**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

OAK RIDGE ENVIRONMENTAL PEACE ALLIANCE, *et al.*,

*Plaintiffs,*

v.

JAMES RICHARD PERRY, Secretary, United States Department of Energy, *et al.*,

*Defendants.*

Civil Action No. 17-01446 (DLF)

**MEMORANDUM OPINION AND ORDER**

Plaintiffs Oak Ridge Environmental Peace Alliance, Nuclear Watch of New Mexico, Natural Resources Defense Council, Ralph Hutchinson, Ed Sullivan, Jack Carl Hoefer, and Linda Ewald filed this action challenging the sufficiency of the National Nuclear Security Administration's ("NNSA's") environmental review for a project to modernize existing buildings and construct new buildings to house the Uranium Processing Facility at the Y-12 National Security Complex ("Y-12 Complex") in Oak Ridge, Tennessee. Plaintiffs claim that NNSA violated the National Environmental Policy Act ("NEPA") and the Administrative Procedures Act ("APA") by failing to consider various risks relating to the Y-12 Complex, including structural vulnerabilities in the event of an earthquake and delays in the decontamination and decommissioning of aging facilities there. Defendants James Richard Perry, Secretary of the United States Department of Energy, and Frank G. Klotz, Administrator of the NNSA, moved to transfer this case to the United States District Court for the Eastern

District of Tennessee, the judicial district in which the Y-12 Complex is located. For the reasons that follow, the Court will grant Defendants' motion to transfer.

## I. BACKGROUND

NNSA is an agency within the U.S. Department of Energy ("DOE") that is responsible for maintaining and enhancing the safety, security, reliability, and performance of the U.S. nuclear weapons stockpile. AR 00016866. NNSA manages nuclear weapons programs and facilities, including those at the Y-12 Complex in Oak Ridge, Tennessee. AR 00016835. The Y-12 Complex was constructed during World War II as part of the Manhattan Project and has been the primary site for enriched uranium ("EU") processing and storage, and one of the primary manufacturing facilities for maintaining the U.S. nuclear weapons stockpile. AR 00016866.

In 2011, NNSA reported that the continuing operation of the Y-12 Complex was hindered by the fact that "most of the facilities at Y-12 are old, oversized, and inefficient," as well as "costly to maintain," with "no inherent value for future missions." AR 00016875. NNSA determined that "[m]odernizing this old, over-sized, and inefficient infrastructure" was a "key strategic goal of Y-12 and [was] consistent with NNSA strategic planning initiatives and prior programmatic NEPA documents . . . ." *Id.* As a result, NNSA produced a Final Site-Wide Environmental Impact Statement ("Site-Wide EIS") for the Y-12 Complex in February 2011. The 2011 Site-Wide EIS analyzed the potential environmental impacts of five alternative plans to modernize the site, including a plan to construct a single building to house a Uranium Processing Facility. AR 00016834–00017460. On July 20, 2011, NNSA issued a Record of Decision that authorized the construction of a single-structure Uranium Processing Facility at the Y-12 Complex. *See* Defs.' Br. In Supp. of Mot. to Transfer 3, Dkt. 7-1.

Nearly five years later, however, NNSA changed course and elected to upgrade existing buildings and construct multiple smaller buildings rather than proceed with the approved plan to construct a single-structure Uranium Processing Facility. Defs.' Br. In Supp. of Mot. to Transfer Ex. 1, Beausoleil Decl. ¶¶ 4, 8, Dkt. 7-2. NNSA characterized the new approach as "a hybrid of two alternatives previously analyzed" in the 2011 Site-Wide EIS. 81 Fed. Reg. 45,139 (July 12, 2016); Defs.' Br. In Supp. of Mot. to Transfer Ex. 1, Beausoleil Decl. ¶ 3, Dkt. 7-2. On April 16, 2016, NNSA issued a Supplement Analysis for the Site-Wide EIS for the Y-12 National Security Complex (the "Supplement Analysis"), which concluded that NEPA did not require NNSA to produce a new or supplemental environmental impact statement. *Id.* As a result, on July 5, 2016, NNSA issued an Amended Record of Decision approving changes to the July 20, 2011 Record of Decision to reflect that NNSA was authorizing an upgrade of existing buildings and separating the single-structure Uranium Processing Facility into several smaller buildings. *Id.* ¶¶ 3–4.

