



Tuesday, August 6, 2013

THE
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COUNCIL OF
THE STATES

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Marcy Kaptur
Ranking Member, House Energy and Water Development Appropriations Subcommittee

**RE: State Environmental Agency Directors Seek Stronger FY14 Budget for the
Dept of Energy's Nuclear Cleanup Work**

[Via e-mail]

Dear Members of Congress:

We are writing to you on behalf of the Environmental Council of the States (ECOS), the national non-profit non-partisan association of state environmental agency directors.

On March 6, 2013, our association adopted a policy resolution urging Congress to "appropriate the levels of funding necessary to ensure EM [the U.S. Department of Energy's Office of Environmental Management's]... annual budgets are fully funded and fully compliant" noting that "stable funding leads to greater efficiencies in cleanup cost and schedule" (see addendum).

We realize that you are working to reduce federal spending, and there are a lot of different interests competing for increasingly limited funds.

This letter is in regards to the fiscal year (FY) 2014 defense and non-defense-related nuclear cleanup program budgets for the U.S. Department of Energy's Office of Environmental Management (DOE-EM). These are the programs spearheaded by DOE for remediating hazardous and radiological wastes at U.S. nuclear weapons complex sites. To avoid confusion, this letter does not address the uranium enrichment decontamination and decommissioning program budget.

We understand that you have been working to negotiate a pair of appropriations bills to fund the subject programs, and other programs, for FY2014 (S.1245 and HR.2609). We also understand that, in the absence of an appropriations act, a continuing resolution (CR) might be issued for FY2014 (or a portion thereof) so EM can operate its budget on a pro-rata basis according to the prior year's budget. We also understand that, subsequent to a CR, an appropriations act could be passed into law which might determine the final levels of funding to be reconciled for EM's FY2014 budget.

We are writing to recommend that you enact a total budget of \$5.90B to fund DOE's defense and non-defense related nuclear cleanup activities for FY2014.

Let us explain why we feel so strongly that you should pursue this course of action.

In FY2010, Congress appropriated \$5.90B to fund DOE's defense and non-defense-related nuclear cleanup programs. This strong budget enabled DOE to successfully perform most of its cleanup activities on schedule as required by legally-binding state-federal cleanup agreements. It also provided the funding necessary to support state oversight officials working to ensure that the federal government's cleanup operations were conducted in compliance with state and federal standards. Much of this funding was also passed on to cleanup contractors, generating a great deal of jobs for private-sector workers.

In FY2012, Congress appropriated \$5.23B for these programs, a \$770M decrease from FY2010 funding levels. These cuts had a negative impact on the program, and resulted in missed legally-binding cleanup milestones.

In FY2013, Congress appropriated \$5.27B for these programs under an adjusted CR. However, due to sequestration, the FY2013 cleanup budgets were ultimately funded at \$4.85B, representing a budget \$1.05B lower than FY2010 levels. These budget reductions had to be reconciled late in the fiscal year. These cuts have resulted in tremendous challenges for the nuclear cleanup and oversight programs. Hundreds of private cleanup contractors have been laid off; sampling of some contaminated groundwater plumes has had to occur less frequently; and DOE is missing a number of important cleanup milestones. And under the CR, DOE has had less flexibility to shift funds between cleanup projects to address emerging environmental and public health priorities.

As we approach the next fiscal year, we are very concerned that the cleanup program will face debilitating problems as a result of continuing lower budget appropriations. Plans to initiate pump-and-treat systems to remediate contamination of certain groundwater resources could be delayed indefinitely.

Continued low budgets could also delay indefinitely the decontamination and demolition of nuclear weapons complex facilities determined to be obsolete. This would create additional out-year costs to be borne by the federal government as these facilities must be safeguarded until decontamination and demolition can be properly undertaken. **Funds spent on cleanup now are likely to save future costs by more than double; the longer these facilities remain contaminated, the more it will ultimately cost for the federal government to maintain, safeguard, and remediate them.**

Additional cuts could further curtail the frequency of contamination sampling and jeopardize the states' ability to provide quality assurance of DOE cleanup activities. Without stronger budgets, regulators are facing the prospect of forced layoffs of state oversight workers. Further cuts might also result in more contractor layoffs.

