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Steven Livingstone, Project Manager
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RE: Comments on Draft Long-Term Stewardship Study

Dear Steve:

Thank you for the opportunity to comment on the Long-Term Stewardship Study draft. In general, I think that the document does an excellent job of outlining the difficult issues related to implementing long-term care of residual contamination at the Department of Energy's weapons complex and other contaminated facilities. I have the following comments on the draft.

1. The report notes that the potential decommissioning impacts of new facilities are too speculative to evaluate in the early stages of the planning process in an Environmental Impact Statement (p. 58). I disagree. Private entities routinely develop decommissioning plans prior to constructing new facilities, and incorporate pollution prevention concepts into the design of new facilities and processes. DOE must do the same. This nation spent approximately \$300 billion to create the nuclear weapons stockpile. DOE estimates that it will cost another \$200 billion to "address" the contaminated sites and facilities that we created along the way. "Address" does not mean "permanently clean up." As the study notes, we can expect that some of the engineering and institutional remedies we have adopted at these sites will fail in the long run. Given the tremendous, and largely irreversible, environmental damage caused by operation of the nuclear weapons complex during its first fifty years of existence, it is imperative that DOE ensure that the weapons complex of the future does not result in additional intractable long term stewardship needs.
2. In my comments on the scope of the study, I made the following suggestion: "One reason that institutional controls fail is that, over time, the controls are forgotten. One way to perpetuate knowledge of residual contamination at former DOE facilities would be to dedicate part of each such facility as a historic site or museum that would describe the site's role in the weapons complex (or other function). The study should evaluate dedicating part of each nuclear weapons production facility in this manner as a tool to assist in maintaining long-term knowledge of site history and residual contamination." The draft study states that this comment is out of scope. I disagree. Chapter 7 contains a good discussion on the

difficulty of maintaining awareness of long-term stewardship information needs over time, and describes actions that DOE is taking or could take to address information management. It specifically notes that "A system should be developed to enable a person with limited knowledge of DOE sites to be able to easily search, find, and understand relevant information." Again, on page 108, the report states that "Educational organizations that focus on transferring institutional knowledge from generation to generation, targeted at communities surrounding DOE sites, could reduce the possibility that remaining site hazards are forgotten."

These are precisely the functions of museums, and they serve it well. Such museums could be modeled after the many excellent Presidential libraries in this country, which frequently have both museum and research facilities. Both aspects would be useful in the long-term stewardship context. In addition to maintaining information and enhancing community awareness, such a facility could perform the long-term monitoring and remedy reassessment functions that the report acknowledges will be required. By maintaining a physical presence at each site, DOE could help avert the possibility that stewardship concerns will be forgotten over time. As noted above, creation of the nuclear weapons arsenal also created vast amounts of potentially irreparable environmental contamination and a huge complex of aging facilities whose decommissioning is problematic, to say the least. It is important that the citizens of this country be reminded of these consequences so that we do not repeat the mistakes of the past.

3. The report notes the importance of evaluating institutional controls early in the remedy selection process. In addition to evaluating the true costs of implementing long-term stewardship, the environmental decision-maker should also analyze the legal enforceability of any proposed institutional controls. Because institutional controls depend on state law, the environmental regulator (or DOE) should request a written opinion from the state attorney general as to whether the proposed method is legally enforceable by the relevant environmental regulator against subsequent owners of the land. Further, the analysis of institutional controls should include an analysis of the consequences of failure of institutional or engineering controls.
4. The study does not adequately recognize the role that states will play in monitoring and enforcing institutional controls. Institutional controls will be imposed as part of cleanup decisions rendered by states and by EPA. Like any other aspect of a cleanup decision, they must be enforceable by the environmental regulator that made the decision. Therefore, the document should recognize that states will be among the primary enforcers of institutional controls.
5. On page 47, the report states that deed restrictions are not relevant for sites that will remain in DOE ownership. It is true that the federal government would continue to be bound by institutional controls imposed in a legally binding decision document under an environmental law, even if the land is transferred from DOE to another federal agency. A proprietary control, such as a deed restriction is primarily necessary to ensure an institutional control can be enforced against subsequent owners of the land. However, because federal agencies may grant easements to private parties, such as utilities, over land that remains in federal ownership, it may still be necessary to impose a proprietary institutional control on land that

will remain in federal ownership to ensure that the control will be binding on the holder of any such easement.

6. The report should address the potential advantages of centralizing responsibility for implementing long-term stewardship requirements such as monitoring, maintenance, and continued research and development in a single-special purpose agency whose sole mission would be long-term stewardship. Such an agency would help address the problems related to the ability of organizations to maintain vigilance in executing a given function over time. (These problems are highlighted in the National Research Council study on Long-term Institutional Management of DOE Legacy Waste Sites at pages 79-81).

Sincerely,

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