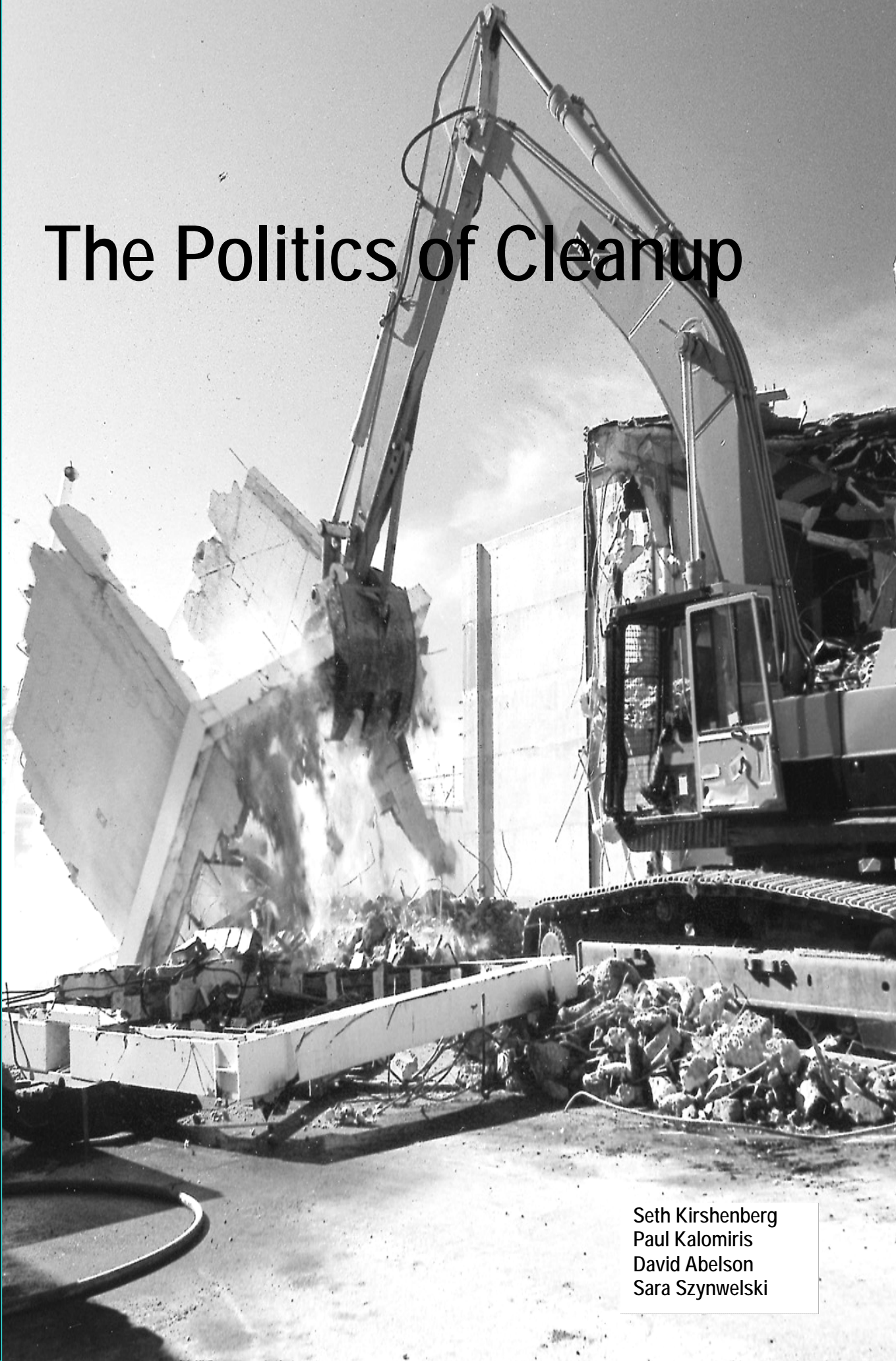


Energy Communities Alliance



The Politics of Cleanup



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Executive Summary

Interaction between federal, state and local parties plays a significant role in the success of environmental cleanup projects at federal facilities. Foremost, members of the communities affected by a federal cleanup action must effectively work with federal and state regulators and cleanup contractors if they hope to meet the public goal of cleaning up sites in a way that will permit the sites to remain or once again become assets.

