To: Amoroso, Cathy[Amoroso.Cathy@epa.gov]; Adams, Glenn[Adams.Glenn@epa.gov]; Froede, Carl[Froede.Carl@epa.gov]; Urquhart-Foster, Samantha[Urquhart-Foster.Samantha@epa.gov]; Richards, Jon M.[Richards.Jon@epa.gov]; Andrews, David[Andrews.David@epa.gov]
From: Jones, Connie[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2B5256C833BF4776BB98B9DA84AC3DE4-JONES, CONSTANCE]
Sent: Thur 8/19/2021 1:54:06 PM (UTC)
Subject: RE: FYI

I agree. The person signing the ROD is also the one who will be consider the Wheeler decision. If decision is overturned, expect Congressional Representatives to possibly intervene, with discussions with the Administrator.

From: Amoroso, Cathy <Amoroso.Cathy@epa.gov>
Sent: Thursday, August 19, 2021 9:50 AM
To: Adams, Glenn <Adams.Glenn@epa.gov>; Froede, Carl <Froede.Carl@epa.gov>; Jones, Connie <Jones.Constance@epa.gov>; Urquhart-Foster, Samantha <Urquhart-Foster.Samantha@epa.gov>; Richards, Jon M. <Richards.Jon@epa.gov>; Andrews, David <Andrews.David@epa.gov>
Subject: RE: FYI

Maybe this is why DOE is pushing so hard to expedite the review…so a final rod will be signed before the EPA decides whether or not to rescind the Wheeler decision.

From: Adams, Glenn <Adams.Glenn@epa.gov>
Sent: Thursday, August 19, 2021 9:22 AM
To: Amoroso, Cathy <Amoroso.Cathy@epa.gov>; Froede, Carl <Froede.Carl@epa.gov>; Jones, Connie <Jones.Constance@epa.gov>; Urquhart-Foster, Samantha <Urquhart-Foster.Samantha@epa.gov>; Richards, Jon M. <Richards.Jon@epa.gov>; Andrews, David <Andrews.David@epa.gov>
Subject: FW: FYI

FYI

DOE Seeks To Implement Wheeler Cleanup Decision Despite EPA Review

August 18, 2021

The Energy Department (DOE) is seeking to implement at its Oak Ridge Reservation (ORR), TN, facility a controversial and precedent-setting Trump EPA decision easing water discharge requirements for radionuclides at a Superfund site despite an ongoing review of the policy by the Biden administration, environmentalists say.

EPA is already opposing the department's efforts to implement the policy, rejecting as outdated and insufficient a feasibility study for managing contaminated wastewater from a landfill that will handle Superfund waste from the facility.

But environmentalists, who are also opposing DOE's plans, are additionally criticizing EPA, saying the agency's opposition to DOE efforts to implement the policy is not based on the fact that officials are still reviewing its "legality, appropriateness, and effect" and are reiterating their call for officials to rescind the policy.

In an Aug. 2 letter to EPA Administrator Michael Regan, the Southern Environmental Law Center (SELC) and other local groups argue EPA's rejection of the landfill plan was instead based on failures DOE made to meet the Trump-era parameters, while they say the agency should have also rejected the study based on the fact that it is weighing whether to uphold the Trump EPA decision.

"EPA should urge DOE to comply with applicable law and reopen the public comment period [on its landfill plans]. EPA should also revise the [Trump EPA] Radionuclide Pollution Decision so that DOE can formulate a revised [focused feasibility study (FFS)] and Record of Decision [(ROD)] that is consistent with [Superfund law] and adequately protective of human health and the environment," they write.

In a statement to *Inside EPA*, an EPA spokesperson says the agency has no comment on the environmentalists' letter and reiterated that officials continue to review the policy, set by former Administrator Andrew Wheeler.

"No decision has been made on revision of the dispute decision," the spokesperson says.

One environmentalist says EPA told environmental groups involved in the issue in June that the agency was seeking to get the matter on Regan's calendar this summer.

A DOE spokesperson was not immediately available for comment.

At issue is Wheeler's Dec. 31 decision overruling a Region 4 determination that strict, technology-based effluent limits for discharges of radionuclide-containing wastewater should apply as enforceable applicable or relevant and appropriate requirements (ARARs) for landfills at ORR, a Superfund site.

However, he backed water quality-based standards as cleanup standards for discharges of wastewater containing radionuclides from landfills at the site.

