

Raynes, Scott

From: David Allen [dallen@ci.broomfield.co.us]
Sent: Tuesday, October 19, 2010 3:14 PM
To: RFInfo
Cc: Surovchak, Scott; carl.spreng@state.co.us; moritz.vera@epa.gov
Subject: Broomfield Comments - RFLMA Changes
Attachments: Broomfield RFLMA Comments.pdf

To RFLMA Parties:

The City and County of Broomfield is please to submit our comments on the ***Proposed 2010 Modifications to Attachment 2 - Legacy Management Requirements of the Rocky Flats Legacy Management Agreement (RFLMA)***. Hard copies of the attached letter will be sent to the RFLMA parties and to the cc list by standard mail. Please contact me if you have any questions on our comments. Thanks.

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October 19, 2010

RFLMA Attachment 2 Modification Comments
U.S. Department of Energy
11025 Dover Street, Suite 1000
Westminster, Colorado 80021

Sent via Email to rinfo@LM.doe.gov

RE: Proposed 2010 Modifications to Attachment 2 – Legacy Management Requirements of the Rocky Flats Legacy Management Agreement (RFLMA)

To RFLMA Parties:

The City and County of Broomfield (Broomfield) appreciates the opportunity to offer comments on the proposed modifications to the *Rocky Flats Legacy Management Agreement (RFLMA) Attachment 2 – Legacy Management Requirements*. Broomfield also wants to express its thanks to the RFLMA Parties, which includes the Department of Energy, Office of Legacy Management (DOE-LM), the U.S. Environmental Protection Agency (EPA), and the Colorado Department of Public Health and Environment (CDPHE), for extending the public comment period on two separate occasions at our request.

Broomfield has a population of approximately 58,000, more than 30,000 jobs across all industry sectors, over 4 million square feet of retail space, and is home to over 20 corporate, regional, and national, headquarters. Broomfield, which is immediately downstream and downwind of the Rocky Flats site, is seriously concerned with the post closure changes that are being proposed by DOE-LM. Broomfield was actively involved with the decision making process to support an accelerated regulatory closure and to establish the current monitoring regime. If DOE-LM continues to proceed without the support of the downstream communities, it will undermine the collaborative and cooperative process that was successfully used to achieve accelerated closure at Rocky Flats.

As a downstream community and asset holder, Broomfield does not support the approach that has been proposed by DOE-LM. We recognize that there are two separate regulatory processes for approving the proposed breaching of the dams and amending the RFLMA; however, the approach used so far has not provided Broomfield with a level of comfort to support these changes. Both of these changes should be evaluated in a holistic manner since they have potentially significant irreversible consequences. We believe that the establishment of a working group will (1) result in a more efficient means to exchange information and ideas, (2) provide a more effective approach for developing consensus with the affected stakeholders, and (3) improve public participation and support. Our

goal, as with the DOE-LM, EPA, and CDPHE, is to ensure that the public health and environment remains protective to those who live, work, shop, visit, and recreate in Broomfield.

Summary Listing of Concerns

Broomfield has several overarching concerns related to the changes being proposed by DOE-LM:

1. The proposed amendments to RFLMA which eliminate the test and release operations for the terminal ponds violates the terms and conditions of the Lease Agreement between the Department of Energy and Broomfield, dated September 26, 2006.
2. The construction of the new monitoring points, as well as the breaching of the dams which is being considered as a separate action under the National Environmental Protection Act (NEPA) process, violates the institutional control which prohibits excavations greater than 3 feet.
3. Any changes or modifications to the Institutional Controls requires a formal amendment to the Corrective Action Decision/Record of Decision (CAD/ROD) and cannot be made through a consultative process.
4. DOE-LM is proposing to disregard state regulations and EPA guidance documents for Applicable or Relevant and Appropriate Requirements (ARAR) by eliminating upstream surface water Points of Compliance (POC) located at the terminal ponds and moving them further downstream from the source of contamination.
5. The proposal to use a 12-month rolling average instead of a 30-day average to determine surface water compliance masks the variability of the monitoring data and disregards the ability to incorporate an advance warning system.
6. AOC Wells and the discharge locations for the four groundwater treatment units need to be designated as POC to adhere to state and federal regulations.
7. Contact Record 2010-04, dated July 15, 2010, presumes that the amendments to the RFLMA will be implemented and prematurely grants approval for DOE-LM to excavate below 3 feet for the new monitoring locations. In addition, it also assumes that the NEPA document for the dam breachings has been approved.
8. Any new monitoring points should be operated in conjunction with existing POCs (i.e. located at the terminal ponds and Indiana Street) for several years to make sure monitoring results at the proposed location are representative of both upstream and downstream conditions.
9. No changes or revisions to the POC monitoring frequency, water quality standards, method of calculation, and compliance standards should be made until

the evaluation period in the previous item above is completed and another public comment period is held.