Federal site cleanups are political processes as well as technical activities. The process for identifying and resolving the issues attendant in this undertaking — and the decisions themselves — constitutes the politics of cleanup. By identifying the interests of the parties involved and in developing appropriate solutions to conflicts as they arise, the cleanup process moves beyond being a solely technical project to encompass a broad-reaching dialogue about what it means for a cleanup to be deemed successful and complete.

From our research and interviews with federal, state and local government officials, community representatives and cleanup contractors, ECA developed recommendations for parties that are going through complex environmental cleanups as a way to help them save time and minimize frustration throughout the process.

Our recommendations are grouped into four categories that broadly capture key steps in the cleanup process:

- I. *Goals*: Developing Goals and Identifying the Future Use of the Site;
- II. *Actions*: Accomplishing Cleanup by Focusing on and Refining Goals Throughout the Cleanup Process;
- III. *Communications*: Engaging the Community Through Consultation, Coordination and Ongoing Dialogue; and
- IV. *Conflict Resolution*: Resolving Conflicts to Achieve Goals.

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I. Goals: Developing Goals and Identifying the Future Use of the Site

A critical ingredient underpinning the successes of federal facility cleanup's is the parties' alignment on the cleanup goals and the future use of the site (recognizing that each site took time to develop accepted goals). Equally important is the process the parties followed in developing the goals and future use scenarios. Without such an alignment, cleanup — much less a timely cleanup — would not be possible.

Recommendation #1: All Parties Must Collaborate — The federal government, local governments, community members, state and federal agencies, and Congress must collaborate when developing the cleanup and future use vision for the site.

The parties must agree on the cleanup purpose and long-term vision for the site. These visions create the frameworks from which expectations flow and cleanups are completed, so it is critical for the parties to come together early in the process and agree on a conceptual vision.

To be effective, however, the cleanup and future use visions must move beyond the conceptual level, and specific cleanup goals also must be identified, defined and agreed to by the parties. This way, cleanup enables the future use of the site. The latter stages of cleanup at Mound have been clouded by a disagreement over the status of a site landfill. The Rocky Flats cleanup was marked by seven years of debate over soil cleanup levels that DOE and the regulators adopted but that the affected communities and their residents opposed. In both cases, the conceptual vision was largely shared, but the detailed cleanup levels, which in both cases necessitated long-term controls, were vigorously debated.

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Recommendation #2: Know the Rules — The law defines the cleanup process and the opportunity to participate in the process.

The law governs the cleanup process and defines the roles therein for the federal government and state regulators. The rules identify the cleanup process, the land transfer process and the minimum public participation process of the federal agency conducting the cleanup and the federal and state regulators. All parties must know the law in order to understand their roles and how each can affect the cleanup process.

Guidance and policies help interpret the law, but the law is the reality. Policies are changed by the agencies, either at the federal or state levels. The laws can be changed and will likely change throughout the cleanup process. Communities should utilize knowledgeable federal and state officials to inform them of the rules, and ensure they inform the legislature on changes to the rules.

Recommendation #3: Understand Federal Agencies' Goals — The parties must consider the federal government's mission and goals.

The federal government's overriding mission in cleaning up contaminated sites is to mitigate the risks and associated liabilities, and to reduce, if not eliminate, its long-term costs. The federal government faces certain constraints when remediating a site (including internal policies, congressional mandates, regulatory requirements and funding restrictions) that must be recognized by all other parties and understood for their potential positive and negative impacts on the cleanup.

Recommendation #4: A Cleanup Contract with Defined Goals Must Be Used — Closure contracts, which serve a number of roles, must identify clear milestones, be communicated to all parties, be understood by the parties and be funded annually by Congress.

Without doubt, the contract between a federal agency and its primary cleanup contractor is critical to accomplishing cleanup. Among other things, the contract establishes the legal relationship among the contracting parties, defines the scope of work the contractor must accomplish to clean up the site, sets the cost to clean up the site and creates incentives to accomplish the cleanup mission (in a timely manner). Properly scoped contracts should (but often do not) mirror the regulatory agreements that drive federal facility cleanup projects.

