

1 COLORADO DEPARTMENT OF ENERGY

2

3 REPORTER'S TRANSCRIPT OF PUBLIC MEETING June 16, 2011

4

IN RE:

5

6 PROPOSED PLAN FOR AMENDMENT OF
7 THE CORRECTIVE ACTION DECISION/
8 RECORD OF DECISION (CAD/ROD)

7

and
8 ROCKY FLATS LEGACY MANAGEMENT
9 AGREEMENT (RFLMA) ATTACHMENT 2
PROPOSED MODIFICATION

9

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11 PURSUANT TO NOTICE to all parties in interest, the
12 above-entitled matter came on for public meeting on
13 Thursday, June 16, 2011, commencing at 6:31 PM at the
14 Westminster City Park Recreation Center, 10455 Sheridan
15 Boulevard, Westminster, Colorado 80020, before
16 Martha Loomis, Certified Shorthand Reporter and Colorado Notary
17 Public.

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20 APPEARANCES:

21 RFLMA COORDINATORS

22 Robert Darr, DOE

23 Scott Surovchak, DOE

24 Carl Spreng, CDPHE

25 Vera Moritz, EPA

1 P R O C E E D I N G S

2 MR. DARR: I want to thank you all and welcome you to
3 our public meeting to talk about the proposed plan for the
4 Amendment to the CAD/ROD to clarify the IC.

5 Our meeting agenda, first I'd like to start off and
6 introduce the RFLMA Coordinators who are going to be doing our
7 presentation led by Scott Surovchak, our DOE Rocky Flats Site
8 Manager, Carl Spreng, the RFLMA Coordinator from the Colorado
9 Department of Public Health and Environment, and Vera Moritz,
10 who is the RFLMA Coordinator for the EPA.

11 I want to remind everybody to please sign in, and
12 particularly if you want to give a comment to indicate on the
13 sign-in sheet that you'll be giving a formal comment.

14 We're going to handle the comments at the end of the
15 presentation and after questions, and then we'll set aside a
16 specific period for people to make a specific formal comment at
17 that time. We also encourage anybody to send in written
18 comments as well.

19 Following the presentation we do have a verbal comment
20 limit of three minutes, but since it doesn't look like we're
21 going to have all that many tonight we can have a little
22 flexibility.

23 We want to limit it to three minutes so everybody gets
24 a chance, and if you don't have time you can come back and
25 continue on after everyone else gets their shot.

1 After that we will adjourn.

2 The purpose of this meeting is we're going to provide
3 information on the Proposed CAD/ROD Amendment. We're going to
4 give you locations where you can find additional information if
5 you need it.

6 We also have our meeting being recorded by a court
7 reporter. We'll have a transcription available of the full
8 meeting as required under the Proposed Plan Requirements under
9 CERCLA.

10 As I said, we want to encourage your written comments,
11 anybody who has any. All the comments that we receive will be
12 considered by the RFLMA parties before a decision is finally
13 made.

14 And we have, thanks to a request from a stakeholder,
15 extended the public comment period for another 30 days to allow
16 a 60-day comment period. So the end of the comment period is
17 August 2nd.

18 In the announcement that you have and also up on the
19 back of the presentation are the addresses where to send your
20 comments. The easiest way is through e-mail, or you can mail
21 them.

22 If you mail them they need to be postmarked the day of
23 the end of the comment period. Or you can hand deliver them up
24 to that time. Then e-mails received at the end of the day of
25 that time period also will be accepted.

1 Okay, at this time I'd like to turn over the
2 presentation to Scott Surovchak. And feel free if you have any
3 questions concerning a specific slide or comment at the time we
4 can go ahead and answer them.

5 But if you have more involved questions we can, you
6 know, let me know an idea of what you want to talk about and we
7 can make a note on the flip chart that the answer to the
8 question will take a little longer, and we'll address it at the
9 end of the presentation.

10 MR. SUROVCHAK: Well, most of you remember the history
11 behind all this. But just in case, the CAD/ROD, which is what
12 we're really talking about in this Amendment, was based on our
13 June of 2006 Proposed Plan. And that's what we had all the
14 public meetings about, as you may recall, back in 2006.
15 I think we had three public meetings about that.

16 What we're talking about on this is the Central
17 Operable Units, the central portion of the Rocky Flats property,
18 which is the piece that we -- you can't hear me?

19 This is the piece that we have jurisdiction of. It's
20 the 1,308 acres within the refuge at the site. That's the area
21 that the final response and all the implementation of remedy,
22 where all that applies.

23 As you may recall, the actions selected for that unit
24 was Institutional Controls, including Physical Controls and
25 Monitoring, so that in essence was the remedy, which means that

1 we maintain the specific remedies that were installed during the
2 closure project, and continue to monitor ground water, surface
3 water.

4 And all those requirements, as you all know, are in
5 our Rocky Flats Legacy Management Agreement, which was signed by
6 DOE, EPA, and the State, I believe in March 2006, somewhere in
7 that timeframe.

8 This Amendment makes no change to the remedy at all.
9 We haven't proposed any modification of the monitoring, to any
10 of the implementation of the remedy.

11 What we're proposing here is a clarification on the
12 description of the Institutional Controls for excavation and
13 soil disturbance. They still meet, and we never intended to
14 modify the objective or the rationale and you'll see that when
15 we go through this. They still fit all those statements.