10. DOE-LM has not provided any data or modeling studies to support the statement that groundwater emerges to surface water before leaving the Central OU [RFLMA Section 5.2].

Broomfield wants to make sure that the remedy remains protective of human health and the environment. In addition, Broomfield would prefer to support the changes rather than taking on an adversarial position. To achieve this, we recommend that DOE-LM, USAPA, and CDPHE consider an alternative approach that uses an incremental implementation strategy and provides for greater community involvement.

Broomfield requests that a working group be established to address the comments and concerns stated in this letter. No approvals or final decisions on the dam breachings or RFLMA amendments should be made until the working group has had the opportunity to reach a consensus on purpose, need, timing, and scope of the proposed changes. Broomfield will provide its vision of the roles, responsibilities, and participants of this working group in the next 4 to 6 weeks. We believe that the working group should be formally recognized and acknowledged as an amendment to RFLMA.

Our remaining comments are intended to provide further support and additional clarity to the Summary Listing of Concerns stated above. To achieve this, we have divided the remainder of this letter into three main headings: General Comments, Specific Comments, and Closing Remarks. We request that DOE-LM, USEPA, and CDPHE disposition each comment individually and would appreciate a joint meeting with each agency to review the responses before any final decisions or approvals are made.

General Comments

During the past year, Broomfield has made the following assertions through various written and verbal communications with DOE-LM, the U.S. Environmental Protection Agency (EPA), and the Colorado Department of Public Health and Environment (CDPHE):

- The proposed changes openly violate the institutional controls and other restrictions in the regulatory closure documents, state and federal environmental statutes, and written agreements;
- There are no compelling technical or scientific justifications for the changes;
- With regulatory closure occurring less than 5 years ago, the site has not been subject to a sufficient number of wet, normal, and dry hydrologic cycles to demonstrate long-term effectiveness of the remedy; and
- Many of the engineered controls are not functioning as intended and the site is still undergoing physical changes.

To date, Broomfield has not received any satisfactory written responses from DOE-LM, USEPA, or CDPHE to repeated requests on the first two items listed above. Broomfield believes that any future changes should adequately address these very important concerns, at a minimum. Any decision to proceed without a formal response would constitute poor public policy.

Water Lease Agreement

Broomfield believes that the interim changes to operate the terminal ponds in a flow through manner and the permanent modifications to breach the dams are in direct violation of the terms and conditions of the Lease Agreement between DOE and Broomfield, dated September 26, 2006. Both modes of operation are in direct conflict to the requirement to sample and test surface water before discharges are made.

Institutional Controls

Breaching the remaining dams and constructing new monitoring points would violate institutional control that prohibits excavations deeper than 3 feet. The CAD/ROD does not provide a process for issuing variances to the Institutional Controls. A description of the consultative process begins on page 71 of the CAD/ROD and reads:

DOE shall notify EPA and CDPHE 45 days in advance of any proposed land use changes that are inconsistent with the objectives of these institutional controls or the selected remedy/corrective action. DOE shall not modify or terminate institutional controls, implantation actions or modify land use without approval of EPA and CDPHE. DOE shall seek concurrence before any anticipated action that may disrupt the effectiveness of these institutional controls or any action that may alter or negate the need for the institutional controls. For purposes of this CAD/ROD, DOE may not modify or terminate these institutional controls without the approval of EPA and CDPHE, by formal amendment to this CAD/ROD. (Emphasis added.)

Broomfield asserts that approving excavations beyond 3 feet for non-remedy related purposes constitutes a modification to the Institutional Control. Since the proposed activities create new pathways that were not evaluated in the comprehensive risk assessment, an amendment to the CAD/ROD is needed to include supplemental risk assessments for each location where excavations will occur.

Points of Compliance/ Applicable or Relevant and Appropriate Requirements (ARAR)

EPA guidance documents for ARARs clearly state that surface water Points of Compliance (POC) should be located at the site boundary or at the point of discharge. For the Rocky Flats site, all of the groundwater treatment units at the Rocky Flats site have been designated in the remedy as engineering controls. Therefore, regulatory points of compliance should be established at the discharge of all groundwater treatment

systems to maintain consistency with EPA guidance documents and with state water quality regulations.

