Message

From: Openchowski, Charles [openchowski.charles@epa.gov]
Sent: 6/22/2021 9:27:54 PM
To: Buxbaum, David [Buxbaum.David@epa.gov]; Anderson, RobinM [Anderson.RobinM@epa.gov]; Fonseca, Silvina [Fonseca.Silvina@epa.gov]
CC: Johnson, MaryC [Johnson.MaryC@epa.gov]; Brock, Martha [Brock.Martha@epa.gov]
Subject: RE: 2021-06-22 Daily News

Not sure why Betsy thinks there's any ambiguity… thanks for sharing this, what is iwp news?

From: Buxbaum, David <Buxbaum.David@epa.gov>
Sent: Tuesday, June 22, 2021 3:57 PM
To: Anderson, RobinM <Anderson.RobinM@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Openchowski, Charles <openchowski.charles@epa.gov>
Cc: Johnson, MaryC <Johnson.MaryC@epa.gov>; Brock, Martha <Brock.Martha@epa.gov>
Subject: FW: 2021-06-22 Daily News

FYI

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From: Johnson, MaryC <Johnson.MaryC@epa.gov>
Sent: Tuesday, June 22, 2021 3:14 PM
To: Brock, Martha <Brock.Martha@epa.gov>; Buxbaum, David <Buxbaum.David@epa.gov>
Subject: RE: 2021-06-22 Daily News

Betsy Southerland, a former EPA water and Superfund official, said at the time that Wheeler's letter would set precedent unless the Biden EPA develops a rationale for why technology-based standards should apply, noting that CERCLA requirements are unclear about the application of technology-based standards. "Given this ambiguity Wheeler was able to write that they don't apply," she said.

From: Brock, Martha <Brock.Martha@epa.gov>
Sent: Tuesday, June 22, 2021 3:06 PM
To: Johnson, MaryC <Johnson.MaryC@epa.gov>; Buxbaum, David <Buxbaum.David@epa.gov>
Subject: RE: 2021-06-22 Daily News

I hadn't.

June 22, 2021

EPA Reviews Nuclear Waste Decision, Expanding Scrutiny Of Trump Actions

June 22, 2021

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)

231170

A related story listed below the above one, and I don't recall seeing it:

Environmentalists Urge Regan To Reverse Nuclear Waste Cleanup Precedent

June 1, 2021

Environmentalists are urging EPA Administrator Michael Regan to review, reconsider and reverse a precedent-setting Trump-era decision that technology-based effluent limits for radionuclides are not enforceable at a Superfund cleanup, charging such an approach is at odds with President Joe Biden's environmental protection executive order (EO).

In a May 26 letter, they charge that then-EPA Administrator Andrew Wheeler's controversial decision at the Oak Ridge Reservation (ORR) is inconsistent with Biden's EO 13990, which urges agencies to review Trump-era actions that may fail to meet the current administration's public health and environmental goals.

They also ask Regan to allow the public to comment on the decision -- before any Record of Decision (ROD) is signed -- to ensure EPA and the Department of Energy (DOE), which is responsible for the cleanup at the Tennessee site, adequately considered adverse impacts on a local minority community and whether the agencies adequately accounted for any climate change impacts.

"The Radionuclide Pollution Decision is inconsistent with the Administration's goals stated in Executive Order 13990 and should be reviewed and reconsidered in order to ensure access to clean water and reduced exposure to dangerous radionuclide pollution in the communities surrounding the ORR site," the Southern Environmental Law Center, Advocates for the Oak Ridge Reservation, Tennessee Chapter Sierra Club and Tennessee Citizens for Wilderness Planning say in their letter to Regan.

"This reconsideration is also essential to adequately evaluate (1) environmental justice impacts to the nearby Scarboro neighborhood, which was designated as a segregated community during World War II and has borne disproportionate environmental burdens associated with the ORR site; and (2) the impacts of climate change-related increasing intensity of storm events on the amount of radionuclide-containing wastewater entering Bear Creek."

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, one environmentalist says.

