**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF TENNESSEE**

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| **OAK RIDGE ENVIRONMENTAL PEACE ALLIANCE, NUCLEAR WATCH NEW MEXICO, NATURAL RESOURCES DEFENSE COUNCIL, RALPH HUTCHISON, ED SULLIVAN, JACK CARL HOEFER, and LINDA EWALD,** | ) | |
| **Plaintiffs,** | ) | |
| | ) | **No. 3:18-cv-00150** |
| **v.** | ) | **REEVES/POPLIN** |
| **JAMES RICHARD PERRY, Secretary, United States Department of Energy, and LISA E. GORDON-HAGERTY, Administrator, National Nuclear Security Administration,** | ) | |
| **Defendants.** | ) | |

**PLAINTIFFS' MOTION TO ENFORCE THIS COURT'S JUDGMENT**

Plaintiffs file this Motion to Enforce the Court's Judgment of September 24, 2019, ECF No. 64, because the Department of Energy ("DOE") and the National Nuclear Security Administration ("NNSA") have issued a new Amended Record of Decision ("2019 AROD"), *see* 84 Fed. Reg. 53,133 (Attachment A), that is fundamentally inconsistent with this Court's Judgment, ECF No. 64, and Memorandum Opinion and Order ("Opinion"), ECF No. 63. Based on a finding that the agencies violated the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321–4347, by failing to properly consider new information about seismic hazards in eastern Tennessee, this Court vacated the NNSA's previous 2016 AROD and associated 2016 Supplement Analysis ("SA") and 2018 SA, and ordered the agencies to prepare a new analysis of seismic risks on remand. However, a mere *three days* after this Court issued its Opinion and Judgment, NNSA issued the 2019 AROD, which effectively adopted the same decision this

Court vacated—and did so without preparing *any* analysis of seismic risks that complies with this Court's Opinion. Accordingly, Plaintiffs respectfully request that the Court enforce its Judgment of September 24, 2019, ECF No. 64, by declaring that the 2019 AROD is inconsistent with this Court's Opinion, vacating the 2019 AROD, and declaring that any subsequent AROD that allows NNSA to conduct further construction or related activities before NNSA completes the legally required NEPA analysis this Court ordered will likewise be inconsistent with this Court's Judgment.[1]

## I. LEGAL BACKGROUND

"[A] party must make 'all reasonable efforts' to comply with a court order." *United States v. Smallwood*, No. 88–5666, 1989 WL 25863, at *2 (6th Cir. Mar. 13, 1989) (quoting *United States v. Roberts*, 858 F.2d 698, 701 (11th Cir.1988) (per curiam)). Where a party fails to comply, "[a] federal court has the inherent authority to enforce its judgments." *Fox v. Massey–Ferguson Inc.*, No. 93–74615, 2008 WL 5188823, at *2 (E.D. Mich. Dec. 10, 2008). "Without jurisdiction to enforce a judgment entered by a federal court, 'the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution.'" *Peacock v. Thomas*, 516 U.S. 349, 356 (1996) (quoting *Riggs* v. *Johnson County*, 6 Wall. 166, 187 (1868)).

To enforce judgments, district courts have broad authority and discretion to issue a variety of remedies. "A primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–45 (1991). Examples of such authority include enforcing an order through mandamus requiring public officials to perform required actions, as well as through financial remedies

[1] Defendants oppose this motion.

where necessary. *Peacock*, 516 U.S. at 356 (collecting examples). District courts may also utilize relevant statutory authorities in crafting an appropriate remedy. *See SEC v. Mulholland*, No. 12-CV-14663, 2017 WL 5507889, at *10 (E.D. Mich. Nov. 17, 2017) (considering inherent authority and statutory authority in devising an appropriate remedy).

In appropriate circumstances, district courts may also enforce their orders through awards of attorneys' fees, other sanctions, or findings of contempt. As the Sixth Circuit has explained, "'[t]here can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt.'" *SEC v. Dollar General Corp.*, 378 Fed. Appx. 511, 516 (6th Cir. 2010) (quoting *Shillitani v. United States*, 384 U.S. 364, 370 (1966)); *see also Elec. Workers Pension Trust Fund of Local Union 58, IBEW v. Gary's Elec. Serv. Co.*, 340 F.3d 373, 378 (6th Cir. 2003) ("When a court seeks to enforce its order or supervise its judgment, one weapon in its arsenal is contempt of court.")

