

May 10, 2022

VIA e-mail to

Roger Petrie
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Oak Ridge Office of Environmental Management
U.S. Department of Energy
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RE: Request to Provide Completed Information for Public Discussion of the EMDF and an Additional Period of Public Comment as Required under CERCLA

Dear Mr. Petrie:

The Southern Environmental Law Center, Advocates for the Oak Ridge Reservation, Tennessee Chapter of the Sierra Club, and Tennessee Citizens for Wilderness Planning (Community Groups) write to request that the U.S. Department of Energy (DOE) provide completed information which the Department has committed to make available for public comment regarding its plans to construct and operate the proposed Environmental Management Disposal Facility (EMDF) on the Oak Ridge Reservation (ORR) in Oak Ridge, Tennessee. Community Groups additionally write to request that DOE expeditiously work with the U.S. Environmental Protection Agency (EPA) and the Tennessee Department of Environment and Conservation (TDEC) to provide a period of formal public comment on DOE's entire proposed action to construct and operate the EMDF as required under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

First, Conservation Groups were recently made aware of a website published by UCOR, a private contracting company involved in activities at the ORR, which includes three new "fact sheets" published by DOE to provide information regarding the proposed EMDF remedial action.¹ These fact sheets purport to provide new information about the proposed project's site groundwater characterization, waste acceptance criteria, and water quality protection for Bear Creek which was not available during a 2018 public comment period on DOE's Proposed Plan concerning the EMDF. The fact sheets state that DOE will accept comments from the public regarding this information from May 9 to June 7, 2022.²

¹ See EMDF Information, UCOR (last visited May 6, 2022), <https://ucor.com/additional-emdf-information/>.

² See, e.g., *Environmental Management Disposal Facility Site Groundwater Characterization*, U.S. DOE, 4 (last visited May 6, 2022), <http://ucor.com/wp-content/uploads/2022/05/EMDF-Site-Characterization-factsheet-r05-02-2022.pdf> ("DOE will accept written comments on the EMDF fact sheets any time from May 9 to June 7, 2022.").

Review of DOE's fact sheets reveals that seemingly-available information cited in these documents is currently missing or unavailable at the listed web addresses. For example, the *Waste Acceptance Criteria* fact sheet includes a hyperlink to the "DOE Information Center" which does not work.³ Similarly, the *Water Quality Protection for Bear Creek* fact sheet states that measured radionuclide values will be compared to regulatory limits and newly-developed fish tissue and surface water values. The fact sheet then provides "For more information on these values, and how they are calculated visit ucor.com/EMDF."⁴ However, a search for ucor.com/EMDF produces a "Page not found" webpage.⁵

Prior to the opening of a public comment period on these fact sheets, DOE must ensure that the public has access to all referenced information and that all of the hyperlinks and websites referenced in the factsheets are in working order. Because this missing information has prevented the public from having adequate time to comprehensively review these fact sheets prior to the start of the public comment period, DOE should additionally extend the time period in which the public can provide comments to the Department regarding these documents.

Second, Conservation Groups note that these newly-published fact sheets and DOE's solicitation of comments on them neither fulfills nor negates the public comment requirements of CERCLA regarding the proposed EMDF. As such—and given the large amount of new and unanticipated information which post-dates the 2018 public comment period on DOE's Proposed Plan for the EMDF—a new public comment period on the entire proposed remedial action is necessary. As you are aware, DOE issued its Proposed Plan on the EMDF for public comment approximately four years ago, at a time when several portions of the administrative record were incomplete. Specifically, DOE had yet to finalize a Remedial Investigation/Feasibility Study (RI/FS), wastewater focused feasibility study (FFS), waste acceptance criteria (WAC), list of complete applicable or relevant and appropriate requirements (ARARs), or to present the public with sufficient information regarding the geology and hydrology of the selected site.