After learning about NNSA's amended plan for the future of the Y-12 Complex, Oak Ridge Environmental Peace Alliance and Nuclear Watch of New Mexico sent a letter to NNSA Administrator Frank Klotz requesting that NNSA prepare an environmental impact statement addressing the revised design for the Uranium Processing Facility. Compl. ¶ 58, Dkt. 1. Oak Ridge Environmental Peace Alliance and Nuclear Watch of New Mexico later sent a petition to NNSA and the Department of Energy, asserting that NNSA's July 5, 2016 Amended Record of Decision was "a significant change" from the 2011 Record of Decision. *Id.* ¶ 95. They also claimed that the April 16, 2016 Supplement Analysis failed to take into account critical information from other federal agencies, in particular, the United States Geological Survey's updated seismic hazard maps, concerns expressed by the Defense Nuclear Facilities Safety

Board regarding the Y-12 Complex's structural viability in the event of a seismic event, and a Department of Energy Inspector General report discussing risks posed by NNSA facility degradation, among others. *Id.* ¶¶ 59–78, 95–97. NNSA denied the petition on December 22, 2016, *id.* ¶ 103, and on September 28, 2017, Plaintiffs filed this action seeking declaratory and injunctive relief. Specifically, Plaintiffs seek an order vacating NNSA's 2016 Supplement Assessment and 2016 Amended Record of Decision and remanding those decisions to NNSA to prepare either a Supplemental Environmental Impact Statement or a new Site-Wide Environmental Impact Statement regarding the new design for the Uranium Processing Facility at the Y-12 Complex. *Id.* at 44, ¶ 2. On September 28, 2017, Defendants moved to transfer this case to the Eastern District of Tennessee. On December 4, 2017, this case was assigned to the undersigned judge.

## II. LEGAL STANDARDS

Pursuant to 28 U.S.C. § 1404(a), a district court may transfer a civil action to another district or division of the federal judiciary "[f]or the convenience of parties and witnesses, in the interest of justice." 28 U.S.C. § 1404(a). "The only textual limitation on the Court's authority to transfer a case under 1404(a) . . . is the requirement that the case 'might have been brought' in the forum to which the defendant is seeking transfer." *Oceana, Inc. v. Pritzker*, 58 F. Supp. 3d 2, 3 (D.D.C. 2014) (quoting 28 U.S.C. § 1404(a)). Once that hurdle is cleared, "Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)). This determination requires the Court to balance both public and private interest factors. *Atl. Marine Constr. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 134 S. Ct. 568, 581 (2013). The

party requesting transfer bears the burden to establish that transfer is appropriate in light of these factors. *Sec. & Exch. Comm'n v. Savoy Indus., Inc.*, 587 F.2d 1149, 1154 (D.C. Cir. 1978).

To evaluate the private interest factors, courts in this jurisdiction consider the plaintiff's choice of forum, the defendant's choice of forum, and where the claims arose. *See, e.g.*, *Pres. Soc. of Charleston v. U.S. Army Corps of Eng'rs*, 893 F. Supp. 2d 49, 54 (D.D.C. 2012). Additional private interest factors include the "'relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive.'" *Atl. Marine Const. Co.*, 134 S. Ct. at 581 n.6 (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241, n.6 (1981)). Public interest factors "include 'the administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; [and] the interest in having the trial of a diversity case in a forum that is at home with the law.'" *Id.* (quoting *Piper Aircraft Co.*, 454 U.S. at 241 n.6).

The D.C. Circuit has directed district courts in this circuit to "examine challenges to . . . venue carefully to guard against the danger that a plaintiff might manufacture venue in the District of Columbia" by naming high-level government officials as defendants. *Cameron v. Thornburgh*, 983 F.2d 253, 256 (D.C. Cir. 1993). The fact that a case might implicate national policy issues is just one factor that can be outweighed by other factors favoring transfer. *Starnes v. McGuire*, 512 F.2d 918, 928 (D.C. Cir. 1974) (rejecting the argument that "issues involving national policy are uniquely appropriate for resolution by this forum").