When enforcing an order, district courts should tailor the remedy to the severity of the violation. *See Chambers*, 501 U.S. at 44 ("Because of their very potency, inherent powers must be exercised with restraint and discretion."). Indeed, the fact that a court's "inherent authority to sanction derives from its equitable power to control the litigants before it and to guarantee the integrity of the court and its proceedings," *First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 512 (6th Cir. 2002), indicates that a court should use its equitable authority and discretion to identify a remedy that fully and effectively enforces its judgment and is appropriately tailored to the circumstances. *See Spallone v. U.S.*, 493 U.S. 265, 276 (1990) ("[I]n selecting contempt sanctions, a court is obliged to use the least possible power adequate to the end proposed.").

## II. FACTUAL BACKGROUND

Because an extensive discussion of the factual background of this case appears in the Court's Opinion, ECF No. 63, as well as in Plaintiffs' Memorandum in Support of Summary Judgment, ECF No. 53-1, Plaintiffs forgo a lengthy discussion of the history of NNSA's activities at Y-12. Instead, because the issue at hand is Defendants' compliance with this Court's Opinion and Judgment, Plaintiffs summarize the Court's thorough, 104-page ruling and the cursory, 2-page 2019 AROD that NNSA issued a mere three days later in response to the ruling.

### A. This Court's Opinion and Judgment

On September 24, 2019, this Court issued its Opinion, ECF No. 63, and Judgment, ECF N0. 64, ruling in favor of Plaintiffs by finding that the DOE and NNSA had violated NEPA by failing to properly consider new information about seismic hazards and by failing to properly support an array of categorical exclusions. Recognizing the serious nature of the issues in this case, this Court found that the NNSA's violations of NEPA are "hardly trivial or academic." Opinion, ECF No. 63, at 96. Instead, this Court stressed that "[w]ithin the range of possible NEPA cases that might come through its courthouse, the Court is hard-pressed to imagine a more dramatic hypothetical than this, where it must contemplate what might occur if a major earthquake struck a nuclear weapons manufacturing facility located in a major population center." *Id.* at 63–64.

This Court held that "Defendants have violated NEPA by failing to consider the information presented in the USGS's 2014 seismic hazard map in a NEPA document, and by failing to provide a more transparent analysis of the environmental consequences of seismic hazards at Y-12." Opinion, ECF No. 63, at 103. Seismic risks constitute a critical issue for NNSA's decision to continue an enriched uranium strategy in aging buildings that likely cannot withstand earthquakes of a magnitude that can "be reasonably expected to happen." Opinion,

ECF No. 63, at 49 n.39; *see also id.* at 90–91 (describing "highly negative consequences" that could result). In particular, this Court found that by relying on a "bounding" analysis, Defendants wrongfully "avoided *any* comparison of the relative differences that might result when choosing between the action alternatives," in violation of NEPA and DOE's own regulations. *Id.* at 100.

This Court reasoned that "[t]he concern presented by a bounding analysis is that by using it, the agency may obscure differences in impacts among alternatives." *Id.* at 99. And after carefully reviewing NNSA's 2011 Site-Wide Environmental Impact Statement ("SWEIS") and its 2016 and 2018 SAs, this Court found that this unlawful obscuring of differences among alternatives "is exactly what happened here." *Id.* Regarding the 2011 SWEIS, this Court found that because that document "bounded its comparison of environmental impacts … no specific impacts were analyzed with respect to the … [action] alternatives." *Id.* at 98. Instead, "NNSA simply found there were 'no greater impacts than the No Action alternative.'" *Id.* at 98 (quoting AR16981). Likewise, the 2016 SA and 2018 SA featured no specific analysis of seismic risks, but instead merely "affirm[ed] the sufficiency of the prior bounding analysis." *Id.* at 99. This Court found that by relying on this bounding analysis, "Defendants have blatantly disregarded DOE's own guidance against using bounding analyses when a more detailed analysis would help to decide among alternatives or to address concerns the public has expressed." *Id.* at 99.

