October 2014

The following is a compendium of news reports over the preceding month that may be of interest to our AG offices who are dealing with DOE sites or general nuclear waste issues. Neither the National Association of Attorneys General nor the National Attorneys General Training & Research Institute expresses a view as to the accuracy of news accounts, nor as to the position expounded by the authors of the hyperlinked articles.

**FEDERAL**

**DEPARTMENT OF ENERGY (DOE)**

DOE has prepared and released a recovery plan report concerning the reopening of the Waste Isolation Pilot Plant (WIPP) that handles defense transuranic waste. The report requires, *inter alia*, strengthening safety programs, regulatory compliance, increasing ventilation, and decontamination of underground areas. The [Acting Assistant Secretary for Environmental Management Mark Whitney](https://www.energy.gov/act) stated that safety is the primary concern for the agency and that WIPP may resume full operations in 2016.

**DOE is soliciting input from companies** on the types of railcars that should be used and whether the government should lease or buy the cars to transport large, 150-ton casks of nuclear fuel throughout the country. Currently, the U.S. military transports fuel via Navy ships to federal labs, but the federal government is attempting to prepare and consider models of rail to transport loads of spent fuel in the absence of a permanent repository.

**DEFENSE AUTHORIZATION ACT**

Various groups have noted that the increased proposed budget under the [Defense Authorization Act](https://www.govinfo.gov/content/pkg/PLAW-114hr2864/pdf/plaw-114hr2864.pdf) is at its highest level ever for nuclear weapons research and production.

**NUCLEAR REGULATORY COMMISSION (NRC)**

Two additional nominees were approved by the Senate to serve as new members of the [NRC](https://www.nrc.gov/) and both are expected to handle issues involving carrying out increased safety measures following the Fukushima incident, licensing nuclear reactor plants, and determining plans on handling the storage of nuclear waste. One nominee, Stephen G. Burns, served recently as head of legal affairs for the Organization for Economic Cooperation and Development’s Nuclear Energy Agency. Jeffrey M. Baran served as the energy and environment staff director for the House Energy and Commerce Committee.
Environmental groups opposed to nuclear power have threatened to proceed in federal court to contest the Nuclear Regulatory Commission’s (NRC) new rule permitting the licensing of nuclear power plants and the storage of waste onsite indefinitely, if the rule is actually implemented this month. The groups further claim that federal regulations prohibit the NRC from issuing licenses since plans for a permanent geologic repository are unavailable and because additional studies regarding nuclear waste disposal should first be required. An attorney representing the 17 groups has filed a requisite petition, requesting that the NRC stop licensing and re-licensing nuclear reactor plants. A copy of the petition can be found here.

A study to explore underground storage of nuclear waste in realistic, outdoor conditions will take place at a research facility on Clemson University’s campus. Examining underground activity via an outdoor container will not pose a risk to nearby inhabitants. The $5.25 million grant will research legacy waste from weapons production and nuclear power generated plants. The environmental scientists and engineers slated to work on the grant are from Clemson University, South Carolina State University, and the University of South Carolina and possess myriad expertise in nuclear engineering, radiochemistry, health physics, plant physiology, environmental science, hydrogeology, geophysics, computational modeling and civil engineering.

The Multidisciplinary Journal of Microbial Ecology published a paper, wherein it found that small, single-cell organisms could assist with disposing of nuclear waste, and, although this finding by itself is not a new phenomenon, this recent research is critical because this is the first time that microbes were found to survive in non-pristine soil. In other words, the microbes were able to live in harsh conditions that would be similar to radioactive sites. The goal of the research was to enhance the scientists’ knowledge of safe disposal methods, and they will now turn their attention to the next phase that includes understanding the impact that the microbes have on radioactive materials.

Utah State regulators approved EnergySolutions’ request to enlarge the time it has to respond to questions posed concerning storage of low-level radioactive waste in Utah. EnergySolutions says that it needs additional time to respond substantively to questions raised following completion of its site-specific performance assessment. EnergySolutions is vying to become the recipient of the nation’s repository of depleted uranium.