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While the primary value of such contracts flows between the contracting parties, these contracts serve several other roles that are central to any successful cleanup project, including:

1. Establishing expectations among the parties;
2. Providing a cleanup vision for Congress to fund; and
3. Focusing the parties on the scope of work necessary to accomplish a cleanup that meets or exceeds regulatory requirements.

The Mound, Oak Ridge and Rocky Flats cleanups showed that these contracts serve another, vitally important role: they provide a basis for community members and Congress to gauge cleanup progress which in turn can increase trust and confidence in the cleanup.

Recommendation #5: Understand Community Values — To properly collaborate, the parties must work to understand the values of the community, and must work to incorporate such values into the planning process.

Successful environmental cleanups are not limited to only reducing risk and thus minimizing the federal government's liability. Success also is predicated on substantively

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incorporating the local community's values into the cleanup process. In certain cases this has led to additional cleanup beyond a strictly risk-based cleanup.

The sole way to ensure sites are cleaned and are an asset for the local community is to engage local parties on how the cleanup and, more particularly, the future use goals support or help advance local needs. For example, designating Mound as a wildlife refuge, as was done at Rocky Flats, would have been fundamentally inconsistent with the local needs; reindustrializing Rocky Flats, as was done at Mound, would have likewise been inconsistent with core values held broadly by local governments and others in the affected community.

II. Actions: Accomplishing Cleanup by Focusing on and Refining Goals Throughout the Cleanup Process

A federal facility cleanup process, as the Oak Ridge, Mound, and Rocky Flats cleanups highlight, is iterative. In environmental cleanups not all of the issues, challenges, and opportunities are understood at the start of the cleanup process. The process necessitates a degree of flexibility, where communication must be dynamic. Successful cleanups, therefore, are able to integrate changes into the planning process.

Recommendation #6: Education Is Essential — The parties must take the time to educate each other on the technical and policy issues underlying the cleanup and to commit staff resources to engage each other. Discussions, which need to take place throughout the process, must also include the question of technical risk and perceptions of risk, recognizing perceptions of risks posed do not always align with the technical risk.

In terms of education, many elected officials, community activists, economic development leaders and others at DOE sites were extremely conversant about site issues. Such expertise in technical, policy and economic transition issues does not arise overnight; it is the result of significant effort on behalf of DOE, regulators and the cleanup contractor to educate the community about the issues that come together as part of the closure project.

There is no formula for how best to educate members of the community and local governments, but DOE and the regulators need to exert whatever time and effort it takes to educate the affected entities about the issues involved in site cleanups. While the parties need to develop mechanisms that address site-specific needs (*see Recommendation #14*), some specific steps each of the parties should take (*partially captured in Recommendation #11*) include:

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- Hold regular technical meetings;
- Provide pre-decisional drafts of cleanup documents to the community;

- Provide local governments and other members of the community with broad access to federal site personnel;
- Hold regular meetings between the federal facilities manager and community members; and
- Educate new parties as they become involved.

Education by each party involved in the cleanup of other parties must occur regularly. The community must not only be educated by federal and state agencies and contractors, but the community must educate federal and state agencies and contractors so that they understand the goals and needs of the community and the history of the community.

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As for risk communication, the issue is vitally important for the parties to understand, especially those parties charged with implementing and regulating the cleanup. A party's acceptance of risk most often breaks between tolerated risks and non-tolerated risks, and does not necessarily track quantifiable, scientific risk. For this reason, one of the critical lessons learned from the success and challenges at the sites ECA investigated was the importance of developing and implementing a risk communication process. ECA therefore strongly recommends the federal government tackle the question of risk communication, for through such a dialogue lies the greatest chance that the various parties will be able to reconcile differing perspectives on the question of risk and thus reach agreement on difficult cleanup decisions.

Decisions, even technical ones, are not solely technically based. For that reason, the federal government and the regulators also must be educated about the perceptions among local governments and others within the neighboring community regarding risk (which generally vary from community to community and even within communities), because such perceptions may not be consistent with technical risks.

Recommendation #7: Congress Must Make Cleanup a Legislative Priority — Federal lawmakers should understand the needs of the parties involved and become intimately involved in cleanup decisions.