The Court thus held that NNSA's "refusal to prepare an updated, and unbounded, accident analysis that would help the public fully comprehend the differences in earthquake hazards between the various buildings at Y-12 is arbitrary and capricious in light of the new information" showing greater seismic risks. *Id.* at 103. Likewise, this Court concluded that "Defendants have violated NEPA by failing to consider the information presented in the USGS's

2014 seismic hazard map in a NEPA document, and by failing to provide a more transparent analysis of the environmental consequences of seismic hazards at Y-12." *Id.*

Having concluded that DOE and NNSA acted in an arbitrary and capricious manner and violated NEPA in serious ways, and, enacting the appropriate, default remedy specified in the Administrative Procedure Act ("APA"), this Court vacated the 2016 AROD, the 2016 SA, and the 2018 SA. *See* 5 U.S.C. § 706(2)(A) ("The reviewing court *shall* … hold unlawful and *set aside* agency actions, findings, and conclusions found to be … arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law" (emphases added)). That vacatur had the legal effect of foreclosing activities authorized under the 2016 AROD. *See Pub. Emps. for Envtl. Responsibility v. U.S. Fish & Wildlife Serv.*, 189 F. Supp. 3d 1, 4 (D.D.C. 2016) ("Obviously, the effect of vacatur is to stop these activities" authorized under decisions "the Court has found wanting").

This Court also directed Defendants to come into compliance with NEPA in a timely manner. Thus, the Court remanded the matter to NNSA with a clear instruction that the agency "shall conduct further NEPA analysis—including at minimum, a supplement analysis—that includes an unbounded accident analysis of earthquake consequences at the Y-12 site, performed using updated seismic hazard analyses that incorporate the 2014 USGS seismic hazard map." Opinion, ECF No. 63, at 104. Finding that "NNSA's treatment of the concerns regarding seismic hazards … disregards NEPA's requirement for full and timely public disclosure," *id.* at 103, the Court also stressed the importance of providing the required analysis in a timely manner. Thus, the Court stated that NNSA "must strictly adhere to NEPA's procedural requirements, and fully disclose the environmental costs of a *range* of alternatives before a final decision is made." Opinion, ECF No. 63, at 101. Likewise, the Court stated that "what matters is that NNSA

adequately discloses the potential environmental impacts of any decision it makes, and that it does so in a timely fashion." *Id.* The Court also specifically rejected the notion that NNSA's interim measure of moving "material at risk" from aging buildings could "allow it to avoid conducting a transparent and complete analysis in a timely fashion," because "[t]o hold otherwise would turn NEPA into a dead letter." *Id.* at 102.

### B. NNSA's 2019 Amended Record of Decision

On September 27, 2019—only three days after the Court issued its Opinion and Judgment—NNSA issued a new AROD. 84 Fed. Reg. at 53,134 (noting the 2019 AROD was signed on September 27). The 2019 AROD is a "decision to *continue to implement* on an interim basis a revised approach for meeting enriched uranium requirements (while addressing issues related to seismic analysis), by upgrading existing enriched uranium (EU) processing buildings and constructing a new Uranium Processing Facility (UPF)." *Id.* (emphasis added). Thus, the 2019 AROD purports to continue precisely the same activities previously authorized under the 2016 AROD that this Court explicitly vacated pending further NEPA analysis. Indeed, leaving no room to doubt that the agency is attempting to resurrect the same authorization the Court vacated pending further NEPA evaluation, the 2019 AROD states that NNSA will "*continue to implement* safety improvements under *previously approved* contracts." *Id.* at 6 (emphases added). The 2019 AROD asserts that the continuation of such activities absent completion of the legally required NEPA analysis would be "consistent with the court's ruling," contrary to common sense. *Id.*[2]

[2] NNSA issued its 2019 AROD three days after the Court issued its ruling, but indicated that "construction will continue" at Y-12 on the same day the Court ruled. *See* John Huotari, Oak Ridge Today, *Judge voids UPF decision, requires more seismic hazard analysis*, Sept. 24, 2019, *available at* https://oakridgetoday.com/2019/09/24/judge-voids-upf-decision-requires-more-seismic-hazard-analysis/.

## III. ARGUMENT

### A. The 2019 AROD is Profoundly Inconsistent with This Court's Opinion Regarding the Need for Timely New Analysis of Seismic Risks