16 This Amendment also provides that any additional
17 modification that we make for termination will follow the
18 existing regulations and guidance that were in effect either in
19 CERCLA or RCRA at that time. You'll see what that gets in a
20 minute.

21 It formalizes the process that Carl and I established
22 a while ago that we thought was protective of excavation work at
23 the site. So now that process is actually included in the
24 CAD/ROD and Rocky Flats Legacy Management Agreement. It was a
25 very common-sense type approach.

1 Okay. I don't think it likes me.

2 This was the one that caught everybody's attention a
3 little while ago. This was the prohibition in intrusive
4 activities below the depth of three feet. The original
5 statement was that it would be, Except for remedy-related
6 purposes.

7 At that time we didn't intend really to preclude any
8 non remedy related excavation because there are times, and there
9 have been times in the past where we've had to excavate below
10 three feet for reasons such as ditch construction or drainage
11 control, things like that.

12 We didn't intend in the rationale for this
13 Institutional Control that it would prohibit anything that
14 wasn't associated with the remedy because obviously there's work
15 that we'll have to do out there that is not remedy related.

16 So this is the clarification on the right side. We
17 tried to line this up so you could compare it line by line.

18 On the right side everything stays the same until you
19 get to the underlined wording. And you'll see it in the other
20 Institutional Control Modifications also. What that says is,
21 Without prior regulatory review and approval pursuant to the
22 soil disturbance review plan in the RFLMA Attachment 2, and that
23 refers to the plan that will be included in RFLMA as part of
24 this Amendment. And it's the way we've been doing business
25 since 2006.

1 Carl came up with a list of three pretty common-sense
2 questions that had to do with where you're excavating; in other
3 words, are you excavating in an IS, a PAC, or somewhere like
4 that where you might expect to find contamination, or are
5 excavating on an old infrastructure, buried infrastructure such
6 as a basement of a building, the OPWL, the NPWL, the process
7 waste lines, some of the process waste lines that were left in
8 place at depth.

9 So it's a pretty common-sense approach to know where
10 you're digging and have you taken the proper controls.

11 In lining it up with the previous objectives in the
12 rationale this Amendment doesn't change the initial objective,
13 which was to prevent unacceptable exposure to residual
14 subsurface contamination. As a matter of fact it tightens it up
15 because it codifies the process that we've been using for about,
16 oh, five years now.

17 And as far as the rationale, the rationale stays the
18 same. And it's supportive in that, like I say, it codifies that
19 process so it eliminates the possibility that we'd excavate into
20 something that we didn't expect to find.

21 Like I said, it's pretty common-sense stuff. We
22 looked at the existing data. Most of us have been out there for
23 years; we know where these things are; we know whereabouts to
24 find them in the field. It's just a matter of exactly locating
25 them.

1 IC-3 was similar in that it required us to conduct
2 grading, excavation, filling, et cetera, in accordance with an
3 erosion control plan, which we already have and which we've done
4 for years.

5 Once again what we've done here is to say that, Soil
6 disturbances in all cases can't be brought back exactly to the
7 pre-existing grade. So we added some language that said that
8 the soil disturbance that will not restore the soil surface to
9 pre-existing grade or higher may not be performed without prior
10 regulatory review and approval pursuant to the Soil Disturbance
11 Review Plan.

12 Once again this invokes that same process that we've
13 used for years to ensure that if we're not, say -- a perfect
14 example is we've got a road out there, the old Central Avenue
15 that's on a fairly flat area.

16 If you're going to dig a ditch to form what we call
17 Texas crossings to get across a road, and fill it with rock,
18 you're not going to be able to return that to the initial grade
19 because it's going to be a ditch. I mean, that's the whole
20 idea.

21 So what this language says is that we can do that but
22 it has to be in accordance with our approved process; in other
23 words, we have to know that we have sufficient distance between
24 the base of that excavation and any potential buried
25 infrastructure, contamination, whatever it might be.

1 Once again there's no change to the objective, which
2 was to prevent migration of the residual surface soil,
3 contamination of surface water. The objective is still met in
4 that we're using our existing process to ensure that during the
5 construction and following that we don't allow that to happen.
6 There's no change in that rationale either.

7 Okay. Then IC-7, the way it's currently phrased, this
8 was intended to ensure that no action out there damaged any
9 existing remedy, whether it be a treatment system, the
10 separation between the top of the soil and a contaminant,
11 whatever it was.

12 So what we've done in the underline is to say that,
13 This sentence shall not be construed to prohibit the
14 modification, removal, replacement, or relocation of any
15 engineer component or response action.

16 The reason for that is if you take this language and
17 read it literally you can infer that we can't modify an existing
18 treatment system.

19 That doesn't make sense. If you decide during an
20 operation that you need to improve the operating system you have
21 to be able to do that, and that's what this does for us.

22 So once again there's no change to this objective and
23 no change to the rationale for this IC. So the current CAD/ROD
24 says that the selective remedy corrective action will be
25 implemented, a modification of the Rocky Flats Environmental

1 Covenant -- and you all know what the covenant is -- to include
2 all the Institutional Controls required for the Central Operable
3 Unit.

4 In this we're referring to the Environmental Covenant
5 of May 2006 that was modified in December 2006 to include not
6 just the present landfill but the entire Central Operable Unit.

