Message

**From**: Fitz-James, Schatzi [Fitz-James.Schatzi@epa.gov]
**Sent**: 6/22/2021 7:57:13 PM
**To**: Anderson, RobinM [Anderson.RobinM@epa.gov]; Fonseca, Silvina [Fonseca.Silvina@epa.gov]; Walker, Stuart [Walker.Stuart@epa.gov]
**Subject**: RE: ORR -- Only reading this now.

I hadn't seen it until I received your email

**From:** Anderson, RobinM <Anderson.RobinM@epa.gov>
**Sent:** Tuesday, June 22, 2021 3:54 PM
**To:** Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Fitz-James, Schatzi <Fitz-James.Schatzi@epa.gov>; Walker, Stuart <Walker.Stuart@epa.gov>
**Subject:** ORR -- Only reading this now.

https://insideepa.com/sites/insideepa.com/files/documents/2021/jun/epa2021_1229.pdf [Letter response of June 9 to Southern Environmental Law Center.]

Amazing we have to get this through Inside EPA.

EPA Reviews Nuclear Waste Decision, Expanding Scrutiny Of Trump Actions

June 22, 2021
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EPA has agreed to environmentalists' request to review a precedent-setting Trump-era decision that technology-based effluent limits for radionuclides are not enforceable at a Superfund cleanup, a sign officials are reviewing a broader universe of the prior administration's actions beyond the rules the Biden administration has listed for review.

Acting enforcement chief Lawrence Starfield told environmentalists in a June 9 letter that pursuant to Biden's Executive Order (EO) 13990, which urged agencies to review Trump-era actions that fail to meet the administration's environmental goals, the agency is "in the process of reviewing" former Administrator Andrew Wheeler's Dec. 31 decision regarding the radionuclide cleanup at the Energy Department's (DOE) Oak Ridge Reservation (ORR) in Tennessee.

Pursuant to EO 13990, "EPA is in the process of reviewing the [Dec. 31 radionuclide pollution decision at ORR]," Starfield wrote.

He also says the agency is reviewing the Trump EPA decision in view of Biden's environmental justice executive orders as well. "We are also looking at the Decision in the context of Executive Orders 14008 and 13985, which direct federal agencies to promote and work towards proactively achieving environmental justice," he adds.

At issue is Wheeler's decision spelled out in a Dec. 31 letter to DOE and Tennessee regulators that settled a long-running dispute federal and state regulators had with DOE over a landfill cleanup at the site.

The former administrator's decision overruled 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) at ORR, a Superfund site.

But the Southern Environmental Law Center (SELC) and other environmental groups last month urged Administrator Michael Regan to "review, reconsider and reverse" Wheeler's decision.

In their late May letter, the environmental groups told Regan that Wheeler's decision for the site was inconsistent with EO 13990, which generally urged agencies to review and, where necessary, rescind or revise Trump-era actions that fail to meet the current administration's public health and environmental goals.

As part of the order's implementation, the Biden administration also identified a "non-exclusive list" of Trump administration actions for review, though Wheeler's decision at the Oak Ridge site was not among them.

But environmentalists urged the Biden EPA to review it "to ensure access to clean water and reduced exposure to dangerous radionuclide pollution in the communities surrounding the ORR site."

Environmentalists also told EPA that Wheeler's decision should be revisited to evaluate potential implications for environmental justice and climate change.

One environmentalist has said that while the administration is reviewing numerous Trump-era rules under the order, non-regulatory decisions such as Wheeler's also would fall under the broad coverage of EO 13990. This source argued the order does not limit reviews just to rulemakings, citing EPA's recent revocation of a refinery air permit in St. Croix.

'Cutting Corners'

Starfield's response signals EPA may address environmentalists' concerns that if Wheeler's decision is allowed to stand, it could result in "cut[ting] corners" on important cleanups. The environmentalist has pointed to the possibility that liable parties may attempt to use Wheeler's decision to evade technology-based solutions for Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) sites.

Wheeler's Dec. 31 decision resolved a lengthy dispute between EPA Region 4 and Tennessee regulators, on one side, and DOE on the other, over the cleanup at ORR.

While Wheeler backed Region 4 and the state on their position that water quality-based standards should apply as cleanup standards for a landfill discharging wastewater containing radionuclides, he set a precedent in rejecting then-Region 4 Administrator Mary Walker's position that strict, technology-based effluent limitations should apply as enforceable ARARs.

Such site-specific requirements determine which state and federal requirements are enforceable at remedial actions governed by CERCLA.

EPA also plans to hold a listening session with environmentalists who sent the query; these groups also asked EPA to discuss other aspects of Wheeler's Dec. 31 decision as they have said that several of Wheeler's rulings in that decision are concerning.

The groups also asked EPA and DOE to offer additional opportunities for public comment due to new information related to relevant and appropriate requirements. They have sought public comment opportunities before any Record of Decision is signed to ensure the agencies adequately considered adverse impacts on a local minority community and whether the agencies adequately accounted for any climate change impacts.

To that, Starfield says CERCLA "provides opportunities for meaningful public comment at various stages in the cleanup process. As the CERCLA process at the Oak Ridge Reservation site moves forward, EPA will work with DOE to consider opportunities for additional public comment." -- Suzanne Yohannan (syohannan@iwpnews.com)

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