



Department of Energy  
Office of Legacy Management

April 23, 2009

Mr. Paul Frohardt, Administrator  
Colorado Water Quality Control Commission, OED-OEP-A5  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

Subject: Responsive Pre-Hearing Statement of the U.S. Department of Energy for Triennial  
Review Hearing for Regulation #38

Dear Mr. Frohardt:

This is to transmit the enclosed original and 13 copies of the subject Responsive Pre-Hearing  
Statement in this matter.

Please call me at (720) 377-9683 or Rick DiSalvo, Assistant Project Manager for DOE's Rocky  
Flats Legacy Management Support contractor, the S.M. Stoller Corporation, at (720) 377-9674 if  
you have any questions regarding the enclosure.

Sincerely,

Scott R. Surovchak  
LM Site Manager

RJD/abm

Enclosure

cc:

Carl Spreng, CDPHE  
David Moon, EPA Region 8  
Post Closure AR  
rc-rocky.flats RFS 425.02

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REPLY TO: Westminster, CO Office

RESPONSIVE PRE-HEARING STATEMENT OF THE U.S. DEPARTMENT OF ENERGY

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**REVISIONS TO THE CLASSIFICATIONS AND NUMERIC STANDARDS FOR THE  
SOUTH PLATTE RIVER BASIN REGULATION #38 (5 CCR 1002-38)**

**I. Introduction**

The Colorado Water Quality Control Division (Division) has proposed revisions to Regulation #38, section 38.6, Table 2, for Big Dry Creek segments 4a, 4b, and 5, as shown in Exhibit 6 of the Division's Proponent's Pre-Hearing Statement (WQCD 2009). These segments include portions of Woman Creek and Walnut Creek located on the Rocky Flats Site, which is owned by the United States and is under the U.S. Department of Energy (DOE) Office of Legacy Management's (LM's) jurisdiction and control. Portions of segments 4a and 4b are also located on the Rocky Flats National Wildlife Refuge (Refuge), land that DOE transferred to the jurisdiction and control of the U.S. Department of the Interior in 2007.

Rocky Flats was listed on the Comprehensive Environmental Response, Compensation, and Liability Act National Priorities List (NPL) in 1989. The final remedy was selected in the September 29, 2006, Corrective Action Decision/Record of Decision (CAD/ROD) (DOE et al. 2006) after DOE's completion of cleanup and closure in late 2005.

The CAD/ROD consolidated the portions of Rocky Flats that required additional response actions into the Central Operable Unit (OU). Generally speaking, the Central OU consists of the former industrialized area of Rocky Flats, the Original and Present Landfills, and land east of the former 903 Pad that contains relatively higher levels of residual contamination. The final remedy for the Central OU is being implemented in accordance with the *Rocky Flats Legacy Management Agreement* (RFLMA). RFLMA is attached as Exhibit 1.

The Rocky Flats Site area surrounding the Central OU was designated the Peripheral OU in the CAD/ROD. The Peripheral OU was deemed acceptable for unrestricted use and unlimited exposure, and was deleted from the NPL in 2007. That same year, portions of the Peripheral OU were transferred to the U.S. Department of the Interior to establish the Refuge.

This Responsive Pre-Hearing Statement addresses the revisions the Division proposed for the current recreational classification for segments 4b and 5.

DOE LM opposes the Division's proposed change to the recreational classification for segments 4b and 5 and requests that the Division update its recreational Use Attainability Analysis (UAA) for segments 4a, 4b, and 5.

## II. The Division's Proposed Revisions to Recreational Classification

The Division proposes changing the recreational classification for segments 4b and 5 from Recreation 2 (Not Primary Contact Use) to Recreation Class P (Potential Primary Contact Use). This proposed change results in a proposal to change the *E. coli* standard from 630/100 milliliter (mL) to 205/100 mL for segments 4b and 5.

The cleanup and closure of Rocky Flats included the removal of the sanitary sewer system and the Sewage Treatment Plant (STP) facility in 2005 and termination of the STP discharge permit. While this potential source of *E. coli* was eliminated in 2005, the proposed use revisions do not reflect the post-closure restricted-access conditions.

Pursuant to Regulation 31.5 (32) (5 CCR 1002-31, sec. 31.5(32)), "primary contact recreation" is defined as:

. . . recreational activities where the ingestion of small quantities of water is likely to occur. Such activities include but are not limited to swimming, rafting, kayaking, tubing, windsurfing, water-skiing, and frequent water play by children.

The Division did not present an update to the UAA to support the proposed change but presented the following rationale:

The change to the recreation use is a result of changes to access at Rocky Flats. Although a recreation UAA was completed a few years ago, this UAA is no longer reflective of the potential for public access and, consequently, the potential for primary or secondary contact to occur. It is the Division's understanding that the part of the old facility encompassing this segment is currently open to the public and will eventually become a wildlife refuge . . . Recreation is a potential use of this segment as access is not limited. Additionally, the Rocky Flats Cleanup Agreement requires the water in this segment to be of a quality that may be used for all purposes at site closure. (Division's Proponent's Pre-Hearing Statement, Exhibit 6 pp. 9-10.)

In fact, the areas of Rocky Flats encompassing these segments are closed to the public and will remain closed for the foreseeable future.

