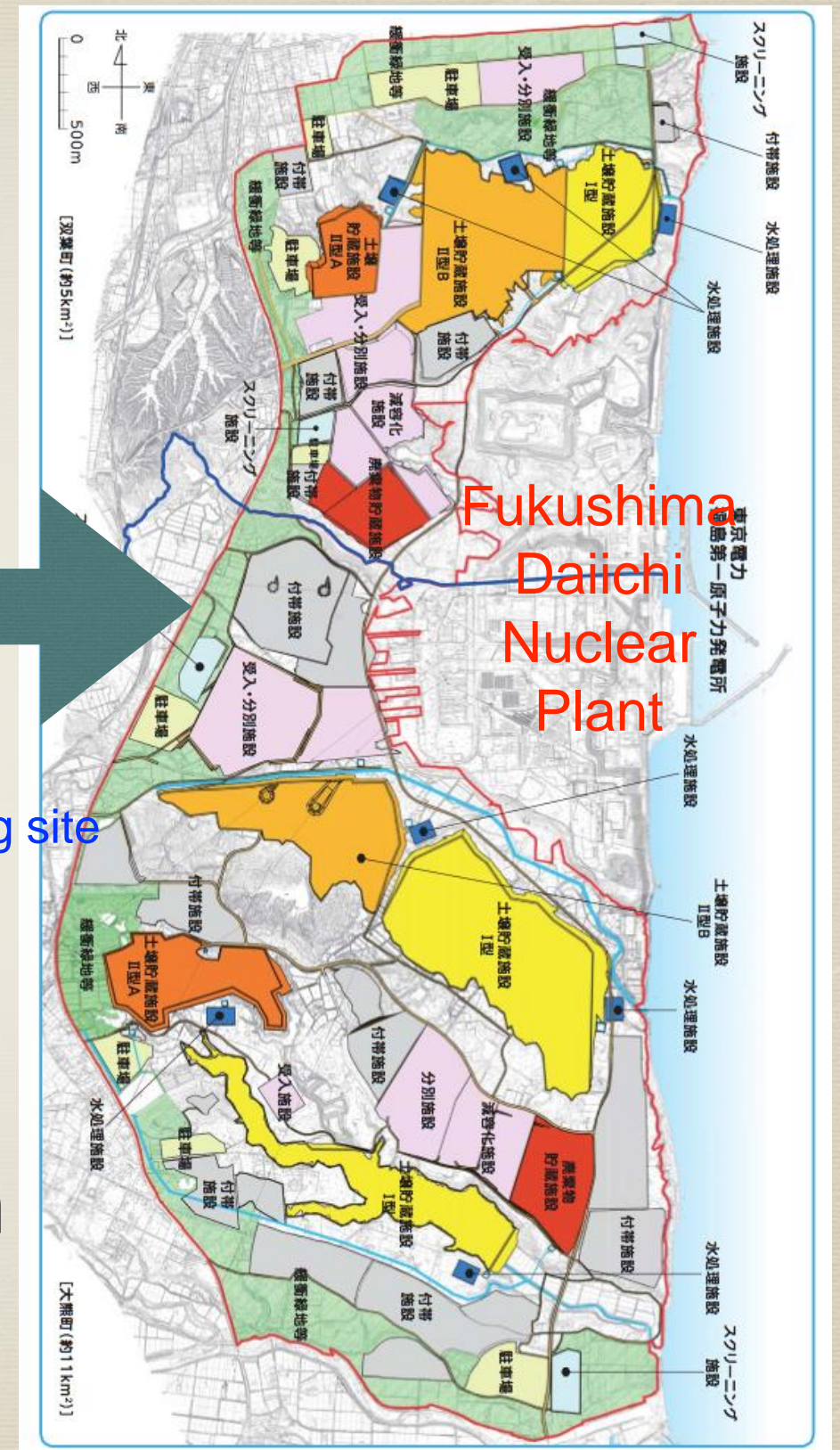
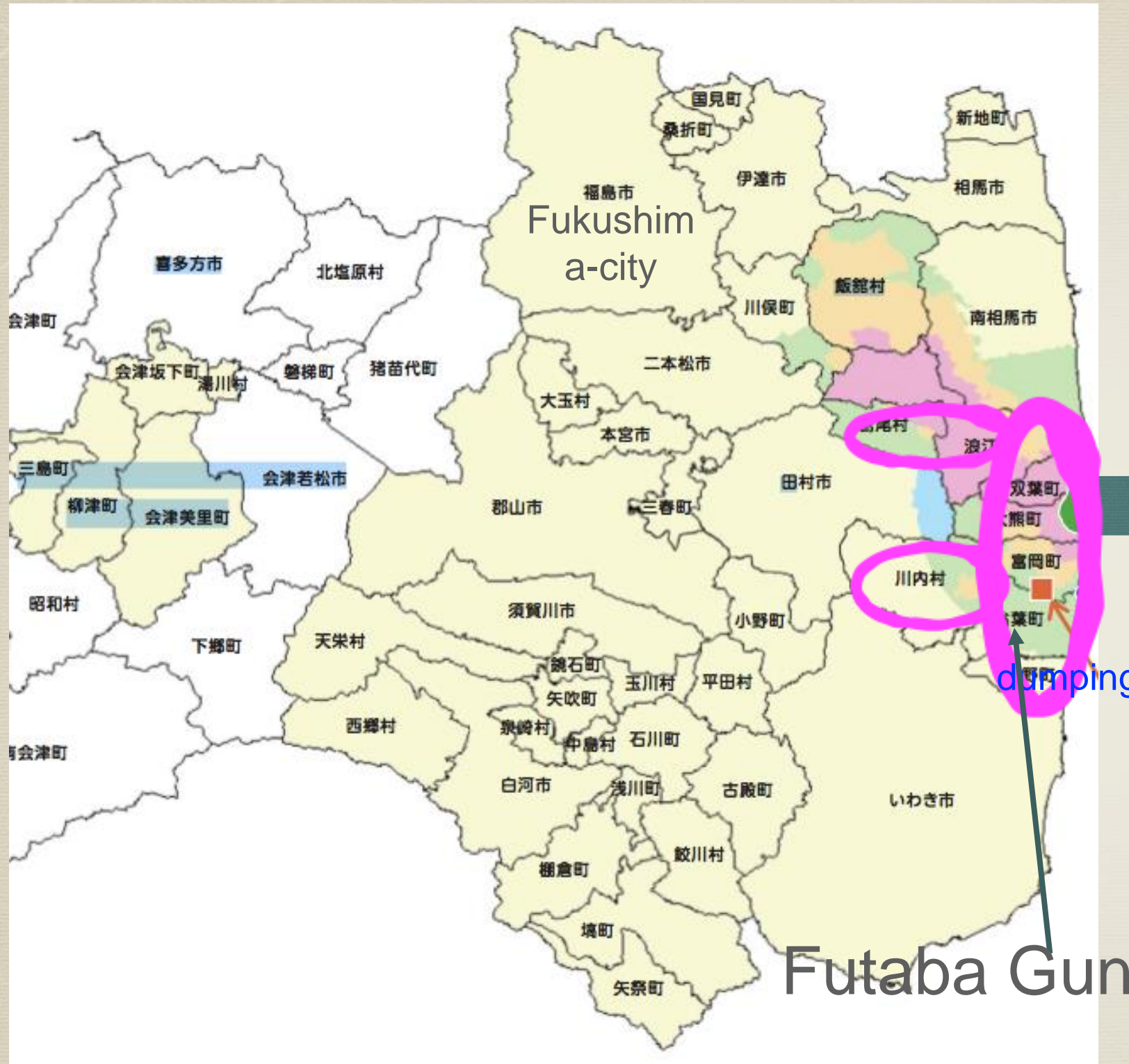
- * Construction process of Fukushima interim storage facility for soil and wastes produced by decontamination.
- * Soil and wastes contaminated by radioactive material will keep in the facility for 30 years.
- * Traditional attitude of administrative authorities of Japan
- * Deliberation of information is inadequate.
- * Stakeholder participation is inadequate, as well.

