

**ENERGY COMMUNITIES ALLIANCE  
&  
ENVIRONMENTAL LAW INSTITUTE**

**ROLE OF LOCAL GOVERNMENT IN LONG-TERM STEWARDSHIP  
AND INSTITUTIONAL CONTROLS PROJECT**

**ROUNDTABLE MINUTES**

August 2-4, 2000  
Hyatt Regency Hotel  
Denver, Colorado

The following is a summary of the Energy Communities Alliance (ECA) and Environmental Law Institute (ELI) Roundtable about the role of local government in long-term stewardship.

**Welcome and Meeting Overview**

Representatives from city, tribal, county, and state governments, citizen interest groups, the US Environmental Protection Agency (EPA) and the Department of Energy (DOE) met in Denver, Colorado on August 2-4, 2000 to discuss the role of local governments in long-term stewardship. (The full list of participants is included as Exhibit A).

The meeting opened August 2 with a primer on institutional controls given by ECA Executive Director Seth Kirshenberg, and ELI Director of the Center for State, Local and Regional Environmental Programs, John Pendergrass. On August 3, Rocky Flats Environmental Technology Site Manager Barbara Mazurowski welcomed participants and Mr. Kirshenberg, Mr. Pendergrass and Mr. Werner discussed their respective organizations' background and involvement in long-term stewardship issues. Mr. Kirshenberg and Mr. Pendergrass also outlined the ECA and ELI Role of Local Government in Long-Term Stewardship and Institutional Controls Project (the "Project").

Participants then provided feedback on the long-term stewardship issues facing their communities, and listened to panel presentations on the long-term stewardship activities ongoing and expected for three DOE sites: the Rocky Flats Environmental Technology Site, Colorado, the Los Alamos National Laboratory, New Mexico and the Oak Ridge Reservation, Tennessee.

To conclude the second day Mr. Kirshenberg and Mr. Pendergrass briefly presented the general findings from the case studies. The third and final day of the conference began with a discussion of the role of local government in long-term stewardship findings and ended with a discussion of ideas and steps for moving forward. (The full agenda is attached as Exhibit B).

**Project Overview**

DOE recognizes the need to address long-term stewardship, as well as the need to involve local governments in planning along with State regulators and the EPA. The goal of the ECA and ELI Long-term Stewardship and Institutional Controls Project ("Project") is to

obtain input from local governments on their interest, role, and capability, if any, in working on and implementing institutional controls and long-term stewardship activities in and around their communities. In an effort to better understand the potential roles and responsibilities, if any exist, of local governments, the Project gathered information and gained insight into the following key issues:

- Local government responsibility related to long-term stewardship and institutional controls
- Federal (DOE, EPA, other) responsibility related to long-term stewardship and institutional controls; and
- Local needs related to long-term stewardship and institutional controls.

In an effort to address and understand these issues ECA and ELI conducted case studies of three distinct areas where long-term stewardship and institutional controls are an issue: Rocky Flats in Colorado, Los Alamos in New Mexico, and Oak Ridge in Tennessee.

### **Participant Input on Long-term Stewardship Issues in Their Communities**

In an effort to further understand the specific issues and concerns of each of the participants with regard to long-term stewardship and institutional controls, Mr. Kirshenber and Mr. Pendergrass requested that each of the participants voice a few of their thoughts about long-term stewardship and institutional controls. The following is a list of the major concerns:

- The meaning of long-term stewardship needs to be clarified.
- DOE should consult a wider variety of groups with vested interests in the process when selecting cleanup remedies.
- Legally, there is not a clear understanding of how local and state governments are to work together on long-term stewardship issues.
- Legal mechanisms are needed to enforce institutional controls in perpetuity.
- Communities adjacent to DOE sites that require long-term stewardship and institutional controls must communicate with each other.
- DOE must understand the importance of communicating long-term stewardship issues to local governments and the public so that the process of implementation and enforcement of stewardship activities does not fail.
- What are the legal restrictions involved in land transfers and who will be responsible for remediation of property if contamination is discovered after DOE conveys property?
- Are we going to pay now or pay later, in dealing with environmental cleanup?
- Some local officials feel that there is a lack of commitment from DOE to engage in long-term cleanup activities.
- There must be an improvement in trust between DOE and local governments.
- Institutional memory is important, in order to ensure that future generations have access to information so that they are aware of contaminated areas.
- Inter-generational equality should be considered to ensure that future generations are not burdened with our waste.

