



Many Voices Working for the Community

Oak Ridge Site Specific Advisory Board

July 6, 2000

Mr. Rod Nelson
Assistant Manager for Environmental Management
DOE-ORO
P.O. Box 2001
Oak Ridge, TN 37831

Dear Mr. Nelson:

Recommendations and Comments on Stewardship Requirements in CERCLA Documents

At our July 5, 2000, Board meeting, the Oak Ridge Site Specific Advisory Board reviewed and approved the attached recommendations and comments.

After reviewing several recent Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) documents, the Board determined that stewardship requirements were not adequately described in regard to recommendations made in Volumes 1 and 2 of *Oak Ridge Reservation Stakeholder Report on Stewardship* and the "Community Guidelines for Determining End Uses for Contaminated Land and Water on the Oak Ridge Reservation" published in the *Final Report of the Oak Ridge Reservation End Use Working Group*. This is consistent with the Board's interest in long-term stewardship information and documentation.

We look forward to receiving your written response to our recommendations and comments.

Sincerely,

A handwritten signature in black ink that reads "Steven H. Kopp".

Steven H. Kopp, Chair

SHK/dah

cc: David Adler, DOE-ORO
John Hankinson, EPA
Earl Leming, TDEC
Ralph Skinner, DOE-ORO
Julie Pfeffer, Bechtel Jacobs



**Oak Ridge Site Specific Advisory Board
Recommendations and Comments
on Stewardship Requirements in CERCLA Documents**

ISSUE

Recent CERCLA decision documents for the Oak Ridge Reservation do not adequately describe stewardship requirements.

DISCUSSION

The Stewardship Committee of the Oak Ridge Site Specific Advisory Board reviewed the stewardship sections of the following recent CERCLA documents:

- Record of Decision for the K-1070-a Burial Ground, East Tennessee Technology Park, Oak Ridge, Tennessee (DOE/OR/01-1734&D3)
- Record of Decision for the Phase I Activities in Bear Creek Valley at the Oak Ridge Y-12 Plant, Oak Ridge, Tennessee (DOE/OR/01-1750&D3)
- Record of Decision for the Disposal of Oak Ridge Reservation Comprehensive Environmental Response, Compensation and Liability Act of 1980 Waste, Oak Ridge, Tennessee (DOE/OR/01-1791&D3)
- Record of Decision for the Melton Valley Watershed at the Oak Ridge National Laboratory, Oak Ridge, Tennessee (DOE/OR/01-1826&D1)
- Proposed Plan for Interim Actions in Bethel Valley, Oak Ridge, Tennessee (DOE/OR/01-1795&D2)

The objective of the review was to determine the adequacy of the stewardship sections with regard to the recommendations made in Volumes 1 and 2 of the *Oak Ridge Reservation Stakeholder Report on Stewardship* and the “Community Guidelines for Determining End Uses of Contaminated Land and Water on the Oak Ridge Reservation” published in the *Final Report of the Oak Ridge Reservation End Use Working Group*.

Our overall concern is that DOE is delegating stewardship requirements for the contaminated areas on the Reservation to unenforceable documents [e.g., the Land Use Control Implementation Plans (LUCIPs)] that will be prepared following the CERCLA Records of Decision (RODs) or Action Memoranda (both of which are enforceable documents). Furthermore, post-ROD documents may not survive future archival purges. As a result, stewardship information will be lost to future generations and they will have no recourse if DOE or its successor decides it can no longer afford stewardship for the Reservation.

The basis for this concern is found in the Memorandum of Understanding (MOU; signed by DOE, EPA, and the State) that accompanies the Land Use Control Assurance Plan (LUCAP) for the Oak Ridge Reservation. In Section 1, the MOU states “DOE-ORO recognizes the memorandum as setting forth policy that does not carry the force of law as is established through rule making.” In Section 2, the parties agree “. . . to act in good faith in carrying out their responsibilities under the LUCAP.”

