

ECA Update: September 28, 2015



In this update:

ECA Responds to Omnibus Risk Committee Report *ECA Staff*

ECA has written a letter to express its concerns with the recently issued report by the Omnibus Risk Review Committee, "A Review of the Use of Risk-Informed Management in the Cleanup Program for Former Defense Nuclear Sites" (Report). ECA believes the Report fails to recognize the role of DOE impacted communities in defining risk, the current gains and lessons learned made by those communities, and their critical role in remedy decision-making. The full letter can be read below and is available online [here](#):

Re: Omnibus Risk Review Committee Report fails to recognize the basic role of the community in cleanup process

Dear Chairmen Simpson and Alexander & Ranking Members Feinstein and Kaptur:

On behalf of the local communities adjacent to and impacted by Department of Energy (DOE) activities, the Energy Communities Alliance (ECA) writes to express its concerns with the recently issued report by the Omnibus Risk Review Committee, A Review of the Use of Risk-Informed Management in the Cleanup Program for Former Defense Nuclear Sites ("Report"). ECA believes the Report fails to recognize the role of DOE impacted communities in defining risk, the current gains and lessons learned made by those communities, and their critical role in remedy decision-making. DOE's Office of Environmental Management (EM) is responsible for the largest cleanup program in the world – the remediation of the contamination caused by nuclear weapons production. Local communities situated around DOE facilities are most impacted by DOE's environmental cleanup decisions and, specifically, DOE's definition of "risk" to human health and the environment. These decisions and processes are not academic exercises in our communities. Unfortunately, the Report's recommendations do not address the role of communities in defining risk and instead marginalize locally elected government officials and communities

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affected by DOE. First, ECA believes that the law be followed when selecting a remedy, and second, to implement the law, risk assessments should be a collaborative process, in which parties define acceptable cleanup, repeating this process consistently over a long-term cleanup program.

The Report ignores the Federal Facilities Compliance Act, which requires DOE to work with state and local governments in remedy selection to define risk and select a cleanup remedy. Federal agencies, when selecting a remedy, pursuant to CERCLA, must allow local government officials to participate in planning and selection of the remedial action (including, but not limited to, the review of all applicable data as it becomes available and the development of studies, reports, and action plans) at federal facility cleanup sites.

In addition, as noted in the Report, land use assists DOE in analyzing risk for cleanup of sites based on future use. Local governments define land use at most sites through zoning and give their input to DOE on potential future use of sites. These facts are basic tenants of cleanup actually used by both regulatory entities and DOE in their cleanup decision-making process. Moreover, communities and DOE often negotiate risk issues to determine the level of remediation necessary for land reuse.

Congress asked the authors of this Report to look at past DOE successes in cleanups like Mound, Rocky Flats, and Fernald. In each instance, DOE, local governments, states, and other stakeholders collectively negotiated the future use of the site and its cleanup levels. The cleanup decision-making process resulted from hard-fought laws and regulations requiring DOE to negotiate cleanup levels in collaboration with Congress, the administration, and citizens that live around the sites. In response to a Senate mandated request, as part of the National Defense Authorization Act of 2005, ECA worked with DOE to outline different models and approaches various parties can pursue in better meeting community needs during complex environmental cleanups. These models, based on lessons learned from successes, are outlined above (“Politics of Cleanup”). Politics of Cleanup acknowledges the outcomes for future land use when communities define risk. For example, designating Mound as a wildlife refuge, as done at Rocky Flats, would have been fundamentally inconsistent with local needs; reindustrializing Rocky Flats, as done at Mound, would have likewise been inconsistent with core values held broadly by local governments and others in the affected community. DOE on its own did not define risk and cleanup levels

– the cleanup process took years before the community – not DOE headquarters – reached an agreement.

The Report’s failure to engage local governments, communities, or the public is disconcerting. If a local government sets land use, the law requires that it be included in remedy selection. DOE cleanup stories have historically successful at sites where the local, state, and federal government collaborate on cleanup and remedy selection. Congress should expect that a Report submitted on risk and improving the cleanup process identify local community and government as critical components in risk evaluation at DOE sites. However, the authors fail to interview local government officials, communities, and citizens in the 100 interviews conducted.

The Report also fails to recognize the reality at the sites and ignores local government input in cleanup and future land use decision-making processes by proposing the creation of an “Interagency Taskforce.” ECA members when reading the Report asked – “Do the authors believe that the potential impact of the contamination stops at the DOE fence-line?” ECA urges your committee and DOE to reject any recommendations from the Report undermining states’ rights to hold DOE accountable in the cleanup process and the local government role in remedy decision-making.

Risk reports must include input by local governments renegotiating enforceable cleanup agreements since the United States government, acting through the Department of Energy, cannot meet its obligations. ECA agrees that DOE headquarters serves a critical role in coordinating actions at sites and providing overall policy directives – including funding levels. However, these actions must be well informed by what occurs at the sites and within communities. ECA recommends DOE re-engage local governments and others at the sites (in addition to only the states) to facilitate further discussion about risk. Congress should ensure that sufficient cleanup funding exists to prioritize cleanups across sites.

ECA has consistently supported some of the recommendations in the Report, including redefinition of high-level waste. There is no reason for classifying waste based off its origin. Reclassification of waste based on hazard immediately creates possibilities for waste disposal outside of a deep geologic repository. Furthermore, the Report notes long-term issues ECA has supported in the past including the fact that infrastructure systems are rapidly decaying. ECA agrees that DOE site managers, and others in the Department

wide-budget process, be given more flexibility to “make budget requests for priority problems.”

I have directed ECA staff to reach out to DOE to discuss the continued engagement of local governments in cleanup and remedy decision-making at the sites.

If you have any questions or you would like to discuss this matter further, please contact Seth Kirshenberg, ECA Executive Director, at (202) 828-2317

Sincerely,
Chuck Smith

Chairman, Energy Communities Alliance
Councilmember, Aiken County, SC

Cc: Honorable Ernest Moniz, Secretary of Energy, Department of Energy
Honorable David Klaus, Deputy Under Secretary for Management and Performance, Department of Energy
Honorable Monica C. Regalbuto, Assistant Secretary of Energy for Environmental Management
Mathy Stanislaus, Assistant Administrator, U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response (OSWER)
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