The active and consistent involvement of Congress in the cleanup process is central to DOE's successes. Congress, among its other roles, helps moderate discussions and improves the flow and effectiveness of the decision-making process. Toward this end, because the parties cannot effectively partner and negotiate without intimately understanding congressional politics, an effective partnership necessitates the active engagement of congressional staff in both Washington, D.C., and at the local level. Through this active engagement, the parties often are better able to remain aligned on the cleanup goals and mission, and Congress is better poised to support necessary action, such as appropriations or changes in law that can help facilitate the cleanup mission.

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One of the benefits of a closer working relationship with Congress is that the parties, even when they disagree, work hard to ensure they do not surprise the other party when taking a stance that might be contrary to the others' position – and with this approach, trust develops that proved central to maintaining congressional support for the cleanup project.

Recommendation #8: Local Presence Facilitates Cleanup — The federal entity charged with cleaning up the site and the federal and state regulatory agencies must have a local presence and must address problems resulting from staff turnover that negatively affect cleanup and public involvement efforts.

Proximity of decision makers to the site and the neighboring community is vital to ensuring a healthy dialogue. Frequent contact between DOE, federal and state regulators, congressional staff, local governments, economic development entities, federal advisory boards, and others is essential.

A strong regulator proved to be essential to the numerous successes at Oak Ridge, Mound, and Rocky Flats, but that role can easily be compromised if the regulators are not part of the community in which the site is located. At Oak Ridge and Rocky Flats, DOE and the regulators have a local presence. At Mound, though, DOE moved the Ohio Field Office from Miamisburg to Cincinnati (40 miles away), which exacerbated an already strained relationship. When DOE and regulator personnel lived in and near the Mound site, they were able to make site decisions within the context of how such decisions affected the Mound community; conversely, the greater the distance the key decision maker lives from the affected community, the more likely he or she will perceive the concerns of that community as being merely theoretical.

. . . active and consistent involvement of Congress in the cleanup programs has proven central to DOE's successes in cleaning up its facilities.

Clearly the decision of where to site upper management hinges on a number of factors. The way to resolve this conundrum where key decision makers are not located near the federal facility is to authorize local staff to make decisions on behalf of the federal entity. That way, local governments and other community members will trust that they will be working with those making the decisions.

Recommendation #9: Federal Agency Leadership Sets the Tone — The federal entity charged with cleaning up a site must establish management policies that challenge the staff to complete the job, and broadly communicate agency policies to affected constituencies and to Congress.

Leadership at the highest levels within the federal agency charged with cleaning up the facility drives the cleanup program. These political appointees establish agency policies and priorities that, with Congress's support, establish the framework from which cleanup decisions are made and expectations flow. DOE's cleanup successes stem from effective leadership throughout the life of the cleanup program. Leadership, however, is not limited to effectively managing a large federal bureaucracy, although such leadership has been core to DOE's success.

Leadership means listening to those most affected directly by agency decisions (local governments and other community members) and promoting the programs to Congress.

For community members to effectively engage the federal government, they must spend time in Washington, D.C. meeting with agency heads to both understand agency priorities and to communicate the priorities of the local community. ECA believes that local governments' successes in representing their communities throughout the cleanup process were directly proportional to the time these community leaders spent meeting with agency and congressional leaders in Washington.

III. Communications: Engaging the Community Through Consultation, Coordination and Ongoing Dialogue

Community engagement is critical at all steps in the process — at the development of the vision, at refinement of the cleanup goals and priorities, and at all times where conflicts arise. An overriding principle is not divorcing process from substance. For the federal government the question of community involvement concerns whether more members of the public accepts and supports the process; for local governments and other community members the question is whether they obtain what they want at the site. And for both the question is prioritization — as not all issues are equally weighted. When process gets in the way of discussion a tension will arise. Hence the parties must continue to understand that the process must lead to consultation, coordination and communication.

Recommendation #10: All Parties Must Take Into Account Post-Cleanup Requirements – Cleanup completion typically means that contamination will be left in place; thus, identifying sources of long-term funding and clarifying the roles of the affected parties are essential.