7 The new language here will say that, Modification to
8 the covenant, the 2006 covenant, that replaces the environmental
9 covenant to include all the Institutional Controls required; in
10 other words, that allows the State to modify and us to modify
11 our covenant with the State. Or if the State desires to go
12 another approach, to substitute that also.

13 And this was the language that I referred to earlier
14 in one of the bullets. If you read it literally what it said is
15 that we can't modify, the Agency can't modify or terminate these
16 Institutional Controls without a formal Amendment to the
17 CAD/ROD.

18 Well, by guidance that doesn't rise to the level of a
19 CAD/ROD Amendment. And we realized that as we were talking
20 about this whole thing that modifying the Institutional Controls
21 does not rise to that level of a regulatory modification
22 process.

23 So what the proposed language is is that the
24 Institutional Controls will be modified or terminated in
25 accordance with the requirements, CERCLA, RCRA, Colorado

1 Hazardous Waste Act and all their implemented regulations and
2 guidance in effect at the time.

3 It also says that we'll notify the public of
4 modification or termination, and that they will be given an
5 opportunity to review and comment pursuant to our RFLMA
6 requirements.

7 Now, as those of you who read through our contact
8 records probably remember, this is the process that we've been
9 using for about five years now whenever we're going to excavate
10 at the site.

11 That is that we provide -- and you'll see that in our
12 contact records -- we provide a description of the project
13 including why, the location, the lateral and vertical extent of
14 the excavation, and any information about any remaining
15 subsurface structures in the vicinity, or state that there are
16 none.

17 The vast majority of our excavation work out there
18 involves none of that because it's out in locations that aren't
19 above structures like this.

20 It also includes information of any former ISs, PACs,
21 or other known or potential soil or ground water contamination
22 in the vicinity, or we state that there is none, or that there
23 is no known contamination in those notifications.

24 That's essentially it. It's a very simple Amendment
25 to the Institutional Controls. It looks a lot more complicated

1 when you look at these slides. But when you actually look at
2 the mod, at the Amendment that we sent to you, it's just
3 comparing the tables. And then you can see the difference.

4 So how do you provide comments? Well, the way we like
5 is that you submit them to our website. It makes them easy to
6 categorize. We get a date stamp and all that kind of nice
7 stuff.

8 Due date, like we just said, has been modified to
9 August 2. Please put "Rocky Flats Site Proposed Plan comments"
10 in the title in the "subject" line. That way we will be able to
11 immediately grab those.

12 Or you can go via US mail at our mailing address at
13 the Dover Street office. And if you have any problem with the
14 website call this guy and yell at him. I hate websites.

15 That's essentially it. Anybody have any questions?
16 Yeah?

17 MS. STANLEY: Would the restrictive notice,
18 restrictive notice spell out the Institutional Controls similar
19 to the existing Environmental Covenant?

20 MR. SPRENG: Yes, it would. The language involving
21 the Institutional Controls would be exactly the same in either
22 the Restrictive Notice or the Environmental Covenant, yes.

23 MR. SUROVCHAK: Anybody else?

24 MS. SHUGARTS: On your slide 13 can you show me where
25 in the document it says that the public will be notified? That

1 the public will be given the opportunity to review and comment
2 on modifications or termination of the Institutional Controls?

3 MR. SUROVCHAK: You mean in the Proposed Plan?

4 MS. SHUGARTS: Yes.

5 MR. SUROVCHAK: Rick, do you have a copy of the
6 Proposed Plan?

7 MR. DI SALVO: We do. And I'm looking for it.

8 So on page 7 of 16 of the Proposed Plan, if you have
9 it, at the bottom of Table 2, the last row, it reads the same
10 basically as on the slide.

11 MS. SHUGARTS: I have a followup question.

12 Does that mean then there will not be any
13 determination about whether it's a significant change or not?
14 Every modification or termination of an IC will be subject to
15 public comment?

16 MR. SUROVCHAK: I don't think that's what that line
17 says. It doesn't say that.

18 What it says is it will follow the process at that
19 time

20 MS. SHUGARTS: So there's a potential that we will be
21 discussing whether or not these changes are significant or not
22 at some time in the future?

23 MR. SUROVCHAK: It depends on what EPA does, what EPA
24 would do with the regulation.

25 But I think that gives us some room to move there from

1 the perspective of changing regulations. What it says is we
2 have a minimum.

3 MR. DARR: Would not a significant change pull into
4 the CERCLA space where you have to do a formal modification
5 rather than a simple modification like we could have done in
6 this case?

7 MS. MORITZ: I would like to suggest that this is a
8 fairly nuanced question to answer. And I suggest that we take
9 that as a comment, and get back to you with real accuracy.

10 MR. DARR: I forgot to ask that you give your name
11 when you make a comment for the record. I can identify the
12 first two commenters for the reporter; I remember you guys.
13 Shirley I keep forgetting about.

14 MS. GARCIA: Shirley Garcia.

15 My first question is, is this the only opportunity
16 we're going to have to ask for clarification of this document?
17 Because it is the public comment period, and I would hate to be
18 here all night just going through the documents.

19 Maybe it may be best to take the comments that people
20 make and then get into questions. 'Cause I have several
21 questions, and I don't want to hold everybody up. Should I just
22 ask and go through them?

23 On page 7 of 16 where we're talking about the
24 selective remedy, the next-to-the-last one where the word
25 "perpetuity" is addressed? Where else is -- and that language

1 has been removed, that word.