DOE has requested approximately \$ 5.53B be appropriated for FY2014 to fund its cleanup programs. But even at this figure, we worry that DOE would not be able to successfully perform cleanup work to levels necessary for meeting its obligations to state governments on schedule per cleanup agreements.

Senate Bill 1245 proposes to fund these programs at \$5.38B for FY2014. We understand this bill was recently passed out of subcommittee but awaits consideration by the full Senate. It is unclear to us whether sequestration would further reduce this budget to approximately \$4.96B for FY2014. Regardless, we feel that a stronger budget is needed for this program.

House Bill 2609 proposes to fund these programs at \$5.25B for FY2014. We understand this bill was approved by the full House of Representatives, but has drawn a veto threat from President Obama. It is unclear to us whether sequestration would further reduce this budget to approximately \$4.83B for FY2014. Regardless, we feel that a stronger cleanup budget is merited.

We believe that Congress should fully fund DOE's FY2014 budget request, and appropriate above this request to \$5.90B (or as close as possible) so these critical cleanup operations can continue uninterrupted, and states can conduct the oversight necessary to ensure the work is performed to standard.

Due to sequestration, some of us were notified that the FY2013 budgets affecting nuclear cleanup and oversight activities within our state would be cut by hundreds of thousands of dollars, and we were told with only a few weeks left remaining in the fiscal year.

We urge you to enact a strong FY2014 nuclear cleanup budget soon to allow for the planning necessary to ensure these critical programs are safely managed.

And we hope that you will encourage DOE to provide states with as much advanced notice as possible regarding the impact of funding levels on cleanup and oversight plans, and provide DOE with an operating budget earlier in the process so they can do so. We request that more advanced notice be provided to states regarding the possible impacts of any future funding cuts, and we wish for states to be provided ample opportunities for consulting with DOE regarding state cleanup priorities during this era of restricted budgets. It is important for cleanup priorities to be jointly determined in response to changing circumstances and emerging environmental and public health concerns. And DOE should be provided with an operating budget that affords them the flexibility they need to shift funds around to better address high priorities.

Cleanup of the nuclear weapons complex represents a large liability to the federal government, but this is a liability that continues to shrink as cleanup is achieved at various sites within the complex. As states, we understand what it is like to make tough funding decisions. We urge you to allow DOE to continue this important cleanup work to its conclusion.

Thank you for considering our position as you work towards passing a funding measure for these programs. Please contact R. Steven Brown, Executive Director of ECOS if you have any questions about this letter.

Sincerely,



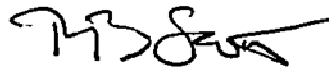
Robert J. Martineau, Commissioner
Tennessee Dept of Environment and Conservation
ECOS Secretary-Treasurer



Shari L. Meghreblian, PhD, Deputy Commissioner
Tennessee Dept of Environment and Conservation
Chair, ECOS Federal Facilities Forum



Colleen Cripps, PhD, Administrator
Nevada Division of Environmental Protection
Chair, ECOS Water Committee



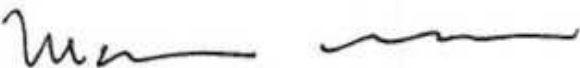
R. Bruce Scott, Commissioner
Kentucky Dept of Environmental Protection



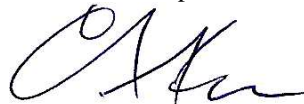
Maia D. Bellon, Director
Washington State Dept of Ecology



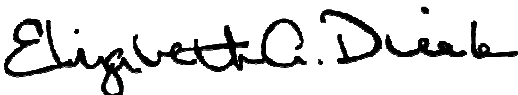
Joseph J. Martens, Commissioner
New York State Dept of Environmental Conservation



Matthew Rodriquez, Secretary for Environmental Protection
California Environmental Protection Agency



Curt Fransen, Director
Idaho Dept of Environmental Quality



Elizabeth A. Dieck, Director of Environmental Affairs
South Carolina Dept of Health and Environmental Control