This source believes the order does not limit reviews just to rulemakings, citing EPA's recent revocation of a refinery air permit in St. Croix.

While environmentalists would likely try to "cabin" the use of Wheeler's precedent-setting decision at other sites, the environmentalist says, there is concern that if the decision is allowed to stand, it could result in "cut[ting] corners" on important cleanups. The source points to the possibility that liable parties may attempt to use his decision to evade technology-based solutions for Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) sites.

At issue is Wheeler's Dec. 31 decision that 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 Region 4 Administrator Mary Walker's position that strict, technology-based effluent limitations should apply as enforceable applicable or relevant and appropriate requirements (ARARs).

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

'Most Troublesome'

The dispute with DOE had originally centered on whether EPA could invoke its CERCLA authority to apply strict Clean Water Act (CWA) requirements as ARARs to govern wastewater discharges.

Wheeler rejected DOE's argument that CWA regulations were not "relevant and appropriate" even if they were not "applicable" to Atomic Energy Act materials, and agreed with the region that water quality-based effluent limits and state water quality rules setting designated uses and criteria to protect uses "are relevant and appropriate requirements."

But Wheeler set the precedent when he reversed Region 4 on its determination that technology-based effluent limits apply, saying they "are not appropriate requirements to apply to a discharge of radionuclides from this CERCLA site." For instance, he rejected applying the state's antidegradation policy to radionuclide discharges from the sites' landfills.

The environmental groups say several of Wheeler's rulings in his Dec. 31 decision for ORR are concerning, but cite as "most troublesome" his decision "that EPA's Region 4 Acting Regional Administrator erred in determining that technology-based effluent limitations under the [CWA's] National Pollutant Discharge Elimination System (NPDES) regulations were relevant and appropriately applied to discharges of radionuclides from the ORR site." They note that Wheeler reached a contrary conclusion to Region 4, basing that on his analysis of factors 1, 3 and 5 listed under the National Contingency Plan, which is used to identify ARARs that apply to CERCLA releases.

They say Wheeler's "incomplete review misconstrued several ARAR factors," and argue EPA should clarify their application during a review.

"We believe that with these clarifications, technology-based effluent limitations are relevant and appropriate to the discharge of radionuclide-containing wastewater at the ORR site," they say in the letter.

For instance, the groups dispute Wheeler's determination that CERCLA's goal does not align with CWA technology limits because the latter aims to eliminate the discharge of all pollutants while CERCLA's does not. "Wheeler thus seems to argue that, because CERCLA does not specifically seek to completely *eliminate* exposure to and risks from hazardous substances, its purpose cannot be the same as the CWA's. This conclusion is contrary to the plain language of the statues and seeks to create differences in the face of their overarching shared goals," they say.

They contend CERCLA remedial provisions aim to protect public health and the environment and identify "that an avenue to do so is by preventing -- i.e. eliminating -- or minimizing the release of hazardous substances." They say section 121 of CERCLA "expressly states a preference for technology-based standards."

They also say the decision should be revisited to evaluate potential implications for environmental justice and climate change, ask for discussions on other aspects of Wheeler's decision and that more public comment opportunities be made available due to new information related to relevant and appropriate requirements.

The environmentalist says Wheeler's letter to DOE settling the dispute was "craftily" written, saying EPA does set the standard, rather than DOE, but then eviscerating the region's decision on the technology limits and finding the state's antidegradation standard does not apply. As a general matter, technology-based standards are less flexible than water quality-based standards though any precedent is likely limited to sites with radionuclide contamination.

Betsy Southerland, a former EPA water and Superfund official, said at the time that Wheeler's letter would set precedent unless the Biden EPA develops a rationale for why technology-based standards should apply, noting that CERCLA requirements are unclear about the application of technology-based standards. "Given this ambiguity Wheeler was able to write that they don't apply," she said.

A spokeswoman with the Tennessee Department of Environment and Conservation, which was a party to the dispute with DOE, says the department is evaluating the groups' letter.