2 Where else in the document is "perpetuity" kept in
3 there. And also in the RFLMA?

4 MR. SUROVCHAK: Are you in the Proposed Plan now?

5 MS. GARCIA: I'm in the Proposed Plan. I'm assuming
6 that that language is to be reflected in RFLMA; is that correct?

7 MR. SUROVCHAK: In the CAD/ROD.

8 MS. GARCIA: And one more clarification. The CAD/ROD
9 does not specify whether something is a major or minor revision
10 so that's another concern I have.

11 But my first question is where else is "perpetuity"
12 addressed in RFLMA and in the Proposed Plan other than the table
13 where it's been removed?

14 MR. SUROVCHAK: Rick?

15 MR. DI SALVO: Which table are you referring to?

16 (Inaudible.)

17 MR. SUROVCHAK: I think on that one we might have to
18 get back to you. We'll take that as a comment.

19 MS. GARCIA: Okay.

20 MS. SHUGARTS: In that same -- this is Cathy Shugarts
21 from Westminster.

22 Shirley's comment about perpetuity as well as also --
23 is there another section where it references the entire Central
24 OU?

25 That's also deleted from that same statement.

1 MR. DI SALVO: I might be able to help clarify. My
2 name is Rick DiSalvo. I'm with Stoller Corporation.

3 The language that's being deleted is basically just
4 the restatement of what's in the Colorado Environmental
5 Covenants statute.

6 So the Environmental Covenant by its nature under the
7 statute runs with the land in perpetuity.

8 The problem -- and I think Dan Miller, who is not here
9 tonight -- with the CDPHE would probably be more eloquent than I
10 am on it since he helped write the statute.

11 The idea was that Colorado needed a change to the law
12 in order to give the State power to enforce, enforce these
13 restrictions in the same manner as any other property right
14 holder, even though they didn't hold a right of property.

15 So to revise or to clarify what under common law might
16 have provided a problem enforcing, enforcing to have that
17 inactive statutory requirement to give the State the power.

18 Removing that language doesn't change what is said in
19 the Environmental Covenant in the Colorado statute. So
20 covenants, until they're terminated, run with the land in
21 perpetuity.

22 The problem is anybody who is not a party to the
23 covenant, prior interest holder in land, can't be enforced
24 against under the covenant law because they have a prior
25 interest in land.

1 So the State enacted the restrictive notice part of
2 that to give the State police power to enforce restriction
3 without a covenant. And that would be binding on all prior
4 interest holders so they didn't have to go to the trouble of
5 finding all those prior interest holders and getting them to
6 agree to the covenant.

7 By their nature they run -- not by nature, by statute
8 the covenant runs with the land in perpetuity but only against
9 whoever grants the covenant and all subsequent interest holders.

10 The restrictive notice would bind anyone, just like a
11 zoning ordinance binds anyone once it's issued. That's the
12 difference. So there's no substantive distinction by removing
13 that language.

14 MR. SPRENG: Just as a matter of information it's our
15 current intent to eventually and fairly soon to probably take
16 the -- change the current Environmental Covenant to a
17 restrictive notice because of those advantages that Rick just
18 mentioned.

19 MR. SUROVCHAK: I think we talked to you guys before
20 about the difference between a covenant and a restrictive
21 notice.

22 The State's primary concern was that it didn't apply
23 to easement holders in our case. And their concern there was
24 that Xcel or any of the other easement holders could cross the
25 Central Operable Unit and can come out and excavate without any

1 control.

2 That doesn't happen now because we control that. But
3 the concern was still there from the State's perspective.

4 MR. ALLEN: Hi. David Allen, City and County of
5 Broomfield.

6 Along the lines of the restrictive notice during the
7 A and P process Dan Miller indicated that we would have an
8 opportunity to review and collect comment on the restrictive
9 notice.

10 I think my question is that the proposed plan here
11 covers amendments to the CAD/ROD to the RFLMA. But we don't
12 have the explicit language for the restrictive notice.

13 I understand some of these ICs will be incorporated
14 into that, but I think my question is will there be a separate
15 public process for reviewing and commenting on the restrictive
16 notice?

17 MR. SUROVCHAK: Do you have anything to say on that,
18 Carl? I'm not sure what the process is.

19 MR. SPRENG: David, we'll have to get a fuller answer
20 to you.

21 But to answer the first part, the exact language that
22 would go into the CAD/ROD, those exact words including the
23 rationale and objectives, would be in the Environment Covenant,
24 inserted into the Environmental Covenant.

25 That's a change from what's currently there because

1 the rationale objectives are not currently there. They're also
2 not currently in Attachment 2, Table 4 of Attachment 2 of
3 RFLMA.

4 Those would be added there as well. So the
5 objectives -- we hoped to clarify the Institutional Controls so
6 that they would more clearly reflect the objectives and
7 rationale.

8 To help with that we will make sure the objectives and
9 rationale accompany the Institutional Controls wherever they
10 appear.

11 MR. ALLEN: May I ask a followup question?

12 On the Institutional Controls, so we're looking at
13 maybe three of the -- are there ten of them proposed? I'm not
14 sure. Seven? A total of seven?