It is clear on the face of the 2019 AROD that NNSA is determined to continue the same activities whose authorization this Court vacated pending further NEPA review, without actually completing the critically important analysis explicitly required by the Court. Because NNSA's 2019 AROD continues the same activities previously authorized under the 2016 AROD, now vacated by this Court, without providing any further environmental analysis this Court required, the 2019 AROD is even more arbitrary and capricious than the 2016 AROD and is fundamentally inconsistent with this Court's Opinion and Judgment. As discussed above, the Court vacated the 2016 AROD because it found that NNSA violated NEPA by failing to adequately consider new information about seismic risks and ordered the agency to conduct a specific new analysis. Opinion, ECF No. 63, at 103–04. The 2019 AROD is not premised on any new analysis of such information. Instead, the 2019 AROD simply continues the same activities previously authorized under the now-vacated 2016 AROD without furnishing any of the analysis this Court required. This tactic is not only fundamentally inconsistent with this Court's well-reasoned vacatur of the 2016 AROD and requirement for further NEPA review, but also an obvious attempt by the government to deliberately circumvent this Court's ruling by resuscitating the same activities once authorized under the now-vacated 2016 AROD without first satisfying this Court's holding that NNSA must complete the legally required NEPA analysis.[3]

[3] The Federal Rules of Civil Procedure provide mechanisms by which Defendants could have sought this Court's permission—but failed to do so. *See* Fed. R. Civ. P. 59(e) (allowing motions to alter or amend a judgment); Fed. R. Civ. P. 60(b)(6) (allowing courts to relieve a party from a judgment for any "reason that justifies relief."). Defendants could have requested—but did not—

Although the 2019 AROD claims to be "consistent with the court's ruling," 84 Fed. Reg. at 53,134, in fact the 2019 AROD's view of the Court's reasoning and holding is unreasonably narrow and self-serving and cannot withstand scrutiny. For example, the 2019 AROD's recognition that the Court ordered further NEPA analysis simply cannot be squared with its assertion that "the court held that NNSA's new strategy … was adequately considered as part of the 2011 SWEIS." 84 Fed. Reg. 53,134. If the Court had actually viewed the 2011 SWEIS as providing all analysis necessary for ongoing activities at Y-12, it would not have ordered further analysis.

Likewise, the 2019 AROD's assertion that the Court found that NNSA simply "is not required to prepare" an SEIS, 84 Fed. Reg. at 53,134, defies the clear terms of the Court's ruling. As detailed below, this Court found only that "NNSA is not required to prepare a SEIS for the UPF project or the ELP *due to changed circumstances*," but that "*new information* revealed since the 2011 SWEIS requires further NEPA analysis." Opinion, ECF No. 63, at 103 (emphases added). And by ordering NNSA to prepare a supplement analysis "at minimum," Opinion, ECF No. 63, at 104, this Court indicated that the agency needs to give serious attention to whether a new SEIS is necessary in light of *new information* about seismic hazards. *See* 10 C.F.R. § 1021.104(b) (defining "supplement analysis" as "a DOE document used to determine whether a supplemental EIS should be prepared"); *see also* 40 C.F.R. § 1502.9(c)(1) (noting that an SEIS

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that this Court reconsider its judgment and remand for additional analysis without vacating the 2016 AROD. *See Hicks v. Berryhill*, No. CV 16-154-ART, 2017 WL 1227929, at *2 (E.D. Ky. Mar. 31, 2017) ("Courts sometimes "remand without vacating," a remedy that allows agencies to fix process errors at minimal cost (for the government, at least)."). Likewise, Defendants could have filed a motion for clarification to ascertain whether the Court agrees that continuing activities authorized under the vacated 2016 AROD is consistent with this Court's opinion. Instead, NNSA barreled ahead by issuing the 2019 AROD three days after this Court's ruling, in an apparent effort to avoid judicial review of its intent to continue activities once authorized under a decision this Court vacated.

may be required by changed circumstances *or* new information). The 2019 AROD's interpretation of the Court's ruling as disavowing any possible need for an SEIS is inaccurate and self-serving.

Similarly, the 2019 AROD wrongly suggests that resurrecting the same decision this Court already vacated is somehow acceptable because this Court "did not vacate the 2011 ROD or Y-12 SWEIS or enjoin any activities at Y-12." *Id.* However, the 2011 ROD was for a different plan of constructing a single new UPF, a decision this Court had no occasion to vacate because NNSA had already abandoned it. Nor is the fact that this Court did not issue an injunction significant; vacatur is the default statutory remedy under the APA for violations of NEPA. *See* 5 U.S.C. § 706(2)(A). Where, as here, a court vacates an agency ROD based on a NEPA violation pending further analysis that is required by law, the vacated decision no longer has any legal effect and a court can reasonably expect that the agency will not undertake the activities authorized under that vacated ROD until the agency has cured the legal violation the court identified. Simply put, Plaintiffs need not seek—or obtain—an injunction in a situation like this one, because the standard, default remedy of vacatur is itself sufficient to indefinitely suspend any unlawful activities until the government comes into full compliance with federal law and any court order. *See Pub. Emps. for Envtl. Responsibility*, 189 F. Supp. 3d at 4 ("Obviously, the effect of vacatur is to stop these activities" authorized under decisions "the Court has found wanting").

