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September 2, 2003

The Honorable Jessie Roberson  
Assistant Secretary for EM  
U.S. Department of Energy  
1000 Independence Ave. SW  
Washington, DC 20585

Mr. Michael Owen  
Director  
U.S. Department of Energy  
1000 Independence Ave. SW  
Washington, DC 20585

**Subject: ECA Summary of Peer Exchange:**

**Comments on the DOE Transition of Environmental Management  
functions to the new Office of Legacy Management**

Dear Assistant Secretary Roberson and Mr. Owen:

As a follow-up to the Energy Communities Alliance (“ECA”) Peer Exchange on Long-Term Stewardship in June 2003, ECA submits the following summary of issues raised and recommendations on the U.S. Department of Energy’s (“DOE”) implementation of the new Office of Legacy Management (“LM”).

ECA appreciates the continuing opportunity to discuss with DOE the plan to establish LM. LM will play the primary role as DOE closes sites at many facilities and conducts post closure activities. DOE has stated that the newly created LM, among its many functions, will be responsible for management of portions of Office of Environmental Management (“EM”) “Closure Sites” that DOE retains; transition of closure sites to other federal agencies (e.g., DOI), local governments, and non-federal entities (e.g., CROs); the development of long-term stewardship (“LTS”) policy for closure and active sites, including the National Nuclear Security Administration (“NNSA”); employee benefit issues; and current Office of Worker and Community Transition issues.

Many of these functions will impact local government directly, thus local governments have a vested interest in the structure of this new office, its responsibilities, the transition of sites from EM to LM. Obviously other issues will be identified as DOE develops the transition process.

This letter is narrowly focused on the transition of current EM functions (as perceived by ECA) to LM and the issues raised at the recent ECA Peer Exchange on LTS.

## **FUNCTIONS OF THE OFFICE OF LEGACY MANAGEMENT**

### **Background: DOE Decisions Impact Local Communities**

DOE cleanup decisions affect local communities and the level of trust between DOE and the local community is critical to the DOE's ability to implement and select its cleanup remedies. Local governments are interested in environmental cleanup of DOE sites because the sites are located in or adjacent to their communities, and local governments have a fundamental duty to provide for the health, safety, environment, quality of life and economic future of their citizens. As asset holders for their communities, 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. Most local governments are interested in working with DOE, the Environmental Protection Agency and state governments on LTS issues to protect the human health, welfare and environment in their communities.

### **I. Closure Sites**

*EM should work with LM on the implementation of long-term stewardship activities during the remedy selection, as opposed to after the remedy has been selected by EM.* ECA Peer Exchange participants discussed the importance of EM working closely with LM during the remedy selection process. In the response to questions from Senator Allard,<sup>1</sup> DOE seemed to indicate that EM will make the active remedy decisions and LM's role will begin once EM makes the final remedy decision. The Peer Exchange participants stressed the need for LM and EM to work together on the remedy selection where the remedy will include a requirement for any LTS activities (whether or not LM eventually will acquire jurisdiction of the property).

As the DOE office responsible for implementing stewardship activities, LM should ensure that the activities contemplated by the remedy are: (1) realistic and capable of being implemented; (2) cost-effective; (3) the best choice of all the available options; (4) protective of human health and the environment; and (5) supported by the impacted community. Further, LM should ensure that funding is available to pay for the remedy for the term that the stewardship activities will need to be in place. The participants expressed concern that LM would not have sufficient funding and planning to take on a role unless it participated in the remedy selection decision making.

*EM and LM should conduct a cost benefit analysis of remedy costs including long-term stewardship costs, before the final remedy is selected.* LM and EM, while two distinct DOE offices, should work well together, understanding that at times the offices will have a division of goals which can create a healthy tension between the offices. ECA is encouraged by recent statements from Assistant Secretary Jessie Hill Roberson and Worker & Community Transition Office Director Michael Owen to the Senate Hearing that LM and EM would work closely to ensure that EM's remedy decision policies and LM's post-closure policies are consistent. If LM is involved in the development and analysis of remedy and stewardship cost baselines, LM will be able to assist in DOE's analysis of what is the best and most cost effective remedy for the United States, not just EM. For example, in Monticello, Utah, the decision was made to remove

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<sup>1</sup> Senate Armed Services Subcommittee on Strategic Forces, Hearing to Receive Testimony on the Department of Energy's Office of Environmental Management and Office of Legacy Management in Review of the Defense Authorization Request for Fiscal Year 2004, April 2, 2003, QFRs (June 2003) ("Senate Hearing").

