

ROCKY FLATS STEWARDSHIP COUNCIL

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Jefferson County -- Boulder County -- City and County of Broomfield -- City of Arvada -- City of Boulder
City of Golden -- City of Northglenn -- City of Westminster -- Town of Superior
League of Women Voters -- Rocky Flats Cold War Museum -- Rocky Flats Homesteaders -- Ken Foelske

January 8, 2007

RFLMA Comments
Rocky Flats Site
U.S. Department of Energy Office of Legacy Management
11025 Dover Street, Suite 1000
Westminster, CO 80021

Re: Rocky Flats Legacy Management Agreement

To The RFLMA Parties,

On behalf of the Board of Directors of the Rocky Flats Stewardship Council, I am pleased to offer comments on the draft Rocky Flats Legacy Management Agreement (RFLMA). Post-closure management of Rocky Flats remains vitally important and the Stewardship Council is grateful for the Department of Energy (DOE), the Environmental Protection Agency (EPA) and Colorado Department of Public Health and Environment's (CDPHE) commitment to this issue.

Long-term stewardship of Rocky Flats is multi-pronged – it includes legal controls, physical controls, communication strategies, Congressional appropriations, regulatory and community oversight plus much more. In past years the Rocky Flats Coalition of Local Governments (Coalition) and the Rocky Flats Citizens Advisory Board (CAB) hosted a productive dialogue and offered a number of recommendations that addressed issues central to long-term stewardship at Rocky Flats. We are pleased to note that many of the key issues identified during this dialogue are captured in the RFLMA.

The Stewardship Council believes the RFLMA is comprehensive and thus supports its approval. A few issues remain that we believe DOE, EPA and CDPE must address. The Stewardship Council thus offers the following comments.

1. Regulatory oversight of post-closure activities

As the Coalition and CAB advocated, ongoing EPA and CDPHE oversight of DOE through regulatory enforcement authority is critical in helping to ensure the numerous legal and physical systems are maintained and that the cleanup remains protective of human health and the

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environment. In summer 2003, EPA and CDPHE's roles post-closure were unclear and there was some suggestion that their enforcement role may be limited. We are therefore pleased that the RFLMA codifies ongoing enforcement authority for both agencies. We support these provisions.

2. *Explain how access to DOE-retained lands will be restricted*

Consistent with the work of the Coalition and CAB, the Stewardship Council places great importance in DOE, EPA and CDPHE defining in specific terms the physical and legal controls that will be used to restrict access to the DOE-retained lands. One important control is a fence demarcating the boundary between the Refuge and DOE-retained lands.

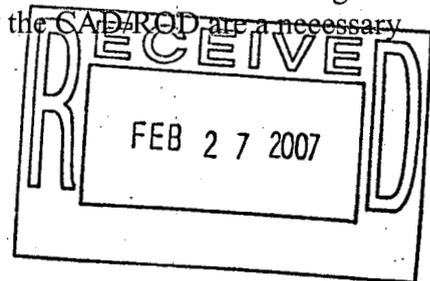
The Stewardship Council supports the agencies decision to post signs on a fence demarcating the boundary between DOE and United States Fish and Wildlife Service (USFWS) lands. We also support the decision to adopt institutional controls designed to restrict unauthorized access. These controls, when coupled with the signs USFWS intends on placing on Refuge lands, provide the type of layering that is necessary to help ensure long-term protection of the remedies and help inform future Refuge visitors of permissible and prohibited activities.

We understand based on conversations with DOE that the reason for the fence is to protect the remedies should USFWS opt to use ungulates as part of its weed management program. The fence is designed to keep those animals from wandering onto DOE lands and potentially disturbing the remedies. We agree with this reasoning and believe another compelling reason to maintain the fence must be further evaluated – keeping people who would unintentionally wander onto DOE lands from disturbing the remedies and monitoring stations. As the Stewardship Council noted in its September 12, 2006, comments on the Proposed Plan,

The Stewardship Council strongly supports the decision to prohibit access to DOE-retained lands. . . .The Stewardship Council believes a fence is warranted and DOE must agree to maintain the fence. . . .Taken together, the fence and signs will not deter those intent on disturbing the remedies and the monitoring systems, but should protect the remedies from those who would otherwise unintentionally wander into DOE lands.

The Stewardship Council recognizes that in regulatory terms the fence is not part of the remedy and thus is not required by the CAD/ROD. This physical barrier is nevertheless important, and regardless of whether a fence is part of the remedy or whether it is a best management practice (as DOE notes it is), it must be maintained.