While DOE, EPA, and the State may argue that the provisions of a LUCIP are enforceable by reference in a Record of Decision (ROD), the Melton Valley ROD explicitly states on page 2-10 that:

“The terms and conditions of the LUCAP or MOU are not specifically incorporated or made enforceable herein by reference. However, it is understood and agreed by DOE, EPA, and TDEC that the contemplated permanence of the remedy reflected herein is dependent in part upon DOE’s substantial good-faith compliance with the specific LUCAP maintenance commitments reflected therein. Should such compliance not occur or should the MOU be terminated, it is understood that the protectiveness of the remedy concurred in may be reconsidered; consequently, additional measures may need to be taken to assure adequate, necessary future protection of human health and the environment.”

Furthermore, there are no provisions for public involvement (i.e., public meetings or public review and comment) in the development of the LUCIPs or regarding how implementation of the LUCAP will be accomplished.

In addition, communications with the regulators have made it clear that the phased RODs for each watershed are to be considered interim. As all phases of a particular watershed are completed, the next step is a watershed ROD to roll up all of the requirements specified in individual RODs for sites or operable units within the watershed. Following completion of all Reservation RODs, a site-wide ROD would be put in place that would consolidate and integrate requirements from all lower-level RODs.

We find that DOE has ignored the recommendation made in Volume 1 and reiterated in Volume 2 that “DOE must make stewardship requirements an integral part of all CERCLA decision documents.” Until the public is assured that appropriate and legally enforceable stewardship

requirements will remain in place following remediation, and that appropriate actions can be taken if stewardship is compromised, public acceptance of areas with residual contamination is not possible.

RECOMMENDATION

DOE must provide long-term stewardship requirements for the preferred alternative in CERCLA Records of Decision and in Action Memoranda. The goals of institutional and engineered controls, the types of controls required, and the implementation, maintenance, costs, and enforcement of such controls should be evaluated as thoroughly as the proposed treatment technology for each alternative in the remedy selection process. Results of the evaluation must be described in the decision documents.

Stakeholders accepted DOE's proposal to produce watershed-level RODs (*Final Report of the End Use Working Group*, July 1998), but the concept of a site-wide ROD has never been discussed publicly. This discussion must take place and stakeholders allowed to make comments and suggestions if a site-wide ROD is proposed as the final solution. Even if the RODs currently under consideration are "interim" in nature, stewardship requirements must be incorporated and must be rolled up to the next level and ultimately to the site-wide ROD or some equivalent document. If changing circumstances demand changes to the stewardship requirements, stakeholders should then be consulted in decisions regarding such changes during the approval process for higher level RODs.

Furthermore, implementation and funding of the stewardship activities must be acknowledged as the responsibility of the federal government, through its designated contractors or agents, as long as hazardous substances, pollutants, or contaminants remain above levels that allow for unlimited use and unrestricted exposure. The roles and responsibilities of local and state governments, and the public must be defined. The location(s) of a publicly available information system must be included along with a short description of what is included in the system (e.g., location of waste sites, characteristics, controls, contingency plans, points of contact). Provisions for annual Remediation Effectiveness Reports and Five-Year Reviews of remediated sites must be included.

And finally, the public participation sections of the CERCLA decision documents must be more comprehensive (e.g., to include provisions for public involvement in five-year reviews of remediated sites and the annual Remediation Effectiveness Reports). An annotated table of applicable or relevant and appropriate public involvement requirements should be included so that stakeholders have an understanding of their remediation responsibilities and opportunities. It should include references to all CERCLA and NCP requirements for public involvement, DOE and EPA guidance (e.g., the EPA Comprehensive Five-Year Review Guidance), Federal Facility Agreement for the Oak Ridge Reservation, and the DOE Public Involvement Plan.

While this recommendation is not all inclusive, we believe it provides an overview of the information that Oak Ridge stakeholders expect to find in DOE's CERCLA decision documents for the Oak Ridge Reservation.