Environmentalists have criticized the decision, charging it is inconsistent with Biden administration's environmental goals and should be revisited

to evaluate potential implications for environmental justice and climate change.
They also warned that Wheeler's decision to not require strict, technology based effluent limits as enforceable ARARs could open the door to other liable parties attempting to use it to evade technology-based mandates at sites regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).
Responding to their concerns, EPA's acting enforcement chief Larry Starfield in early June told environmentalists the agency is reviewing the policy.

Two Actions

But even as EPA reviews the policy, DOE this summer moved ahead with proposed waste disposal plans for ORR -- specifically a draft FFS for managing wastewater from a proposed landfill, which will, along with an existing landfill, handle Superfund waste from the facility, and a draft ROD for the disposal of waste at the facility.
In their letter to Regan, SELC and other environmentalists say DOE is attempting through two actions to "solidify its waste disposal plans" that rely on Wheeler's decision, including the proposed FFS and ROD.
For example, they say that EPA and Tennessee regulators recognized in their comments on the department's draft feasibility study, which reflects DOE's interpretation of Wheeler's decision, that it nonetheless was inappropriately seeking to use a dilution factor to set water quality-based effluent limits from discharges from the landfills.
"Although EPA and [Tennessee Department of Environment and Conservation (TDEC)] have subsequently rejected the revised FFS, both DOE's submittal and the agencies' response underscore the urgent need to reconsider the Radionuclide Pollution Decision and bring it into alignment with CERCLA's goals," SELC and other groups write.
They cite concerns, such as DOE's proposal to allow discharges into a nearby creek from the proposed landfill for two radionuclides that are known carcinogens at "exceedingly high" levels. They say these and other concerns over the two documents "illustrate the harm that will be wrought by the Radionuclide Pollution Decision if left unchanged and the manner in which DOE is attempting to rely on the Decision to cut corners and costs at the expense of Tennessee's water quality and public health."
They contend that EPA should revise Wheeler's decision and require DOE to comply with technology-based effluent limitations as well as Tennessee's antidegradation policy in addition to state water quality standards and state and EPA water quality based effluent limits already affirmed as ARARs at the site.
Amanda Garcia, an attorney with SELC, says EPA also should reject the FFS on the basis that the agency is in the midst of reviewing Wheeler's decision. The regulators are still operating under the framework of the Wheeler decision that environmentalists have asked EPA to revisit, she points out.
Garcia says technology-based standards have the benefit of being straight-forward, and also apply treatment before a contaminant leaves the site, while without them, there is more room to manipulate the numbers and that can make the limits less protective, she says. She notes the "off-the-chart" levels DOE is proposing as an example.
For instance, DOE is proposing discharge limits for Technetium-99 at 1.8 million picocuries per liter (pCi/L) and Strontium-90 at 327,872 pCi/L -- both known carcinogens -- orders of magnitude higher than what DOE proposed in an earlier FFS where DOE proposed 11,000 pCi/L for Technetium-99 and 275 pCi/L for Strontium-90.
"Although EPA has rejected the revised FFS's discharge limits as premature, the agency relies on the flawed framework of the [Wheeler] Decision as the basis for its rejection and cites the Decision as the foundation from which to calculate new limits," they say.
The groups also say compliance with CERCLA and sufficient protection of the public require the implementation of radionuclide discharge limits based on "available and practicable technology" and should take into consideration existing degradation of Bear Creek from DOE's past discharges.
The groups further argue that DOE under CERCLA must reopen the comment period in order to allow for comment on new and unanticipated information since an earlier revised proposed plan.

Regulators' Opposition

EPA and TDEC late last month in separate letters to DOE effectively rejected the FFS, finding it failed to meet the parameters Wheeler laid out in his December decision.
EPA in a July 22 letter to DOE cites various flaws, particularly that the document is outdated and lacks data, for instance failing to include actual radiological data from fish, and that DOE improperly identified it as a screening tool. EPA also disagrees with DOE's decision to remove a CERCLA table on exposure pathway risk-based discharge limits for recreational exposures, and it opposes use of dilution by DOE for developing water quality based effluent limits -- noting that is not allowed by the Clean Water Act or by Wheeler's decision.
EPA also calls for adding in ARARs listed by Wheeler in a January letter to DOE.
And TDEC similarly finds flaws and calls for rewriting the FFS. "The TDEC recommends that DOE revise the FFS to conform with EPA Administrator's decision and develop discharge limits for landfill wastewater that are demonstrated to be protective of human health and the environment, following CERCLA requirements and guidance," TDEC says in its July 23 letter to DOE. -- *Suzanne Yohannan* (syohannan@iwpnews.com)