



**Citizens Advisory Board  
Idaho National Engineering and Environmental Laboratory**

**Cleanup Driven by Risk-Based End States**

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The Idaho National Engineering and Environmental Laboratory (INEEL) Citizens Advisory Board (CAB) received copies of two documents related to a new U.S. Department of Energy (DOE) policy to use risk-based end states to support decisions related to cleanup of site contamination. It is our understanding that the new policy will advise cleanup decision-making complex-wide at all DOE sites. The two documents are labeled “Project 7 Policy” and “Project 7 Guidance.” Our comments were requested by January 31, 2003. This consensus recommendation addresses our comments on both documents.

**GENERAL COMMENTS**

The INEEL CAB agrees with DOE that end state visions must be agreed upon before cleanup can be acceptable to stakeholders and regulators. We believe that end state visions should be derived through goal setting exercises that involve the broad community. The extent to which the new policy applies to all DOE sites must be tempered by local community values and political realities.

It is disturbing that the new policy does not even refer to the existence of specific agreements related to end states at each of the affected DOE sites. Failure to refer to existing documents and relevant agreements allows the impression that DOE is trying to go back to the drawing board on agreements that were already achieved with regulators and stakeholders. **The INEEL CAB recommends that the end state vision be structured as a summary and explicitly reference past agreements and decisions.**

**The INEEL CAB recommends that DOE not attempt to use the new policy to support an effort to change the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).** We believe that the cleanup program at the INEEL to date has complied fully with CERCLA, which involves a rigorous, risk-based decision-making process. Those prior decisions have been reached through processes involving public participation and negotiation with regulators. Decisions that have made commitments to clean up legacy contamination must be implemented as previously agreed. The INEEL CAB recommends that the approach described in the new policy and guidance be integrated with the existing CERCLA process for future cleanup decisions.

**The INEEL CAB recommends that DOE not attempt to use the new policy to support an effort to reverse decisions that have already been made under CERCLA.** The failure of the two documents to acknowledge the existence of three-party agreements (involving DOE and its regulators — the U.S. Environmental Protection Agency and the State) for implementation of the CERCLA process and subsequent cleanup decisions creates confusion and could create distrust. Decisions that have been made, particularly those that are documented through Records of

Decision following comprehensive Remedial Investigation/Feasibility Studies, must be implemented as previously committed.

**The INEEL CAB recommends that DOE strengthen the role of stakeholders in developing risk-based end states.** The terminology referring to consultation with stakeholders should be revised to suggest a more collaborative approach. Regulators, Tribal governments, and local communities must be involved in defining appropriate end states, particularly for sites where DOE may not have ultimate responsibility for implementing long-term stewardship activities.

**The INEEL CAB recommends that DOE continue seeking technical solutions to challenges whenever possible.** The Performance Management Plan for Accelerating Cleanup at the INEEL appeared to the INEEL CAB to be overly reliant on a strategy of seeking regulatory relief as a strategy for achieving accelerated cleanup. At no time should regulatory relief be pursued if the result would allow significant increased risk to human health and safety or the environment.

**The INEEL CAB recommends stronger integration between the concept of risk-based end states and long-term stewardship.** While industrial end states may be more appropriate than residential end states for more contaminated sites, the result will require more rigorous long-term stewardship efforts. To the extent that local communities may eventually assume responsibility for long-term stewardship, end state decisions must involve the affected community. The draft policy and guidance documents do not yet demonstrate a strong integration of end state determination and long-term stewardship considerations.

#### **SPECIFIC COMMENTS ON THE POLICY DOCUMENT**

The fourth paragraph on page 1 states that the remediation goals in the past have not been “business-like and efficient.” The U.S. government is not a business. **The INEEL CAB recommends that DOE replace “business-like” with an adjective that better describes the desired characteristics, such as effective.**

#### **SPECIFIC COMMENTS ON THE GUIDANCE DOCUMENT**

The first paragraph of the Executive Summary (page 1) states that the Department’s intent is to “do it right the first time” and implies that cleanup decisions earlier were not done correctly. That statement is unfair. The INEEL CAB believes that most cleanup decisions to date have been based on reasonable end states that were negotiated with the regulators and scrutinized by the public. **DOE should not attempt to make changes to decisions that are already acceptable to the public.**

The third paragraph in Section 1.0 “Introduction” (page 1) appears to be missing a verb. We suggest “The end state vision will help the Department . . .”