Groundwater Monitoring

Contact Record 2010-04, dated July 15, 2010 states that the Area of Concern (AOC) wells serve as the points of compliance for groundwater. The RFLMA should be revised to support this statement and maintain compliance with State WQCC Regulation No. 41. In addition, all AOC wells should be tested for the entire suite of analytes listed in Table 1 of the RFLMA.

No Technical, Environmental, or Economic Justification

DOE-LM has repeatedly stated that one of its primary goals is to re-establish natural conditions at the Rocky Flats site. While this is an admirable objective to pursue, it does not address the fact that residual contamination will remain at the site for many generations to come. Broomfield believes that the current remedy (which collectively includes the institutional controls, the engineered controls, the monitoring program, and operations plan) is adequate and the changes proposed by DOE-LM do not reduce risk or provide greater protection for human health and the environment.

30-Day Average vs. 12-Month Rolling Average

Currently, there are two analytical methods to determine if a violation of an enforceable standard occurs at the existing surface water POCs. A 30-day average calculation applies to the Indiana Street POC, while a less sensitive 12-month rolling is used at the POC located at the terminal ponds. Broomfield is concerned that the use of the longer timeframe will delay the timing when a reportable condition occurs. We believe that any future POCs should be based on the 30-day average since it will better reflect subtle changes in contamination levels and provide more advanced warning of increases in contaminate levels.

Lack of a Contingency Plan

The actions above are further compounded by the fact that DOE-LM has not prepared a contingency plan in the event a compliance standard is exceeded. Instead, DOE-LM will rely on a consultative process with EPA and CDPHE to decide how to proceed with further studies or monitoring. This method of operation is unacceptable to Broomfield.

Specific Comments

In addition to the general comments discussed above, Broomfield has several specific comments of the proposed amendments to Attachment 2 of RFLMA. These changes are listed in chronological order. Proposed additions are shown in ***bold italic*** typeface and proposed deletions are shown in ~~strike-through~~ typeface.

The existing surface water use classification of Recreation 2 at the top of the page should be replaced with the following to maintain consistency with WQCC Regulation Nos. 31 and 38:

- ~~Recreation 2, and~~
- **Recreation N (North Walnut Creek, South Walnut Creek, and Pond C-2),**
- **Recreation E (Woman Creek),**

Section 2.1 Surface Water Standards – Page 2

The first full paragraph, beginning with the second sentence should be revised as follows to reflect the fact that the all previously granted temporary modifications for the site expired on December 31, 2009:

If the numeric values from basic standards and the site specific standards differ, the site specific standard applies, except where temporary modifications **have been approved by the WQCC** are in place. ~~Temporary modifications for six organic compounds, nitrate and nitrite, as listed in Table 1, have been granted through the year 2009 by the WQCC.~~

Section 2.1 Surface Water Standards – Page 2

The last sentence of the second paragraph should be revised as follows since Contact Record 2010- 04, dated July 15, 2010, states that Area of Concern (AOC) wells satisfy the ARAR in [WQCC] Regulation No. 41 for groundwater POCs:

Exceedances of water quality standards at a surface water POC **or a ground water AOC Well** may be subject to civil penalties under Sections 109 and 310(c) of CERCLA.

Section 5.0 Monitoring Requirements – Page 3

The second sentence under the third paragraph should be revised as follows:

If standard analytical methods **have detection limits that are higher than the respective standard** ~~cannot attain the standard~~ then alternative methods or PQLs will be proposed to the CDPHE **for review and approval by the WQCC.**

Section 5.1 Monitoring Surface Water – Page 4

No changes to this section should be made until such time that DOE-LM can demonstrate through concurrent sampling that the proposed POCs will be representative of the existing upstream and downstream POCs.

Section 5.2 Monitoring Groundwater – Page 4

The second sentence in the Area of Concern (AOC) Wells classification should be revised as follows pursuant to WQCC Regulation No. 41:

These wells are monitored *as Groundwater POCs* to determine whether the plume(s) may be discharging to surface water *and demonstrate compliance with the water standards in Table 1.*

Section 5.3.3 Groundwater Treatment Systems – Page 5

The last sentence should be revised as follows since the groundwater treatment systems discharge to surface waters of the State:

The *effluent discharge point will serve as the POC and the treatment* systems will be *operated and* maintained to ensure the effluent meets *the water standards in Table 1 standards.*

Section 5.4.1 Boundary Wells – Page 6

This section should be retained without any changes until such time the monitoring data or new groundwater studies and/or modeling show that groundwater contamination is not migrating beyond Indiana Street.

