



Bob Ferguson

## ATTORNEY GENERAL OF WASHINGTON

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August 31, 2015

### Sent By Electronic Mail

The Honorable Mike Simpson  
Chairman, Subcommittee on  
Energy and Water Development  
Committee on Appropriations  
United States House of Representatives  
2362B Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Lamar Alexander  
Chairman, Subcommittee on  
Energy and Water Development  
Committee on Appropriations  
S-128, United States Capitol  
United States Senate  
Washington, D.C. 20510

The Honorable Marcy Kaptur  
Ranking Member, Subcommittee on  
Energy and Water Development  
Committee on Appropriations  
2362B Rayburn House Office Building  
United States House of Representatives  
Washington, D.C. 20515

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

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

I am writing with regard to the recently issued 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*. As you know, Washington state residents shoulder an enormous burden from the environmental impacts associated with the Hanford Nuclear Reservation, one of the nation's most contaminated sites. As the legal representative of Washington state and its residents, I have made Hanford and its cleanup a top priority precisely because of the enormity of those impacts. I have a responsibility to do everything I can to protect the health and safety of those who live and work near Hanford and defend the health of the Columbia River. The river is the economic and cultural lifeblood of the Pacific Northwest, vital to the tribes in the northwest, and fuels agriculture, fishing, commercial transportation, recreation and electric power throughout much of the West.

The Hanford Nuclear Site includes 177 underground tanks that store approximately 56 million gallons of mixed high-level radioactive and hazardous waste. Of the 177 underground storage tanks, 149 are single-shell tanks deemed "unfit for use" – many of which have leaked in the past and threaten to leak more in the future, releasing their toxic contents into surrounding soils and groundwater. One single-shell tank has been confirmed to be actively leaking approximately 640 gallons per year, and now the first of Hanford's 28 double-shell tanks has begun leaking waste into its secondary containment.

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Given the enormity of the risk, I am deeply troubled by the Report's findings and recommendations. To be blunt, the Report's recommendations are misinformed and reckless. If implemented, they will have dangerous implications for cleanup of Department of Energy (Energy) legacy sites in Washington and throughout the nation.

Specifically, I disagree with the Report's criticisms of the Federal Facilities Compliance Act (FFCA) and its role and importance in ensuring action on the cleanup of legacy wastes. The Report contains recommendations that would effectively strip this critical law of the very purpose set forth by its bipartisan coalition of 147 sponsors: to hold the federal government accountable to the same standard of compliance it demands of others.

Such an outcome is unacceptable. Through the FFCA, Congress aimed to prevent environmental harm at federal cleanup sites that would otherwise languish due to inaction and delay. Energy's recalcitrance at Hanford, and Washington state's long-running efforts to combat that recalcitrance, were precisely the concerns Congress sought to address. While repealing the FFCA – a law passed by voice vote in the House and 94-3 in the Senate – may lower the cost of Energy's cleanup efforts in the short term, it risks the health and safety of Washington residents and our economy. Lower cleanup costs should come from better management and not at the expense of Washington state.

The Report's conclusion that the Resource Conservation Recovery Act (RCRA), the FFCA, and corresponding state law are somehow an *impediment* to effective cleanup is astonishing. Without RCRA and the FFCA, Energy has no clear obligation to clean up Hanford. The Report appears to assume that Energy will do the right thing if only left alone. The unfortunate reality, however, is that the *only* things that have driven action on high-level tank wastes at Hanford are the legal requirements of the RCRA and the FFCA, corresponding state law, and Washington's enforcement of those laws.

Let me be clear: Removal of these drivers, as recommended by the Report, will result in less oversight, less accountability, and less cleanup at the most hazardous sites in North America.

The Report's criticism of Washington's use of litigation to compel Energy to comply with agreed upon schedules and milestones is equally troubling. Energy is decades behind schedule at Hanford. Although we have frequently negotiated and re-negotiated deadlines and milestones, Energy has made litigation an unfortunate necessity by failing to comply with its obligations and refusing to be accountable for its failures.

The current lawsuit pending in federal court is a good example. Just months after we negotiated a new schedule with Energy for certain milestones, Energy informed us that it would be unable to meet nearly all of the milestones that it had just agreed to. Rather than agree to a revised schedule, Energy instead sought to restructure the entire consent decree, removing nearly all enforceable milestones. As recently noted by Chief Judge Rosanna Malouf Peterson in an order related to the litigation, given its long history of delay and noncompliance “[Energy’s] assurances to this Court that it will perform its obligations under the Consent Decree despite an absence of predetermined, [judicially] enforceable deadlines lacks credibility... .”



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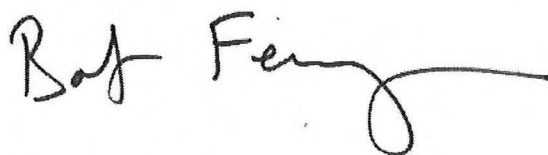
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The Report's recommendation to remove the litigation option from states is the wrong approach. Doing so would further injure states like Washington that have already been forced to shoulder far more than our fair share of the nation's nuclear legacy. Washington has done its part – this report should not be permitted to hinder the federal government from doing its part.

Washington continues to evaluate the Report and will be sending further comments in the near future. In the meantime, I urge you to support us in ensuring that neither your Committee nor Congress accept recommendations that would undermine states' rights to legal redress or jeopardize public health and safety in the name of cost reduction.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Ferguson", with a long horizontal flourish extending to the right.

BOB FERGUSON  
Washington State Attorney General

RWF/jlg

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  
Washington Governor Jay Inslee  
Oregon Governor Kate Brown  
Oregon Attorney General Ellen Rosenblum  
JoDe Goudy, Chair, Yakama Nation Tribal Council  
Gary Burke, Board of Trustees Chair, Confederated Tribes of the Umatilla Indian Res.  
Anthony Johnson, Chair, Nez Perce Tribe Executive Committee  
Steve Hudson, Chair, Hanford Advisory Board  
Mecal Seppalainen, Chair, Oregon Hanford Cleanup Board