

RHMC October 10, 2023

Bill Grantham, New Mexico AGO



- 1) PFAS Litigation
- 2) Interim Storage of Nuclear Materials

PFAS-Related Cases

- ▶ *U.S. v. New Mexico*, D. NM No. 19-046
 - ▶ USAF challenges regulation of PFAS under HWA permit
 - ▶ Dismissed without prejudice August 2022
 - ▶ US appealed dismissal (10th Cir. No. 22-2132)
 - ▶ **Mediating with 10th Cir. Mediator**
 - ▶ EPA to propose relevant rules - currently at OMB
 - ▶ In response to request of Gov. Lujan Grisham

- ▶ *New Mexico v. U.S.*, D. NM No. 19-178
 - ▶ NM/NMED seek injunctive relief - CAFB & HAFB
 - ▶ Transferred to PFAS AFFF MDL, D. SC 18-mn-2873
 - ▶ NM selected as test case for U.S. motion to dismiss
 - ▶ In discovery now, briefing January 2024

PFAS Related Cases Cont.

- ▶ *New Mexico v. 3M et al.*, D. NM 23-0623 (Filed May 26, 2023)
 - ▶ Against 3M, DuPont, 19 other PFAS manufactures.
 - ▶ Seeking damages, voiding of fraudulent transactions, other remedies.
 - ▶ Transferred to PFAS AFFF MDL.
- ▶ Also, re AFFF MDL:
 - ▶ Preliminary approval of water provider settlements w/ Dupont, 3M
 - ▶ Affected Water Providers have until Dec. 4 (DuPont) and Dec. 11 (3M) to Opt Out

Cases Related to Interim Storage

- ▶ *New Mexico v. NRC*, 59 F.4th 1112 (10th Cir. Feb. 10, 2023)
 - ▶ NM Challenge to ISP License in Andrews County, TX
 - ▶ Dismissed - NM not “party aggrieved” because did not participate in NRC proceeding.
 - ▶ Rejected Ultra Vires exception
- ▶ *Texas et al. v. NRC*, 78 F.4th 827 (5th Cir. Aug. 25, 2023).
 - ▶ Challenge to ISP license in Andrews County, TX
 - ▶ Party does not need to participate in NRC proceeding to be “aggrieved”
 - ▶ Recognized Ultra Vires exception that 10th Cir. Rejected
 - ▶ Atomic Energy Act does not authorize NRC to license private, away from reactor storage facility for spent nuclear fuel.
 - ▶ License vacated

Cases Related to Interim Storage Cont.

- ▶ *Beyond Nuclear et al v. NRC*, D.C. Cir. No.20-1187
 - ▶ NGO and others appeal of NRC's dismissing all "contentions" as inadmissible in administrative proceeding.
 - ▶ New Mexico filed Amicus brief September 8, 2023.
 - ▶ Focused on unlawfulness of condition allowing Holtec to store DOE-titled waste despite Congressional ban on DOE taking title before a repository built
- ▶ *Fasken et al. v. NRC*, 5th Cir. No. 23-60377 (filed 7/11/2023)
 - ▶ Texas land and mineral owners challenge to Holtec license.
 - ▶ Central legal issues the same as *Texas v. NRC* (re ISP facility)