## III. ANALYSIS

There is no dispute that Plaintiffs could have filed this case in the Eastern District of Tennessee. The question is whether transferring this case to the Eastern District of Tennessee is

in the interest of justice. To make this determination, the Court will weigh the various private and public interest factors that courts typically consider in deciding whether to transfer a case.

**A. Private Interest Factors**

"The starting point for a private-interest inquiry under § 1404(a) is the parties' respective forum choices . . . ." *Oceana, Inc. v. Pritzker*, 58 F. Supp. 3d 2, 5 (D.D.C. 2013). In this case, Plaintiffs' choice of forum is the District of Columbia, while Defendants' preference is the Eastern District of Tennessee. Although a plaintiff's choice of forum is entitled to some weight, *Atl. Marine Const. Co.*, 134 S. Ct. at 581 n.6, Section 1404(a) does not mandate a "strong presumption" in favor of a plaintiff's choice of forum.[1] And the balance of factors can be tipped where, as here, the underlying claims arose principally in the defendant's choice of forum. *See, e.g.*, *W. Watersheds Project v. Pool*, 942 F. Supp. 2d 93, 102 (D.D.C. 2013) ("Transfer is appropriate when the material events that constitute the factual predicate for the plaintiff's claims occurred in the transferee district" (internal quotation marks omitted)); *Aftab v. Gonzalez*, 597 F.Supp.2d 76, 80 (D.D.C. 2009) ("Although the Court ordinarily grants deference to plaintiffs' choice of forum . . . this deference is weakened where, as here, plaintiffs are not residents of the forum and most of the relevant events occurred elsewhere").

The core of Plaintiffs' complaint challenges Defendants' 2016 decisions to modernize the Y-12 Complex in Oak Ridge, Tennessee, without first preparing supplemental or new

[1] Citing *Piper Aircraft*, Plaintiffs contend that there is a strong presumption in favor of their choice of forum. *Piper*, however, involved the stricter common law doctrine of *forum non conveniens*. The Supreme Court has made clear that courts have broader discretion under Section 1404(a) "to grant transfers upon a lesser showing of inconvenience" than historically was the case under the *forum non conveniens* doctrine. *See Norwood v. Kirkpatrick,* 349 U.S. 29, 32 (1955) ("This is not to say that the relevant factors have changed or that a plaintiff's choice of forum is not to be considered, but only that the discretion to be exercised is broader.") This broader discretion "lessens the weight" that courts must give to a plaintiff's choice of venue. *See In re Volkswagen of Am., Inc.*, 545 F.3d 304, 314–15 (5th Cir. 2008).

environmental impact statements. Compl. ¶ 1. As alleged, Plaintiffs primarily seek to protect the local environment and local communities from harm caused by the production of nuclear weaponry and components at Y-12. *Id.* ¶¶ 3, 5, 8. Not surprisingly, the specific harms identified in the Complaint are local in nature:

- The risk that buildings containing nuclear weaponry or components of nuclear weaponry will collapse at the Y-12 Complex, resulting in the release of nuclear or toxic materials that place the local environment and local residents in extreme peril;
- The federal government's reduced ability to cleanup legacy contamination at the Y-12 Complex;
- The deprivation of environmental information and analyses about vulnerabilities at the Y-12 Complex and the denial of the opportunity for informed public participation in the NEPA process involving the Y-12 Complex;
- The risks to the lives and health of those who live in Oak Ridge, Tennessee and Knoxville, Tennessee in the event that an earthquake causes a release of hazardous radiological materials from the Y-12 Complex;
- Local residents' exposure to radiological materials from the Y-12 Complex;
- A local resident's concern that, after heavy rainfalls, increased levels of mercury in the East Fork Poplar Creek, which drains the Y-12 Complex, exceed EPA drinking standards and exceeds limits for chronic exposure to biola that can harm wildlife;
- A local resident's concern about fishing due to mercury contamination from the runoff at the Y-12 Complex;
- A local resident's concern about harvesting watercress from the local waterways due to contamination from the Y-12 Complex; and
- A local resident's concern about buried hazardous and nuclear waste at the Y-12 Complex causing groundwater contamination.

