January 8, 2019

Ms. Theresa Kliczewski
U.S. Department of Energy
Office of Environmental Management
Office of Waste and Materials Management (EM-4.2)
1000 Independence Avenue, SW
Washington, DC 20585

Via Email: HLWnotice@em.doe.gov

RE: Energy Communities Alliance Comments on the October 10, 2019, Federal Register Notice - DOE’s Interpretation of High-Level Radioactive Waste based on actual radiological characteristics and risk to human health

Dear Ms. Kliczewski,

Energy Communities Alliance (ECA)\(^1\) strongly supports DOE’s efforts to move forward with its proposed interpretation of the definition of the statutory term “high-level radioactive waste” (HLW) as set forth in the Atomic Energy Act of 1954 and the Nuclear Waste Policy Act of 1982. By shifting to base disposal decisions on actual radiological characteristics and risk to human health arising from the waste, rather than artificial former policy standards that base waste classification on origin, ECA expects DOE could:

- Reduce years of DOE operations and risks to current host communities;

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\(^1\) ECA is the national association of local governments of communities that host or are affected by DOE and National Nuclear Security Administration (NNSA) activities. ECA’s mission is to bring together leadership from DOE-affected communities to share information, establish policy positions, and advocate for common interests in order to effectively address and increasingly complex set or environmental, regulatory, and economic development needs. ECA board members include local elected officials and community leaders from communities across the DOE complex.
• Accelerate Hanford, Idaho, West Valley and Savannah River tank retrievals and closures – which decreases risk (moving more waste out of the four sites quicker – thereby decreasing risk to the people that live in the communities);

• Decrease the number, size and duration of storage facilities pending availability of a permanent deep geologic HLW repository; and

• Save taxpayers an estimated $40 billion or more on DOE’s Office of Environmental Management program’s remaining lifecycle costs.

However, as part of making any clarification, DOE needs to provide more information regarding the feasibility of amending existing consent orders, permits and agreements with the states; potential cost and cost savings; and the impact to each sender and receiver site that would be impacted.

**Background**

In 1989, DOE created the Office of Environmental Management with a mission to complete the safe cleanup of the environmental legacy resulting from five decades of nuclear weapons development and government-sponsored nuclear energy research. Yet, despite progress on the ground, the lifecycle costs of the cleanup continue to grow and are now estimated at $257 billion – currently the third largest liability to the American taxpayer. In addition, DOE’s defense HLW continues to pose the greatest risk to human health and the environment. Its only legal disposition path is a geologic repository that has been stalled for decades by political opposition.

A renewed sense of urgency and a willingness to consider technically-defensible alternatives based on science is necessary and paramount. ECA believes DOE’s proposal on the interpretation of HLW could present such an alternative. ECA also asserts that the interpretation is consistent with the International Atomic Energy Agency’s (IAEA) activity-based waste classification scheme and safety standards which call for the specific types and properties of waste to be taken into account when making disposal decisions.
Recommendations

ECA considers DOE’s Federal Register Notice and request for public input to be an important initial step in pursuit of these objectives, especially in light of aging infrastructure, an aging workforce, budget limitations and, at times, a lack of trust between regulators and DOE across DOE’s weapon complex. In support of moving forward, ECA offers six near-term recommendations:

1. **DOE must be transparent and meaningfully engage host communities, state regulators, Tribes and the broader public in the decision-making process.** Meaningful interaction MUST occur to ensure a common understanding of the timeline, challenges and impacts of DOE’s waste management decisions. As DOE has already noted, any changes to how waste is currently managed will still require compliance with the state agreements and performance objectives of a disposal facility as demonstrated through a performance assessment conducted in accordance with all applicable state and federal regulatory requirements.

2. **DOE should complete and release an evaluation of the feasibility, costs, and cost savings of classifying covered defense nuclear waste as other than HLW**, such as outlined in Section 3139 of the National Defense Authorization Act for Fiscal Year 2018. In order to build support, it is crucial that impacted communities, states and decision-makers see an evaluation and analysis of how DOE’s interpretation would impact cleanup. Only then can the intended and unintended consequences be understood. Information and resources must also be provided for education and outreach efforts to facilitate meaningful stakeholder engagement, validation and endorsement.

