

1 COMMITTEE: Agriculture and Energy  
2 POLICY: Federal Facilities Cleanup (*Joint with the Environment*  
3 *Committee*)  
4 TYPE OF POLICY: Existing

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6 Federal and state governments are together faced with managing large quantities of  
7 hazardous, radioactive, and mixed (a combination of hazardous and radioactive materials)  
8 waste and materials that are located at numerous federal facilities throughout the United  
9 States. Some of these wastes and materials have been improperly handled over the years,  
10 necessitating both waste management and environmental restoration at these facilities.  
11 These facilities were crucial to the nation's production of nuclear weapons and overall  
12 defense strategy, and while significant progress has been made, there is a continuing need  
13 for conscientious and thorough environmental reclamation. These facilities, which belong to  
14 the U.S. Department of Energy and the U.S. Department of Defense, each have specific  
15 environmental needs that must be addressed.

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17 Radioactive and hazardous wastes have been generated since 1942 by the development,  
18 production, and maintenance of nuclear warheads by the Department of Energy's network of  
19 nuclear weapons production facilities, including its national research labs. Even as waste  
20 minimization activities are pursued, substantial amounts of waste continue to be generated,  
21 as the environmental restoration effort progresses. This includes transuranic waste (TRU),  
22 which the Department of Energy is currently disposing of at the Waste Isolation Pilot Project  
23 (WIPP) near Carlsbad, New Mexico, as well as the high-level radioactive waste generated by  
24 the production of nuclear weapons. This high-level waste will be disposed of in the same  
25 repository that the Department of Energy will operate for the disposal of spent fuel from  
26 commercial nuclear power plants. Significant amounts of low-level radioactive waste and  
27 mixed wastes were also generated from nuclear weapons production, as well as general  
28 maintenance activities, at military bases. This waste also requires disposal.

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30 Some wastes continue to be stored in inadequate interim storage facilities and pose  
31 potentially serious long-term threats to public health and the environment. There are also

32 safety and equity concerns surrounding the transportation and ultimate disposal of these  
33 wastes. The states insist that the cleanup and disposal programs advance in a safe, cost-  
34 effective and expeditious manner.

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36 Other federal facilities that have generated waste and may remain unsafe for humans include  
37 military bases and formerly used defense sites operated by the Department of Defense.

38 States are also committed to the cleanup and conversion of closed military bases to other  
39 beneficial uses as soon as possible. NCSL encourages the Department of Defense to lessen  
40 the impacts of closing these facilities by entering into partnerships with business and other  
41 private interests in order to turn them into sites of commerce and development.

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43 In 1992, Congress enacted the Federal Facilities Compliance Act (FFCA) which waived the  
44 doctrine of sovereign immunity and allowed partial state environmental regulation at federal  
45 facilities.

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47 NCSL firmly supports the principles of the FFCA. Furthermore, NCSL believes that:

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49 • Federal, state and local environmental laws have been enacted to protect health and  
50 the environment. Federal facilities must comply with and be held to the same  
51 standards established by these laws. Lower standards for federal facilities are  
52 unjustified.

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54 • The federal government should be responsible for the cleanup of federal facilities.  
55 There should be coordination among the Department of Energy, Department of  
56 Defense, and the U.S. Environmental Protection Agency with state regulatory  
57 agencies to insure that the cleanup of these facilities is properly and efficiently  
58 managed.

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60 • The federal government should be subject to all state laws governing the cleanup of  
61 hazardous and radioactive waste materials.

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63 • Department of Energy facility sites should continue to be incorporated into the National  
64 Priority List according to the severity of the risk they pose, but cleanup should be  
65 independent of Superfund monies.

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67 • The Department of Energy should continue to use the contract review process to  
68 provide effective oversight and to evaluate integrated contracts for cost accountability

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70 • Congress should provide for sufficient long-term funding for the effective and timely  
71 cleanup and disposal of existing and future wastes. Cost -effective solutions must be  
72 developed and implemented by federal agencies to meet cleanup standards that  
73 protect human health and the environment. Congress must fund and federal agencies  
74 must implement an aggressive research and development program to develop and to  
75 put into place the technology necessary to address the cleanup situation at all federal  
76 facilities.

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78 • Cleanup work must be accomplished in strict compliance with federal facility  
79 agreements, federal laws and regulations. Congress should give state and federal  
80 regulators complete enforcement authority necessary to ensure such compliance. For  
81 those sites that do not require extensive cleanup, a future use and owner should be  
82 identified as quickly as possible in order to return the affected land to productive use.

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84 • States, Indian tribes and affected units of local government must have a continuing,  
85 substantive role in the planning and oversight activities of the waste-management  
86 effort. The Department of Energy must recognize that cultural resources and artifacts  
87 may be present on DOE sites, and must partner with affected Indian tribes to identify  
88 and mitigate impacts to those resources. Additionally, the general public must also be  
89 given the opportunity to be involved in the decision-making process.