The last sentence in Section 1.0 “Introduction” (page 1) states that risks associated with end states should consider primary receptors. **The INEEL CAB believes that the wording should include all receptors.**

The discussion in Section 2.0 “Roles and Responsibilities” (starting on page 1) fails to designate the responsibility for coordinating with state regulators and local communities to the Assistant

Secretary, the Field Manager, or the Site Manager. **The INEEL CAB recommends that these responsibilities be explicitly assigned to the appropriate individuals.**

The schedule as discussed in Section 3.0 “Schedule Requirements” (page 2) appears to be overly aggressive. For example, it is not clear how DOE can or will draft end states by June 1, 2003. It is similarly naïve to assume that stakeholders will “endorse” the end states by September 1, 2003. Earlier involvement of stakeholders would increase the likelihood that stakeholders will eventually endorse the final end state visions. Our concerns related to the aggressive schedule are exacerbated by the fact that the Guidance Document does not include provisions for what will occur if the schedule cannot be met. It also fails to include descriptions of mechanisms for achieving the milestones listed. **The INEEL CAB recommends that schedules be scrutinized and adjusted if they are not realistic and achievable. Contingency plans should be developed if schedules are not met.**

The first bullet under Section 4.0 “Guiding Principles” (page 2) states that the Department will comply with the requirements of the nation’s environmental laws and regulations. **The INEEL CAB recommends that statement include a commitment to comply with relevant state and Tribal laws and regulations.**

The second bullet under Section 4.0 “Guiding Principles” (page 2) states that “End states, including the selected remedies, must be based on an integrated site-wide perspective (including the current and future use of surrounding land), rather than on isolated operable units or release sites.” The concept of averaging across release sites is troublesome. **The INEEL CAB recommends that DOE clarify the wording to indicate the intention to clean up each release site to achieve an end state that is acceptable to stakeholders.**

The sixth bullet under Section 4.0 “Guiding Principles” (page 2) states that “stakeholders and regulators must be consulted.” Environmental laws require public participation, not just consultation. **The INEEL CAB recommends that DOE use wording that more accurately indicates the requirements for meaningful public involvement.**

It is not clear what is meant or implied by "pure" risk-based end state as discussed in Step One of DOE-internal planning under Section 5.0 “Strategic Considerations” (page 3). The INEEL CAB had understood that the concept of risk-based end states is fundamental to the CERCLA process. **If DOE considers the risk-based end state used by CERCLA to not be "pure" enough, stakeholders will need to know more about this problem and how this policy will improve the goal of a risk-based end state.**

The fourth paragraph in Section 5.0 “Strategic Considerations” (page 3) states that site characterization must include a “validated site conceptual model.” That term needs further explanation. Who would validate a conceptual model and on what basis?

The final paragraph in Section 5.0 “Strategic Considerations” (page 4) makes good points, but the relationship between cleanup and long-term stewardship needs to be strengthened.

The second point under the discussion in Section 6.0 “End State Vision Considerations” (page 4) attempts to redefine "end state" as beginning at the time that the remedy is “operating as designed.” **The INEEL CAB completely disagrees. We recommend that DOE indicate**

**acceptance of the generally held concept that the end state cannot be achieved until the remedy has been completed and contamination has been removed, reduced to acceptable levels, or contained in an approved manner.**

The sixth point in Section 6.0 “End State Vision Considerations” (page 5) suggests that DOE should have the authority to declare a remedy complete. **The INEEL CAB objects strenuously and recommends that this point be deleted. The regulators must retain authority to declare a remedy complete.**

Section 7.0 “Scope and Content” (page 7) appears to indicate that DOE intends to use the proposed vision document as an excuse to not prepare specific plans and schedules for cleanup of specific sites. All of the items listed in the portion on “what the vision document is not” are important concerns. **At the very least, there should be clarification that DOE is obligated to provide meaningful public participation in developing detailed plans, schedules, and budgets. In addition, DOE must comply with all regulatory requirements and agreements, including those that are not addressed in the vision document.**