State chose the policy of Peoples' return to hometown after decontamination

- * Fukushima nuclear accident produced massive radioactive contaminated soil and wastes.
- * Decontamination of radioactive materials is removing soil, cutting branches of trees, and washing away radioactive material from the roofs or roads.
- * Treatment of Radioactive material Act



Interim Storage Facility Site



Population Futaba-town:8,449人 Okuma-town:11,505人

Planned facility : 2,200 millon m2 in Futaba town and Okuma town

- * Decontamination



- * Short-time storage sites.

- * The central government promised that soil etc. would be moved out from short-time storage site to a interim storage facility in 3 years from, however nobody believed the words.



- * Interim storage facility (with radioactive material more than 100000Bq.)



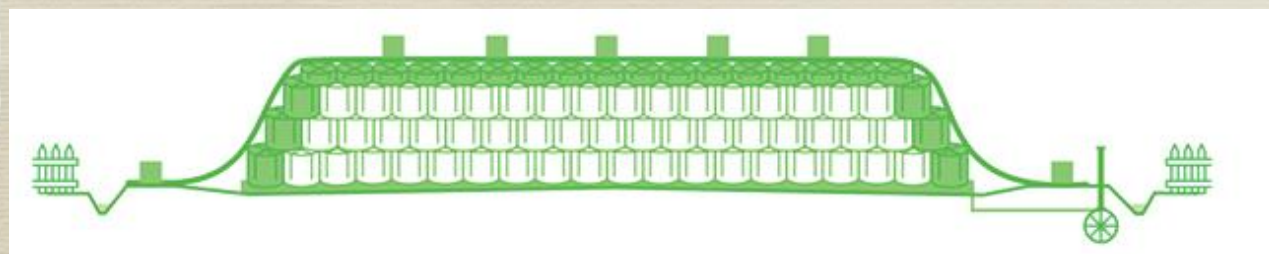
- * They must be safely disposed.



来年1月までに「3年」を迎える仮置き場の数

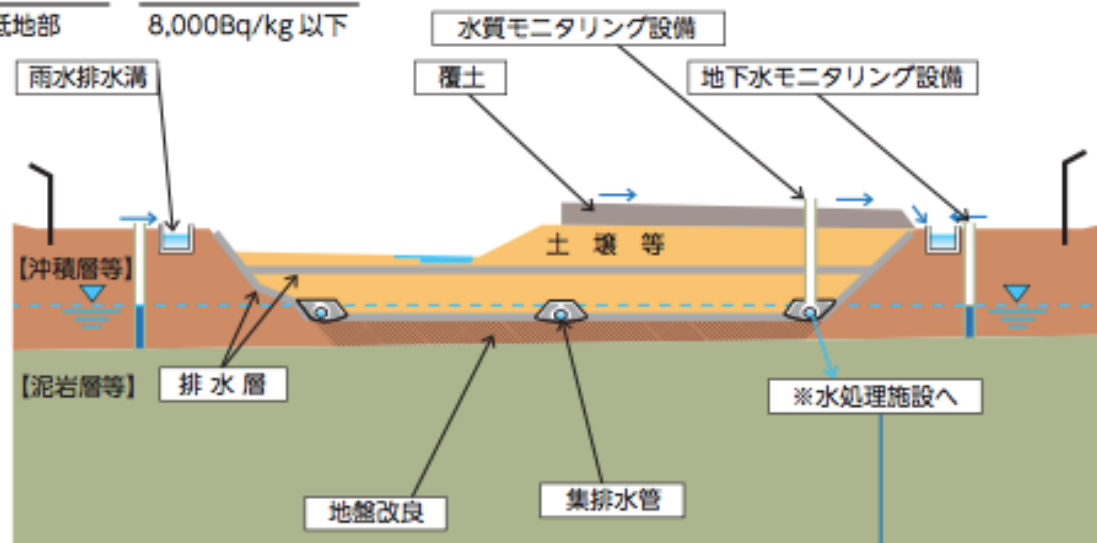
大熊町	1	(—)
川内村	1	(4377)
広野町	1	(4万2000)
川俣町	9	(6万9788)
福島市	1	(1万8935)
須賀川市	13	(171)
二本松市	73	(990)
伊達市	3	(6103)
西郷村	2	(3万5690)
石川町	1	(138)
計	105	(17万8192)

