

ENERGY COMMUNITIES ALLIANCE

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November 29, 2011

Dr. Peter S. Winokur
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Ave NW Suite 700
Washington, DC 20004

RE: Involve Local Governments in DNFSB Meetings

Dear Dr. Winokur:

On behalf of The Energy Communities Alliance (ECA)¹, I would like to encourage the Defense Nuclear Facilities Safety Board (DNFSB) to begin to involve local government and community representatives in future DNFSB meetings. It is essential that the only independent technical oversight organization responsible for identifying the nature and consequences of potential threats to public health and safety at DOE facilities interact with and get feedback from the local governments and communities that host these facilities. Local government officials at DOE sites consider it their mission to protect the health and safety of their communities and citizens, and they can provide some of the best information on these risks and lessons learned from their experiences with DOE.

Your recent meeting in on November 17, 2011 in Santa Fe would have been an excellent opportunity for you to hear from local government officials with extensive knowledge on the topics you were interested in discussing. In your public hearing and meeting notice for the meeting you stated, "The Board is also interested in lessons learned from the events at the Fukushima Daiichi complex, the recent Las Conchas fire, and the 2000 Cerro Grande fire and the actions taken to incorporate these lessons learned at the site-wide level and in defense nuclear facilities operations." Ironically, no local government officials or firefighters—who were responsible for responding to and coordinating the emergency response for both fires—were invited to formally participate in your meeting and identify lessons learned. No local government officials in the northern New Mexico region were notified that the meeting was taking place. The only way Los Alamos officials found out about the meeting was through an e-mail from DOE. An advertisement that ran in the Santa Fe newspaper is not sufficient notice for local government officials or community members that are located 30 miles away in Los Alamos.

¹ Energy Communities Alliance (ECA) is the organization of local governments and communities adjacent to and impacted by Department of Energy activities.

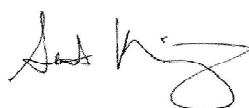
Although I formally e-mailed and called the DNFSB for a speaking role for either the County elected officials or first responders, I was told that if they want to speak, they could be given time during the public comment session. Fortunately, Los Alamos County Council Chair Sharon Stover was able to attend the meeting and provide public comments on the County's experiences during the fires. She highlighted several lessons learned and changes that the County, DOE, NNSA and Los Alamos National Laboratory made after the Cerro Grande fire. These changes helped improve emergency response efforts during the recent Las Conchas fire. Ms. Stover's unique perspective was well-received during your meeting and shows how local communities can provide real insights that can assist the DNFSB in its oversight role.

In the future the DNFSB should reach out to local governments at sites they are reviewing and provide them with an opportunity to address the Board. ECA encourages you to establish a point of contact with local governments at each site to directly disseminate information about your meetings and other activities.

ECA has written extensively on these types of communication issues, and we have attached a section of our book *The Politics of Cleanup* titled "Communications: Engaging the Community Through Consultation, Coordination and Ongoing Dialogue." Many of the lessons learned in the book were implemented very successfully by Vice Chairman Roberson during her tenure as Assistant Secretary for Environmental Management. Vice Chairman Roberson helped establish the minimum standards for communication between DOE Environmental Management and local communities, we believe these standards should be followed by the DNFSB as well.

ECA is happy to meet with you to discuss these recommendations further and we look forward to working with you and the rest of your Board in the future to ensure the health and safety of our communities. Please contact me with any questions at (202) 828-2317 or sethk@energyca.org.