*Id.* ¶¶ 5, 8–10, 13–15, 17–21, 23–24.

Not only are Plaintiffs' alleged claims and harms primarily local in nature, the key policy work that resulted in the challenged 2016 Supplement Analysis and the 2016 Amended Record of Decision occurred locally in Oak Ridge, Tennessee. Defs.' Mem. In Supp. of Mot. to Transfer, Beausoleil Decl. ¶¶ 10, 13, Sept. 25, 2017, Dkt. 7-2; Defs.' Reply Br., Supplemental

Beausoleil Decl. ¶ 3, Oct. 18, 2017, Dkt. 10-1. Likewise, all public outreach, comments, and responses relating to the earlier 2011 Final Site-Wide EIS for the Y-12 Complex took place in Oak Ridge. Defs.' Mem. In Supp. of Mot. to Transfer, Beausoleil Decl. ¶ 11, Dkt. 7-2.

While NNSA Administrator Klotz signed the disputed 2016 Amended Record of Decision in Washington, D.C., local NNSA staff prepared the 2016 Amended Record of Decision in Oak Ridge, Tennessee, with technical information provided by contractors. Defs.' Mem. In Supp. of Mot. to Transfer, Beausoleil Decl. ¶ 13, Dkt. 7-2; Defs.' Reply Br., Supplemental Beausoleil Decl. ¶¶ 3(c), (d), Dkt. 10-1 (stating that Department of Energy Headquarters staff in Washington, D.C., "had no involvement in the preparation and initial drafting of the Amended Record of Decision"). NNSA's Office of General Counsel and Office of NEPA Policy and Compliance provided only "minor editorial comments and requested that more explanatory information related to the environmental impacts from the Supplement Analysis be included." Defs.' Reply Br., Supplemental Beausoleil Decl. ¶ 3(c), Dkt. 10-1. And ultimately, staff in Oak Ridge, Tennessee decided whether to implement the suggested revisions. *Id.* NNSA Headquarters staff in Washington, D.C. otherwise "had no involvement in the preparation and initial drafting of the Amended Record of Decision." *Id.* ¶ 3(d).

NNSA staff and contractors in Oak Ridge, Tennessee also prepared the 2016 Supplement Analysis that concluded that NEPA did not require NNSA to produce a new or supplemental environmental impact statement. Defs.' Mem. In Supp. of Mot. to Transfer, Beausoleil Decl. ¶ 12, Dkt. 7-2; Defs.' Reply Br., Supplemental Beausoleil Decl. ¶ 3(b), Oct. 18, 2017, Dkt. 10-1. The Department of Energy "had no involvement in the preparation, drafting, and review of the Supplement Analysis." Defs.' Reply Br., Supplemental Beausoleil Decl. ¶ 3(a), Dkt. 10-1. While the NNSA Office of General Counsel staff in Washington, D.C. provided editorial

comments and identified areas that needed explanation during the drafting of the document, "NNSA staff and contractors in Oak Ridge had lead drafting responsibilities for the Supplement Analysis . . . ." *Id.* ¶ 3(b). And Geoffrey Beausoleil, the Field Office Manager for the Oak Ridge NNSA Production Office, and Dale Christenson, the Federal Project Director for the Oak Ridge Uranium Processing Facility, signed the Supplement Analysis after determining that "the identified and projected environmental impacts of the proposed action would not be significantly different from those in the 2011 EIS and that neither a supplement to [the] 2011 EIS nor a new EIS was required under NEPA." Defs.' Mem. In Supp. of Mot. to Transfer, Beausoleil Decl. ¶¶ 6, 12 (quotation), Dkt. 7-2. Similarly, senior officials at the Oak Ridge NNSA Production Office and Uranium Processing Facility Project Office prepared and issued the earlier 2011 Site-Wide EIS for the Y-12 Complex that analyzed the potential environmental impacts of the alternate plans to modernize the Y-12 Complex. *Id.* ¶ 12.

Despite this action's strong ties to the Eastern District of Tennessee, Plaintiffs maintain that overriding national interests support keeping this case here. At bottom, Plaintiffs argue that by failing to consider various risks relating to the Y-12 Complex, including warnings from other federal agencies regarding the Y-12 Complex's structural vulnerabilities in the event of an earthquake, and facility decontamination and decommissioning delays, Defendants are jeopardizing the nation's national security. Compl. ¶ 2.