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a contaminant, vanadium, from the soil at a DOE site, even though such action was not mandated by regulations. The decision saved DOE money in the long run by spending more on the remedy upfront but significantly reducing the LTS costs. This example of conducting a cost-benefit analysis could become a model for exemplary analysis of site cleanup and stewardship.

**LM roles.** LM staff should be located at large DOE sites. As a way to facilitate greater communication with EM and others, during and after the transition LM should assign one or more staff to offices at large closure and cleanup sites. At smaller sites, ECA understands that a full time staff person may not be needed in every case. On-site LM staff would work with EM, site-specific advisory boards, state regulators, the Environmental Protection Agency, local and tribal governments, and stakeholders on costs, progress, and acceptance during and after the remedy selection process and the execution of the Record of Decision. LM staff would provide oversight of EM, related to LTS to ensure that long-term stewardship policy is being followed.

LM staff has specific roles and responsibilities that would be more efficiently managed from being on-site. Being in proximity to sites also would allow LM staff to respond quickly to any changing site conditions, to ensure that cleanup and remedy selection can proceed quickly. Further, where third parties will be relied upon to undertake a stewardship role, LM can coordinate with these third parties (including local, state and tribal governments) at the site.

**LM acceptance.** *Ultimately, LM must have the authority on whether to accept a property for management based upon EM meeting specific LM criteria for remedy selection, long-term stewardship, community acceptance and funding availability.* LM should not be obligated to, nor should it, accept property simply because a milestone date has been reached.

*When considering property conveyances, LM needs to work with local governments regarding economic development in communities affected by site closures.* LM should help create opportunities by conveying land to local governments or community reuse organizations, rather than banking land or retaining land and incurring maintenance and security costs. This is one of the surest ways to facilitate redevelopment in affected communities.

*In the case of property conveyances between federal agencies, LM must ensure that the receiving federal agency has funding to undertake the mandated long-term stewardship responsibilities.* A lack of funding could compromise human health and safety. LM also must consider the impact that federal-to-federal property transfers have on payments in lieu of taxes (“PILT”), a significant source of income for local governments. *PILT must not diminish simply because property has been transferred from DOE’s inventory to another federal agency.*

## II. Long-Term Stewardship Policy Development by the Office of Legacy Management

**LM/NNSA interaction.** *ECA recommends that LM work with the NNSA to implement LTS.* The role should be similar to that at EM sites. LM would set long-term stewardship policy and assist NNSA to develop long-term stewardship plans for a cleanup site. Although NNSA would implement the final stewardship plans, we believe that LM should approve the final NNSA plans.

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**Engage groups.** *LM should engage local, tribal and state governments, the site-specific advisory boards, nongovernmental organizations, and stakeholders in policy discussions and forums.* This must occur not in the public comment period at the tail end of a process, but rather when policy is being formulated. Over the past several years the interaction between EM and parties impacted by and interested in cleanup and LTS has decreased. Several important policy issues still need to be resolved and LM can assist the Department to develop solutions to these issues through dialogue.

**Security and Information.** *ECA would like EM and LM to review current processes and fairly balance information dissemination with security needs.* Local governments recognize that some information must be protected, given the security constraints. DOE should investigate creating a process for local government officials to gain access to specific security information that may be needed by the local government to protect the health and safety of the community – especially in the case of an emergency – where such information might not otherwise be released to the general public.

