



August 27, 2015

The Honorable Mike Simpson  
Chairman, Subcommittee on  
Energy and Water Development  
Committee on Appropriations  
2362B Rayburn House Office Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Lamar Alexander  
Chairman, Subcommittee on  
Energy and Water Development  
Committee on Appropriations  
S-128, U.S. Capitol  
U.S. Senate  
Washington, DC 20510

The Honorable Marcy Kaptur  
Ranking Member, Subcommittee on  
Energy and Water Development  
Committee on Appropriations  
2362B Rayburn House Office Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Dianne Feinstein  
Ranking Member, Subcommittee on  
Energy and Water Development  
Committee on Appropriations  
S-146A, U.S. Capitol  
U.S. Senate  
Washington, DC 20510

Dear Chairmen Simpson and Alexander & Ranking Members Feinstein and Kaptur:

We are writing to express our grave concerns regarding the recently delivered Report of the Omnibus Risk Review Committee, "*A Review of the Use of Risk-Informed Management in the Cleanup Program for Former Defense Nuclear Sites.*" If enacted, recommendations within the report will critically impact cleanup of the Hanford Nuclear Reservation site in Washington State, with corresponding impacts to the Columbia River—one of the most important and valued resources of both Washington and Oregon.

Our concerns begin with the fact that the report strays significantly from the original congressional intent. The Congressional Omnibus appropriations legislation directed the Department of Energy to "undertake an analysis of how effectively [DOE] identifies, programs and executes its plans to address risks" relating to its environmental cleanup liabilities, as well as examine "how effectively the Defense Nuclear Facilities Safety Board (DNFSB) identifies and elevates the nature and consequences of potential threats to public health and safety at defense environmental cleanup sites." However, the report fails at this task by instead focusing primarily on ways to reduce costs rather than reducing risks to public health and safety. In our view, this approach not only misses the original objective of the study, but also creates the potential for a far more harmful outcome: recommendation towards *less* protective cleanups at sites that still pose enormous threats to human health and the environment.

Other portions of the report raise similarly significant concerns, and initial analysis of the recommendations contained in the report are alarming for the future of state authority in cleanup of

The Honorable Mike Simpson  
The Honorable Lamar Alexander  
The Honorable Marcy Kaptur  
The Honorable Dianne Feinstein  
August 27, 2015  
Page 2

DOE legacy wastes. They also call into question, on a larger scale, state regulatory authority overall. Specifically, recommendations within this report—if implemented—would fundamentally alter and substantially abrogate state authority, including:

- The establishment of a standing Interagency Task Force to advise and assist DOE in cleanup priority setting, resource allocation, milestone flexibility and dispute resolution would specifically exclude states from the critical decision making and legal processes at the sites.
- Proposed federal legislation that would remove state's legal abilities to seek redress in court when the federal government fails to meet obligations and efforts to address those failures cannot be resolved with the current dispute processes that exist within current legal agreements.
- Recommendation of an independent panel with binding authority for dispute resolution and subject to review exclusively by the U.S. Court of Appeals for the District of Columbia.
- Discounting the applicability of state regulation as being excessive, costly, and not properly vetted, despite the fundamental requirements of the federal CERCLA and RCRA requirements, which mandate the inclusion of these laws and authorize states to carry out RCRA on behalf of the federal government.

With regard to the last bullet point, portions of the report are also simply inaccurate. For example, we understand that EPA submitted factual corrections to the report's authors pointing out inaccurate assertions regarding the alleged unequal application of state requirements at cleanup sites (the Holden Mine Site in Washington in particular). However, these errors remained in the final report and serve to bolster the authors' ultimate conclusions, while simultaneously misdirecting the report's target audience on an issue of critical importance.

Finally, curtailing state authority in this arena has already proven to be ineffective. Both Washington and Oregon strongly supported passage of the Federal Facilities Compliance Act in 1992 precisely because DOE had clearly demonstrated that, without active state involvement and oversight, compliance with environmental laws at Hanford would not be achieved. Numerous recommendations within this report would roll back this important legislation, which provided states with the means to ensure protection of their citizens' health and the environment from Hanford's legacy wastes. Indeed, the tank closure and waste treatment requirements of RCRA and corresponding state law are the only clear legal requirements that force DOE to remove and treat high-level tank waste.

Ranking Member Kaptur, you are fortunate in that the legacy DOE nuclear weapons production sites in Central Ohio – Fernald and Mound – have successfully been cleaned up. Chairman Simpson, you represent a state that also has a legacy DOE site undergoing cleanup. You understand the sacrifices citizens of the Northwest have made through the past six-plus decades—first to support the war effort, then the Cold War, and now the inevitable cleanup. Chairman Alexander and Ranking

The Honorable Mike Simpson  
The Honorable Lamar Alexander  
The Honorable Marcy Kaptur  
The Honorable Dianne Feinstein  
August 27, 2015  
Page 3

Member Feinstein, you both also face the challenges of assuring that your sites at Oakridge, Tennessee, Lawrence Livermore Laboratory in Northern California, and Santa Suzanne Energy and Technology Engineering Center in Southern California (respectively) continue to be cleaned up in a manner that ensures the health and safety of your state residents. We are as frustrated as anyone by the slow pace and the high cost of cleanup at Hanford and other DOE sites. Yet abrogating states' rights is not the solution. The federal government has a legal and moral obligation to clean up the wastes that threaten our citizens and our environment.

We hope that you will support us in ensuring that the recommendations in this report that: 1) exclude states; 2) reduce considerations of applicable state laws; 3) put aside the public health and safety of state and regional residents for cost reduction; and 4) limit states' rights to legal redress, not be endorsed by your committee or by Congress.

Our states' agencies are undertaking a detailed evaluation of the report and will be sending comments to the Department of Energy in the near future. We will also share those with your Subcommittee.

Sincerely,



Jay Inslee  
Governor of Washington



Kate Brown  
Governor of Oregon

cc: Honorable Ernest Moniz, Secretary, U.S. Department of Energy  
Monica Regalbuto, Assistant Secretary for Environmental Management,  
U.S. Department of Energy  
Gina McCarthy, Administrator, U.S. Environmental Protection Agency  
Members of the Washington Congressional Delegation  
Members of the Oregon Congressional Delegation  
Bob Ferguson, Attorney General of Washington  
Ellen Rosenblum, Attorney General of Oregon