15 So we're modifying three out of seven and providing
16 additional language for rationale and objective on that?

17 MR. SUROVCHAK: No, we're not. We haven't modified
18 that at all.

19 MR. ALLEN: That could be included with the
20 Environmental Covenant notice that is not currently included
21 with the existing one.

22 So I think the point of the question I was going to
23 ask is that if you're going to include that additional
24 information with these three specific Institutional Controls
25 that you would have the same type of information for all seven

1 of those.

2 MR. DI SALVO: Correct.

3 MR. ALLEN: Okay.

4 MR. DI SALVO: This is Rick DiSalvo.

5 When you look at the modification to Attachment 2 to
6 the table that has the Institutional Controls in it the
7 rationale and objective out of the CAD/ROD is now added to that
8 table for all seven.

9 MR. ALLEN: All seven?

10 MR. DI SALVO: All seven.

11 MR. ALLEN: We don't have that.

12 MR. DI SALVO: Yes.

13 MR. SUROVCHAK: Yes, it's in there.

14 MR. DI SALVO: It's Attachment 1.

15 MR. SUROVCHAK: Anybody else? Bob? Quiet tonight.

16 MR. NELSON: Yes.

17 MS. HAWLEY: Christine Hawley.

18 Are there any anticipated future changes to the IC
19 beyond this proposed language?

20 And what I'm getting at is why the additional step
21 forward to limit the, to limit this formal process, this formal
22 amendment process.

23 Is there anticipation to change these again? Or is
24 this language considered adequate for what you expect to need to
25 do in the future? Why the additional change to the document?

1 To make it easier to change the next time?

2 MR. SUROVCHAK: Can I ask Lorraine to answer that one?

3 I think that follows along the --

4 MS. ROSS: You can answer whether -- Lorraine Ross
5 with the EPA.

6 You can answer whether the -- I don't think there's
7 any intentions to change.

8 MR. SUROVCHAK: I can answer that. If we were we'd do
9 them in this.

10 MS. ROSS: And the reason that we're changing it is
11 because it just makes sense to use the law and the regulations,
12 and not to do something different.

13 You know, we're not trying to play hide the ball or
14 anything. It's just there is a process that's set out in the
15 regulations and we all believe it should be followed.

16 MS. HAWLEY: Yeah. I guess I'm confused a little bit
17 about that.

18 I understand the statement that was made earlier was
19 that, you know, these modifications are not major. But we're
20 talking about a CAD/ROD that lays out a three part remedy and IC
21 is one part of that.

22 So I'm not sure I understand future modifications
23 might not be involved in all those things.

24 MR. DI SALVO: Rick DiSalvo.

25 I can perhaps expand on that a little bit. In the

1 regulations and guidance related to when a CAD/ROD Amendment is
2 required, it's required for what are called fundamental changes
3 to the remedy, those that affect the scope of the remedy, the
4 anticipated cost of the remedy, and basically the direction of
5 the remedy.

6 In other words if on one hand you said it will be a
7 ground water pump and treat, and then you decided that's not the
8 right remedy and instead it was going to be natural attenuation
9 and no treatment, that could be considered a fundamental change
10 to the remedy.

11 Where you're not making a change of that extent the
12 regulations have a process that doesn't amount to a CAD/ROD.
13 I'm sorry, requiring a Proposed Plan, so that's a big
14 difference.

15 MS. HAWLEY: No, no. That was clarifying.

16 But I wonder if the changed language here that would
17 allow for a proposed Institutional Control change was considered
18 a major change to the remedy.

19 Again, the Institutional Controls are part of the
20 remedy. And there could be a major redirection in the change to
21 the Institutional Controls if that would allow for a requirement
22 of a formal amendment. Or if this language removes the
23 requirement entirely.

24 MR. DI SALVO: No. If there was a fundamental change
25 to the remedy as defined in the regulations and CERCLA guidance

1 then that requires a CAD/ROD.

2 MS. HUNT: Emily Hunt with the City of Thornton.

3 I was hoping somebody could give me a little history
4 as to why the language in the current document is -- was
5 originally inconsistent with EPA guidance or regulations or
6 whatever was existing at the time. I don't have that kind of
7 historical context.

8 MR. SUROVCHAK: Well, I don't want to be unfair to
9 Lorraine. She was here as a guest. She volunteered to show up.

10 MS. MORITZ: New guidance. EPA guidance just --

11 MR. DARR: Vera, can you speak up a little?

12 MS. MORITZ: Vera Moritz, EPA.

13 The quick answer here is EPA has just issued brand-new
14 guidance that just came out this year. Whereas the ROD was
15 2006.

16 MS. HUNT: Was that consistent with the guidance in
17 2006?

18 MS. MORITZ: I don't think -- our guidance did not go
19 to that extent of detail.

20 MR. SUROVCHAK: Shirley?

21 MS. GARCIA: Shirley Garcia.

22 On Attachment 1, page 1 of 3, why was other word
23 "shall" changed to "will"? Will or shall, there's a big
24 difference between the two unless there's been some guidance.

25 MR. SPRENG: That was probably at my request. I hate

1 "shall" unless it's in the legal document.

2 I've been told by a variety of attorneys that "shall"
3 has no more legal standing than "will." If you prefer "will,"
4 you know, there's "will" throughout there with one or two
5 "shalls."

6 And the "shalls" have no more, have no more standing
7 than the "wills," but if that's a preference, make that a
8 comment and we'll review that.