Sincerely,



Seth Kirshenber
ECA Executive Director

cc: Ms. Jessie Hill Roberson, DNFSB Vice Chairman
Dr. John E. Mansfield, DNFSB Board Member
Mr. Joseph F. Bader, DNFSB Board Member
Councilmember Robert Thompson, ECA Chair, Richland, WA
Mayor Thomas Beehan, ECA Vice-Chair, Oak Ridge, TN
Councilmember Chuck Smith, ECA Secretary, Aiken County, SC
Councilmember Fran Berting, ECA Treasurer, Los Alamos County, NM
Commissioner Seth Beal, ECA Immediate Past Vice-Chair, Butte County, ID
Council Chair Sharon Stover, ECA Board Member, Los Alamos Council, NM
ECA Board of Directors

ATTACHMENT A

III. Communications: Engaging the Community Through Consultation, Coordination and Ongoing Dialogue

Community engagement is critical at all steps in the process — at the development of the vision, at refinement of the cleanup goals and priorities, and at all times where conflicts arise. An overriding principle is not divorcing process from substance. For the federal government the question of community involvement concerns whether more members of the public accepts and supports the process; for local governments and other community members the question is whether they obtain what they want at the site. And for both the question is prioritization — as not all issues are equally weighted. When process gets in the way of discussion a tension will arise. Hence the parties must continue to understand that the process must lead to consultation, coordination and communication.

Recommendation #10: All Parties Must Take Into Account Post-Cleanup Requirements – Cleanup completion typically means that contamination will be left in place; thus, identifying sources of long-term funding and clarifying the roles of the affected parties are essential.

Federal sites rarely are remediated to natural background levels; consequently, contamination usually is left in place when cleanup is “complete.” Hence, the process of cleanup must recognize that ongoing management (often called long-term stewardship) of the remaining contamination will be required.

In order for cleanup projects to be ongoing assets for the affected community, the stewards must be identified and agreed to by all of the parties and have the funds necessary to implement long-term stewardship activities. Ideally, as cleanup actions are being designed, long-term funding management requirements and funding needs will be identified as well. Achieving this goal, however, has proven difficult.

Recommendation #11: The Parties Must Build a Working Relationship — All parties must take the necessary steps to develop and maintain trust, accountability and openness.

The Cold War demanded an umbrella of secrecy over the activities of DOE, resulting in the decision-making framework of “decide, announce and defend.” Partnerships, which are based on trust, accountability and openness, require a fundamentally different paradigm. DOE largely has moved away from its historic posture, but where the decision-making process is not open, community trust will be difficult to maintain.

Trust and accountability flow from the program mission and vision — without an agreement on the goals for the program and a vision for where to go, trust and accountability are difficult to achieve. At the sites ECA investigated, there are various ways DOE and the regulators have built trust and have been accountable. Parties at other facilities need to work together to understand the site-specific needs and develop the mechanisms to meet those goals.

All parties, not just the federal entity charged with cleaning up the facility, must be trustworthy and accountable. For example, at one site both local elected officials and members of DOE's advisory board did not meet the same standards of trustworthiness and accountability that were demanded of DOE. Such inconsistency is not lost on DOE and thus compromises the value and effectiveness of those community members when seeking to partner with DOE and the regulators.

Openness can be summarized by the following ideas, which ought to be embraced by officials at the local, state and federal levels:

1. Abide by the principle of "no surprises";
2. Be honest;
3. Provide regular information and brief your counterparts;
4. Identify for all parties any real or potential impediments to success;
5. Be available, which could mean talking with or meeting with your counterparts of the local community on a daily or weekly basis;
6. Share bad news when you get it;
7. Work off-line, as not all discussions should take place in public;
8. Respect the parties enough to say when you do not agree; and
9. Keep searching for ways to increase dialogue and openness.

Recommendation #12: Be Organized — Local governments and the community must be organized and proactive, and strive to speak with one voice.

DOE has invested considerable time, effort, and money over the past decade building and supporting community involvement through Environmental Management Site-Specific Advisory Boards (EM SSABs), and the investment has paid off through the organized, continuous involvement of a broad range of members from the local community. Throughout the DOE complex, EM SSABs have been to varying degrees integral to the successful partnerships between the federal and state agencies and the community. However, while these groups have served an important role in organizing community involvement, there are instances where EM SSABs do not agree with the goals of locally elected officials and the local governments (and failure to recognize this issue slowed agreement on cleanup levels).

