

September 22, 2022

VIA e-mail to

Administrator Michael S. Regan
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20004
Regan.Michael@epa.gov

RE: Request for Update Regarding EPA's Review of the December 31, 2020 Radionuclide Pollution Decision by former Administrator Andrew Wheeler

Dear Administrator Regan:

The Southern Environmental Law Center (SELC) writes on behalf of Advocates for the Oak Ridge Reservation, Tennessee Chapter of the Sierra Club, and Tennessee Citizens for Wilderness Planning (collectively, Community Groups) concerning the U.S. Environmental Protection Agency's (EPA) review and use of a precedent-setting December 31, 2020 dispute resolution decision issued by former Administrator Andrew Wheeler regarding the discharge of wastewaters under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) at the Oak Ridge Reservation (Radionuclide Pollution Decision).

In May 2021, SELC, on behalf of Community Groups, requested that Administrator Regan review the Radionuclide Pollution Decision under Executive Order 13990.¹ In June 9, 2021 correspondence to SELC, EPA confirmed that it was undertaking review of the decision.² Since that time, Community Groups have met and corresponded with EPA several times regarding the Radionuclide Pollution Decision and explained its pernicious effect on EPA's ability to ensure protective standards for the discharge of radionuclides into Bear Creek from existing and proposed landfills in accordance with CERCLA and the Clean Water Act.³ EPA has not alerted Community

¹ See Letter from Amanda Garcia et al., SELC, to Michael Regan, EPA, re: Request to Review the December 31, 2020 Radionuclide Pollution Decision Regarding Discharge of Radioactive Wastewaters at the Oak Ridge Reservation Facility in Oak Ridge, Tennessee (May 26, 2021).

² Letter from Lawrence Starfield, EPA, to Amanda Garcia et al., SELC, re: Request to Review December 31, 2020, Radionuclide Pollution Decision (Decision) Regarding Discharge of Radioactive Wastewaters at the Oak Ridge Reservation Facility in Oak Ridge, Tennessee (June 9, 2021).

³ Letter from Amanda Garcia, SELC, et al., to Michael Regan, EPA, re: Concerns Regarding the U.S. Department of Energy's Recent Actions During the U.S. Environmental Protection Agency's Review of the December 31, 202- Radionuclide Pollution Decision for the Oak Ridge Reservation Facility in Oak Ridge, Tennessee (Aug. 2, 2021); Letter from Amanda Garcia, SELC, et al., to Michael Regan, EPA, re: Request for Update Regarding the U.S. Environmental Protection Agency's Review of the Radionuclide Pollution Decision and for a Revised Proposed Plan Regarding Environmental Management Disposal Facility at the Oak Ridge Reservation (Nov. 4, 2021); Letter from Amanda Garcia, SELC, et al., to Carleton Waterhouse, EPA, re: Additional Information Regarding Communities Potentially Affected by the U.S. Environmental Protection Agency's Oversight of Cleanup Decisions at the Oak Ridge Reservation and the Radionuclide Pollution Decision (February 22, 2022).

Groups or SELC to the conclusion of that review process. To our knowledge, the agency's review is ongoing. However, in its Draft 2/Revision 1 Record of Decision for the Environmental Management Disposal Facility (EMDF ROD), DOE asserts that:

The approach for preliminary remediation goals and discharge limits was developed and agreed upon among the [Federal Facility Agreement] parties, including significant input and review from EPA Headquarters. **With their involvement and concurrence, it is concluded that the review of the [Radionuclide Pollution Decision] is complete and the Decision has been upheld.**⁴

Based on DOE's statement in the draft EMDF ROD, it appears that Administrator Regan has concluded his internal review of the Radionuclide Pollution Decision and has decided to retain and utilize the legally flawed and arbitrary decision of his predecessor Administrator Wheeler to allow high levels of radionuclide pollution to create a sacrifice zone in Bear Creek. This is the first indication Community Groups have received that EPA has concluded its review and that Administrator Regan has not only determined to retain this dangerous decision but will sign a Record of Decision for a new hazardous and radioactive waste landfill based on it.

We respectfully request an update from EPA regarding the status of the review of the Radionuclide Pollution Decision, and, if applicable, the agency's rationale for upholding the Decision. As we did more than one year ago, we strongly urge EPA to rescind the Radionuclide Pollution Decision and prevent its use at Oak Ridge Reservation and other federal facilities. Instead, EPA should fulfill its obligations under CERCLA and develop standards that will be protective of communities that fish and recreate in Bear Creek and downstream of Oak Ridge Reservation.

Sincerely,



Amanda Garcia
Stephanie Biggs
Attorneys
Southern Environmental Law Center
agarcia@selctn.org
sbiggs@selctn.org

⁴ U.S. Department of Energy, *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&D2/R1, 3-426 (Aug. 29, 2022) (emphasis added).

Request to EPA for Update re: Review of Radionuclide Pollution Decision

September 22, 2022

Page 3 of 3

Cc:

Carleton Waterhouse, EPA Deputy Assistant Administrator, Office of Land and Emergency Management, Waterhouse.Carlton@epa.gov

Barry Breen, EPA Acting Assistant Administrator for the Office of Land and Emergency Management, Breen.Barry@epa.gov

David Hockey, EPA Acting Associate Director for the Federal Facilities Restoration and Reuse Office, Hockey.David@epa.gov

Dimple Chaudhary, EPA Deputy General Counsel for Nationwide Resource Protection Programs, Chaudhary.Dimple@epa.gov

Frederick J. Thompson, Acting Deputy Regional Administrator, Region 4, Thompson.Fred@epa.gov

Jeffrey Prieto, EPA General Counsel, Prieto.Jeffrey@epa.gov

John Nicholson, EPA Region 4 Chief of Staff, Nicholson.John@epa.gov

Leif Palmer, Regional Counsel, EPA Region 4, palmer.leif@epa.gov

Radhika Fox, EPA Assistant Administrator for the Office of Water, Fox.Radhika@epa.gov

Silvina Fonseca, EPA Senior Policy and Technical Advisor to the Assistant Administrator for the Office of Land and Emergency Management, Fonseca.Silvina@epa.gov