The existing regulatory structure that by implication specifies the fence is not part of the remedy need not be altered to ensure it is maintained. Rather, the requirement that DOE maintain the fence should be added to the RFLMA under the same basis that DOE, EPA and CDPHE included other important provisions in Attachment 2 "Operational Monitoring" (Section 5.4). The provisions captured in the Section 5.4 are not required by the CAD/ROD but as the agencies have noted, regulatory requirements beyond those mandated by the CAD/ROD are a necessary part of a comprehensive post-closure management program.



Consistent with the approach taken in Section 5.4, we request the agencies add a provision to Attachment 2 specifying that a fence shall be maintained until such time that DOE, EPA and CDPHE, through the consultative process, collectively determine that it is no longer warranted.

3. *Surface Water and Groundwater Monitoring*

Clearly the provisions regarding surface water and groundwater monitoring are some of the most critical elements of the RFLMA. As noted in our September 12, 2006, letter on the Proposed Plan,

The Stewardship Council feels confident the process DOE, EPA and CDPHE utilized in developing the monitoring program and the decisions made (e.g., the siting of the approximately 120 groundwater wells and approximately 30 surface water monitoring stations) is comprehensive based on the existing data. There was substantive local government and community involvement and the decisions reflect important technical and policy considerations.

We are, however, concerned about the legal status of three surface water monitoring locations – SW18, Solar Ponds Discharge Gallery and GS51. In both the 2005 and 2006 Integrated Monitoring Plan these stations were identified as part of the monitoring network and were either considered investigative (GS51, SW18 for plutonium) or performance monitoring locations (Solar Ponds Discharge Gallery, SW18 for VOCs). We understand based on conversations with DOE and contractor staff that DOE intends to continue periodic monitoring at these locations. We support this decision.

According to DOE and CDPHE staff, ongoing monitoring at these locations will help DOE evaluate remedy effectiveness and, in turn, help DOE evaluate whether changes to the monitoring system or additional remediation are needed. Unfortunately, though, these monitoring stations and related requirements will not be captured in the RFLMA but instead will be part of DOE's site operations guide, a document that is beyond the regulatory reach of EPA and CDPHE. The Stewardship Council strongly believes that these stations should be included in Attachment 2 along with the other surface water and groundwater requirements. While these locations are not regulatory points of compliance, like the points of evaluation these monitoring locations help provide valuable data to evaluate remedy effectiveness.

DOE understands the ongoing value of these locations. So too do EPA and CDPHE. Yet, under the regulatory structure of the RFLMA DOE would be solely responsible for determining whether continued monitoring at these locations is warranted. The consultative process that is critical to all other water quality issues would be no longer applicable. Similarly, according to CDPHE, it is an open question as to whether DOE would be required to share data collected at these locations with EPA or CDPHE; it is likewise unclear whether DOE will have to include this information in CERCLA five-year reviews.

If DOE, EPA and CDPHE determine that monitoring at these three locations is no longer necessary then they should enter into the consultative process and remove these stations. So long as the agencies determine that these stations continue to provide valuable data – and clearly DOE does by its decision to continue to periodically monitor at these locations – then the full force of

the RFLMA should apply. After all, any data that helps determine remedy effectiveness is central to a comprehensive long-term stewardship program and thus should be part of the RFLMA and enforceable by EPA and CDPHE.

We therefore request that these three monitoring locations be added to the suite of locations identified in Attachment 2.

Alternatively, if DOE, EPA and CDPHE determine that the CAD/ROD prohibits including these stations in Attachment 2 along with the others surface water monitoring stations, then the Stewardship Council requests that these three stations be added to "Operational Monitoring" (Section 5.4).

4. Stakeholder Communication

As the Stewardship Council noted in its November 6, 2006, letter to DOE, EPA and CDPHE communication with the Rocky Flats Stewardship Council and its members remains vitally important. There are a few changes to the RFLMA that we would like DOE, EPA and CDPHE to make.

Quarterly meetings:

As the Stewardship Council communicated to DOE, EPA and CDPHE in its letters on the Proposed Plan (September 12, 2006) and in its letter to the three agencies on communication needs (November 6, 2006), we remain committed to ensuring that technical dialogues outside of Legacy Management's quarterly meetings continue. Legacy Management's quarterly meetings are important forums and the Stewardship Council looks forward to partnering with Legacy Management on these meetings. However, as we have stated in the past, these meetings should not become the sole forum to address important issues.