9 MR. SUROVCHAK: Shirley?

10 MS. GARCIA: Shirley Garcia.

11 The process -- I know we keep talking about the risk
12 assessment. And so when we're talking about excavation we're
13 talking about the potential for the worker to be at risk because
14 of inhalation and the potential to come across soil below the
15 surface that potentially is contaminated.

16 Is there going to be any criteria that's going to be
17 set for when we're actually out there digging potentially where
18 there was contamination where there will be some type of
19 in-the-field monitoring?

20 Or an additional to that, if you're going to be
21 excavating soil -- we have, a group of us have been asking for a
22 long time for a map. And now we're not even going to be
23 potentially excavating soil and replacing it back to its
24 original level topography. How is that going to be captured?

25 When we were going through this process years back our

1 concern was that we keep digging and not going back to original
2 grade, at one point in the future we're going to be down to
3 three foot below grade.

4 How is that going to be addressed? Are we going to
5 get an annual map every year of all the work that's been done
6 and at what elevation it's left at?

7 That's two questions: Worker health and safety, who
8 is going to be doing that, monitoring the fill re:
9 contamination, and map.

10 MR. SUROVCHAK: Yeah. If there was any -- well, first
11 off, the process that we talked about, we've been using it for
12 five years.

13 We looked at existing data. If it indicates we need
14 control such as PPE or field monitoring we do it.

15 MS. GARCIA: For RAD?

16 MR. SUROVCHAK: Yeah. Just like we did on -- what was
17 it? On B-1 when we thought there might be a chance that we
18 might see something in the old outlet structure that was rocked
19 up back -- when was that? The '80s I think it was when we
20 cemented up the outlet structure there.

21 Then it was a process knowledge decision. We had a
22 RAD tech out there. We had guys prepared to go to PPE in case
23 we found something, which we didn't.

24 MS. GARCIA: If --

25 MR. SUROVCHAK: Yeah, if we think we need them.

1 And that's based on the process that Carl and I came
2 up with several years ago which looks at process knowledge,
3 which looks at historical documents, which looks at whether
4 we're in status areas of concern, things like that.

5 So we're not just out there digging. And as you know,
6 in the area of extent where we dig is very limited. We're
7 talking primarily ditches, things like that.

8 MR. SPRENG: Part 2 was a change to the topography and
9 that, how that would be documented?

10 Yeah. Again the soil surface review plan would review
11 that prior to any excavation to see if there was any
12 potential --

13 MS. GARCIA: I understand that's going to be captured
14 in contact records. But people aren't going to have the
15 opportunity to look at all the contact records. There's just
16 been too many since the closure.

17 How is it going to be captured, at least on an annual
18 basis? Even in the annual report it would be helpful. Whatever
19 excavation takes place, what the outcome was, a summary of that
20 would be helpful.

21 One other question. I keep hearing there's
22 contaminated soil potentially to be put back. Is there an
23 action level for that also?

24 MR. SPRENG: The answer to where the -- any new
25 topographic contours would be documented is in the reports,

1 annual and quarterly reports, yes. It would be documented.

2 Anything that, any actions taken by the site are
3 documented in those so yes, those change would be documented
4 there.

5 MR. SUROVCHAK: Okay. Now, once again there's plenty
6 of opportunity -- 60 days minus a few -- to send us your
7 comments. Take advantage of that.

8 MR. DARR: Cathy, do you have any other questions?

9 MR. SUROVCHAK: One last question. One.

10 MS. SHUGARTS: Sorry. I have more than one.

11 Cathy Shugarts, Westminster.

12 Talking about the soil disturbance evaluation
13 procedure, are we referring to Appendix F?

14 MR. DI SALVO: Attachment 2.

15 MS. SHUGARTS: How is it different than in the SOG
16 appendix soil disturbance evaluation process?

17 MR. DI SALVO: I can answer that.

18 MS. SHUGARTS: Maybe I can ask all my questions at the
19 same time here.

20 MR. SUROVCHAK: Write them down.

21 MS. SHUGARTS: Right here.

22 The next question that leads to that is what is the
23 process for modifying that procedure? And does it address any
24 effects on water quality as it was mentioned in the objective
25 for IC 3?

1 MR. SUROVCHAK: Linda.

2 MS. KAISER: I can talk to the first part of it.

3 Linda Kaiser, with Rocky Flats Stoller.

4 So the soil disturbance procedure that's in the SOG
5 was developed previously as a tool for us to use when we are
6 getting ready to do any sort of digging.

7 It looks at a variety of things including the kinds of
8 things that we've been talking about. Is it in a known area of
9 contamination? You know, do we need to have any sort of worker
10 controls?

11 It also looks at things like, Could there have been a
12 buried utility there that might cause us a problem? They're
13 supposed to be inactive but, you know, it might still be big
14 enough that we need to know about it.

15 You know, a variety. Could there have been a hole
16 there in the past that wasn't backfilled adequately, some of
17 these problems.

18 So it's a tool for us to, you know, look at
19 engineering issues, to look at worker protection issues, to look
20 at contaminability issues.

21 The new soil disturbance plan that's going to be in
22 the RFLMA was developed specifically just for RFLMA issues. We
23 will probably still continue to use our internal procedure
24 because it covers more subjects.

25 But the official one that we will use for the contact

1 records is the new one that's going in to
2 Appendix F of the RFLMA. That's the difference.