UPDATES – WASTE AND LABORATORY SITES

LOS ALAMOS NATIONAL LABORATORY (LANL)

Following the radiation leak at WIPP from receiving a barrel packed at LANL, DOE has taken remedial measures and moved four LANL employees and removed the DOE contractor responsible for managing
cleanup at the lab. Per an order from DOE Secretary Moniz, program operations for cleanup at LANL have been changed from the National Nuclear Security Administration to the DOE Office of Environmental Management.

SANTA SUSANA FIELD LABORATORY

The Ninth Circuit recently issued a decision, ruling in *Boeing v. Raphael, et al.* that the California law (Senate Bill 990 that set a standard requiring that the soil, water, and air be clean enough in and around the Santa Susana 2850-acre property to permit subsistence farming) impermissibly elevates the standard which the DOE imposed (that the site merely be clean enough to build on and populate with people). Moreover, the Court found that the State violated intergovernmental immunity by attempting to regulate cleanup activities in direct violation of the Supremacy Clause.

AIKEN, SOUTH CAROLINA - SAVANNAH RIVER SITE (SRS)

Carol Johnson, the new CEO of Savannah River Nuclear Solutions, the contractor responsible for operating and managing the SRS site spoke at an Augusta Chamber of Commerce meeting and discussed the importance of the SRS site serving an important role in maintaining national security and assisting to help the local economy. Although Ms. Johnson is new to SRNS, she is not new to the industry; she previously worked at the SRS site and most recently worked as the president and manager at Washington Closure Hanford.

YUCCA MOUNTAIN

NRC Chairwoman Macfarlane reaffirmed that the NRC will comply with a prior court order and utilize the remaining $7.5 million to proceed with reviewing Yucca Mountain as a possible permanent repository for nuclear waste. However, she noted that, without DOE participation for the licensing process or money to fund the continued review, there is not much more that the NRC could do despite the need to work on establishing a solution to store the nation’s waste. An opponent, the Nuclear Energy Institute (NEI), disagrees with Macfarlane’s assessment that DOE is not a viable applicant because DOE’s application remains pending before the NRC (arguing that DOE’s application cannot be pulled for consideration without congressional consent) and therefore NEI finds Macfarlane’s assessment to be factually and legally inaccurate.

HANFORD – WASHINGTON

The Department of Labor issued an initial order requiring that Washington River Protection Solutions – a Hanford contractor – to rehire a former employee who was laid off in October 2011 and pay attorneys’ fees, damages for emotional distress and callous disregard for protected rights as a whistleblower, and other related expenses. The order was suspended after Washington River filed the required objection to prevent the order from taking effect and asked for a hearing on the merits. An administrative law judge will hear the case, and ultimately, a review board will issue the final decision.
PRAIRIE ISLAND INDIAN COMMUNITY

Ron Johnson, president of the Prairie Island Indian Community and Peggy Rehder, the Red Wing City Councilmember who lobbies Washington on nuclear waste storage issues, expressed dissatisfaction with the recent NRC decision to store nuclear waste onsite indefinitely even if a permanent geologic repository is never built. In particular, Ron Johnson noted special concern because he says that no other community lives in such close proximity to nuclear waste storage than his community.

INTERNATIONAL

United States Senator Carl Levin introduced a resolution, joined by Senators Debbie Stabenow, Mark Kirk, and Tammy Baldwin, in an attempt to place pressure on the Canadian government and calling for the Obama Administration to oppose the construction of a nuclear waste permanent repository in Kincardine, Canada, given its proximity to the Great Lakes. A link to the copy of the resolution can be found here.

Various Michigan lawmakers and citizens continue to weigh in on the debate involving the planning to build a nuclear waste repository in Kincardine. The groups oppose building the permanent repository for safety reasons and recently appeared in a town-hall style meeting to listen to and express their concerns in another forum opposing the site; additional pieces of legislation have been passed in Michigan opposing construction of the site.

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