Section 5.4.2 Pre-discharge Pond Sampling – Page 6

Broomfield asserts that this paragraph should remain unchanged since a final decision to breach the dams has not been made. In addition, if DOE plans to operate the terminal ponds in a flow through condition (a proposal that we strictly oppose unless protocols and procedures are significantly revised), then at a minimum, appropriate sampling protocols and procedures need to be added to this section to specify when flow through operations will cease and then subsequently resume. These are the types of revisions, among others, which we submit are appropriate to address in the working group. Further, additional modifications and amendments to the RFLMA and Water Lease with Broomfield will be required to allow any changes to the existing test and release mode of operations for the terminal ponds.

Section 6.0 Action Determinations – Page 7

Add language that local communities are notified of all reportable conditions and are invited to participate in any consultative process between DOE, CDPHE, and EPA.

When reportable conditions occur (except in the case of evidence of violation of institutional controls as described below), DOE will inform CDPHE, ~~and EPA,~~ *and the downstream communities' working group* within 15 days of receiving the inspection reports or validated data. Within 30 days of receiving inspection reports or validated analytical data documenting a reportable condition, DOE will ~~submit a plan and a schedule for an evaluation to address the condition~~ *initiate the consultative process described in RFLMA Paragraph 11 to determine if mitigating actions are necessary. As part of the first step in the consultative process, DOE will submit a draft plan and proposed schedule to identify the potential source, cause, and risks associated with the reportable condition* ~~consult as described in RFLMA Paragraph~~

~~to determine if mitigating actions are necessary.~~ ***The downstream communities' working group will be invited to participate whenever the consultative process is initiated for informational purposes and to provide support if requested.*** Final plans and schedules ***to conduct further investigations and studies or*** for implementing any mitigating actions, ~~if any,~~ will be approved by CDPHE in consultation with EPA. DOE is not, however, precluded from undertaking timely mitigation ***to protect human health and the environment*** once a reportable condition has been identified.

In the case of a violation of institutional controls, DOE will notify EPA, and CDPHE, ***and the downstream communities' working group*** within 2 days of discovering any evidence of such a violation, and at that time initiate the consultative process to address the situation. In no case will DOE notify EPA, and CDPHE, ***and the downstream communities' working group*** more than 10 days after the discovery of a situation that may interfere with the effectiveness of the institutional controls. DOE will notify EPA, and CDPHE, ***and the downstream communities' working group*** of the actions it is taking within 10 days after beginning the process to address the situation.

Section 6.0 Action Determinations – Page 8

The last bullet point that references Figure 13 Flowchart – Pre-discharge Pond Sampling should not be deleted.

Table 1 Surface Water Standards – Pages 11 through 15

Remove the Temporary Modifications column and delete footnotes [c] and [h].

Table 1 Surface Water Standards – Pages 11 through 15

Revise footnote [n] to indicate that the standard is for arsenic.

Table 2 Water Monitoring Locations and Sampling Criteria – Pages 16 through 18

1. Points of Compliance – No changes to delete the existing or construct new surface water Points of Compliance should be made until sufficient field data has been gathered to demonstrate the new proposed locations will continue to be representative of the existing monitoring sites.
2. Boundary Wells – The boundary wells should not be deleted.
3. Present Landfill (PLF) Area – Assuming the Present Landfill pond is breached and PLFPONDEFF monitoring site is deleted, there is no need to add the new surface water monitoring site designated as NNG01. The monitoring site PLFSYSEFF, which corresponds to the Present Landfill Treatment System effluent, would better serve as the compliance location since it discharges to surface waters of the State and is located as close as practical to the source of contamination.

4. Present Landfill (PLF) Area – Based on the preceding item above, the analytes for PLFSYSEFF should be changed from “VOCs, SVOCs, U, metals” to “*As required by decision rule.*”
5. Pre-discharge – All three pre-discharge monitoring locations listed should be retained.

Proposed Figure 1 Water Monitoring at Rocky Flats – Page 26

The proposed sequence and dates for the dam breachings listed in the right hand margin do not correspond to the verbal information provided by DOE. Regardless, the original figure should be retained since the justification for the new monitoring sites are based on plans to breach the terminal dams which have not been approved.

Figure 5 Points of Compliance – Page 30

No changes to the figure should be made since the changes are based on the assumption that the dams have been breached. In addition, Reportable Conditions and evaluation of compliance with remedy performance standards for Nitrate must be based on a 30-day average, not a 12-month rolling average, to adhere to the chronic standards listed in State WQCC Regulations Nos. 31 and 38.