Likewise, the 2019 AROD erroneously suggests that it is "consistent with 10 C.F.R. § 1021.315(e)." 84 Fed. Reg. 53,134. That regulation allows DOE to amend a record of decision if it is "adequately supported by an existing EIS." 10 C.F.R. § 1021.315(e). To reach this conclusion, the 2019 AROD wrongly interprets this Court's Opinion as determining that

"NNSA's new strategy is adequately supported by the 2011 SWEIS." 84 Fed. Reg. 53,134. However, although this Court rejected some of Plaintiffs' claims regarding the adequacy of the 2011 SWEIS, with regard to new information about seismic hazards, this Court did not find that the 2011 SWEIS was adequate. To the contrary, the Court detailed significant problems with the 2011 SWEIS's consideration of seismic risks, including that "[b]y the very letter of NEPA, NNSA has violated its obligation to make 'explicit' reference to any methodologies or studies upon which it relied." Opinion, ECF No. 63, at 84; *see also id.* at 86 ("The 2011 SWEIS also makes *no* mention of a 'site-specific design-basis earthquake spectra'). In that same vein, the Court also found that if "a concerned citizen relied on the 2011 SWEIS and 2016 SA to learn how NNSA planned to incorporate the new information on predicted ground accelerations from the 2014 USGS map, she would be sorely lacking for guidance, given that neither of the documents in question references *any* relevant site-specific analysis from Y-12." Opinion, ECF No. 63, at 86–87.

Moreover, contrary to the 2019 AROD's assertion that this Court found that the NNSA's activities were sufficiently analyzed in the 2011 SWEIS, this Court actually found that as a result of the NNSA's unlawful bounding approach, in the 2011 SWEIS "no specific impacts were analyzed with respect to the UPF alternative, Upgrade in-Place alternative, or the Capability-Sized alternatives," because instead of providing a specific analysis of risks, "NNSA simply found there were 'no greater impacts than the No Action alternative." Opinion, ECF No. 63, at 98.

Accordingly, the 2019 AROD's assertion that this Court found that the agency's new decision is somehow adequately supported by the 2011 SWEIS is disingenuous because it fails to account for the serious deficiencies this Court identified in the 2011 SWEIS's consideration of

seismic hazards. Indeed, if this Court had found, as NNSA now seems to suggest, that the 2011 SWEIS adequately considered seismic risks (despite the information at issue arising after 2011), this Court would have had no basis to order the agency to conduct a new analysis and to vacate the 2016 AROD.

Finally, the 2019 AROD is profoundly inconsistent with this Court's emphasis on timely compliance with NEPA. *See* Opinion, ECF No. 63, at 101 ("[W]hat matters is that NNSA adequately discloses the potential environmental impacts of any decision it makes, *and that it does so in a timely fashion*" (emphasis added)). This Court's emphasis on timely compliance is consistent with fundamental NEPA principles, which require analysis to be completed *before* an agency makes a decision to act. *See Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc*., 462 U.S. 87, 97 (1983) (NEPA's "action-forcing procedures" require agencies to "take a 'hard look' at the environmental consequences *before* taking a major action" (emphasis added)); *see also* 40 C.F.R. § 1502.5 (NEPA is not intended to allow an agency to "rationalize or justify decisions already made"). Indeed, the Court also specifically rejected the notion that NNSA's purported safety improvement of moving "material at risk" from aging buildings could "allow it to avoid conducting a transparent and complete analysis in a timely fashion," because "[t]o hold otherwise would turn NEPA into a dead letter." *Id.* at 102.

The Court's emphasis on timely compliance with NEPA is also consistent with the fundamental principle that agencies may not make any "irreversible and irretrievable commitment of resources" before completing legally required NEPA analysis. *See Metcalf v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000) (noting that NEPA's implementing regulations require "agencies to prepare NEPA documents, such as an EA or an EIS 'before any irreversible and irretrievable commitment of resources'"). A contract to undertake activities with

environmental impacts before undertaking required NEPA analysis constitutes such an "irreversible and irretrievable commitment of resources." *Id.* at 1143–44. Here, NNSA is continuing activities under "previously approved contracts" before completing the NEPA analysis this Court has required. 84 Fed. Reg. at 53,134. This decision represents the expenditure of several billion dollars on an approach that may, depending on the result of the seismic analysis the Court required, prove inadequate to meet NNSA's enriched uranium mission requirements and, therefore, be entirely untenable. This Court vacated the 2016 AROD and required timely completion of additional analysis of seismic hazards; the 2019 AROD's tactic of continuing to implement NNSA's desired action without first completing such analysis is irreconcilable with this Court's ruling.

