Message

From: Fonseca, Silvina [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D77D07BE7386476380B9193170946863-FONSECA, SILVINA]
Sent: 2/22/2022 2:35:01 PM
To: Colip, Matthew [colip.matthew@epa.gov]; Branby, Jill [Branby.Jill@epa.gov]; Manges, Ellen [Manges.Ellen@epa.gov]
CC: OLEM FFRRO Press [OLEMFFRROPress@epa.gov]; Taylor, Trish [Taylor.Trish@epa.gov]
Subject: RE: Inside EPA inquiry re: EJ Action Plan / EJ mtgs at federal facility sites

https://insideepa.com/daily-news/environmentalists-cite-ej-issues-new-push-nuclear-cleanup-change

Inside EPA

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Environmentalists Cite EJ Issues In New Push For Nuclear Cleanup Change

February 18, 2022

Environmentalists are pressing EPA for updated fish consumption and demographic data at a Department of Energy (DOE) Superfund site where the Biden administration is reconsidering a Trump-era cleanup decision, reiterating their calls for EPA to reverse the precedent-setting decision in order to comply with its environmental justice (EJ) goals.

While commending the Biden administration for centering EJ in all decision-making, several regional and local advocacy groups say in a Feb. 16 letter to Carlton Waterhouse, EPA's top political official in EPA's waste office, that they are concerned that communities most likely to be harmed by the Trump-era radionuclide decision "have not been adequately identified, nor the risks to them appropriately evaluated or disclosed."

"As previously acknowledged by EPA, the communities most likely to be affected by water pollution at DOE's current and proposed landfills are the anglers who fish and eat aquatic organisms downstream of the receiving waterway," which may include low-wealth and/or Latino communities, the letter adds.

The groups in the letter say President Joe Biden has been clear "about the Administration's commitment to listen to science, ensure public access to clean water, limit the public's exposure to dangerous chemicals, and hold polluters accountable. These principles are all interconnected and implicated in the cleanup activities at the Oak Ridge Reservation" in Tennessee.

The letter follows a Feb. 11 meeting between environmental and citizen groups, Waterhouse, and representatives from EPA Region 4, DOE and the Tennessee Department of Environment and Conservation (TDEC) to generally discuss Oak Ridge Reservation (ORR) and EPA's commitment to EJ.

The meeting with Waterhouse and others focused in general on ORR, not specifically on the ongoing dispute over what cleanup requirements should apply to wastewater discharges containing radionuclides from an existing landfill and a proposed landfill at the facility, according to Amanda Garcia, an attorney with the Southern Environmental Law Center (SELC) and participant in the meeting. EPA told the environmental and community groups that Waterhouse is conducting meetings at federal facilities around the country, stressing EPA's commitment to EJ, she says.

EPA did not respond by press time to questions about the meeting or whether it had responded to the groups' letter.

Environmentalists' push at the site for more data and a rescission of the Trump-era precedential decision on cleanup comes as EPA is many months into weighing whether to reverse that decision, made by Trump-EPA Administrator Andrew Wheeler in December 2020 related to landfill wastewater discharges at ORR.

At the urging of environmental groups, EPA last June launched a review of the decision 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. EPA is also reviewing the decision in view of Biden's environmental justice executive orders. The review marked a sign from the administration that it would reconsider a broader universe of the prior administration's actions beyond just rules.

Wheeler's decision reversed a Region 4 decision aimed at settling a dispute with DOE, specifically dropping strict, technology-based effluent limits for radionuclides as enforceable at a Superfund cleanup and rejecting the application of the state's antidegradation policy to discharges of radionuclides from the site's landfills -- moves that environmentalists fear will lead to "cut[ting] corners" on important cleanups, with one environmentalist pointing to the possibility that other liable parties may attempt to use it to evade technology-based mandates at sites regulated by the Superfund law.