The Stewardship Council appreciates DOE's commitment, through both its actions and provisions the Department included in the post-closure public involvement plan (Appendix 2), to support discussions outside of the formal public meetings. The Stewardship Council does not believe all joint meetings between DOE and the Stewardship Council must be specified in the public involvement plan – but we had hoped that DOE would include in that plan quarterly technical meetings with local government staff and others.

The quarterly technical meetings with staff provide an additional forum to review monitoring data and other information that quantifies and qualifies the ongoing effectiveness of the cleanup remedies. Based on conversations Stewardship Council staff has had with DOE, we understand that as necessary (which includes at the Stewardship Council's request or the request of its members) DOE will participate in such meetings. The Stewardship Council therefore will not request that these technical meetings be specified in the public involvement plan.

Instead, the Stewardship Council will ask the cities of Broomfield, Northglenn and Westminster to schedule and host these meetings. Our plan is that these technical meetings take place approximately one week prior to the Stewardship Council's quarterly meetings. DOE would then formally present the quarterly data during the Stewardship Council's meeting. This proposal meets our members' needs while, we trust, not unduly burdening DOE.

Surface Water Compliance Reporting:

As noted in the Stewardship Council's November 6, 2006, letter to DOE, EPA and CDPHE, direct communication with the cities of Broomfield, Northglenn and Westminster on issues affecting water quality remains important. We believe the three agencies have taken important steps to address issues the Stewardship Council and these member governments have raised.

The Stewardship Council supports the numerous steps DOE, EPA and CDPHE have taken to meet this important request. Specifically, the Stewardship Council supports the provisions in Attachment 2 specifying that if DOE receives validated sample results that indicate an exceedance at a point of compliance or a point of evaluation of any surface water quality standards listed in Table 1, DOE has 15 days to notify CDPHE, EPA, the Stewardship Council, Broomfield, Northglenn, Westminster and Thornton. That means DOE will continue to notify our organization and these cities at the same time it notifies EPA and CDPHE.

Similarly, as DOE prepares to discharge water from the three terminal ponds (A-4, B-5 and C-2) the Department will notify the Stewardship Council and the four aforementioned cities at the same time it notifies EPA and CDPHE of its intent to discharge, pre-sampling results and the proposed discharge schedule. This provision, while not required by the CAD/ROD, was added to Attachment 2, Section 5.4. (This provision is, importantly, consistent with the September 26, 2006, water lease agreement for Walnut Creek between Broomfield and DOE which covers discharges from A-4 and B-5). The Stewardship Council supports this provision.

Groundwater Compliance Reporting:

The Stewardship Council supports many of the groundwater monitoring and reporting requirements specified in Attachment 2, including the provisions regarding regulator oversight. We are, however, concerned about the ongoing role of the Stewardship Council and its members as the groundwater monitoring program and treatment systems are evaluated and, as necessary, modified. In our comments on the Proposed Plan, the Stewardship Council recommended DOE, EPA and CDPHE continue the important dialogue with the community regarding development of, maintenance of and changes to the groundwater monitoring program.

Clearly DOE, EPA and CDPHE must be able to consult to identify solutions to any problems encountered. Yet, the consultative process as captured in the RFLMA swings the pendulum too far by potentially and unnecessarily limiting community engagement in this process. Specifically, unlike surface water, if problems with the groundwater monitoring and treatment systems are discovered, DOE only needs to formally notify the community quarterly. DOE has committed in Appendix 2 (public involvement plan) to make contact records between DOE, EPA and CDPHE publicly available once they are signed and to maintain an open door policy with the community. Importantly, though, depending on the nature of the problem and media at issue, contact records might only be signed once a decision amongst the RFLMA parties has been made. If we are notified once a decision has been made then we will have likely been excluded from the process.

This regulatory delineation regarding community involvement between surface water and groundwater makes sense as impacts to surface water can pose an immediate risk, whereas impacts to groundwater present a lesser risk due to the relative slow-moving nature of groundwater. Nevertheless, it is important that should problems be identified the Stewardship Council and its members should be notified in a timely manner, which may be more frequent than quarterly and may be prior to contact records being signed and issued. More importantly, should changes to the monitoring or treatment system be required, it remains important that our organization and our members be notified of the problems and likely solutions before DOE, EPA and CDPHE settle on a course of action.