※7月末現在。カッコ内は汚染土などの保管量・立方尺。大熊町分は非公表



土壌貯蔵施設 (I型) の構造

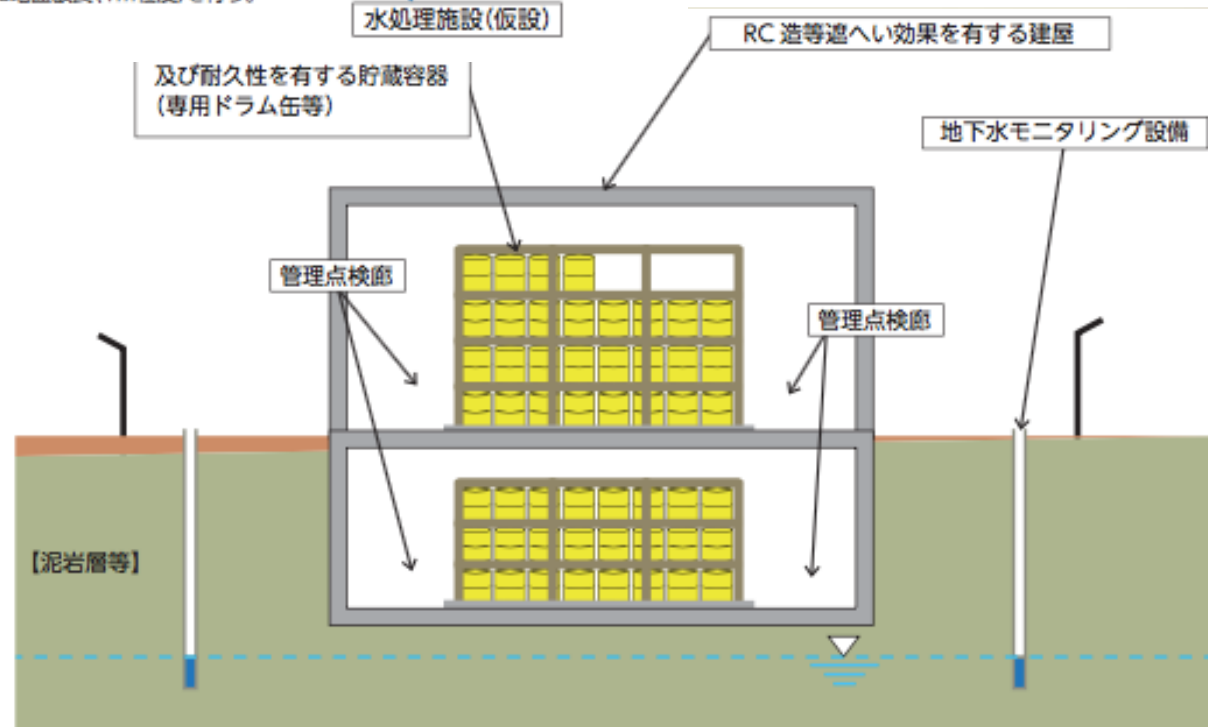
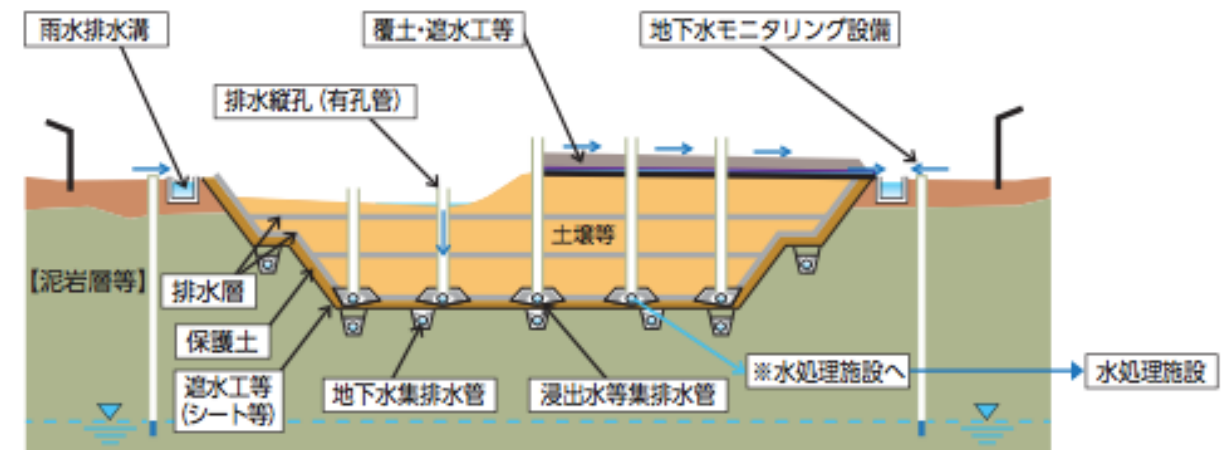
適用地形・地質 低地部
放射性セシウム濃度 8,000Bq/kg 以下