3 MR. SUROVCHAK: That's essentially the existing one,
4 this one here that we talked about earlier. The same process
5 that we use now.

6 MS. SHUGARTS: Does it look at water?

7 MR. SUROVCHAK: From a residue control perspective,
8 yes.

9 The whole idea behind this is so that when you make an
10 excavation you don't cause soil particles to be transported into
11 the surface water; that's why we also invoke the erosion control
12 plan.

13 MS. SHUGARTS: That's documented every time?

14 MR. SUROVCHAK: Yeah. For the most part a lot of
15 these are basically erosion control plan operations,
16 construction, things like that. We are doing it specifically to
17 minimize erosion.

18 MR. DARR: Okay. No further questions?

19 Okay, those who have signed up to make their formal
20 public comment, if you're ready.

21 Shelley, you're first on the list. So please identify
22 yourself. Make your formal comment, and speak as clearly as
23 possible and have the microphone close so that we can hear you.

24 MS. STANLEY: Shelley Stanley, City of Northglenn.

25 The City of Northglenn strongly opposes the proposed

1 changes to the CAD/ROD and RFLMA Attachment 2.

2 We feel that these changes will drastically reduce the
3 protectiveness of the Institutional Controls and the
4 Environmental Covenant.

5 Northglenn does not believe that the proposed changes
6 merely clarify the language nor the original intent as DOE
7 suggests. We see the proposed changes as drastically reducing
8 the cornerstone protections that were put in place, carefully
9 signed during the process of accelerated site closure.

10 The Institutional Controls and Environmental Covenant
11 were put in place as strong and clear protections recognizing
12 the residual contamination and uncertainties remaining on the
13 site.

14 Beyond this proposed broad scale weakening of the
15 Institutional Controls DOE's draft language also has provisions
16 to the CAD/ROD to make future modifications to the Institutional
17 Controls easier and without full public input.

18 Northglenn will be providing written comments on the
19 proposed changes. And we do appreciate extension of the comment
20 period.

21 MR. DARR: Thank you.

22 Next on the list we have Cathy Shugarts.

23 MS. SHUGARTS: Cathy Shugarts, City of Westminster.

24 City of Westminster strongly opposes the proposed
25 Amendment to CAD/ROD and modification for RFLMA Attachment 2.

1 The document language does not clarify the
2 Institutional Controls as intended; rather, it replaces the
3 enforceable restrictions with activity-specific regulatory
4 approvals for actions that violate current use restrictions.

5 In the IVPs were assurances to the public that the
6 site remedy would remain protective of human health and the
7 environment following the accelerated site closure. The
8 proposal leaves the door open to any action that is approved by
9 the State.

10 The City is alarmed by the proposal's virtual
11 elimination of the opportunity for public input on future site
12 activities.

13 The City of Westminster intends to submit written
14 comments, and again appreciates the extension period. We will
15 need the time to fully examine implications of the proposal.

16 MR. DARR: Next, Shirley Garcia.

17 MS. GARCIA: Shirley Garcia, ex Rocky Flats worker.

18 I'm a resident of the city of Westminster, and I work
19 for the City of Broomfield. David is going actually to speak
20 for Broomfield. I'm just going to make a comment.

21 I strongly support the communities' statements,
22 Westminster's statement, and actually Northglenn's statements.

23 One of the nine CERCLA criteria is community
24 acceptance. I'm asking the RFLMA parties to actually look at
25 our comments and look and see what the public is saying tonight,

1 and reflect your changes and proposals to what we're saying and
2 not make the changes that you're asking for tonight.

3 I was one of the few people sitting in the room here
4 that was part of the closure. And we strongly supported
5 Alternative 2 because of the Institutional Controls in
6 perpetuity. And the risk that actually was put in place was
7 because there was no pathway.

8 As of yet we have not seen any risk assessment of the
9 potential pathway. We're asking that. That actually is
10 required by law. As stated in the document that it is not a
11 risk is not being fair to the community.

12 I do thank you for the extended comment period. I do
13 ask for an additional two weeks on top of that. So many
14 documents were released that are very germane to the technical
15 staff to be able to look at all the many documents holistically
16 and look at the technical aspect ramifications for all the
17 documents so we can actually comment to you and evaluate all our
18 concerns.

19 Thank you.

20 MR. DARR: All right. Next on the list, LeRoy. Did
21 you want to make a comment?

22 MR. MOORE: My name Le Roy Moore. I'll make two
23 comments.

24 The first one is ditto to the things that have already
25 been said.

1 And the second comment is that in the future I would
2 appreciate EPA and CDPHE involving the public in this discussion
3 before you get so far along and act like you've made an
4 agreement. Looks like to me you've made an agreement. Looks
5 like a done deal.

6 I have to confess that I don't quite understand what
7 you're talking about because you say there's no change and yet
8 it sure looks like there's serious changes, which is the reason
9 I said "ditto."

10 Thank you.

11 MR. DARR: Emily Hunt.

12 MS. HUNT: I'm Emily Hunt, City of Thornton Water
13 Resources Manager.

14 Thornton share the concerns with those that have
15 already been expressed. We oppose the proposed changes to the
16 CAD/ROD Attachment 2.

17 Our very brief initial review causes us concern
18 because it seems to substitute a public process for regulatory
19 approval.