**Records.** *Maintenance of records regarding site conditions, remediation and LTS should be performed locally and at a national repository.* ECA reaffirms its current policy regarding recordkeeping, which states:

“The success of long-term stewardship activities requires a record management facility at or near the location of the stewardship activities that is accessible to the community and compatible with the local government’s recordkeeping system. National or regional records management facilities will also be required to maintain duplicate records as failsafe measures.”

*LM and DOE should provide funding to local governments to encourage the development and maintenance of local records management systems that will provide the governments and the local citizens with access to the records.* This is critical in the long run, as the knowledge of site cleanup and remaining contamination diminishes with passing generations.<sup>2</sup>

### III. Corporate Acceptance/Buy-In/Institutionalization of Long-Term Stewardship Policies

*Once policy is developed and established, LM must ensure its message is consistent from DOE headquarters to site managers and staff.* This is particularly critical when dealing with LTS, a concept embraced at higher levels at DOE but not necessarily accepted by all current DOE field managers. It is critical that a culture of acceptance of LTS as a portion of cleanup remedies takes hold within LM and EM staff, from headquarters to field personnel. During the transition from EM to LM, it will be important that EM staff recognize the ongoing nature of the DOE mission at sites soon to be closed, and that LTS is a part of that mission.

DOE headquarters staff can instill this understanding internally and convey it to LM and EM field staff. The assignment of LM staff to closure sites — as recommended above — will

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<sup>2</sup> With regard to active sites, DOE and EM should provide for appropriate records management mechanisms, similar to those recommended for LM closure sites.

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assist in developing broad acceptance of LTS policies within the scheme of site cleanup. Further recommendations that follow this point are:

- *LM should make planning for site disposition and stewardship more systematic and include the identification and involvement of all parties that may have a role in stewardship activities, particularly local governments.*
- *To deal with potential stewardship failures, LM should ensure that local governments are provided detailed characterization and environmental contamination information that is documented, mapped and disclosed.*
- *EM should clearly identify which LTS tools it plans to rely upon in the remedy decision-making process and work with local and state governments and stakeholders on a commitment to utilize those tools along with LM.*
- *EM (with LM) should be willing on October 1, 2003 or soon thereafter to explain each site-specific plan for integrating LTS with remedy selection or at least a plan for undertaking such an activity<sup>3</sup>.*

### Conclusion

During the recent ECA Peer Exchange on LTS, participants outlined important roles for DOE:

- (1) integrating LTS options within the remedy decision-making process should be the responsibility of both LM and EM;
- (2) EM involving LM in the development of project cost baselines for LTS;
- (3) assigning LM staff to closure and large sites;
- (4) EM and LM institutionalizing a policy that evaluates short- and long-term implications of remedy decisions;
- (5) EM giving local governments a formal role in the remedy decision-making process;
- (6) providing funds to local governments to encourage the development and maintenance of local records management systems;
- (7) recognizing the importance of local economic development in communities affected by site closures;
- (8) involving LM personnel in remedy selection so that LTS can be integrated into cleanup plans;

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<sup>3</sup> Several communities around DOE sites continue to express concern that LTS is not being integrated into remedy decision making.

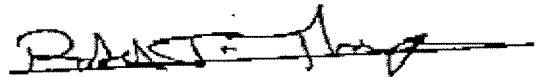
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- (9) involving LM in the oversight of developing LTS at NNSA cleanup sites;
- (10) engaging local governments and stakeholders in policy development;
- (11) instilling a culture of acceptance of LTS as a portion of cleanup remedies among EM and LM staff; and
- (12) developing and sustaining trust in DOE's activities.

ECA supports the creation of LM and is hopeful that the office will become an effective agent for the cleanup of sites nationwide. The best way to ensure this occurs is by working with citizens and local governments adjacent to the DOE sites to develop solutions to these complex problems.

ECA appreciates your consideration of its comments. Please contact ECA Executive Director Seth Kirshenberg directly at (202) 828-2494 with any questions regarding ECA's comments. We look forward to working with you on these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Thompson", with a long horizontal line extending to the right.

Robert Thompson  
Chair, ECA  
Mayor, City of Richland, Washington

cc: ECA Executive Committee