RFLMA modified and superseded the Rocky Flats Cleanup Agreement (see RFLMA paragraph 7; attached as Exhibit 1). Contrary to the Division's understanding, public access to the Central OU is prohibited, and RFLMA mandates that no-trespassing signs and signs listing the institutional controls (land use restrictions) be posted to implement the physical controls required by the remedy. In addition, the Central OU is surrounded by a four-strand barbed-wire fence. The required no-trespassing signs are posted on the fence to be legible from 25-foot intervals around the perimeter of the property (see RFLMA Attachment 2, section 3.2; attached as Exhibit 1). DOE LM and Legacy Management Support contractor staff members are present on site routinely to conduct surveillance and maintenance activities and to ensure that the no-trespassing rule is enforced.

The portion of segments 4b outside of the Central OU is in the property that has been transferred to the U.S. Department of the Interior as the Refuge; it is managed by the U.S. Fish and Wildlife Service. This property, like the Central OU, is surrounded by a four-strand barbed-wire fence and posted with no-trespassing signs. The Refuge is not open to the public, and DOE LM understands that there will be no recreational uses of this segment when public access to the Refuge is allowed. Exhibit 2 to this Responsive Pre-Hearing Statement shows the signage referred to above.

The portions of segment 4a that are on Rocky Flats property are subject to the same public-access restrictions as segments 4b and 5, and they also do not have recreational uses. (DOE LM is unaware of public-access restrictions and also unaware of actual or potential recreational uses on the portions of segment 4a that are not on Rocky Flats property.)

Class N (Not Primary Contact Use) is the appropriate use designation. Pursuant to Regulation 31.11.1(a)(iii) (5 CCR 1002-31, sec. 31.11.1(a)(iii)), Class N is for:

These surface waters are not suitable or intended to become suitable for primary contact recreation uses. This classification shall be applied only where a use attainability analysis demonstrates that there is not a reasonable likelihood that primary contact uses will occur in the water segment(s) in question within the next 20-year period.

Based on the current access restrictions and the foreseeable uses of the Rocky Flats property, there is no reasonable likelihood that primary contact recreational uses will occur in the next 20 years.

The Division's reference to the Rocky Flats Cleanup Agreement (RFCA) regarding water quality's suitability for all uses at site closure is taken out of context. First, RFLMA has superseded RFCA, so RFCA does not apply. Second, the water quality goals in RFCA were designed to guide response actions during the cleanup period. The applicable surface water uses for the Central OU under RFLMA include Recreation 2 (see RFLMA Attachment 2, section 2.1; attached as Exhibit 1).

We believe the Division is relying on an erroneous understanding of public access to Rocky Flats and has not provided any evidence to support a change in the recreational classification. If the Division's proposal to revise the classification is not granted, then the proposed revised *E. coli* standard would not be appropriate for segments 4b and 5.

DOE LM proposes that the Division update its UAA for these segments to reflect the post-closure conditions and public-access restrictions for segments 4b and 5 and the portion of segment 4a on Rocky Flats property.

### **III. Witnesses**

The following persons may provide testimony in support of this proposal. Other witnesses may be identified based on consideration of any Rebuttal to this Responsive Pre-Hearing Prehearing Statement.

Scott Surovchak, DOE  
Richard DiSalvo, S.M. Stoller Corporation (Legacy Management Support Contractor)

**IV. Exhibits**

Exhibit 1, *Rocky Flats Legacy Management Agreement*.

Exhibit 2, Signs Posted on Rocky Flats Property.

**V. References**

DOE (U.S. Department of Energy), EPA (U.S. Environmental Protection Agency), and CDPHE (Colorado Department of Public Health and Environment), 2006. *Corrective Action Decision/Record of Decision for Rocky Flats Plant (USDOE) Peripheral Operable Unit and Central Operable Unit, Jefferson and Boulder Counties, Colorado*, U.S. Department of Energy, U.S. Environmental Protection Agency, and Colorado Department of Public Health and Environment, September.

WQCD (Water Quality Control Division), 2009. Prehearing Statement of the Water Quality Control Division, Revisions to the Classifications and Numeric Standards for the South Platte River Basin (Regulation No. 38), March 24.

5 CCR 1002-31. Colorado Department of Public Health And Environment Water Quality Control Commission Regulation No. 31, The Basic Standards and Methodologies for Surface Water, effective May 31, 2008.

Respectfully submitted this 23<sup>rd</sup> day of April 2009.



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Signs Posted on Rocky Flats Property



No Trespassing sign required by RFLMA. Signs are placed on barbed wire fence that surrounds the Central OU Perimeter at intervals to be legible from 25 foot intervals.



Signs posted at access road to Rocky Flats Site and National Wildlife Refuge.

Signs Posted on Rocky Flats Property



Typical no trespassing sign posted on barbed wire fence surrounding Rocky Flats Site and National Wildlife Refuge.

CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the Responsive Pre-Hearing Statement of the U.S. Department of Energy in the matter of the rulemaking hearing for consideration of Revisions to the Classifications and Numeric Standards for the South Platte River Basin, Regulation #38 (5 CCR 1002-38), was mailed or e-mailed to the following mail addresses and/or e-mail addresses on the 23<sup>rd</sup> day of April 2009:

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**Plum Creek Wastewater Authority  
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**Littleton/Englewood Wastewater Treatment  
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U.S. Department of Energy's Responsive Pre-Hearing Statement Revisions to the Classifications and Numeric Standards for the South Platte River Basin Regulation #38 (5 CCR 1002-38)

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