3. **DOE should revise its radioactive waste management policy (DOE Order 435.1) to clarify that waste will be managed and dispositioned according to its characteristics, not its origin.** This will allow some wastes currently categorized as HLW to more appropriately be treated as transuranic (TRU) waste or low-level waste in accordance with its composition, making alternative, nearer-term disposal paths available provided
waste meets applicable requirements (performance assessment and waste acceptance criteria) of existing disposal facilities.

4. DOE must work directly with the State of New Mexico on a permit modification for the Waste Isolation Pilot Plant (WIPP) to remove the blanket prohibition on tank waste and wastes managed as HLW so that if it meets the applicable requirements it can be disposed of at WIPP.

5. DOE (and Congress) should provide full funding for WIPP capital asset projects to resume the full range of waste disposal capabilities and ultimately increase capacity.

6. DOE should begin work on a number of pilot projects and waste management policy evaluations to better understand alternative approaches and inform future policy decisions. These projects include demonstrating feasibility of treatment and off-site disposal of Hanford low-activity tank waste, and documenting the technical basis for certain treated tank wastes from Savannah River and Idaho to be designated as transuranic waste (TRU) and dispositioned at WIPP or commercial facilities.

7. DOE must analyze the impact at each site and communicate it to the public. Currently every site has questions regarding the change in interpretation. DOE has not provided the data and the policy direction. DOE must immediately communicate the actual impact to each site and community based on its proposed actions at the sites. Failure to release the information will likely result in an inability to implement the change in policy successfully and will definitely lead to mistrust and regulator lawsuits – which will continue the delays in reducing risk.

Most of these recommendations were originally outlined – and can be found in more detail – in ECA’s 2017 report, “Waste Disposition: A New Approach to DOE’s Waste Management Must Be Pursued.”
What ECA is Hearing: Additional Questions for Consideration

Since 2013, ECA has hosted a number of roundtable discussions on clarifying the high-level definition with DOE, states, local governments, tribes, economic development entities and community members. A number of common concerns have been raised that may deserve additional attention from DOE. These include:

- If the estimated cost savings of implementing the interpretation are realized, can DOE demonstrate a benefit to the complex as a whole?
- How much quicker can a site be cleaned up based on the change in interpretation?
- What are the near and long-term benefits to a site?
- What will the impact be on other waste categories (will more or less waste be disposed of on-site versus shipping it to a central repository)?
- What will the impact be to onsite vs. offsite disposal at different sites?
- What will the impact be to the budget at different sites?
- How will existing DOE/state regulator/EPA agreements need to be changed? How will a meaningful state oversight role be ensured?
- How does the performance assessment work with the waste acceptance criteria?
- How can the interpretation be codified to provide certainty of approach over time and changing political administrations?
- What are the receiver sites and what, if any, steps need to be taken to permit the sites to take the waste?
- Can a national and site map be provided by DOE to show the movement of waste, timing and cost savings at each site if this new interpretation is implemented?

As DOE determines next steps, it may be useful to address these questions in any evaluation on implementation or outreach plan to stakeholders.
The US will still need a deep geologic repository

DOE’s proposed Interpretation of HLW does not negate the need for a permanent geologic repository. Regardless of how DOE proceeds, there will still be federal defense HLW requiring permanent disposal in a deep geologic repository. ECA supports moving ahead with the Yucca Mountain licensing process. Even if it is determined that the site is not safe, there will be many lessons learned for DOE, for the Nuclear Regulatory Commission, for the Environmental Protection Agency, and stakeholders that can inform the siting of another high-level waste repository.

ECA appreciates the opportunity to provide input on DOE’s Interpretation of High-Level Radioactive Waste, and more broadly, on advancing the cleanup mission in the safest, most-efficient and expeditious way.

Many DOE sites across the complex were never intended to store waste yet serve now as de facto interim storage sites. Simply leaving waste in place is neither acceptable nor the safest option. ECA looks forward to engaging on all efforts to advance nuclear waste management and evaluate options that can provide risk-based, technically feasible, cost-effective and safe alternatives for moving waste out of our communities more expeditiously.

Please contact Kara Colton, ECA’s Director of Nuclear Energy Policy, by phone at (703) 864-3520 or email at kara.colton@energyca.org with any questions or for any additional information.