Due to the slow-moving nature of groundwater the Stewardship Council will not press to make it a regulatory requirement that when DOE notifies EPA and CDPHE of issues with groundwater we also be notified. (Making it a regulatory requirement would put DOE at risk of being fined should they fail to provide simultaneous notice to the Stewardship Council and its members.) Yet, the Stewardship Council strongly objects to the three agencies making changes to the monitoring system and treatment systems without first discussing the problems and solutions with the Stewardship Council and its members.

Notifying us after the fact and/or making important decisions without our input would not be acceptable. One of the roles of the Local Stakeholder Organization (LSO) for Rocky Flats is "To discuss with federal, state, and local elected officials and agencies issues related to the long-term stewardship and management of the Rocky Flats site...and [to] solicit and transmit to DOE comments on long-term surveillance and maintenance issues as other issue as necessary." If the Stewardship Council learns of problems with or changes to these systems after DOE, EPA and CDPHE have decided on a course of action then it becomes exceedingly difficult for the Stewardship Council, as the LSO for Rocky Flats, to serve this important role.

We therefore request the provisions regarding the role of the community be broadened so to ensure our input early in the decision-making process.

Emergency Response:

The Stewardship Council also supports the provisions regarding emergency management. One of the lessons we learned from the April 2006 grassland fire at Rocky Flats was that communication with local emergency responders was important. We also learned that communication between DOE and emergency responders within the municipal and county governments potentially affected by the fire was critical. The communication mechanisms captured in the RFLMA are important and thus the Stewardship Council supports these provisions.

Should any member government's emergency response point of contact change our members will communicate those changes directly with DOE.

Violations of Institutional Controls:

The Stewardship Council also supports the provisions regarding a violation of an institutional control. We believe that once a violation is discovered initiating the consultative process is warranted. As noted above in the discussion on groundwater, it is important for DOE

to provide the Stewardship Council, as the LSO for Rocky Flats, with timely notice of the violation.

We therefore request that the RFLMA be amended to clarify the Stewardship Council and its members will be informed in a timely manner of any violations of institutional controls and be able to engage DOE, EPA and CPDHE prior to the agencies deciding on a course of action.

5. Reach of Institutional Controls

As the Stewardship Council noted in its September 2006 letter on the proposed plan, a few of the monitoring stations DOE will be charged with managing will be on Refuge lands. The RFLMA limits EPA and CDPHE oversight to ensuring the standards are met but does not include regulating the physical and/or institutional controls necessary to protect these stations. Once the Refuge is open to the public it will be critical to protect these stations from unintentional damage. It therefore remains imperative that DOE decide how these stations will be protected.

DOE's assurance that the Department will work with USFWS to address this question leaves an important issue unresolved. For years DOE and USFWS have resisted signing a Memorandum of Understanding regarding post-closure management of Rocky Flats, a document that could provide the steps the two agencies will take to address this issue. The agencies' inability to reach agreement on this document raises concerns.

Even though this issue is beyond the bounds of the RFLMA, we urge DOE to begin negotiations with USFWS on this issue.

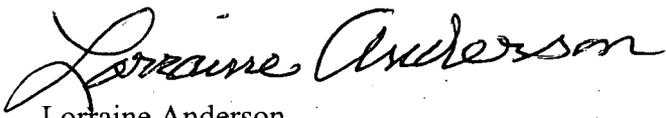
6. Funding for post-closure activities must be assured

A second issue that is beyond the bounds of the RFLMA but is essential to ensuring successful implementation of the RFLMA is funding for post-closure activities. By establishing DOE's Office of Legacy Management, Congress created an appropriations line-item that helps ensure DOE will receive adequate funding for all post-closure activities affecting Rocky Flats.

It remains important that DOE funding is driven by site-specific needs and obligations. Required actions cannot be scaled back as a result of inadequate budget requests by DOE to Congress or under funding by Congress.

Thank you for your continued commitment to work with the Stewardship Council and its members. An ongoing and active dialogue remains imperative to the long-term success of the cleanup of Rocky Flats. We look forward to reviewing your responses to these comments.

Sincerely,



Lorraine Anderson
Chairman

Cc: Senator Wayne Allard
Senator Ken Salazar
Representative Mark Udall
Representative Ed Perlmutter
Mike Owen, DOE
Mark Aguilar, EPA
Carl Spreng, CDPHE
Dean Rundle, USFWS