*底部:沖積層の場合は、重機可動性の確保のために地盤改良(1m程度)を行う。

土壌貯蔵施設 (II型A) の構造

適用地形・地質 丘陵地、台地等
放射性セシウム濃度 8,000Bq/kg 超



Interim Storage Facility

Summery of Timeline

- * 2011.10 Released “Basic policy on an interim storage facility “ ← There was no opportunity for the public to review it, as well as no opportunity in policy making process.
- * 2011.12 Negotiation among Statee and local governments started. The State requested to consider whether they will accept the plan or not, to Fukushima prefecture and 8 towns and villages in Futaba area.
- * 2012.03 The authority explained its plan on the facility site to 8 towns and villages in Futaba-Gun.
- * 2012.11 Governor of Fukushima prefecture accepted the site investigation with the reservation of taking adequate account to the local governments and their residents.
- * 2013.01 The authority held meetings to explain about the site investigation at several places. One meeting took 2 hours.
- * 2013.04 Site investigation commenced at Okuma town.
- * 2013.05 First meeting of Study Committee on Safety Measures for Interim Storage Facility. First meeting of Study Committee on Environmental Protection Measure on Interim Storage Facility as well.
← Study by Specialists
- * 2013.12 State requested acceptance of the facility construction plan to 3 towns.
- * 2014.02 Governor of Fukushima prefecture requested gathering the site in 3 towns to 2 towns.
- * 2014,04 The central government accepted it.

Summery of Timeline

- * 2014.05 Futaba town and Okuma town accepted the meeting to explain the construction plan of the facility to residents.
- * 2014.05-06 Closed meetings to residents(No accurate information had not directly given by the state till the day. Residents got information through newspaper, TV, or internet.)
- * 2014.08 Minister of Ministry of Environment explained the plan to 2 town council.
- * 2014.09 Closed meetings to explain the matters concerning acquisition to land owners and land right holder in the site. Many land owners of 2200 owners did not attend any meetings.
- * 2014.12 Okuma town accepted the facility.
- * 2015.01 Futaba town accepted the facility.
- * 2015.03.13 State will bring some amount of soil on the land in the site.
- * Only a little land has been acquired yet. Most land owners hesitate to negotiate to sell their land. Most land owners have not accepted the offer. Their reasons are various.

- * Today, the government understands importance of disclosure of administrative information and the participation of interested people, even no requirement of the act.
- * So that, the authority, the MoE, held local meetings to explain its plan to the residents of 2 towns and local governments. Information has been delivered through the internet.
- * However, the central government had no intention whatever of changing the framework of its plan.

