



Department of Energy

Washington, DC 20585

December 16, 2003

The Honorable Gary Locke
Governor of Washington
Co-lead, NGA's Federal Facilities Task Force
National Governors Association
Center for Best Practices
444 North Capitol Street, Suite 267
Washington, DC 20001-1512

Dear Governor Locke:

This is in response to your letter dated November 12, 2003, regarding the formation of the Office of Legacy Management (LM), the protection of public health, and the sound reuse of former nuclear weapons and research sites. We appreciate the concerns you outlined in your letter and provide the responses below as part of our ongoing dialogue.

Remedial action decisions are proposed and implemented by the Department of Energy (DOE) organization responsible for cleanup – the Office of Environmental Management (EM). EM has the funding and expertise for identifying and implementing environmental remedies. While LM and EM will work together to ensure a smooth and effective transition of site responsibility, remedy decisions for DOE are entrusted to EM. LM will be responsible for long-term surveillance and maintenance at sites that have been remediated and closed. In this role, we will provide feedback on the protectiveness and cost effectiveness of those remedies so future remedy decisions can be improved.

The balancing criteria of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) include consideration of "long-term effectiveness and permanence". The other eight criteria, whether they be balancing, threshold, or modifying, all touch on post-remedy issues. That is, CERCLA as well as the nation's other environmental laws inherently require the consideration of "long-term stewardship" as part of any remedy decision. To date there have been no significant instances of remedy failures at DOE sites where the site has been remediated and closed.

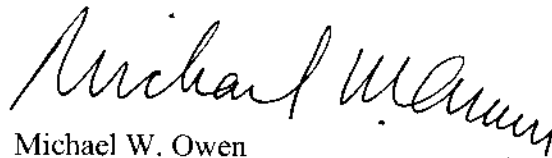
Institutional controls can be a useful tool to ensure the protection of public health at sites that cannot be released for unrestricted use. However, we do not see them as critical to the protection of public health at most DOE sites because we have emphasized the use of robust physical or engineered controls and sustained federal control of contaminated areas. Thus, while we value the protection provided by institutional controls we have tried to limit their importance to either a secondary or layered component of a solution. Most of the legally enforceable land use controls we have considered to date are under the control of local governments. While we intend to comply with applicable State laws,



we believe it is equally, if not more important, to engage local governments regarding land use decisions and associated controls.

In closing, the Department intends to continue our dialogue on this subject with the National Governors Association (NGA) and other State-based organizations. We continue to believe that we can learn from the U.S. Environmental Protection Agency and State led efforts to deal with the thousands of non-federal sites that require some form of long-term stewardship. That is, the best practices of the States, combined with those of the federal agencies will ultimately provide the most cost-effective and protective solutions. We would appreciate the NGA providing us with information on State specific practices that are being used to address these issues at non-federal sites.

Sincerely,

A handwritten signature in cursive script that reads "Michael W. Owen". The signature is written in black ink and is positioned above the printed name.

Michael W. Owen
Director
Office of Legacy Management