

United States Government

Department of Energy

Rocky Flats Office

**memorandum**

DATE: SEP 13 1993

REPLY TO  
ATTN OF: ERD:HR:10795

SUBJECT: Notice of Violation from the Environmental Protection Agency and the Colorado Department of Health on the Rocky Flats Interagency Agreement, Operable Unit 2

TO: Associate Deputy Secretary for Field Management, FM-1, HQ  
General Counsel, GC-1, HQ  
Assistant Secretary for Environmental Restoration and Waste Management, EM-1, HQ  
Assistant Secretary for Environment, Safety and Health, EH-1, HQ

In compliance with the August 18, 1993, guidance from the Secretary on Reporting Procedures for Enforcement Actions Related to Violations of Environmental Requirements, this memorandum provides notification that a Notice of Violation (NOV) has been formally submitted to the DOE Rocky Flats Office.

The violation relates to missing a previous Interagency Agreement (IAG) milestone date on Operable Unit 2 for the delivery of the Draft RCRA Facility Investigation/Remedial Investigation Report (RFI/RI) which was due on March 12, 1993. A request for extension on this Draft Report was denied by the regulatory agencies and a NOV was issued on March 16, 1993. The IAG required the submittal of a Final Report on August 9, 1993. The regulatory agencies also denied a request for extension on this Final Report and have now issued a second NOV.

Rocky Flats has expedited the schedule for delivery of the Draft and Final Reports and planned delivery on December 16, 1993, and May 21, 1994, respectively. Although Rocky Flats does not deny the authority of the Environmental Protection Agency and Colorado Department of Health (CDH) to impose fines and penalties on the first missed milestone for the Draft Report, there is a strong argument against imposing further penalties for missing the Final Report. Rocky Flats had requested and received the approval of the regulatory agencies to "Stop the Clock" on all Remedial Investigation Report activities as of June 21, 1993, for Operable Unit 2 until risk assessment issues were resolved. Resolving this issue will further impact the planned completion dates for both reports identified above.

DOE is liable for penalties of up to \$5,000 for the first week and up to \$10,000 for every week thereafter for noncompliance on each milestone missed under the IAG. The Notice of Violation for the Final RFI/RI Report was issued to the Department of Energy since the Management and Operating (M&O) contractor is not a party to the agreement. CDH has the authority to issue a comparable NOV to the M&O under the RCRA permit, but has not yet done so.



A. H. Pajole  
Acting Manager

7 Attachments:  
Background letters