

memorandum

Rocky Flats Office



000022362

DATE: FEB 16 1994

REPLY TO
ATTN OF: AMER:MHM:01388

SUBJECT: Informational Paper for Enforcement Action Against the U.S. Department of Energy Regarding Operable Unit No. 8

TO: Thomas P. Grumbly, Assistant Secretary, Environmental Restoration & Waste Management, EM-1 HQ
Tara J. O'Toole, Assistant Secretary for Environmental, Safety and Health, EH-1, HQ
Donald W. Pearman Jr., Acting Associate Deputy Secretary for Field Management, FM-1, HQ
Robert R. Nordhaus, General Counsel, Office of the General Council, GC-1, HQ

Please find attached an informational paper for the February 15, 1994 enforcement action by the U.S. Environmental Protection Agency, Region VIII, (EPA) and Colorado Department of Health (CDH) against the U.S. Department of Energy. The informational paper is required by the August 18, 1993 S-1 memorandum which sets forth guidance on reporting procedures for enforcement actions related to violations of environmental requirements.

The DOE Rocky Flats Office received a fax of a signed letter from EPA and CDH (attached) on February 15, 1994. The letter states that EPA and CDH are taking an enforcement action against DOE for the failure of submitting the Draft Phase I Resource Conservation and Recovery Act (RCRA) Facility Investigation/Remedial Investigation Report for Operable Unit No. 8 by February 14, 1994, as required by the Rocky Flats Plant Interagency Agreement.

Please note that an occurrence notification report required by DOE Order 5400.3B for the enforcement action has been initiated and will be transmitted by normal channels. We will also submit a supplement to the occurrence notification report by March 1, 1994 as required by the August 1993 S-1 memorandum.


Mark N. Silverman
Manager

Attachments

CC w/Att:

- E. Livingston-Behan, EM-20, HQ
- R. Scott, EM-20, HQ
- R. Lightner, EM-45, HQ
- R. Greenburg, EM-453, HQ
- A. Rampertaap, EM-453, HQ
- R. Pelletier, EH-23, HQ
- L. Smith, Deputy Manager, RFO
- D. Simonson, RFO
- M. McBride, AMER
- R. Schassburger, DAMER
- F. Lockhart, DAMER
- J. Hartman, AMSSS
- S. Olinger, AMESH
- D. Lindsay, OCC, RFO
- R. Birk, ER, RFO
- B. Thatcher, ER, RFO
- S. Stiger, EG&G
- B. Pererman, EG&G

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INFORMATIONAL PAPER - ROCKY FLATS PLANT OPERABLE UNIT 8
STIPULATED PENALTIES

The U.S. Environmental Protection Agency, Region VIII, (EPA) and Colorado Department of Health (CDH) transmitted a February 15, 1994 letter to the U.S. Department of Energy, Rocky Flats Office (DOE/RFO) stating that stipulated penalties under the Rocky Flats Plant Interagency Agreement (IA) will accrue automatically for the failure of DOE/RFO to meet the February 14, 1994 IA milestone for the OU 8 Draft Phase I RCRA Facility Investigation/Remedial Investigation (RFI/RI) Report. The stipulated penalties are up to \$5000 for the first week starting February 15, 1994 and \$10,000 for each week thereafter.

It is important to realize that we will incur additional violations to industrial area OUs 8, 9, 10, 12, 13 and 14 later in FY 94 and FY 95, including two milestones in April 1994.

BACKGROUND:

On January 31, 1994 DOE/RFO transmitted a letter to EPA and CDH requesting:

- (1) a modification to work, and
- (2) an extension of two milestones for the Draft and Final Phase I RFI/RI Reports for OU 8 (February 14 and July 12, 1994).

Justification for modification to work was that a portion of the Individual Hazardous Substance Sites (IHSSs) in OU 8 are beneath or immediately next to process buildings in the industrial area where transition and Decontamination and Decommissioning (D&D) activities will be necessary. There is a need to eliminate the potential for double cleanup as well as provide a more efficient approach for addressing the industrial area OUs. We proposed to separate the OU 8 IHSSs into two groups; (1) those tied to building cleanup and (2) those sufficiently away from buildings, not tied to building cleanup. A strategy for subdividing IHSSs in the RFP industrial area OUs (OUs 8, 9, 10, 12, 13 and 14) was faxed to EPA and CDH in January 1994 and formally transmitted to them on February 9, 1994. Furthermore, this strategy had been informally discussed in working meetings with EPA and CDH since the Spring of 1992.