CC: Ernest Moniz, Secretary of Energy (DOE)
David Huizenga, Senior Advisor for Environmental Management (DOE-EM)
Terry Tyborowski, Deputy Assistant Secretary for Program Planning and Budget (DOE-EM)
Reggie Cheatham, Federal Facilities Restoration and Reuse Office Director (EPA)
Donovan Robinson, Environmental Management Program Examiner (OMB)



Resolution Number 10-3
Approved March 24, 2010
Sausalito, California

Revised March 6, 2013
Scottsdale, Arizona

As certified by
R. Steven Brown
Executive Director

CLEANUP BUDGETS FOR THE NUCLEAR WEAPONS COMPLEX

WHEREAS, the nation's nuclear weapons production and research and development activities, conducted largely between the 1940s and 1980s, have left a legacy of hazardous, radiological, and mixed wastes scattered across sites widely referred to as the "nuclear weapons complex" (the "complex"); and

WHEREAS, proper cleanup of the complex is critical for protecting human health and to ensure that damages to natural resources are mitigated and/or compensated for; and

WHEREAS, the complex formerly consisted of over 100 sites in 33 states, thereby comprising one of the largest environmental cleanup operations being undertaken in the U.S.; and

WHEREAS, at least 11 states currently host active cleanup operations spearheaded by the U.S. Department of Energy (U.S. DOE) Office of Environmental Management (EM) and the U.S. Army Corps of Engineers (Corps); and

WHEREAS, state environmental agencies are regulators with U.S. EPA and U.S. DOE, and may oversee cleanup operations within the complex as established by Federal Facility Agreements (FFAs), permits, and consent orders under FFCA, CERCLA, RCRA, and other laws; and

WHEREAS, some sites within the complex, including the Ohio Fernald and Colorado Rocky Flats sites, have benefited from accelerated cleanups that have generated cost savings from reduced future maintenance costs that were not redirected towards other site cleanups within the complex; and

WHEREAS, in 1999 the U.S. Congress transferred the cleanup operations of over 24 radiologically contaminated sites in 10 states under the U.S. DOE's Formerly Utilized Remedial Action Program (FUSRAP) to the Corps; and

WHEREAS, the influx of funding from the American Recovery and Reinvestment Act of 2009 (ARRA) has provided for further acceleration of nuclear and hazardous waste cleanups as well as decontamination and demolition of obsolete facilities within the complex; and

WHEREAS, recently-completed cleanups have shrunk the footprint and overall size and presence of nuclear weapons complex sites within the states; and

WHEREAS, notwithstanding these recent successes, continued cleanup of the complex remains a priority issue for the States; and

WHEREAS, stable funding leads to greater efficiencies in cleanup cost and schedule for the U.S. DOE, the Corps, and the States.

NOW, THEREFORE, BE IT RESOLVED THAT:

ECOS strongly supports continued environmental cleanup of the nuclear weapons complex.

ECOS recommends that U.S. DOE continue cleaning up the nuclear weapons complex and maintain a strong forum for communication and planning with state oversight officials via ECOS.

ECOS urges U.S. DOE and Corps officials to request *annual budgets* for the EM and FUSRAP programs, as well as for the National Nuclear Security Administration (NNSA) and the U.S. DOE Office of Legacy Management (LM), to ensure enough funds are provided to all sites to achieve cleanup milestones on schedule as required by FFAs, permits, and consent orders.

ECOS urges the U.S. Congress to appropriate the levels of funding necessary to ensure EM, LM, NNSA and FUSRAP annual budgets are fully funded and fully compliant as just described.

ECOS urges U.S. DOE and the Corps to establish mechanisms whereby any cost savings that result from accelerated cleanups are recouped and redirected toward funding other site cleanups within the nuclear weapons complex, and

This resolution will be transmitted to the U.S. Congress, the White House Office of Management and Budget, the Secretary of Energy, senior Corps management, the U.S. DOE Senior Advisor for Environmental Management, the Under Secretary for Nuclear Security, the National Governors Association, and other stakeholder groups.