

ENVIRONMENTAL MANAGEMENT SITE-SPECIFIC ADVISORY BOARD

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Dr. Monica Regalbuto
Assistant Secretary for Environmental Management
U.S. Department of Energy, EM-1
1000 Independence Avenue, SW
Washington, DC 20585

Dear Dr. Regalbuto:

Background

The Department of Energy (DOE) Environmental Management (EM) sites with legacy waste awaiting permanent off-site disposal have been, or could be, subject to large fines from their respective regulatory agencies for failure to meet legally mandated deadlines for permanent disposal of legacy waste. For example, the New Mexico Environment Department recently fined Los Alamos National Laboratory (LANL) and the DOE Waste Isolation Pilot Plant (WIPP) \$54 million for failures connected to a radiation leak when a drum of waste processed at LANL breached a year ago at WIPP, shutting down the nation's nuclear waste repository. LANL has also acknowledged it will miss deadlines set for later this year for long-term waste cleanup at LANL set in a binding consent decree.

Payment of real or potential multi-million dollar fines has the effect to further reduce the ability of these EM Sites to successfully meet mandated and legally binding cleanup goals. In most cases states have the option to use the funds collected on fines for work unrelated to the issues that led to the fine or for the direct benefit of residents of the affected area. A more effective use of funds would be to use the money collected from fines to fund supplementary environmental projects, given that EM funding allocated to DOE and/or the National Nuclear Security Administration for EM work should be used to protect and/or improve the health and environment of the citizens of the geographic area and population affected by the previous disposal of legacy wastes at the DOE sites.

Comments and Observations

In lieu of fines and penalties that could be required and instituted at the respective facilities, the EM Site-Specific Advisory Board (SSAB) recommends that DOE-EM consider Supplemental Environmental Projects (SEPs) as a beneficial and amenable means to help accomplish the legally mandated cleanup goals at DOE facilities.

An SEP is defined as an environmentally beneficial project which a violator voluntarily agrees to undertake in settlement of an enforcement action but which is not legally required by law. In

addition, the U.S. Environmental Protection Agency (EPA), and most state regulatory agencies, allow for the implementation of SEPs in lieu of a portion of civil penalties calculated under the Civil Penalty Policy, when such payment of fines and penalties are imposed;

There are seven common categories of projects that can be acceptable SEPs:

- Public Health
- Pollution Prevention
- Environmental Protection
- Environmental Restoration
- Environmental Assessments and Audits
- Environmental Compliance
- Renewable Energy

Recommendation:

The EM SSAB recommends that DOE-EM;

1. Pursues SEPs in lieu of fines and penalties issued by regulators.
2. Pursues SEPs, in lieu of new fines and penalties imposed by a new compliance order issued by regulators for violations.
3. Proposes SEPs in settlement of enforcement actions by regulators that meet the following restrictions:
 - Are consistent with the EPA SEP policy and Region implementing guidance
 - Are consistent with or advances the Resource Conservation and Recovery Act
 - Have adequate nexus to the violation as determined by the relevant regulators sole discretion, with site stakeholder and public engagement.
 - Involve the management or administration of the project or funds by the relevant regulator; (state and/or EPA) and benefits the community and/or environment near the impacted site by the violation while providing educational opportunities with contractors and public institutions of higher education.
4. Uses SEPs to primarily benefit the community that is directly impacted by the violation.

In Summary:

It is the intent of the EM SSAB to ensure that DOE-EM funds programmed and allocated for the cleanup and mitigation of legacy waste disposal at sites are used for those purposes and for the benefit of the citizens of the affected areas, where the basis of the violations cited by the relevant regulator occurred.

References:

1. EPA Guidelines for Supplemental Environmental Projects
2. State Supplemental Environmental Project Policy Act/Regulations

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