There is no doubt that a direct challenge to the overall safety and administration of this nation's nuclear program would give rise to national interests that would tilt the scales in favor of Plaintiffs' choice of forum. But this case concerning the modernization of a single building plan at one nuclear site in Oak Ridge, Tennessee does not, particularly where the policy was generated locally, and the alleged harms most affect individuals who live within close proximity

to the Y-12 Complex. While risks associated with air, soil, and water radiological contamination have the potential of subjecting communities to great peril, particularly in the event of a major earthquake, these impacts will be felt principally within a 50-mile radius of the Y-12 Complex.

Plaintiffs' choice of forum in this case is further diminished by the fact that Plaintiffs are themselves more closely connected to Tennessee than Washington, D.C. Five of the seven plaintiffs (Oak Ridge Environmental Peace Alliance, Ralph Hutchinson, Ed Sullivan, Jack Carl Hoefer and Linda Ewal) are residents of Tennessee, while a sixth plaintiff (Nuclear Watch of New Mexico) is a resident of New Mexico. Only one plaintiff (Natural Resources Defense Council) has an office in Washington, D.C., but its principal place of business is in New York City. Defs.' Mem. In Supp. of Mot. 13, Dkt. 7-1.

Nor does the fact that some of Plaintiffs' attorneys and the named defendants are located in Washington, D.C., tilt the balance in favor of this forum. As a garden-variety APA case, this action will be resolved based on the administrative record and cross-motions for summary judgment. Thus the other private interest factors that courts typically consider when evaluating motions to transfer—such as convenience to the parties, access to sources of proof, and costs associated with the attendance of witnesses—are not in play here. *See Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985) (noting that courts do not engage in fact finding when conducting judicial review of agency decision making); *Sierra Club v. Van Antwerp*, 523 F. Supp. 2d 5, 12 (D.D.C. 2007) ("[A]t this time, the Court considers this case to be one based solely upon the administrative record, thus making the convenience of witnesses and access to proof irrelevant to the issue of transfer of venue.").

While Plaintiffs' choice of forum is entitled to some weight, on balance, the private-interest factors weigh in favor of transferring this case to the Eastern District of Tennessee.

**B. Public Interest Factors**

Weighing the first of the public interest factors, the administrative difficulties flowing from court congestion, slightly favors Plaintiffs' choice of forum. The average number of cases per judge in this district is 266 and is 484 in the Eastern District of Tennessee, while the length of time that it typically takes for civil cases to reach resolution in this district is 6.9 months, as compared to 12.7 months in the Eastern District of Tennessee. Defs.' Mem. In Supp. of Mot. to Transfer 11 n.3, Dkt. 7-1.

The second public interest factor, litigating this case in a forum familiar with the law, is largely neutral. While this district's docket includes a larger number of cases arising under the APA, courts in both districts are equally capable of interpreting the environmental laws at issue.

Finally, and most significantly, for the reasons discussed above in section III.A., there is a substantial local interest in having this action decided in Tennessee. The potential health and environmental effects in the locality of the Y-12 Complex and its surrounding areas present unique hazards that gravely impact residents in the Eastern District of Tennessee. *See W. Watersheds Project*, 942 F. Supp. 2d at 102; *Aftab*, 597 F.Supp.2d at 80.

Thus, on balance, the public interest factors also weigh in favor of transferring this case to the Eastern District of Tennessee.

**CONCLUSION**

Having balanced the private and public interest factors, the Court concludes that this case should be transferred to the Eastern District of Tennessee in the interest of justice pursuant to 28 U.S.C. § 1404(a). Accordingly, it hereby is

**ORDERED** that [7] Defendants' Motion to Transfer Case to the Eastern District of Tennessee is **GRANTED**. It further is

**ORDERED** that the Clerk of the Court shall transfer this case to the United States District Court for the Eastern District of Tennessee.

**SO ORDERED.**

Date: March 23, 2018

**DABNEY L. FRIEDRICH**
United States District Judge