



Many Voices Working for the Community

Oak Ridge Site Specific Advisory Board

December 13, 2000

Mr. Steven Livingstone,
Project Manager
U.S. Department of Energy
P.O. Box 45079
Washington D.C. 20026-5079

Comments on the draft Long Term Stewardship Study of October 2000

Dear Mr. Livingstone:

This report is an excellent effort to illuminate the large issues for Department of Energy Long Term Stewardship (LTS) and to indicate the available broad policy directions. We did not detect a major point that is not covered somewhere at least by implication. A few ideas, however, were treated too lightly or indirectly to command the future attention they deserve. A few sentences changed or added could eliminate these residual concerns.

Citizen requests for better LTS coverage in Proposed Plans (PP) and Records of Decision (RODs) are dismissed on pages 15 and 17 in Section 3.2 with an argument based on a flawed statement of the request. Nobody expects a detailed stewardship plan in a ROD that would locate signs, fenceposts, the exact width of buffer zones, or list the botanical and biological species that will be monitored forever. Yet the impossibility of including such detail has been given as the reason for not including meaningful stewardship discussions in the crucial decision documents that describe the whole remediation strategy for an area (i.e., Proposed Plans and RODs). How can stewardship be considered in remedy selection (as the LTS study suggests on page 16) if these documents do not clearly commit to maintaining a level of remediation through time that is sufficient to achieve the chosen Remedial Action Objectives? Here, "remediation" includes all the monitoring, maintenance of both institutional and physical controls, information storage and retrieval, public education, and reconsideration of alternatives to which your Study refers. (An analogous issue must exist at sites not regulated under CERCLA.) We believe that a post-ROD document, to which the public has no formal input, is no place to be defining high level goals for long-term stewardship as is suggested near the end of page 17.

On page 41 and Exhibit 5-1, the authors of the Study acknowledge that persons outside the originally contaminated area are protected from hazards primarily by “engineering controls” designed to stabilize the contaminants, rather than by “institutional controls” that keep people away from hazards. However, the rest of the report dwells far too much on the latter type of remedy. Unless contaminated properties are transferred to owners who prove to be complacent and uncooperative, the engineering controls and their maintenance will be the more important for DOE sites, just as they are for strip mines and old hazardous waste dumps that lack effective liners and caps. Where hazardous contamination will be left in place at weapons sites, engineered physical controls will be added; storms and floods are bound to challenge the halfway measures that must be used to control contaminant transport. We believe the Study should emphasize LTS for “engineering controls.”

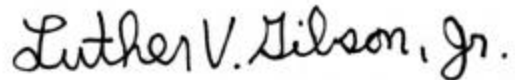
On page 48 and particularly in Exhibit 5-4, the authors indicate the fragility and possible uselessness of land use control measures such as deed restrictions. We recall that the paper of Mary English, your Reference 49, indicates that easements and other deed restrictions have been found to fail over time unless the owner that originates the restrictions (here usually the federal government) consistently enforces the restrictions in the civil courts. This finding is very important, and suggests a strong and difficult condition for the usefulness of deed restrictions. We have found many references to deed restrictions in government regulations and decision documents, but recall only one case that indicated the intent of the agency to inspect and then enforce the restriction (groundwater licenses in Union Valley in Oak Ridge). If Ms. English is correct for an important fraction of the cases, this consistent enforcement caveat needs emphasis. It is just the type of condition that engineers and members of the public are unlikely to think of. (Another approach would be for the DOE to convince state legislatures to enable third party lawsuits to enforce deed restrictions for a class of lands that includes DOE sites. Local governments normally cannot and do not try to enforce such restrictions.)

Please mention the significance of cost inflation to the considerations involving trust funds in Section 8 around page 91. The trust described in Exhibit 8-5 for stewardship of the Oak Ridge Reservation Environmental Management Waste Management Facility can succeed only if the terms of agreement are broadly interpreted to include using a portion of the trust income to increment the principal. This reinvestment would counteract the expected gradual increase over time in the dollar cost of maintenance and monitoring. The Tennessee trust fund agreement is a real breakthrough, and interestingly it is one in which the local public played no role except to be concerned before and to cheer after it was signed.

The likely importance of continuing local public involvement for effective LTS is introduced in the sidebar on page 91. We applaud those comments, but would go farther. We think some sort of citizen stewardship board will be needed at the highly contaminated sites. Successful organization of such boards will be difficult, and some encouragement by the federal government may be required. Local governments could combine to provide such informal oversight, but experience with county government suggests that long term problems rarely get the attention of local political leaders. Usually they are busy paving roads, operating jails, hiring school teachers, and pursuing economic development. Often, some citizen group must activate the elected leaders.

We are pleased that the Natural Resources Defense Council lawsuit settlement has led to a useful overview of DOE's stewardship needs.

Sincerely,



Luther V. Gibson, Chair

Cc: Pat Halsey, DOE/ORO
Connie Jones, EPA Region 4
Norman Mulvenon, LOC
Oak Ridge SSAB Stewardship Committee Members
John Owsley, TDEC
Myrna Redfield, DOE/ORO
Ralph Skinner, DOE/ORO