### **Site Panel-Rocky Flats**

*Frazer Lockhart, DOE Rocky Flats Assistant Manager for Closure Projects*

Mr. Lockhart opened the panel with a presentation on Rocky Flats and the current status of the closure project. The target of the closure group is to get Rocky Flats as close to a non-long-term stewardship site as possible. In an effort to do this DOE will move all of the plutonium off the site and demolish all of the buildings while assuring that all of the cleanup activities are completed to the appropriate level for their future use. A key issue in the cleanup of Rocky Flats is the surface water, and this concern functions as a driving force as well as the cleanup standard. Rocky Flats is unique in that it is very close to the end of cleanup, estimated in 2006, and so the issues that surround long-term stewardship are today's concerns for the site.

The groundwork for long-term stewardship at the site began in 1994 when the Rocky Flats personnel began to consider future use of the site. They determined that the final ROD will have provisions for long-term monitoring, institutional controls, deed restrictions, and mineral and water rights transfers.

*David Abelson, Executive Director, Rocky Flats Coalition of Local Governments*

Mr. Abelson discussed the role that the Rocky Flats Coalition of Local Governments (the "Coalition") has had with the issues of long-term stewardship at the site as well as what the Coalition feels are the major long-term stewardship/institutional control concerns. Recently the Coalition worked with the Citizen Advisory Board (CAB) of Rocky Flats in an effort to create a Rocky Flats working group that can evaluate cleanup assumptions for the site. The principal issues are the protection of human health and the environment for future generations, the removal of wastes to off-site locations, protection for the buffer zone as a national wildlife refuge, as well as the prospect of protecting the entire site, which would prohibit industrial development. The Coalition has taken the position that the site should continue to be owned by the federal government. However, local governments should have a role in land management.

The Coalition's challenge is to identify the key stewardship needs, and their role in the remedy selection process for Rocky Flats, because currently the remedy selections are not conducted with long-term stewardship issues in mind. The Coalition and the State of Colorado have worked together to develop a "toolbox" that will hopefully facilitate the integration of remedy selection and stewardship. The participants discussed the "toolbox" at length. The "toolbox" is attached as Exhibit C.

*Dan Miller, First Assistant Attorney General for the State of Colorado*

Mr. Miller discussed the attributes of effective institutional controls and the need to have an effective institutional control as part of an environmental cleanup plan. Key aspects of an effective institutional control are: enforceability, need for an institution, and a requirement for institutional memory to keep the control in place.

Mr. Miller stated that the legal enforceability of an institutional control is a concern when a contaminated site is cleaned up and then transferred. Another concern is whether or not the state has the capacity to take care of the land. If DOE does not need the land, other federal agencies should use it because otherwise the land may transfer into private hands, which could cause problems for further environmental remediation activities.

Mr. Miller provided a critical review of the mechanisms used to control the contaminated lands should be considered. Common law, such as easements and covenants, is flawed because it is not designed for the purposes of long-term stewardship. This brings out one of the key attributes of an enforceable institutional control: the entity that creates the institutional control should be able to enforce the control. Also important is to make sure that an institution is in place that will enforce the control. In most cases the layered approach to institutional controls is the best method because oversight is needed on a site-by-site basis as well as on a statewide/national level. In addition, the real estate industry should also be educated (as well as the lessees) about the issues surrounding long-term stewardship and institutional controls that are placed on the land. Finally, Mr. Miller said that institutional memory is important. One way to retain institutional memory is to create a museum on the site that would help to maintain awareness of residual contamination.

### **Site Panel-Los Alamos**

*Deborah Griswold, Team Leader, DOE Albuquerque Operations*

Ms. Griswold reviewed the function of the Albuquerque operations office and the next steps that the office is planning to pursue. One of the next steps is to develop a field office level long-term stewardship plan in Albuquerque whose principles will include roles and responsibilities, stakeholder involvement, general planning assumptions, and how to reevaluate sites based on changes in standards or technology.

In terms of budgeting, Ms. Griswold said the Albuquerque office has created a baseline that goes to the year 2070. She also noted that the Albuquerque office does not consider long-term stewardship an option, rather it is a necessity and Los Alamos National Laboratory (LANL) must make the institutional controls work because there is just not enough money to make everything perfectly safe for everyone forever.

