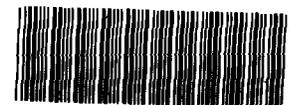


DOE RFO
 CO RESPONSE
 INCOMING LETTER

93 DOE 01153
 SUNDAY 2/2/93
 AC 100 1/5/93
 DU DATE

EG&G ROCKY FLATS



000029118

EG&G ROCKY FLATS INC
 ROCKY FLATS PLANT P O BOX 464 GOLDEN COLORADO 80402 0464 (303) 966 7000

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Robert M Nelson Jr
 Manager
 DOE RFO

Attn P M Powell

BURNING OF THE SOUTH INTERCEPTOR DITCH (SID) GHS-0021 93

The Surface Water Division (SWD) of EG&G Rocky Flats recently requested the assistance of the Ecology & NEPA Division (END) in preparing the necessary paperwork for DOE to submit a new Application for Open Burning Permit to the Colorado Department of Health (CDH) to cover the controlled burning of the SID in order to remove dead vegetation and cattails that are impeding the flow of water DOE RFO has stated that the burning should start April 1 1993

In the course of preparing the necessary paperwork END has identified several issues that need to be addressed before the burning can proceed Most of these issues were addressed at some point in the past and they may still be adequately addressed However it is not clear whether regulatory approvals that were obtained as long ago as 1991 are still valid or whether changes in the original seasonal timing of the burn are sufficiently significant to invalidate these prior approvals Also the files that we have examined might not be complete and there could have been subsequent contacts that we are not aware of If that is the case we would appreciate receiving any additional information pertaining to the following issues so we can evaluate that information

Following is a list of the issues that have been identified along with a brief discussion of each issue and suggested actions A summary follows the list

Issue Section 404 (Corps of Engineers) Wetland Permit

Discussion A letter from the Corps (Timothy Carey) to DOE (David Simonson) dated October 16 1991 states that this activity (Number 199177193) does not require a 404 permit This clearance may or may not be current

Suggested Action Unless DOE has guidance that clarifies this issue the Corps should be recontacted to see if the October 16 1991 letter is still valid

Issue Corps EPA Jurisdiction Controversy

Discussion There is confusion/disagreement over which wetland activities on Rocky Flats are under the jurisdiction of the Corps and which are under the jurisdiction of EPA If EPA is claiming jurisdiction of SID activities the Corps previous approval to burn the SID without requiring a 404 permit may not be adequate even if it is still current

NOTE _____

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Suggested Action END understands that DOE is pursuing this matter as it pertains to other projects at Rocky Flats and suggests that the SID burn activities be included in discussions with EPA and the Corps to clarify which agency has jurisdiction and what approvals are necessary

Issue Compliance with 10 CFR 1022

Discussion The Categorical Exclusion (CX) for this project (RFO/CX001 92) dated October 24 1991 includes a statement that the SID burn does not require wetlands action notification through the Federal Register or preparation of a floodplain/wetlands assessment (see 10 CFR 1022 5(g)) There appeared to be some confusion regarding the applicability of 10 CFR 1022 to this project in early correspondence discussing the burn activity The CX indicates that this was resolved

Suggested Action No action required

Issue Categorical Exclusion (CX)

Discussion Categorical Exclusion RFO/CX001 92 South Interceptor Ditch Vegetation Burn determines that no further NEPA documentation is required for this project and the project may proceed The CX does specify that the burn occur during the dormant period

Suggested Action Ensure that the burn occurs within or near the dormant period

Issue Compliance with Endangered Species Act (ESA)

Discussion A letter dated November 21 1991 from the U S Fish & Wildlife Service (FWS) (LeRoy W Carlson) to DOE (David Simonson) indicates that "the Service does not oppose the plan by Energy for maintenance burning of vegetation within the confines of the South Interceptor Ditch channel The Service concurs with the determination by Energy that burning the Ditch as outlined in the document does not result in a "may affect" determination for currently listed endangered species and Species of Concern as defined in the subject document A memo from David Simonson to Jack Kersh (December 2 1991) that accompanies this FWS letter states that the FWS and Colorado Division of Wildlife have agreed that burning the vegetation in the SID this time of year will not adversely impact wildlife Thus the vegetation burning of the SID can proceed per the burn permit from the State of Colorado "

It is not clear from the correspondence what is meant by "burning the ditch as outlined in the document," or what is meant by "this time of year" (The 1991 burn permit was issued 7/10/91 and expired 10/30/91 so it had already expired when the letter was written by FWS) If the currently proposed SID burn is not as outlined in the document or at "this time of year" the FWS and CDOW approval may not be valid.