'Interconnected Goals'

In earlier correspondence to EPA, SELC and other environmental groups noted that if the decision is allowed to stand, it will limit EPA's authority to require a protective remedy at Oak Ridge and will allow DOE and other liable parties at other sites to point to the decision "to support remedies that eschew technology-based treatment and state use designations for rivers and streams affected by radionuclide pollution."

The Feb. 16 letter from SELC, the Tennessee Chapter of the Sierra Club, and three other local advocacy groups says, "Regardless of any updated, site-specific angler demographic and fish consumption data, the most effective way to achieve the interconnected goals articulated in Executive Order 13990 -- including centering environmental justice, listening to science, ensuring public access to clean water, limiting the public's exposure to dangerous chemicals, and holding polluters accountable -- remains to apply the science-based principles set forth in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Clean Water Act (CWA)."

They add, "Perhaps most importantly, this includes the principle that pollution should be minimized using the best available treatment technology before it leaves the site," citing CERCLA section 9621(b)(1)'s preference for treatment methods when undertaking remedial action. "EPA has the opportunity to uphold these principles by revising the flawed Radionuclide Pollution Decision."

In that decision -- which resolved a lengthy dispute between EPA Region 4 and TDEC on one side and DOE on the other -- 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, but he set a precedent in rejecting then-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.

While EPA has indicated it has not yet decided whether to reverse Wheeler's landmark decision, environmentalists for several months have feared that EPA, while taking issue with the adequacy of a DOE feasibility study for managing contaminated wastewater from a landfill that will handle Superfund waste from the facility, is objecting to aspects of the plan within the framework of Wheeler's decision, rather than rejecting the study due to the fact that the agency is still weighing whether to uphold the Wheeler decision.

A Dec. 20 letter to SELC from EPA Acting Assistant Administrator for Office of Land & Emergency Management Barry Breen seems to underscore that fear, according to Garcia. In that letter, Breen says EPA is continuing to evaluate Wheeler's decision "on the formal dispute with DOE regarding the discharge to surface water of wastewaters generated during a response action under CERCLA" for ORR, but also says EPA is working with DOE on addressing the agency's comments on DOE's feasibility study and record of decision and is stressing that DOE allow for public comment on new information related to the proposed landfill at issue in the dispute.

But Garcia says it does not make sense for DOE's plans for the new landfill to move ahead before EPA decides what can go into the landfill and what can be discharged from it into Bear Creek. DOE's proposal includes much higher discharge limits than if it had relied on technology-based effluent limits, she says.

Fish Consumption Data

In their Feb. 16 letter, the groups argue that applying treatment-based standards, which are preferred under CERCLA, to remedial activities at ORR "does not need to result in additional delay of this much-needed cleanup effort."

They say they understand current delays are largely due to regulatory parties' inability to agree on wastewater discharge standards under the Wheeler decision. But by revising that decision to instead require DOE to meet ARARs based on technology-based effluent limits and the state's antidegradation statement, that will end disagreements over discharge levels and protect those consuming fish, they say.

The letter also points to fish consumption studies but expresses fears that EPA and DOE may lack up-to-date fish consumption data and demographic data.

They cite various data that indicate the waterways nearby are heavily fished, and say one study found anglers fishing from one creek ate an average of 37 grams of fish per day. Garcia says fish consumption studies from the early 2000s indicate that people were eating much more fish than the default value would indicate, with some of those types of fish being under a fish consumption advisory.

Further, they say in the letter, "Community Groups are not aware of current demographic data regarding anglers fishing near the [ORR], but as we have repeatedly stated, we remain concerned that low-wealth and/or Latino communities may constitute a growing portion of the local fishing population."