Figure 6 Points of Evaluation – Page 31

The method of calculation for all applicable analytes should be based on a 30-day average instead of the 12-month rolling average since these monitoring site are intended to serve as an early warning system. Accordingly, footnote 2 regarding the 12-month rolling average should also be deleted.

Figure 7 Area of Concern Wells, Boundary Wells, and SW018 – Page 32

The existing figure should be retained as is, without any of the changes proposed by DOE.

Figure 11 Groundwater Treatment Systems – Page 36

The following revisions should be made to the flow chart:

1. Box that states “Sample ~~PLFPONDEFF~~⁷ NNG01⁷” should be deleted since there is no need to construct a new surface water monitoring site downstream of the PLFSYSEFF if the Present Landfill pond is breached. PLFSYSEFF is the appropriate monitoring location since it is where discharges to surface water occurs and it is as close as possible to the source of contamination.
2. Footnote 7 should be deleted based on the preceding item above.
3. PLFPONDEFF should be deleted from footnote 6 if the monitoring site is removed.

Figure 13 Pre-discharge Pond Sampling – Page 38

This figure should not be deleted and be retained.

Closing Remarks

Broomfield is amenable to considering flow-through operations of the terminal ponds contingent upon the development of operational and performance criteria for initiating or terminating flow-through operations on a temporary or permanent basis. Such criteria must be agreed upon by the downstream communities and documented in RFLMA. In addition, DOE-LM must adopt a contingency plan that outlines the physical and/or operational actions that DOE-LM will employ in the event a compliance standard is exceeded at any surface water Point of Compliance.

If EPA and CDPHE approves the changes to RFLMA as proposed by DOE-LM, the level of protection provided by the remedy will be reduced, and there will be a corresponding increase in the risks associated with the site. In effect, DOE-LM's proposal will result in the following:

1. Creation of new exposure pathways that were not evaluated or considered as part of the comprehensive risk assessment in the CAD/ROD.
2. Moves existing upstream points of compliance further from the source of contamination.
3. Proposes to establish new surface water points of compliance at the confluence of multiple tributaries which would dilute concentrations and monitoring results with larger volumes of flow.
4. Adopts a less sensitive 12-month average for regulatory compliance purposes instead of keeping the 30-day average that exists at the downstream POCs.
5. Eliminates the physical capability to prevent water that exceeds the standards from migrating off-site.

Despite our opposition to the approach taken so far, we believe that the formation of a working group would provide a forum to allow DOE-LM to meet its goals, allow CDPHE and EPA to provide continued regulatory oversight, and allow the downstream communities to establish greater confidence that the remedy will continue to remain protective of human health and the environment well into the future. Broomfield recommends the establishment of such a group to ensure the proposal and any future site changes occur in a phased manner through a collaborative and cooperative manner. This type of an approach will reaffirm our confidence in the long-term performance of the remedy and help foster a credible public image. As stated previously, we will provide a recommendation for the organizational structure of the working group in the next 4 to 6 weeks.

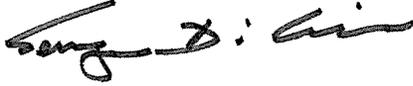
Thank you for the opportunity to provide comments on this important document. We look forward to continue working with you.

Proposed 2010 Modifications to Attachment 2 – Legacy Management Requirements of
the Rocky Flats Legacy Management Agreement

October 19, 2010

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Sincerely,



George Di Ciero
City and County Manager

cc: Doug Young, Senator Udalls' Office
Zane Kessler, Senator Bennet's Office
Andy Schultheiss, Representative Polis' Office
Bill Holden, Representative Perlmutter's Office
Dave Geiser, DOE-LM
Thomas Pauling, DOE-LM
Scott Surovchak, DOE-LM
James Martin, USEPA
Carol Rushin, USEPA
Larry Svoboda, USEPA
Vera Moritz, USEPA
Martha Rudolph, CDPHE
Howard Roitman, CDPHE
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Gary Baughman, CDPHE
Carl Spreng, CDPHE
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Lori Cox, Broomfield Councilmember
Jeff Stoll, Broomfield Public Health Officer
David Allen, Broomfield Deputy Director of Public Works
Brent McFall, Westminster City Manager
Mike Smith, Westminster Director of Public Works
Bill Simmons, Northglenn City Manager
Josh Nims, Woman Creek Reservoir Authority
Dr. Mark Johnson, Jefferson County Public Health
David Abelson, Rocky Flats Stewardship Council