Federal sites rarely are remediated to natural background levels; consequently, contamination usually is left in place when cleanup is “complete.” Hence, the process of cleanup must recognize that ongoing management (often called long-term stewardship) of the remaining contamination will be required.

In order for cleanup projects to be ongoing assets for the affected community, the stewards must be identified and agreed to by all of the parties and have the funds necessary to implement long-term stewardship activities. Ideally, as cleanup actions are being designed, long-term funding management requirements and funding needs will be identified as well. Achieving this goal, however, has proven difficult.

Recommendation #11: The Parties Must Build a Working Relationship — All parties must take the necessary steps to develop and maintain trust, accountability and openness.

The Cold War demanded an umbrella of secrecy over the activities of DOE, resulting in the decision-making framework of “decide, announce and defend.” Partnerships, which are based on trust, accountability and openness, require a fundamentally different paradigm. DOE

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largely has moved away from its historic posture, but where the decision-making process is not open, community trust will be difficult to maintain.

Trust and accountability flow from the program mission and vision — without an agreement on the goals for the program and a vision for where to go, trust and accountability are difficult to achieve. At the sites ECA investigated, there are various ways DOE and the regulators have built trust and have been accountable. Parties at other facilities need to work together to understand the site-specific needs and develop the mechanisms to meet those goals.

All parties, not just the federal entity charged with cleaning up the facility, must be trustworthy and accountable. For example, at one site both local elected officials and members of DOE's advisory board did not meet the same standards of trustworthiness and accountability that were demanded of DOE. Such inconsistency is not lost on DOE and thus compromises the value and effectiveness of those community members when seeking to partner with DOE and the regulators.

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Openness can be summarized by the following ideas, which ought to be embraced by officials at the local, state and federal levels:

1. Abide by the principle of “no surprises”;
2. Be honest;
3. Provide regular information and brief your counterparts;
4. Identify for all parties any real or potential impediments to success;
5. Be available, which could mean talking with or meeting with your counterparts of the local community on a daily or weekly basis;
6. Share bad news when you get it;
7. Work off-line, as not all discussions should take place in public;
8. Respect the parties enough to say when you do not agree; and
9. Keep searching for ways to increase dialogue and openness.

Recommendation #12: Be Organized — Local governments and the community must be organized and proactive, and strive to speak with one voice.

DOE has invested considerable time, effort, and money over the past decade building and supporting community involvement through Environmental Management Site-Specific Advisory Boards (EM SSABs), and the investment has paid off through the organized, continuous involvement of a broad range of members from the local community. Throughout the DOE complex, EM SSABs have been to varying degrees integral to the successful partnerships between the federal and state agencies and the community. However, while these groups have served an important role in organizing community involvement, there are instances where EM

SSABs do not agree with the goals of locally elected officials and the local governments (and failure to recognize this issue slowed agreement on cleanup levels).

At most sites DOE's Office of Environmental Management has put more effort into working with EM SSABs than working directly with local governments. ECA strongly believes this approach is problematic because local governments do not have the luxury of waiting for other parties, such as EM SSABs, to address their needs. Local governments must take the initiative to organize and engage the federal government, the cleanup contractor, the regulatory agencies, and Congress. Through local government organizations at Mound and Rocky Flats, for example, the local governments created the forum for them to identify jointly their interests and develop strategies for accomplishing their mutual goals. They created the means by which they could then engage the other parties — and to the degree they can speak with one voice their power and effectiveness is amplified.

Had these governments not had the monies to engage in the manner and extent they did . . . it is likely Rocky Flats would have closed late and at an additional cost of hundreds of millions of dollars to the federal government.

A local governmental entity can engage the federal government, the regulators and Congress on site issues, and can use the collective position of the local governments to better discern what is in the public interest. By working with a single entity, such as a coalition of governments, the federal government, regulators and Congress gain an educated and informed partner whose collective position indicates what is in the public interest of local residents. Goals are more readily clarified because the parties have worked out their differences and minority views are in turn more easily identified and marginalized. By taking these steps the federal government helps build credibility with local governments and with Congress which can help serve to provide political cover, especially against minority factions from within the local community.

Recommendation #13: Resources Ensure Parties Can Participate — The federal government and Congress must provide regulators and communities with the financial resources necessary to organize and retain the staffing resources they need.