At most sites DOE's Office of Environmental Management has put more effort into working with EM SSABs than working directly with local governments. ECA strongly believes this approach is problematic because local governments do not have the luxury of waiting for other parties, such as EM SSABs, to address their needs. Local governments must take the initiative to organize and engage the federal government, the cleanup contractor, the regulatory agencies, and Congress. Through local government organizations at Mound and Rocky Flats, for example, the local governments created the forum for them to identify jointly their interests and develop strategies for accomplishing their mutual goals. They created the means by which they

could then engage the other parties — and to the degree they can speak with one voice their power and effectiveness is amplified.

A local governmental entity can engage the federal government, the regulators and Congress on site issues, and can use the collective position of the local governments to better discern what is in the public interest. By working with a single entity, such as a coalition of governments, the federal government, regulators and Congress gain an educated and informed partner whose collective position indicates what is in the public interest of local residents. Goals are more readily clarified because the parties have worked out their differences and minority views are in turn more easily identified and marginalized. By taking these steps the federal government helps build credibility with local governments and with Congress which can help serve to provide political cover, especially against minority factions from within the local community.

Recommendation #13: Resources Ensure Parties Can Participate — The federal government and Congress must provide regulators and communities with the financial resources necessary to organize and retain the staffing resources they need.

Without federal funding, local governments and community organizations will struggle to secure the funds necessary for them to be able to actively engage on site issues. Without the means to partner effectively, the successful transition of the site to a continuing asset for the local community is compromised.

Federal facility cleanups in the 1980s and 1990s were based on litigation and little was accomplished. Where cleanup did occur, the federal agency would submit the cleanup paperwork to the regulators who would then take months to review and approve that the cleanup was complete. Eventually, the EPA brought together the federal agencies and state regulators for meetings which ultimately assisted in the creation of agreements that permitted federal funding for state regulators. This ensured that states had the staff to work with the federal agency on cleanup issues. For example, at Mound, Oak Ridge and Rocky Flats, DOE funding provides for state regulators to participate and facilitate the cleanup process. Similarly, DOE funding allows EM SSABs, tribes and some local government groups to participate in cleanup decision making, helping to build trust among all the stakeholders. Significantly, none of the interviewees believe that the funding compromises their independence from DOE.

Rocky Flats provides a prime example. From 1999 to 2005, DOE, through congressional appropriations, provided the Rocky Flats Coalition of Local Governments approximately \$2 million to support their efforts. Had these governments not had the monies to engage in the manner and extent they did, but were otherwise sufficiently organized to hinder the process, it is likely Rocky Flats would have closed late and at an additional cost of hundreds of millions of dollars to the federal government.

Recommendation #14: Following the Minimum in the Law Is Not Enough — Minimum regulatory requirements are insufficient to support substantive public involvement; the parties must develop public involvement processes that are tailored to site-specific needs, recognizing that process is different from negotiations.

Frequently, the most difficult challenge the federal and state parties face in engaging the local governments and other community members is in identifying the purpose of any public involvement process. A public involvement process for the sake of process will yield little positive results and will not serve to support a timely cleanup. Because federal environmental laws include specific provisions for community involvement, the agencies charged with managing and regulating the cleanup often strictly (and narrowly) follow public involvement processes as laid out in applicable regulations.

However, strictly following regulatory minimums ensures openness but may not support a productive partnership, nor would it likely achieve timely cleanup. A process that all entities can agree on needs to evolve and ensure trust and communication are built at a site. For that reason, the parties charged with cleaning up a site and those charged with regulating their cleanup activities need to be clear on the point of public involvement processes. For the federal government and the state regulators, the greatest challenge is not whether federal and state regulations and policies allow the parties to partner with local governments and other members of the local community, for they do. Rather, engagement fundamentally involves whether the federal government and the state regulators view working with local governments and other community members as another box they will need to check to meet minimum regulatory requirements, or whether they believe, as ECA does, that engaging affected community members improves the decision-making framework. If the answer is not the latter, then conflicts are increasingly likely to arise and prove difficult to resolve.