

January 18, 2024

Deputy Secretary David Turk
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

**RE: DOE Needs to Establish Clear Protocols or Policy for Responding to Site
Emergencies/Incidents at Former Defense Nuclear Facilities**

Dear Deputy Secretary Turk,

For the protection of public health and our communities, DOE needs to establish clear protocols or policy for responding to site emergencies/incidents at former Defense Nuclear Facilities. As you know, one poor response leads to national headlines. We have learned that no response, a slow response, a “not our issue” or “this was not based on a pre-existing condition” response from DOE before any investigation is undertaken is irresponsible and can lead to negative publicity and consequences for all parties.

For decades the Energy Communities Alliance (ECA) and the local governments hosting or adjacent to DOE’s federal nuclear facilities have supported DOE’s cleanup work. Many of our members grew up in the communities around DOE sites, worked themselves or had family that worked on the sites, and they celebrated when cleanup was completed, and property conveyed out of federal ownership with opportunities for reuse. However, recent incidents at the former Mound Site in Ohio and Weldon Springs Site in Missouri¹ demonstrate that unexpected events can and will occur post conveyance, and DOE currently lacks a clear process to respond – especially in emergency situations.

While the federal government may or may not have legal responsibility for these unexpected events, the response of DOE to any incident resulting from former defense activities at a former defense site is critical for the protection of public and environmental health, safety and trust – not just around sites that are closed but also to communities where cleanup is ongoing and conveyance back to the community in the future expected.

¹ <https://apnews.com/article/nuclear-waste-cancer-st-louis-army-corps-school-9e1ceb765822fc53fcbc2e42005adef2>

Hence, **ECA is calling on DOE to create clear protocols or to formally establish a policy for responding to site emergencies/incidents at former defense nuclear facilities.** The current policy DOE order 151.1d is not sufficient for the issues that are arising.

ECA recognizes and appreciates that there are many examples where DOE has responded quickly and diligently when emergency incidents occurred across the weapons complex - most often where DOE or NNSA have ongoing operations. However, at former federal nuclear facilities that no longer have an active DOE or defense mission, it can be unclear whether DOE's Office of Legacy Management or the Army Corps of Engineers, as partners in stewardship with specific expertise, should be responding to hazardous environmental issues, events, and concerns.

As we know, the conveyed sites are not transferred to non-federal entities in an "as is, where is" condition. Almost every parcel of land conveyed after 1992 has a legal requirement pursuant to CERCLA (42 U.S.C. 9620(h)) for DOE to respond to the environmental issues. Further, DOE conveyed some sites with an indemnification of the party that owns the land for pre-existing environmental and hazard conditions. But even on parcels of land conveyed prior to 1992, DOE (or the federal government) should not push responsibility to the local community – or even consider that appropriate - especially when there are claims of radioactivity in schools or migrating hazardous materials.

As frontline communities, and considering recent events, ECA believes it is critical to address these issues for both conveyed and retained DOE property now. We ask DOE to consider:

- How to clarify and institutionalize formal protocols or a formal DOE process to respond to site emergencies or incidents at former defense nuclear facilities. For example, in the event an explosion occurs at a former nuclear defense site, is it DOE's or the community's responsibility to investigate once the emergency responders have concluded initial assessments.
- How to train and coordinate with local emergency responders around DOE's former nuclear facilities to ensure they are prepared to address the unique issues related to a nuclear weapons production facility – not just at the time of transfer but into perpetuity.
- How to ensure capacity and appropriate funding is requested for the Office of Legacy Management in anticipation of additional sites being transferred from EM to LM.

Real health and safety issues will occur at the former defense nuclear facilities regardless of the due diligence prior to conveyance, as we have learned. DOE must be prepared to respond and have the capabilities – especially if our communities continue to accept that "cleanup" occurs based on risk analysis and a reliance on institutional controls at the sites.

ECA appreciates the ongoing support DOE provides to local host communities and governments across the complex. Experience shows that working together facilitates the progress we all want to see. Our members would welcome the opportunity to collaborate and ensure DOE – and all impacted parties – are prepared to address unforeseen circumstances quickly, responsibly, and safely in a transparent and predictable manner.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brent Gerry".

Mayor Brent Gerry
Chair

Cc: Mr. William “Ike” White, Senior Advisor for Environmental Management
Mr. Carmelo Melendez, Director, Office of Legacy Management
Greg Gervais, Director, U.S. Environmental Protection Agency, Federal Facilities
Restoration Reuse Office
The Environmental Council of the States
State and Tribal Government Working Group
National Conference of State Legislatures
National Governors Association