They say they would welcome updates from EPA on steps taken to identify local angling communities and understand current fish consumption. -- *Suzanne Yohannan* (syohannan@iwpnews.com)

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From: Colip, Matthew <colip.matthew@epa.gov>
Sent: Friday, February 18, 2022 10:42 AM
To: Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Branby, Jill <Branby.Jill@epa.gov>; Manges, Ellen <Manges.Ellen@epa.gov>

Cc: OLEM FFRRO Press <OLEMFFRROPress@epa.gov>; Taylor, Trish <Taylor.Trish@epa.gov>
Subject: RE: Inside EPA inquiry re: EJ Action Plan / EJ mtgs at federal facility sites

Silvina – thanks

Mat

From: Fonseca, Silvina <Fonseca.Silvina@epa.gov>
Sent: Friday, February 18, 2022 10:30 AM
To: Branby, Jill <Branby.Jill@epa.gov>; Colip, Matthew <colip.matthew@epa.gov>; Manges, Ellen <Manges.Ellen@epa.gov>
Cc: OLEM FFRRO Press <OLEMFFRROPress@epa.gov>; Taylor, Trish <Taylor.Trish@epa.gov>
Subject: RE: Inside EPA inquiry re: EJ Action Plan / EJ mtgs at federal facility sites

My edits and comments.

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From: Branby, Jill <Branby.Jill@epa.gov>
Sent: Friday, February 18, 2022 8:51 AM
To: Colip, Matthew <colip.matthew@epa.gov>; Manges, Ellen <Manges.Ellen@epa.gov>
Cc: OLEM FFRRO Press <OLEMFFRROPress@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Taylor, Trish <Taylor.Trish@epa.gov>
Subject: RE: Inside EPA inquiry re: EJ Action Plan / EJ mtgs at federal facility sites

Good morning,

Attached please find FFRRO's response to the InsideEPA EJ request stated below. This response has been cleared by Greg.

We had one question to be addressed in this response – when Carlton is referred to as the DAA, would he be titled Dr. along with that or use one title at a time? Please advise.

Thank you!

Jill Branby
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From: Taylor, Trish <Taylor.Trish@epa.gov>
Sent: Wednesday, February 16, 2022 3:30 PM
To: Branby, Jill <Branby.Jill@epa.gov>

Cc: Colip, Matthew <colip.matthew@epa.gov>; OLEM FFRRO Press <OLEMFFRROPress@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>
Subject: RE: Inside EPA inquiry re: EJ Action Plan / EJ mtgs at federal facility sites

Could you get something to Matt C by COB tomorrow or early Fri a.m.?

From: Branby, Jill <Branby.Jill@epa.gov>
Sent: Wednesday, February 16, 2022 3:23 PM
To: Taylor, Trish <Taylor.Trish@epa.gov>
Cc: Colip, Matthew <colip.matthew@epa.gov>; OLEM FFRRO Press <OLEMFFRROPress@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>
Subject: RE: Inside EPA inquiry re: EJ Action Plan / EJ mtgs at federal facility sites

Thanks Trish, we'll get a summary together for you. When is the deadline to submit to OCPA?

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From: Gervais, Gregory <Gervais.Gregory@epa.gov>
Sent: Wednesday, February 16, 2022 3:16 PM
To: Taylor, Trish <Taylor.Trish@epa.gov>; OLEM FFRRO Press <OLEMFFRROPress@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>
Cc: Colip, Matthew <colip.matthew@epa.gov>
Subject: RE: Inside EPA inquiry re: EJ Action Plan / EJ mtgs at federal facility sites

Sure. Looping in Silvina, who has worked closely with Carlton on these sessions too.

****
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From: Taylor, Trish <Taylor.Trish@epa.gov>
Sent: Wednesday, February 16, 2022 3:09 PM
To: OLEM FFRRO Press <OLEMFFRROPress@epa.gov>
Cc: Colip, Matthew <colip.matthew@epa.gov>
Subject: FW: Inside EPA inquiry re: EJ Action Plan / EJ mtgs at federal facility sites

Hi Jill,

See media inquiry below. Ellen mentioned that FFRRO organized a series of community engagement sessions last week down at Oak Ridge TN for Carlton and that she thought it was related to the siting of a new landfill.

Could you draft a short response to the inquiry below with a description of meetings – and any plans for meetings at other sites. Also check if they see any potential tie-ins to the OLEM EJ Action Plan.