### B. The 2019 AROD is Inconsistent with this Court's Opinion Regarding Categorical Exclusions.

As discussed above, this Court also found that NNSA violated NEPA by wrongfully invoking categorical exclusions for an array of activities involved in upgrading aging buildings. Opinion, ECF No. 63, at 84. This Court found that NNSA's use of these categorical exclusions was arbitrary and capricious because the agency failed to make findings that were explicitly required by DOE's own regulations. *Id.* at 79–84. Because the categorical exclusions were "plainly inconsistent with DOE's regulations," *id.* at 83, the Court ordered NNSA "to correct any categorical exclusions where the project is ongoing," *id.* at 84. Moreover, this Court rejected Defendants' argument that Plaintiffs' challenge to NNSA's categorical exclusions was moot, reasoning that because some of the projects at issue are apparently incomplete, "the Court's finding that the categorical exclusions have been unlawfully applied will still have tangible effect." *Id.*

The 2019 AROD makes absolutely no mention of categorical exclusions. It does not acknowledge that this Court found NNSA's previous use of categorical exclusions arbitrary and capricious and provides no assurance that the agency will change course. Moreover, because the 2019 AROD continues the same activities that were previously authorized under the now-vacated 2016 AROD—apparently including activities that were subject to categorical exclusions—the 2019 AROD risks depriving this Court's Judgment of the "tangible effect" this Court specifically intended it to have. *See* Opinion, ECF No. 63, at 84. Accordingly, because the 2019 AROD does not recognize or purport to cure the legal violations this Court identified, and instead threatens to repeat those same legal violations, it is inconsistent with this Court's Judgment for this reason as well.

### C. The 2019 AROD Does Not Provide the Additional Analysis this Court Required or Any Specific Plans Regarding Future Analysis.

As discussed above, this Court vacated NNSA's 2016 AROD, 2016 SA, and 2018 SA and remanded to the agency with explicit instructions that NNSA "shall conduct further NEPA analysis—including at minimum, a supplement analysis—that includes an unbounded accident analysis of earthquake consequences at the Y-12 site, performed using updated seismic hazard analyses that incorporate the 2014 USGS seismic hazard map." Opinion, ECF No. 63, at 104. Although the 2019 AROD recognizes this aspect of the Court's ruling and states that "further NEPA documentation will be developed on an expedited basis that includes an unbounded accident analysis of earthquake consequences at Y-12, using updated seismic hazard analyses that incorporate the 2014 United States Geological Survey maps," 84 Fed. Reg. 53,134, the new decision to continue implementing the now-vacated plan of action is not itself premised on any new analysis of seismic risks. Nor does the 2019 AROD provide any concrete information about any new NEPA analysis. For example, the 2019 AROD does not explain what NEPA document

NNSA intends to prepare, does not include any timeline for its preparation, does not address whether the NEPA document will consider any alternatives to NNSA's chosen course of action, does not assure compliance with the Court's Opinion stressing "the need for an analysis of environmental impacts *between* [] alternatives," Opinion, ECF No. 63, at 100, and does not address whether NNSA will accept public comment.[4]

Because the 2019 AROD is wholly unmoored from the additional analysis of seismic risks that this Court specifically ordered NNSA to prepare in order to bring its actions into compliance with federal law, the 2019 AROD flouts this Court's ruling for this additional reason.

## CONCLUSION

For the foregoing reasons, this Court should declare that the 2019 AROD is inconsistent with its Opinion and Judgment, vacate that decision as inconsistent with this Court's Judgment, and declare that any similar future effort to adopt the same decision embodied in the vacated 2016 AROD before NNSA completes the analysis of seismic risks that this Court required will likewise be inconsistent with the Court's Opinion and Judgment.

Respectfully submitted,

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[4] Plaintiffs have requested information regarding the timeline for NNSA's new analysis and whether the agency will accept public comment, but Defendants have not provided this information.

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