*Greg Lewis, Director, Water and Waste Management Division, New Mexico Environment Department(NMED)*

Mr. Lewis discussed a number of different factors that make the Los Alamos area unique in terms of long-term stewardship. Among these distinguishing characteristics is that Los Alamos has a continuing mission and that the geography/dispersal of the units within the area make it difficult to sufficiently cleanup many of the areas. Another issue is contamination that in some cases may be seeping towards the groundwater, even though the water table is at depths of about 1,000 ft below the surface.

Mr. Lewis mentioned that New Mexico has no set laws for institutional controls, however the NMED is currently drafting legislation that would create enforceable property law to

deal with environmental issues. In general, however, the location of contamination is not well documented and the idea of long-term stewardship is in its infancy in the State and is slowly evolving.

*Fred Brueggeman, Assistant Administrator for Intergovernmental Relations, Los Alamos County*

Mr. Brueggeman also pointed out that Los Alamos is unique because it is not a closure site and that it has had about fifty years of experience in long-term stewardship already. However, the fact that it is not a closure site does adversely affect it because in recent years much of the money that would have gone to Los Alamos for cleanup has gone to other sites that are being cleaned up to be closed, and are therefore a higher priority.

In terms of future use of the site, the County and the San Ildefonso Pueblo are planning to acquire several parcels of real property from DOE. Many parcels are “clean,” however some contain environmental contaminants and may take several years for DOE to remediate. A second issue with much of the property in the area that DOE previously owned is whether or not the people who bought the property years ago knew about the contamination, because stewardship activities were not in place when the land was transferred. Separately, there are certain areas in Los Alamos that are still so contaminated that they must be closed off to development.

Mr. Brueggeman said the County is preparing to acquire the water supply system from the DOE because it is really the only option given how little water there is in the area.

### **Site Panel-Oak Ridge**

*Lorene Sigal, Oak Ridge Site Specific Advisory Board*

Ms. Sigal explained that the Oak Ridge site, in contrast with the Rocky Flats and Los Alamos sites, has contamination on less than 10% of its area. These contaminated areas are divided into five watersheds, two of which are areas that will never be cleaned up.

Early in 1997, the Site Specific Advisory Board (SSAB) End Use Working Group (WG) was created. This group studied each of the five watersheds with the understanding that the wastes were not going to disappear, therefore, the WG had to accept an alternative. The stakeholders decided that they would not accept the contaminated areas in their “backyard” unless long-term stewardship practices were instituted. The stakeholders in the Oak Ridge community created a series of reports, then realized in 1998 that they had not covered all of the issues that were pertinent. Of the thirty recommendations that these reports put forth about fifteen are either completed or in progress, while there has been little action on the other fifteen. However, some of the latter recommendations require action from Congress. Accomplishments include the creation of a DOE Field Office position to deal with stewardship, a draft Oak Ridge stewardship plan and a local citizen’s long-term stewardship board. The WG is concerned because most of the citizens involved are older, so they are also actively recruiting younger people and as a result will do a mini-course in long-term stewardship at the high school next year.

Ms. Sigal noted a WG concern that stewardship requirements are not being evaluated in the remedy selection process, and that the citizens would like to see stewardship evaluated in the proposed plans so that they can have input. The WG would also like stewardship activities to be included in the CERCLA Records of Decision (RODs). Currently, the WG is dealing with the land use control assurance plan, and updating the public involvement plan. The WG would like to see the DOE, EPA, state governments, local governments and stakeholders working together in the decision making processes.

*Susan Gawarecki, Ph.D., Executive Director, Oak Ridge Local Oversight Committee*

Ms. Gawarecki began her portion of the panel by offering a brief description of the Oak Ridge Local Oversight Committee (LOC). The Oak Ridge LOC draws its membership from a broader base than that of the SSAB, however, they have not been able to get a regular attendee from the EPA. This creates a problem because then the EPA does not know what the stakeholders are thinking with regards to the projects.

Currently the plan for Oak Ridge is to place a cap on contaminated areas and keep the contamination under surveillance and under federal ownership. Therefore, the federal government will provide stewardship for the sites. There is also an agreement to develop an environmental management waste facility where waste would be taken from superfund cleanups from around the Oak Ridge region. Ms. Gawarecki noted that a good example of how stewardship is moving forward at Oak Ridge is the DOE's payment into a state trust fund for long-term oversight of the site. This payment will be conducted under the auspices of a state law that is already in place.