Thanks,
Trish

From: Taylor, Trish
Sent: Wednesday, February 16, 2022 2:19 PM
To: Benjamin, Kent <Benjamin.Kent@epa.gov>; Manges, Ellen <Manges.Ellen@epa.gov>
Cc: Colip, Matthew <colip.matthew@epa.gov>
Subject: Inside EPA inquiry re: EJ Action Plan / EJ mtgs at federal facility sites

Hi Kent,

We received a follow-up from Suzanne Yohannan of *Inside EPA* about OLEM's EJ action plan.

Deadline is 11:00 AM Friday.

I have somewhat of a follow-up to OLEM's EJ action plan. I heard that OLEM Deputy AA Carlton Waterhouse is conducting meetings with community groups near federal facility sites around the country to discuss EJ issues. Can you confirm that? If so, can you talk about his plans -- why is EPA holding these meetings? What does it hope to get from them? Where are the locations -- which federal facilities? And when is this happening?

Finally, is this part of OLEM's EJ Action plan? I didn't see it mentioned but did see some items in the plan related to federal facilities.

Thank you,

Begin forwarded message:

> **From:** Suzanne Yohannan <suzanney@iwpnews.com>
> **Date:** February 16, 2022 at 2:05:52 PM EST
> **To:** "Milbourn, Cathy" <Milbourn.Cathy@epa.gov>
> **Cc:** EPA Press Office <press@epa.gov>
> **Subject: EJ at federal facility sites**
>
> I have somewhat of a follow-up to OLEM's EJ action plan. I heard that OLEM Deputy AA Carlton Waterhouse is conducting meetings with community groups near federal facility sites around the country to discuss EJ issues. Can you confirm that? If so, can you talk about his plans -- why is EPA holding these meetings? What does it hope to get from them? Where are the locations -- which federal facilities? And when is this happening?
>
> Finally, is this part of OLEM's EJ Action plan? I didn't see it mentioned but did see some items in the plan related to federal facilities.
>
> My next deadline is Friday at 11 a.m.
>
> Thanks.

Suzanne Yohannan
Inside EPA
703-562-8759
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From: Milbourn, Cathy <Milbourn.Cathy@epa.gov>
Sent: Tuesday, February 15, 2022 4:05 PM
To: Suzanne Yohannan <suzanney@iwpnews.com>
Cc: EPA Press Office <Press@epa.gov>
Subject: FW: DDL 2.15Inside EPA --- Superfund report-OLEM EJ action plan

Hi Suzanne,

Here's the answer to your inquiry- on background.

Regards,

Cathy

Inquiry:
I have a press inquiry related to the draft OLEM EJ Action Plan. I saw that EPA is taking public comment, but I don't see a public docket from which I can see comments filed. Does EPA have a public docket that can be viewed? If so, could I obtain the link?

If not, can you give me a list of who has commented so far? Or is there a way I could see the comments?

Response:

Thank you for your questions regarding the draft OLEM EJ Action Plan. EPA is not taking formal public comment on the draft OLEM EJ Action Plan; it is not a guidance or policy document and does not have a public docket setup. However, EPA is working to plan opportunities for meaningful public input at several upcoming virtual and in-person engagement events in 2022. We anticipate updating the draft plan in Summer 2022, which will capture and reflect relevant public input received by or before April 30, 2022. In the interim, the public can provide input at EJActionPlanOLEM21@epa.gov.

So far, public input received has focused mostly on improvements to the Superfund program.

From: Suzanne Yohannan <suzanney@iwpnews.com>
Sent: Friday, February 11, 2022 4:46 PM
To: EPA Press Office <Press@epa.gov>
Subject: OLEM EJ action plan

Dear Press Officer,

I have a press inquiry related to the draft OLEM EJ Action Plan. I saw that EPA is taking public comment, but I don't see a public docket from which I can see comments filed. Does EPA have a public docket that can be viewed? If so, could I obtain the link?

If not, can you give me a list of who has commented so far? Or is there a way I could see the comments?

Thanks.

Suzanne Yohannan

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