EPA has not yet responded to the groups' requests to hold discussions on the matter, according to the environmentalist.

An EPA spokesperson did not reply by press time to questions about the letter. -- *Suzanne Yohannan* (syohannan@iwpnews.com)

230839

From: Johnson, MaryC <johnson.MaryC@epa.gov>
Sent: Tuesday, June 22, 2021 3:00 PM
To: Brock, Martha <Brock.Martha@epa.gov>; Buxbaum, David <Buxbaum.David@epa.gov>
Subject: FW: 2021-06-22 Daily News

Did you see the item below? Re: ORR decision?

If so - could you send the full article? I can't get it.

thanks

From: Palmer, Leif <Palmer.Leif@epa.gov>
Sent: Tuesday, June 22, 2021 1:45 PM
To: R4 ORC Managers - Official <R4_ORC_Managers@epa.gov>
Cc: R4ORC.SPECIALASSISTANT <R4ORC.SPECIALASSISTANT@epa.gov>
Subject: FW: 2021-06-22 Daily News

From: Walker, Denise <Walker.Denise@epa.gov>
Sent: Tuesday, June 22, 2021 1:30 PM
To: Walker, Denise <Walker.Denise@epa.gov>
Subject: 2021-06-22 Daily News

Somethings Positive:

NYT: An Architect With an Eye on the Environment
Increasingly, architects and builders are thinking about how their creations affect the health of the planet. Kunle Adeyemi has built his career around that question.

EPA Regs/Air:

InsideEPA: EPA Under Pressure To Preserve RFS As Pivotal High Court Ruling Looms
As the Supreme Court prepares to rule on EPA's power to grant certain waivers from its renewable fuel standard (RFS), the program's supporters are urging officials to refrain from cutting the program's biofuel blending mandates or issuing waivers from its requirements, amid reports that officials may offer relief to refiners on their compliance mandates.
Related from E&E: Power shift sparks renewable-standard lobbying push

Climatewire: Microbes from biological sources driving methane surge
A sudden increase in atmospheric methane since 2007 has given scientists a new challenge: Pinpoint sources of this potent global warmer. For over 200 years, methane levels, which are less plentiful than carbon dioxide but 28 times more powerful when measured over a century, have been rising.

EPA Regs/Water:

InsideEPA: EPA Reviews Nuclear Waste Decision, Expanding Scrutiny Of Trump Actions
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.

InsideEPA: EPA Plans To Seek Remand Of CWA 401 Rule But Faces Likely Opposition
EPA plans to ask three federal district courts to remand without vacatur a Trump-era rule that narrowed how states evaluate whether federal permits protect state water quality standards, a move that has support from the rule's proponents but is expected to face opposition from environmental groups and Democratic state attorneys general (AGs).

E&E: GOP senators want transparency on WOTUS rewrite
A group of Republican senators slammed the Biden administration for deciding to redraw Clean Water Act jurisdiction this month.

EPA Regs/Chemicals:

InsideTSCA: Environmentalists' PFAS Testing Petition Wins Bipartisan House Support
A bipartisan group of North Carolina lawmakers is urging EPA to reverse its Trump-era denial of a TSCA petition seeking to require Chemours to conduct toxicity testing on 54 per- and polyfluoroalkyl substances (PFAS) in the state, in the latest sign that members of both parties support calls for the Biden administration to strengthen its PFAS policy.

BNA: Let Courts—Not Biden EPA—Review Chemical Risk Issue, Groups Say
A pattern is emerging as a second nonprofit coalition objects to the Biden administration's request to redo a Trump-era chemical risk evaluation without awaiting a federal court ruling that would shape EPA's chemical policies in this and future administrations.

Miscellaneous:

InsideEPA: Judge Dismisses Suit Over Trump NEPA Rule On Procedural Grounds

A federal district court judge has dismissed environmentalists' challenge to a Trump-era rule that dramatically streamlines how federal agencies implement the National Environmental Policy Act (NEPA) after finding that the groups lack standing to bring the claim because they have not demonstrated injury and because the suit is unripe.