Another concern of the LOC is the off-site areas that are contaminated by discharge. The challenge is to make sure that employees working in the industrial areas under reconstruction, with fixed contamination, are trained in radiation safety. The last issue discussed by Ms. Gawarecki was land transfers and the enforcement of deed restrictions. This issue is exemplified by a golf course with a deed restriction stating that no wells were to be drilled on the property because of a contaminated water source. However, the deed restriction was not obeyed and a well was drilled on the golf course property. In this case the violation was noticed and rectified only because a DOE official drove by the area and noticed the well, enforced the deed restrictions and consequently the well was removed.

*Jerry Kuhaida, Mayor of Oak Ridge*

Mayor Kuhaida opened his presentation by stressing that the city council is responsible for the future of the community. For this reason it is actively involved with economic development and the quality of life within the city. Of the industrial areas outside of the city of Oak Ridge about 5,000 acres are highly developable. In one way the lack of development in the areas can be seen as a 40% loss of revenue for the Oak Ridge economy.

The council is concerned about the pits and trenches which will not be removed, that take the contamination down river. Councilmembers are also concerned about acting too quickly and "moving dirt" before the location and movement of the contaminants is fully

understood. In terms of moving forward he felt that a GIS system for mapping where the contamination is would be a good idea. This would help with record management for the sites.

### **Role of Local Governments in Implementing Long-Term Stewardship Activities**

ECA and ELI reviewed with participants their findings on the role of local governments in long-term stewardship (ECA and ELI Findings are attached as Exhibit D). Participants were then asked to provide their comments on the ECA and ELI Findings, as well as provide input on the tools necessary for local government involvement in long-term stewardship activities.

#### 1. Involvement in the Decision-Making Process

- Local governments need to be actively involved in the remedy selection/decision-making process from the onset.
- Local governments request that DOE Field Office staff and local governments work as a team.
- Local governments should be notified of DOE activities that have long-term stewardship implications within their jurisdictions.
- Local governments must work with DOE to ensure long-term monitoring of land transferred out of federal ownership.
- Local governments and DOE should work together on future land use plans.
- Local governments need a permanent and meaningful role when working with federal agencies.
- Local governments should work with each other and other stakeholder groups to gain consensus on land-use.
- Local governments need to establish what their appropriate goals are in working on long-term stewardship activities, especially when there are numerous local governments adjacent to one DOE site.
- Local governments need to actively engage in long-term stewardship activities by bringing the issues to DOE and to regulators.
- DOE's Environmental Management Division should ensure that local governments and communities understand the CERCLA process and therefore the pros and cons of engaging in stewardship activities.
- DOE must be willing to consider community values and long-term health effects in any decision-making.

#### 2. Information Management

- DOE and local governments should maintain a database of information that can be shared about the nature and location of contamination (i.e. a GIS). This database should be updated as technology advances and the software must be compatible between local, state and federal governments.
- Site information must be archived and documented properly by DOE.

- Local governments, the State and DOE should be proactive in sharing information with their communities about long-term stewardship.
- There should be a record of the particular successes and failures relating to implementation of long-term stewardship activities and institutional controls. This record should be widely publicized.
- There should be a federally or non-federally funded information repository that is operated by local governments. A staff position should be created to maintain the repository. This repository need not necessarily be located in a building, as this implies a static source of information. The repository should be located somewhere readily accessible to the public.
- Local governments must have access to where, how much and how mobile contamination on and off-site is.

### 3. Funding

- The federal government should be expected to continue to pay for and enforce institutional controls.
- Congress should be lobbied to provide long-term funding for stewardship activities.
- Local governments need funding for long-term stewardship activities.
- Local governments should clarify the types of funding they are looking for, and therefore, the types of activities they are willing to work on.
- Local governments must realize that involvement in long-term stewardship activities may require an unreimbursed expenditure. It is unrealistic to expect that someone else will pay for all of these activities.

### 4. Authority

- Local government needs go well beyond their current regulatory authority.
- Local governments should advocate to state legislatures to codify local government enforcement rights.
- Local governments should have the authority to enforce institutional controls on property that has been transferred from the federal government.
- It is important to note that neither DOE nor GSA has a coherent program for reinspection and enforcement of land-use restrictions for property transferred out of federal ownership.

### **Steps for Moving Forward\***

The last session of the Roundtable was devoted to looking to the future and trying to decide what the next steps should be, on the part of all of the attendees, with respect to long-term stewardship on the national and local levels. Participant input has been divided into the following areas:

---

\* The recommendations identified by participants do not necessarily represent the views of ECA or ELI. Instead, the recommendations are statements made at the meeting by participants.