The stated justifications for the extension of the OU 8 milestones were (1) the need to first modify the work and (2) insufficient FY 92 and FY 93 funding. In FY 92, DOE made the decision to give priority funding to OUs 1 through 7, 11 and 15 and to fund OUs 8, 9, 10, 12, 13 and 14 to the extent possible.

The EPA and CDH denied our request for an extension due to their perception of (1) a failure on DOE's part to secure adequate funding under the terms of the IA and (2) a unilateral DOE/RFO decision to allocate no funding to OU 8 for RFI/RI activities. They denied our request for modification to work because they believe we asked for more time to do less work and did not sufficiently discuss the details of the proposed modification to work.

We are considering entering dispute over the denial of our extension request with CDH as the lead OU 8 regulatory agency by March 1, 1994 under part 12 of the IA. The most likely justification for dispute will be technical, and will attempt to address incorrect assumptions in the IA for all RFP industrial area OUs. It is critical that we resolve the technical issues with EPA and CDH regarding the industrial area OUs. In addition, we

are currently looking into alternate approaches for RFI/RI activities at OUs 8, 9, 10, 12, 13 and 14 in order that we may expedite required activities.

Attachments

- (1) Five elements required for informational paper per August 18, 1993 S-1 memo
- (2) February 15, 1994 EPA and CDH letter

DATE: February 16, 1994

SUBJECT: Denial of extension request for submittal of the draft and final Phase I RFI/RI report for OU8, 700 Area.

ISSUE: Colorado Department of Health (CDH) and Environmental Protection Agency (EPA) sent a rejection letter of DOE,RFO's January 31, 1994 request for extension of the Draft and Final Phase I RFI/RI Reports for OU 8. The rejection letter was received by FAX on February 15, 1994 at 4:55 pm. CDH's letter states that "DOE is in violation of the Interagency Agreement (IAG)."

In accordance with the Secretary's guidance on reporting procedures for enforcement actions related to violations of environmental requirements dated August 18, 1993, five points as described under Section 1 - Enforcement Against the Department are addressed as follows.

(A) The nature of the alleged violation and of the environmental threat posed thereby;

A milestone for the draft Phase I RFI/RI Report for Operable Unit 8, due February 14, 1994, (in the Interagency Agreement between DOE, EPA, and CDH) was not met. No new environmental threat will result from this milestone violation.

(B) whether the alleged violation has been corrected, or is continuing;

The alleged violation has not been corrected. There are numerous outstanding technical issues that are still unresolved relative to the change in the Rocky Flats Plant mission that has impacted the scope of the OU8 RFI/RI workplan.

(C) the basis for the regulatory authority's discovery of the alleged violation (e.g. Department or contractor self-reporting or external regulatory inspection);

The existing IAG deadlines for OU 8 Draft and Final Phase I RFI/RI Reports are legally binding milestones under the current IAG. DOE formally notified CDH and EPA of its inability to meet these specific OU8 enforceable milestones on January 31, 1994, and requested an extension for good cause.

(D) whether fines or penalties are being assessed and, if so, the amount; and

Stipulated penalties are accruing since the receipt of the certified letter from CDH and EPA on February 15, 1994. The penalties are up to \$5,000 for the first week, and \$10,000 for each week thereafter for the late submittal of primary documents. In OU 8's case, this includes the Draft Phase I RFI/RI Reports, due February 14, 1994, and subsequent milestone, Final Phase I RFI/RI report, due July 12, 1994.

- (E) whether duplicative notices were issued to the Department and to a contractor for the alleged violation.

No duplicative notices were issued to other parties. The DOE was the sole recipient of the violation of the IAG. However, there was a Notice of Violation (NOV) issue to EG&G in May 1992 by CDH due to an inadequate OU8 Draft Phase I RFI/RI Workplan submission. The NOV has not yet been formally closed.