CERCLA requires that proposed remedial plans and their accompanying notice and analysis "shall include sufficient information" to provide the public with "a reasonable explanation" of the proposed remedy as well as the other alternatives which were considered. 42 U.S.C. § 9617(a). DOE's initial proposed remedial plan for the EMDF fell far short of this statutory mandate. As EPA correctly noted in its comments on the draft Record of Decision (ROD) for the EMDF, "[u]nder the [National Oil and Hazardous Substances Pollution

³ *Environmental Management Disposal Facility Waste Acceptance Criteria*, U.S. DOE, 3 (last visited May 6, 2022), <http://ucor.com/wp-content/uploads/2022/05/EMDF-WAC-factsheet-r05-02-2022.pdf>.

⁴ *Environmental Management Disposal Facility Water Quality Protection for Bear Creek*, U.S. DOE, 1 (last visited May 6, 2022), <http://ucor.com/wp-content/uploads/2022/05/EMDF-Water-Quality-factsheet-r05-02-2022.pdf>.

⁵ Several supplemental documents are included on UCOR's website containing the DOE fact sheets which may include the resources cited therein. However, this is not clear from either the website or the fact sheets and must be updated. See <https://ucor.com/additional-emdf-information/>.

Contingency Plan], new information should be made available for public review and comment consistent with 40 CFR 300.430(f)(3)” before issuance of a final ROD.⁶

Importantly, CERCLA regulations also specify that such information must be presented holistically as part of an entire updated proposed remedial action, and the regulations further specify that the public must have an opportunity to comment on this information in a comprehensive format. Specifically, the regulations mandate that an agency “shall” issue “a revised proposed plan” when new, unanticipated information is made available to the public after a previous proposed plan is put forth but before a ROD is finalized. 40 CFR 300.430(f)(3). The revised proposed plan should include “appropriate supporting material that provides the necessary engineering, cost, and risk information” absent from the first proposed plan and its supporting analysis, and should further discuss how the updated selected alternative “compares to the other alternatives with respect to the nine evaluation criteria [in 40 CFR 300.430(e)(9)].” U.S. Env’t Prot. Agency, *A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Decision Documents*, 4-4 (July 1999).⁷ The agency must then provide “opportunity for public comment on this updated plan and its supporting analysis. 40 CFR 300.430(f)(3).

By requiring substantial new and unanticipated information to be compiled into a revised proposed plan and analyzed anew, CERCLA ensures that agencies substantively reevaluate selected remedies in response to new and significant information, and that both the information and analysis are presented in a consolidated way for the public to review. Given the amount of new information that must be compiled, analyzed, and reviewed prior to finalizing a ROD in this case, DOE must issue such a revised proposed plan and reopen a period of public comment for that entire suite of information. DOE’s compilation of fact sheets regarding the EMDF and UCOR’s publication of them on their website for public comment cannot replace the public participation requirements of CERCLA.

Finally, Community Groups note that these fact sheets continue to lack basic information about the suitability of the proposed EMDF site, what materials will go into the landfill, and how much pollution will be allowed to discharge from the landfill. The information in these fact sheets does not enable the community to evaluate whether DOE’s proposal satisfies CERCLA’s requirements to provide a remedy that is protective of public health and the environment.

Sincerely,

⁶ U.S. ENV’T PROT. AGENCY, EPA Comments on the Record of Decision for Comprehensive Environmental Response, Compensation, and Liability Act Oak Ridge Reservation Waste Disposal at the Environmental Management Disposal Facility, Oak Ridge, Tennessee, (DOE/OR?01-2794&D1), 18 (Oct. 6, 2021),

https://www.tn.gov/content/dam/tn/environment/remediation/documents/oakridgereservation/emdf-documents/rem_73212_EMDF_ROD_D1_EPA_10_06_2021.pdf (EPA Comments).

⁷ Available at https://www.epa.gov/sites/default/files/2015-02/documents/rod_guidance.pdf.

Re: EMDF Public Discussion Fact Sheets

May 10, 2022

Page 4 of 4



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