Another letter from FWS (LeRoy Carlson) to DOE (James Hartman) dated April 1 1992, also addresses ESA and Migratory Bird Treaty Act (MBTA) concerns regarding the burning of the SID It recommends that Energy consider implementing a migratory bird nesting survey

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It also recommends that Energy design and implement a work plan for the vegetation burn that minimizes adverse impacts to migratory birds and other natural resources down-gradient for airborne and other potential transport mechanisms. We further recommend that Energy conduct the burn as soon as possible to minimize potential adverse effects to nesting migratory birds and other natural resources. Migratory bird nesting surveys are scheduled for March 17 and March 24 1993 with the report due by March 29.

Suggested Action Given the delay since the approval and the change in seasons during which the burn would occur it is not possible to determine whether the FWS approval is still valid. Unless DOE has additional information or more recent guidance from FWS the only way to know if the approval is valid is to contact FWS.

Issue Compliance with Fish & Wildlife Coordination Act (FWCA) Migratory Bird Treaty Act (MBTA) and Bald Eagle Protection Act (BEPA)

Discussion A letter from FWS (LeRoy Carlson) to DOE (David Simonson) dated November 21 1991 states that "the document entitled Fish and Wildlife Coordination Act Migratory Bird Treaty Act Compliance Proposed South Interceptor Ditch (SID Project Final Habitat Survey Report is consistent with the requirements of the Fish and Wildlife Coordination Act (16 U S C 703 712) the Migratory Bird Treaty Act (16 U S C 661-666c) and the Bald Eagle Protection Act (16 U S C 668-668c). There is no mention of time of year but it is not clear what restrictions if any might be stated in the referenced document. It is not clear whether this letter dated November 21 1991 is still valid or not.

Comments regarding the April 1 1992 letter from FWS to DOE, as discussed above in the ESA Issue Section also apply to the Migratory Bird Treaty Act.

Suggested Action Given the delay since the approval it is not possible to determine whether the FWS approval is still valid. Unless DOE has additional information or more recent guidance from FWS the only way to know if the approval is valid is to contact FWS.

Issue Memo from Office of Southwestern Area Programs Decontamination and Decommissioning Division (EM-453)

Discussion The referenced memo dated January 15 1992 from the Office of Southwestern Area Programs (Raymond Greenberg) to DOE (Frazer Lockhart) provides comments on the SID Project. The memo includes a request that the attached comments be considered for any future actions of this type at Rocky Flats. However the attached comments are incomplete and are missing one or more pages. A cover memo from DOE (David Simonson) to EG&G (J M Kersh) also requests that the comments be considered regarding future actions at the SID. Without a complete set of comments it is not possible to comply with the request to consider the comments for the proposed SID burn. A copy of the memo obtained from Document Control also lacks the missing page(s) of the comments.

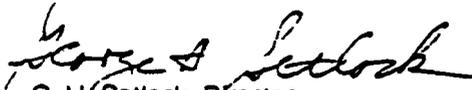
Suggested Action If compliance with these comments is an important issue a complete copy of the comments should be obtained and evaluated.

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In summary it appears that most of the documents and correspondence dealing with the SID burn are more than one year old and our files do not contain updates or subsequent contacts for required approvals. In most discussions of the burn and its potential environmental impacts the seasonal timing of the burn (fall) is cited as a reason why the burn will have acceptable environmental impacts. Since the proposed burn is apparently going to occur in the spring this could be viewed by agencies as a significant change in scope that would invalidate prior approvals. Correspondence from the FWS dated April 1 1992 indicates that the burn should occur as soon as possible to minimize potential adverse effects. This might indicate that the issue of fall vs spring burning is not a major problem but that burning later in the spring or summer could be a problem.

In order to avoid delay of the burn we feel it is important to discuss the above issues and any other unresolved issues with appropriate members of your staff while there is time to make necessary contacts. We recommend that a meeting be established between EG&G and DOE RFO staffs to discuss these issues and to develop any follow-up actions. Please advise S M Nesta of a suggested meeting date and time.

Should you have any questions please contact S M Nesta on X8605 or R C Flory on X8680.



G H Setlock Director
Environmental Protection Management
EG&G Rocky Flats Inc.

JDK agm

Ong and 1 cc R M Nelson Jr

cc

J Pepe DOE, RFO
B K Thatcher DOE, RFO