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May 12, 2003

Mr. David Geiser  
U.S. Department of Energy  
1000 Independence Ave., SW  
Washington, DC 20585

**Subject: ECA Comments to the DOE Draft Policy  
Titled "Use of Risk-Based End States"**

Dear Mr. Geiser:

Energy Communities Alliance ("ECA"), the membership organization of local governments adjacent to U.S. Department of Energy ("DOE") facilities, appreciates the opportunity to provide comments on the DOE policy titled "*Use of Risk-Based End States*" (the "Policy").

As ECA stated in its initial response to the draft policy on February 3, 2003, ECA supports risk-based cleanup when DOE can ensure the long-term protection of human health and the environment and where DOE, after analyzing the cost of cleanup that will not leave contaminants in place, determines that there will be a cost savings to the United States.

Generally, the current version of the Guidance is much clearer than the initial draft Guidance. Further, ECA appreciates the information that DOE has provided to ECA and local government on the response to comments.

All of the comments to this version of the Policy are in addition to the comments that ECA submitted in February. ECA is still concerned that DOE does not clearly state that it will **involve the impacted local government in all land use and future use decision-making**. Where the property will be conveyed from DOE ownership the involvement of the local government is key and consistent with U.S. EPA policy on risk based environmental cleanup and the selection of the land use remedy. We believe that the Policy needs to be clearer on this point.

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Titled “Use of Risk-Based End States”**

**Need to Include Local Governments Specifically**

The current draft does not refer to local governments directly. We request that you specifically list “local governments” as an entity that that DOE will work with on these issues and not lump local government as a “stakeholder.”

As ECA stated in its initial comments:

“The Draft Guidance does not clearly identify a formal role for the “host” local government to participate in any meaningful way. . .

As ECA has stated, local governments are charged with specific legal mandates under state and federal laws, and serve as stewards of public resources such as land and revenue, including land use planning and control. Local governments represent the elected representative of the entire community, and are the “asset holder” with the primary stake in DOE site decisions. Local governments are not just stakeholders. Local governments represent the first line of communication with affected citizens, not the local citizens advisory board and not national activists. Public participation should play an important role in DOE decision making, but public meetings and advisory boards are not a substitute for direct communication and interaction with affected local governments. Several DOE site personnel still believe that talking to an advisory board is sufficient public outreach and input; hence the Draft Guidance should clarify that the site is required to work directly with the local governments. Each site manager ought to be required to give a presentation to the respective local governing bodies to begin building trust from the outset.”

Further, we suggest the following specific changes (added language is underlined):

*Throughout the document:*

Please replace “regulators and stakeholders” with “regulators, local governments and stakeholders”

*Purpose and Scope, para. 2:*

"The goals must be grounded in the vision for the site at the end of the cleanup effort...which in turn must be driven by the expected future land use, as determined in consultation with the local land use authority."

*Background, para 4:*

"...Once the site future use is defined in consultation with the local land use authority..."

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"...an agreed-to-understanding of the post-remediation status of a site by DOE and the local government entity responsible for those land use decisions."

*Policy, para 1:*

" . . . in cooperation with regulators and local governments and Tribal nations and in consultation with stakeholders . . ."

*Policy, para. 2, subsec. 2:*

"End-States must be based on an integrated site-wide perspective (including the current and future use of surrounding land as set forth in the land use records of the local jurisdiction or in coordination with the local government)..."

*Policy, para. 2, subsec. 3* Add the following sentence at the end of the subsection:

"Long-term effectiveness and permanence must be a key to selection of the remedy and institutional controls should not substitute for active response unless such active measures are determined not to be practicable, based upon the balancing as set forth in the NCP."

*Policy, subsec. 5:*

"Regulators and local governments will be asked to concur and affected and interested state, tribal, and local governments and stakeholders must be consulted and responsible state, tribal, and local governments must approve...."

*Implementation, para. 1:*

"DOE will comply with all applicable laws, including applicable land use policies and regulations,..."

*Implementation, para. 2:*

"...dialogue with the regulators, local governments, . . . and stakeholders...."

*Implementation, para. 3:*

Among other things, the corporate strategy will describe how to revise site baselines and associated performance plans using the site specific risk-based end state vision, where the current process does not use risk based processes. [Please clarify what this paragraph is addressing. Does DOE not believe that it has followed the NCP, CERLCA policy, EPA policy and integrated risk based cleanup at *most* sites?]

Finally, as ECA stated in its initial comments, risk-based cleanup is premised on a credible and viable long-term stewardship program. The Policy should address this issue in implementation especially with the development of the new Office of Legacy Management.

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**Conclusion**

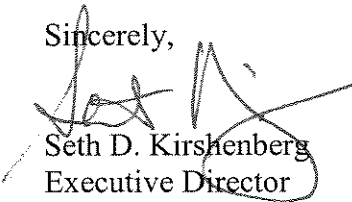
ECA appreciates the opportunity to comment on the revision of the Policy. ECA continues to support DOE's efforts to ensure that cleanup occurs quickly.

A key to ensuring success is revising the Policy to clearly state that local government will be involved in the remedy decision making process.

Further, DOE must ensure that it utilizes its successes as models and works with the local governments adjacent to the DOE sites to develop solutions to these complex problems. Health and environmental risks are key issues for citizens who live adjacent to these sites. DOE must ensure that when it relies upon risk-based cleanup DOE can guarantee the community's health and safety.

Once again, ECA appreciates your assistance and consideration of our comments. Please contact me directly at (202) 828-2494 with any questions regarding ECA's comments. We look forward to continue to work with you on these important issues.

Sincerely,



Seth D. Kirshenber  
Executive Director

cc: ECA Board of Directors