Some Issues

- * Timing of participation ← Too late participation
- * When stakeholders should participate?
- * Needs of review system of the policies and plans. participation in review process.
- * Who should participate in the process.
- * residents of 2 towns, Fukushima prefecture, general public
- * Measures of deliberation of information

Case 2

- * Ken-o-do(Metropolitan Inter - City Expressway) case
- * 4 suits were brought to courts : Both of injunction of construction, action for revocation of the project approval under the Land acquisition Law.
- * This case shows limitation of “access to justice” in Japan.
- * Many movements against road construction have been happened all over Japan.
- * Nikko Taro-sugi (called Taro cedar) case is famous in road construction cases, because traditional culture and scenery was protected by justice(Tokyo high court, 13. July 1973).
- * Standing: landowner (Nikko Tosho-gu shrine)
- * must consider about traditionally culture, even the administrative decision is in the scope of administrative discretion.

Ken-O-Do (圏央道)

- One of three ring roads of metropolitan area
- 40-60km radius from the centre of Tokyo
- 300km long.

It passes Takao mountain through tunnel.



Standings

- * These litigations are called “Takao-san Tengu litigations”
- * Plaintiffs : Tengu, plants, a Takao nature conservation group, residents, land owners in the site of the road.
- * Standing; Tengu, nature, conservation group, denied
- * Standing; Residents near the road and land owners in the site, affirmed
- * First filing suit was in 2000(injunction of its construction)
- * Tengu: long nose goblin, imaginary creature



Public interest of road

V.S.

Nature conservation, noise, safety

- * Ring road : 30km of road operated then.
- * The authority estimated that part of Takao tunnel would be one of the most busy part of the road.
- * reduction of congestion of city centre
- * Plan is reasonable from the aspect of transport policy and financial policy.
- * V.S.
- * Traffics would not be so heavy as the authority insisted.
- * Takao-san is a treasure of biodiversity(plants:1321 species, birds;137species)
- * - nature should be protect for future generations.
- * Takao-san is one of the most popular recreational place for residents of Tokyo. -
260 million people come and climb it every year.
- * The road will disrupt the quiet and scenery of the village in the valley.

- * Plaintiffs lost all litigations.
- * Tokyo high court decision(20 July 2012)
 - * - affirmed a danger of vanish of some species, disruption of scenery, and increase of air pollution and noise.
 - * - questionable about accuracy of the estimation of traffics by the authority
 - * - But, “public interest” of the road surpasses interests which plaintiffs insisted.
- * Other court: facts alleged by plaintiffs is unreasonable.

- * standing is very narrow; property right holders, persons who are in danger of suffering health damage
- * When plaintiffs file a suit against the administrative authority, they can hardly win.
- * That is the reality.

Case 3 Yamba Dam case

- * Tone river is the second longest river. in Tokyo.
- * Yamba Dam is planed in 1952. But anti-dam movement by local people was very strong.
- * Yamba dam is planed for the purpose of supplying drinking water to Tokyo and other 4 prefectures. and of prevention of flood.
- * Tokyo and the other 4 prefectures pay some rate of construction cost.
- * Local governments where the dam , accepted the plan in 1995.
- * People who oppose it, claim that it disrupt the nature scenery. They additionally claim that it is useless facility, because there will not demand of drinking water more, and that the river authority expect much lager flood than real expectation.



Limitation of Access to Justice

- * Some residents and people living in Tokyo Metropolis and the 4 prefectures, brought inhabitant litigation to 5 courts.
 - * Inhabitant Litigation:
 - * - litigation for false practice of local government finance.
 - * - Not tax payers suit, but similar to it.
 - * - Standing: residents
 - * - Local level, not state level
 - * It is indirect means in order to stop the construction. It makes only stop financial spending of the cost at local level.
 - * Actions for the Judicial Review of administrative Disposition in Administrative case litigation act
- Article 3 (1) The term "action for the judicial review of an administrative disposition" as used in this Act means an action to appeal against the exercise of public authority by an administrative agency.
- * There is no administrative disposition in this process.

Conclusion

- * Many acts are legislated now.
- * It is very difficult for plaintiffs, who alleged environmental protection, to win cases against administrative authority.
- * Even though public participation is nominal, administrative authorities mostly have won cases.
- * Exception is waste disposal site case.

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Thank you for your kind
attention