Without federal funding, local governments and community organizations will struggle to secure the funds necessary for them to be able to actively engage on site issues. Without the means to partner effectively, the successful transition of the site to a continuing asset for the local community is compromised.

Federal facility cleanups in the 1980s and 1990s were based on litigation and little was accomplished. Where cleanup did occur, the federal agency would submit the cleanup paperwork to the regulators who would then take months to review and approve that the cleanup was complete. Eventually, the EPA brought together the federal agencies and state regulators for meetings which ultimately assisted in the creation of agreements that permitted federal funding for state regulators. This ensured that states had the staff to work with the federal agency on

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cleanup issues. For example, at Mound, Oak Ridge and Rocky Flats, DOE funding provides for state regulators to participate and facilitate the cleanup process. Similarly, DOE funding allows EM SSABs, tribes and some local government groups to participate in cleanup decision making, helping to build trust among all the stakeholders. Significantly, none of the interviewees believe that the funding compromises their independence from DOE.

Rocky Flats provides a prime example. From 1999 to 2005, DOE, through congressional appropriations, provided the Rocky Flats Coalition of Local Governments approximately \$2 million to support their efforts. Had these governments not had the monies to engage in the manner and extent they did, but were otherwise sufficiently organized to hinder the process, it is likely Rocky Flats would have closed late and at an additional cost of hundreds of millions of dollars to the federal government.

By working with a single entity, such as a coalition of governments, the federal government, regulators and Congress gain an educated and informed partner whose collective position indicates what is in the public interest of local residents.

Recommendation #14: Following the Minimum in the Law Is Not Enough — Minimum regulatory requirements are insufficient to support substantive public involvement; the parties must develop public involvement processes that are tailored to site-specific needs, recognizing that process is different from negotiations.

Frequently, the most difficult challenge the federal and state parties face in engaging the local governments and other community members is in identifying the purpose of any public involvement process. A public involvement process for the sake of process will yield little positive results and will not serve to support a timely cleanup. Because federal environmental laws include specific provisions for community involvement, the agencies charged with managing and regulating the cleanup often strictly (and narrowly) follow public involvement processes as laid out in applicable regulations.

A public involvement process for the sake of process will yield little positive results and will not serve to support a timely cleanup.

However, strictly following regulatory minimums ensures openness but may not support a productive partnership, nor would it likely achieve timely cleanup. A process that all entities can agree on needs to evolve and ensure trust and communication are built at a site. For that reason, the parties charged with cleaning up a site and those charged with regulating their cleanup activities need to be clear on the point of public involvement processes. For the federal government and the state regulators, the greatest challenge is not whether federal and state regulations and policies allow the parties to partner with local governments and other members of the local community, for they do. Rather, engagement fundamentally involves whether the federal government and the state regulators view working with local governments and other community members as another box they will need to check to meet minimum regulatory requirements, or whether they believe, as ECA does, that engaging affected community members improves the

decision-making framework. If the answer is not the latter, then conflicts are increasingly likely to arise and prove difficult to resolve.

IV. Conflict Resolution: Resolving Conflicts to Achieve Goals

Partnering on environmental cleanups can be messy and conflicts can arise at any point and for many reasons: when the decision to close a site is made, when establishing cleanup levels, or when determining the future use of the site. Often in complex environmental cleanups, the full extent of the contamination is not known at the start of the project, so decisions need to be refined throughout the process, highlighting the need for effective conflict resolution.

Recommendation #15: Engage Each Other Regularly — The parties must substantively engage each other throughout the entire cleanup and reuse planning process.

The best way to resolve conflicts is to build a dialogue and be committed to the other recommendations outlined in this document. The ability to resolve conflicts flows directly from engaging in a dialogue at the start of the process when goals are being defined and cleanup strategies are being developed.

Since cleanup began in earnest at the three sites ECA examined, the common denominator underlying why conflict arose was that local governments and other members of the community were not engaged in the process and/or these parties and the decision makers (DOE and the regulatory agencies) could not come to agreement on levels of risk. Such conflicts, which in the case of Mound and Rocky Flats necessitated congressional involvement, can and should be proactively addressed.