### 1. Database/Information Sharing

- DOE's Office of Long-Term Stewardship should facilitate information sharing on its website.
- ECA should utilize its e-mail server to facilitate information sharing.
- ECA or DOE should create an e-mail listserve for parties interested in long-term stewardship.
- DOE should use Arcview or a similar program that has maps that can be regularly updated at the sites.
- Information relevant to long-term stewardship should be put in libraries, land archives, museums, a DOE headquarters office and provided to historical societies.
- Regulators should create within the Record of Decision (ROD), permit modification, or financial assurance package explicit requirements for a local government-run and maintained site information repository with a minimum of 30 years operation after the final closure of the facility. This should be paid for by DOE.

### 2. Local Government Tasks

- Take an active role in environmental remediation decision making at the sites.
- Clarify the funding or reimbursement needs for specific tasks.
- Determine exactly what local governments' needs are (e.g., GIS system, regular briefings, local or state legislation).
- Increase attention to specific technical and policy details related to long-term stewardship.
- Educate the DOE as to a local governments' land use planning, codes, zoning and values. The opinion was expressed that DOE must be receptive, but it is primarily local government's obligation to educate the DOE.
- Investigate local government capacity for long-term stewardship and enforcement (e.g., land records, zoning etc.).
- It is the duty of local governments to play an active role in DOE Environmental Management activities.
- Local governments must share information with each other about their respective involvement in and experience with long-term stewardship activities to learn from each other.

### 3. Legislation/DOE Policy/Enforcement of Institutional Controls

- Federal legislation may be needed that would require the federal government to take responsibility for contaminated sites in perpetuity.
- There is a need for a national long-term stewardship policy.
- ECA and ELI should work on developing model local and state government enforcement legislation.

- ECA and ELI should analyze the legal issues present at multiple sites for state and local governments to enforce institutional controls, and provide suggestions for improving existing authorities.
- Local governments need the authority and funding to enforce institutional controls within their jurisdiction.
- Local governments should also recognize that many of their long-term stewardship desires go beyond their current regulatory authority, therefore, active communication and coalition building between local and state governments is needed.
- Identify the state laws necessary for local governments to have the authority that they need to facilitate long-term stewardship and then work toward getting that legislation passed.
- Include land-use controls in ROD's and the Federal Facility Agreement (FFA) so that they are clearly enforceable under citizen suit provisions.
- The National Contingency Plan (NCP) should be revised to take into account long-term stewardship issues explicitly.
- EPA should include institutional control recommendations in its new guidance in the NCP so that failure to comply would be subject to a citizen suit.
- A plan for reinspection and enforcement of land-use restrictions on land transferred by DOE should be created.

#### 4. Technology

- Organizations interested in long-term stewardship must stay involved and keep abreast of evolving environmental technology developments.
- DOE should provide funding to interested local governments so that local governments can hire staff to be technical liaisons on environmental remediation issues.
- Partnerships should be created with private industry in an effort to develop innovative remediation and information management technologies.

#### 5. Funding

- DOE and state and local governments need to understand the costs of current remediation, as well as the projected cost for long-term stewardship activities, in order to plan for future funding.
- A higher reliance should be placed on cost-benefit analysis in the remedy selection process, this analysis would include studying the cost of enhanced reliance on institutional controls (e.g., the scope of work, what it would cost overall, and what it would cost to make it better).

Participants discussed the actual financing of long-term stewardship and there were a number of suggestions for methods to raise funds. These suggestions are as follows:

- Local governments should charge DOE with a tipping fee or storage fee per ton/per curie of waste left on sites for disposal.
- DOE should publish a list of surplus property and then make the list available to local government for economic development.
- Local governments should organize a uniform lobbying effort for funding of long-term stewardship.

#### 6. General

- Both ECA and ELI need to continue to promote the issues of long-term stewardship and institutional controls, as well as continue to help the people working on these issues at the local level.
- The ‘toolbox’ created by local governments and the State at Rocky Flats should be expanded, to act as a standardized resource for all sites who will need long-term stewardship.
- Be sure that the new ECA and ELI case study gets a lot of press and exposure.
- Participants suggested reading the new ELI report, “Protecting Public Health at Superfund Sites: Can Institutional Controls Meet the Challenge?,” the Oak Ridge SSAB report “Stakeholder Report on Stewardship,” and the DOE Report “Managing Data for Long-Term Stewardship,” prepared by ICF Kaiser.
- Local governments should be worried about sites remaining in federal ownership.
- Long-term stewardship must provide a mechanism that will alert future generations of hazards long after those who remember the hazards are gone.