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91 Whenever possible, pollution prevention practices should be followed and recovered  
92 materials should be recycled or reused. As it will be necessary for waste to be transported  
93 across state-lines to waste storage and disposal facilities, all transportation must be done in  
94 compliance with state and federal safety procedures for the shipping of hazardous,

95 radioactive, and mixed wastes. States must play an integral role in evaluating the safety of a  
96 particular method of transportation and must be continually informed about the status of  
97 waste movement and storage.

98

## 99 **U.S. Department of Energy**

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101 Furthermore, NCSL recognizes the work of the Department of Energy's Office of Environment  
102 Management in developing the Five Year Strategic Plan, that includes comprehensive,  
103 strategic plans to characterize and prioritize the long-term cleanup and management of  
104 wastes at all Department of Energy facilities. NCSL urges the continued implementation of  
105 these accelerated cleanup plans, and supports the following:

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107 • A firm commitment to a cleanup schedule, including aggressive, but realistic  
108 milestones for all activities. Action should be taken to manage federal radioactive,  
109 hazardous, and mixed waste sites as soon as possible, but safety and quality cleanup  
110 must remain the priority.

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112 • Federal cleanup efforts must be conducted in full consultation with the affected states,  
113 Indian tribes and units of local government. Cleanup efforts should begin with site-  
114 specific plans which can then be used to develop a national plan for future cleanups.  
115 An ongoing dialogue with the states should be maintained and institutionalized to  
116 ensure effective state involvement in critical cleanup related decisions.

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118 • Federal cleanup efforts should enforce priorities and meet milestones set forth in  
119 federal-state consent orders regarding the cleanup of specific sites.

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121 • A fully funded and comprehensive long-term stewardship program for all of the  
122 Department of Energy sites must be developed to ensure that communities are  
123 protected in perpetuity.

124

125 • Funding designated to cleaned and closed “accelerated site cleanups” must be  
126 reallocated to other sites for cleanup.

127

128 NCSL acknowledges the Department of Energy's Performance Based Project Management  
129 with the goal of expeditiously and significantly improving program performance. NCSL  
130 supports improving program performance and risk reduction activities and supports the  
131 following:

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- 133 • The need for performance standards that are both consistent and effectively applied.
- 134
- 135 • The creation of a comprehensive risk-based cleanup strategy that reduces risk to  
136 human health and the environment. This strategy should be both clear and technically  
137 defensible.
- 138
- 139 • Department of Energy adherence to all National Environmental Policy Act processes,  
140 specifically the public involvement requirements.

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#### 142 **Waste Isolation Pilot Plant**

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144 In accordance with Public Law 96-164, the Department of Energy designed the Waste  
145 Isolation Pilot Plant (WIPP) as the first permanent repository for defense generated  
146 transuranic (TRU) waste.

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148 The Waste Isolation Pilot Plant Land Withdrawal Act (PL 102-579), passed by Congress in  
149 1992, allows for further testing and experiments to determine the viability of radioactive waste  
150 disposal in deep geologic salt formations as recommended by the National Academy of  
151 Sciences in 1955.

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153 NCSL urges Congress and DOE to:

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- 155 • Appropriate adequate funds and direct the Department of Energy and the  
156 Environmental Protection Agency to expedite their respective responsibilities under  
157 Public Laws 96-164 and 102-579.

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- 159       • Implement through DOE, a compensation program that recognizes equity  
160           considerations for state and local governments hosting a TRU waste repository and  
161           the federal government's obligation to provide such compensation.  
162
- 163       • Provide assistance to the host community to subsidize and maintain an independent  
164           environmental monitoring and analytical laboratory to ensure public confidence and  
165           safety (i.e., Carlsbad Environmental Monitoring and Research Center).  
166
- 167       • Provide assistance to the state of New Mexico and other affected states for highway  
168           maintenance and improvements, emergency response training and equipment, and  
169           public education.  
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- 171       • Provide assistance to corridor states for transportation-related impacts.  
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173       **U.S. Department of Defense**  
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175       NCSL will continue to work with the federal government in the development of site-specific  
176       cleanup plans. State legislators are interested in the timely cleanup and conversion of bases  
177       subject to closure to lessen the financial impact on the states and local communities from the  
178       closure of military facilities. The Department of Defense should establish an aggressive  
179       cleanup schedule for military facilities or develop options for the transfer of land to new  
180       owners who agree to cleanup the site before developing it for future use. The Department of  
181       Defense and any future owners should be subject to all state laws governing the cleanup of  
182       hazardous and radioactive waste materials. All cleanup efforts should be conducted in full  
183       consultation with affected states and local communities.  
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