20 We'll be submitting written comments as well. We're
21 hoping for a 90-day review period. But we appreciate the
22 60-day comment period. It will give us a chance to sort through
23 the documents.

24 Thank you.

25 MR. DARR: And last on our list who indicated they

1 wanted to make comment is David Allen, who I believe just
2 stepped out. Perhaps we'll give him a minute to return.

3 MS. STANLEY: Can I have a followup? I didn't realize
4 I was supposed to speak for the authority as well.

5 MR. DARR: Certainly.

6 MS. STANLEY: Shelley Stanley, wearing her authority
7 hat of Northglenn, Thornton, and Westminster.

8 The statements previously made are supported by the
9 authority. And the authority will be providing written
10 comments.

11 MR. DARR: Thank you.

12 I'm not sure where David went. We'll accept his
13 verbal comment, but we'll happily accept his written comment.

14 MR. ALLEN: I must be last. I'm David Allen, City and
15 County of Broomfield.

16 Looks like somebody beat us to the punch on requesting
17 extensions on the public comment period.

18 I do have a letter here that was signed today by our
19 assistant city manager. And we had requested -- sounds like an
20 auction going from 30 days to 60 days to Shirley asking for two
21 weeks. We have a request for a 90-day extension.

22 I'm going to go ahead and give it to each of the
23 parties here. I have an original signature here for you guys.

24 City and County of Broomfield is concerned with the
25 changes. Looking back -- and I just have really two comments.

1 Looking back at the CAD/ROD it states that the
2 Institutional Controls are needed to ensure the assumptions
3 used in the risk developments are not violated.

4 And I pulled up the original proposed plan, the
5 2006 proposed plan. And I'm looking here at Table 2 under the
6 analysis of alternatives for the Central Operable Unit.

7 Under the evaluation criteria there's a section for
8 overall protection of health and the environment. And the
9 section I'm going to read to you verbatim is for no further
10 action of monitoring Alternative 1.

11 What it says here is, it says:

12 This alternative may not be protective of human
13 health if the current site land configuration were to
14 change in particular because the comprehensive risk
15 assessment does not evaluate an unrestricted scenario but
16 instead evaluates potential risk to the anticipated future
17 user.

18 The assumptions used in the comprehensive risk
19 assessment human health calculation including the
20 assumptions used in calculating the wildlife refuge
21 worker to eliminate remediation goals need to be
22 embodied in an Institutional Control.

23 Next to that we have the Institutional Control that
24 prohibits excavations below three feet except for remedy-related
25 purposes.

1 Just below that it says:

2 Residual soil contamination exists in the Central
3 Operable Unit. If residual soil contamination is
4 disturbed the contamination could migrate to the
5 surface by erosion, which could result in some surface
6 water samples results above surface water standards
7 at some surface water monitoring locations.

8 Now, there's similar language in this current version
9 of the proposed plan, not exactly the same, not verbatim.

10 But one of the concerns that we have here is that the
11 proposed changes to the Institutional Controls could create new
12 exposure pathways that were not evaluated during closure.

13 The proposed changes are contrary to the selected
14 alternatives to the site, which includes the no further action
15 related to the remediation and the institutional and physical
16 controls on the site.

17 Quite frankly Broomfield would have not supported the
18 closure activities had we known that these kinds of changes are
19 being contemplated which completely eliminate -- essentially
20 develop a review process for any excavation on the site.

21 That's really my first comment.

22 The second comment I have is despite that, and in kind
23 of looking forward into the future is that, you know, we believe
24 that the existing Institutional Controls are adequate and don't
25 need to be revised.

1 However, if it is necessary to revise the
2 Institutional Controls to accommodate excavation for non remedy
3 related purposes then the proposed regulatory review process
4 that's being contemplated here should only proceed after
5 appropriate risk assessments are performed in accordance with
6 applicable laws and regulations.

7 And what I'm getting to there is that the proposed
8 plan specifically mentions buried process lines and buried
9 building slabs, which I believe are very well documented and we
10 know where those are at.

11 However, there are other locations where not all
12 soils have been fully characterized and additional pathways and
13 full risk assessments have not been done on the site.

14 Therefore we believe that if appropriate risk
15 assessments are included as part of this regulatory process then
16 that would give the communities the reassurances that we had
17 agreed upon during closure.

18 So with that I'd like to thank everybody for the
19 opportunity to speak tonight. We will be submitting our
20 comments in writing as well.

21 And again please consider our additional extension,
22 request for extension.

23 Thank you very much.

24 MR. DARR: All right. Thank you, David.

25 Thank you everybody for attending tonight and giving

1 us your input.

2 As I say we'll continue on. The presentation will be
3 posted to the website early next week for anyone who wants to
4 refer back to it.

5 We will also send out a formal notification of the
6 extension to the 30-day comment period to everybody on the state
7 boards.

8 As always if you have any questions, you need
9 information, you can't find something, definitely give me or
10 Scott a call or send us an e-mail. We'll get back to you.
11 Thank you.

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13 (Whereupon the within proceedings adjourned at
14 7:40 PM.)

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C E R T I F I C A T I O N

I, Martha Loomis, Certified Shorthand Reporter, appointed to take the within proceedings hereby certify that the proceedings was taken by me, then reduced to typewritten form by means of computer-aided transcription; that the foregoing is a true transcript of the proceedings had subject to my ability to hear and understand, and that I have no interest in the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand.