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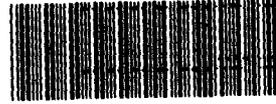
EG&G ROCKY FLATS

OE ORDER
24 RF 08747

EG&G ROCKY FLATS, INC
ROCKY FLATS PLANT, P O BOX 464, GOLDEN COLORADO 80402-0464 • (303) 966-7000

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94-RF-0747

August 23, 1994



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Distribution

ROCKY FLATS CLEANUP AGREEMENT (RFCA) NEGOTIATIONS AUGUST 18, 1994 - TPO-035-94

RFCA negotiations were held at the Environmental Protection Agency (EPA), on August 18, 1994. Attachment 1 is the meeting minutes. Attachment 2 is the Agenda. Attachment 3 contains the Colorado Department of Public Health and Environment (CDPHE) revisions to Part 16 *Submission and Review of Documents* dated August 16, 1994. Attachment 4 is a flow chart which depicts the comment review and resolution periods for both primary and secondary documents. Attachment 5 identifies changes made by EPA on August 16, 1994 to Part 22 *Resolution of Disputes*. Attachment 6 is a listing of *Potential Non-ER Milestones for RFCA*. Attachment 7 is an August 17, 1994 revision to the *Budget Planning and Execution* language. Attachment 8 is a paragraph provided by the Department of Energy (DOE) addressing "Budget Reduction Fair Share Allocation Language" to be added to Paragraph A.1.c. of the *Budget Planning and Execution* language. Attachment 9 is a paragraph provided by Peter Omstein (EPA) to be inserted at the end of Paragraph A 3 of the *Budget Planning and Execution* language

If you have any questions, please contact me on extension 8577 or Pete Judd on digital page 5627.

Timothy P. O'Rourke
Environmental Restoration Project Division

ejw

Attachments.
As Stated



I have checked with the typist and on the back sides were not copied + we can get it. Secretary for Jim O'Rourke X8664 Best Available Copy

DIST	REC
AMAHAL ME	
BURLINGAME AH	X
BUSBY WS	
BRANCH DB	
CARNIVAL GJ	
DAVIS JG	
FERRERA DW	
FRAY RE	
GEIS JA	
GLOVER WS	
GOLAN PM	
HANNI BJ	
HARMAN LK	
HEALY TJ	
HEDAHL T	
HILBIG JG	
HUTCHINS NM	
JACKSON DT	
KELL RE	
KUESTER AW	
MARX GE	
MCDONALD MM	
McKENNA FG	
MONTROSE JK	
MORGAN RV	
POTTER GL	
PIZZUTO VM	
RISING TL	
SANDLIN NB	
SCHWARTZ JK	
SETLOCK GH	
STEWART DL	
STIGER SG	X
TOBIN PM	
VOORHEIS GM	
WILSON JM	
Yates P	X
Quinn	XX
Hutchins NM	X
McKenna FG	X
Murray ER	X
Chickie TP	X
Walt DA	X
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AUTHORIZED CLASSIFIER SIGNATURE

DATE

IN REPLY TO RFP CC NO

ACTION ITEM STATUS
7 PARTIAL OPEN
7 CLOSED
LTR APPROVALS

ORIG & TYPIST INITIALS
TC

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ADMIN RECORD
SW-A-003602



EG&G ROCKY FLATS, INC
ROCKY FLATS PLANT, P O BOX 464, GOLDEN, COLORADO 80402-0464 • (303) 966-7000

August 23, 1994

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If you have any questions, please contact me on extension 8577 or Pete Judd on digital page 5627.

A handwritten signature in black ink, appearing to read 'Timothy P. O'Rourke'.

Timothy P. O'Rourke
Environmental Restoration Project Division

e|w

Attachments.
As Stated

**ROCKY FLATS CLEANUP AGREEMENT (RFCA)
MEETING ATTENDEES
August 18, 1994**

ENVIRONMENTAL PROTECTION AGENCY

Lou Johnson
Martin Hestmark
Peter Ornstein
Cliff Villa

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Gary Baughman
Joan S. Sowinski (Part time)
Dan Miller
Joe Schieffelin

DEPARTMENT OF ENERGY

Dave Brockman
Rick DiSalvo
Tim Howell
Rich Schassberger
Ned Larson DOE-HQ
Ray Greenberg DOE-HQ
Colleen Johnson - Booze, Allen, Hamilton

EG&G ROCKY FLATS, INC.

Tim O'Rourke
David Ward
Linda Guinn
Peter Judd - Halliburton NUS

KEYSTONE CENTER

Todd Barker
Sarah Stokes

**ROCKY FLATS CLEANUP AGREEMENT (RFCA)
MEETING MINUTES
August 18, 1994**

1 . OPENING

The meeting was opened at 0834 by the Keystone Facilitors and the agenda was reviewed
The agenda is included as Attachment 2

2 . CHANGES TO REVISION 4 TO THE RFCA

Dan Miller discussed the changes to Rev 4. It will include.

- Mods to jurisdiction section
- Expanded statement of purpose
- Additional definitions
- Reinserted findings of fact
- Replaced Part 10 (Para 140-161 of IAG)
- Dispute Resolution, Stipulated Penalties, Credits
- Reinserted some enforceability sections
- Penalties, credits, milestones will not reflect discussions held yesterday, but will present proposed State language
- Changes to Part 18 to avoid duplication of other parts of documents
- Funding and document review provisions inserted
- Permit language from other agreements included.

The posting of Rev. 4 on the electronic bulletin board will take place on August 19, 1994.

**3 . REVIEW OF CDPHE REVISIONS TO REV. 3 OF THE RFCA PART 16
SUBMISSION AND REVIEW OF DOCUMENTS**

A paragraph by paragraph review was made to the August 16, 1994 revision to Part 16
Submission and Review of Documents. A copy of this document is included as Attachment 3
(13 pages).

Comments

- a) Hestmark (EPA) suggested that in paragraph 13 the time periods for review should be identified in the Cleanup Work Plan (CWP). Hestmark again voiced his concerns regarding having an automatic schedule extensions for late review comments from the regulators. This issue is still up in the air.

b) Paragraph 17 - Add a statement that EPA and the State will combine their comments

Joe Schieffelin (CDPHE) passed out a flow chart which depicted the comment review and resolution periods for both primary and secondary documents. See Attachment 4 (one page).

c) Paragraph 20 - Dave Brockman requested that the discussion of the remedial milestones in this paragraph should be covered in the RFCA section which discusses enforceable milestones

CDPHE will make revisions that were agreed to during the meeting.
A major revision will be to make the document review times generic. Any additional comments that DOE may have on the new Paragraphs C, D, and E will be submitted with the comments on the Revision 4 to the RFCA that will be issued by CDPHE

The Cleanup Work Plan (CWP) must identify the processes and description of activities necessary to implement the RFCA. These processes are identified in the revised Chapter 4 to the CWP that was handed out at the CWP Work Group Meeting on August 17, 1994

4. STIPULATED PENALTIES

Tim Howell (DOE) presented the significant items from the Attorney Work Group (AWG) Meeting held on August 17, 1994

- a. AWG believes the credit approach is a desirable feature.
- b. EPA and State want to allow one day of credit for two (2) days of improving a deliverable date. DOE disputes this approach.

Hestmark (EPA) stated that DOE is looking for the "low hanging fruit" and want to use credits to delay attacking more difficult activities. Hestmark attributed his remark to a statement made by Pat Witfield (DOE-HQ) at a meeting last year.

Some Questions Debated

- a) Will subsequent impacted milestones be advanced when credits are achieved in a specific area?
- b) If the regulators finish something early what happens to the schedule for impacted activities?
- c) Will accumulated credits have an expiration date?
- d) How do we apply regulator credits against late deliveries of review comments from the regulators?

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e) How will bank accounts be established for earned credits and who keeps the bank records?

Dan Miller will attempt to develop some new language to address the above concerns. The establishment of a three (3) year pilot run on a consensus approach will be considered.

5. REVIEW OF PART 22 DISPUTE RESOLUTION

Peter Ornstein (EPA) reviewed the changes made to Part 22 in the August 16, 1994 revision. See Attachment 5 (3 pages) Ornstein noted that EPA Headquarters still had not completed their review of Paragraph H

Ornstein to update Part 22 to reflect the discussions on 8/18 and to post it on the bulletin board.

Dan Miller to develop a definition of "Good Faith" as it applies to dispute resolution. This will be incorporated into the Rev. 4 version of the RFCA.

Question raised by Hestmark regarding the change to have the Project Coordinator of the disputing party prepare the Statement of Dispute. Previously the statement was written jointly by the three project coordinators Ornstein to revise the paragraph to reflect the joint approach.

The regulators proposed that disputes between EPA and CDPHE on budget matters and setting milestones be arbitrated by a site Citizens Advisory Board This will be non-binding arbitration. The Parties will review this with their respective agencies. Ornstein to work on language to reflect this approach. The CAB will be contacted to see if they are amenable to this idea.

6. NON-ER MILESTONES

The list of non-ER milestones that was distributed on August 11, 1994 was discussed. See Attachment 6 (one page).

Dan Miller did not agree that the milestone related to the initiation of the operation of the Centralized Waste Storage Facility should be on the list since it requires a RCRA Permit.

Dave Brockman (DOE) - We need to define the process screen that identifies what is CERCLA, RCRA or not.

Lou Johnson (EPA) - Deciding what is CERCLA/RCRA boils down to a policy decision.

DOE will take the next step to develop language for the RFCA that will define the screening process for D&D activities to determine what is RCRA, CERCLA or not. This language will be added to the Scope of Agreement language.

7. REVISED BUDGET PLANNING AND EXECUTION LANGUAGE - 8/18

Todd Barker passed out copies of the following documents which offer proposed language for the Budget Planning and Execution section of the RFCA:

- a) August 18, 1994 revision to the Budget Planning and Execution language. See Attachment 7 (8 pages).
- b) A paragraph provided by DOE addressing "Budget Reduction Fair Share Allocation Language" to be added to Paragraph A.1 c See Attachment 8 (one page)
- c) A paragraph provided by Peter Ornstein (EPA) to be inserted at the end of Paragraph A.3. See Attachment 9 (one page).

8. PUBLIC INVOLVEMENT

Some 30 organizations/individuals have asked to be provided access to the Keystone Center electronic bulletin board for access to any information regarding the RFCA negotiations that are to be made available to the public.

9. NEXT STEP

The next meeting of the RFCA negotiation Team is scheduled for August 26, 1994 at the EPA Conference Center from 0830 to 1600 hours. A table of commitments to complete the RFCA is attached. The Cleanup Work Group will meet on August 24 and 25, 1994 at the Rocky Flats site from 0830 to 1600 hours in Building T117, Rooms 67 or 68.

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TABLE OF ACTION ITEMS FOR RFCA

DATE	ACTION TAKER	COMMITMENT
	EPA	Check of Cooperative Agreements - ARAR Provisions
	DOE	Add language to Dispute Resolution for EPA/CDPHE disputes on primary documents (EPA/CDPHE to continue to think about this issue)
	CDPHE	Develop new language for Part 16 on how the assignment of credits is to be handled.
	EPA	Ornstein to post Part 22 to bulletin board after making corrections agreed to on 8/18/94 including the combining of all dispute resolution sections into Part 22
	CDPHE	Dan Miller to revise Part 22 to reflect a definition for "Good Faith"
8/26	All	Evaluate using the CAB to arbitrate disputes between EPA and CDPHE.
8/26	EPA	Ornstein to draft some language to reflect the use of CAB as an arbiter of disputes on budget and milestones between EPA and the State.
	DOE	Revise Part 19 and add language on process to determine what D&D activities are covered by RFCA.

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**RFCA NEGOTIATIONS
AGENDA**

August 18, 1994

- 8 30 CDPHE Review of Rev. 4**
- 9-00 Discussion of DOE RCRA/ CERCLA Proposal and Review CDPHE's revised Part 16**
- 10-30 Break**
- 10-40 Discussion of Stipulated Penalties Language**
- 11-45 Lunch**
- 1-00 Discussion of EPA Dispute Resolution (No-lead dispute resolution and revised Part 22 to include CDPHE-lead dispute process)**
- 2:15 Discussion of Potential Non-ER Milestones for the RFCA**
- 3:15 Next Steps**
- 3:30 Adjourn**

Budget Planning and Execution Language revised to reflect August 11's discussion will be handed out at the meeting.

Negotiators who will be attending the CAB meeting at 7 p.m. that night should plan to meet at 3 30 to discuss the presentation.

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CDPHE Revisions to DOE Rev 3, Part 16, 8/16/94

- Redlines and strikeouts related to REV 3 have been removed from Sections A, B, and F, except for revisions based on comments from the 8/11 meeting or editorial changes we thought necessary. Please note that Paragraph 19 has been added to Section B.
- Redlines and strikeouts have not been removed from Sections C, D, and E per REV 3 since these are newly presented in this revision.

PART 16 SUBMISSION AND REVIEW OF DOCUMENTS

A General Provisions

- 1 The provisions of this Part establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and responses to comments regarding submitted documents, specified herein as either primary or secondary documents. In accordance with § 120 of CERCLA, 42 U S C § 9620, DOE will normally be responsible for issuing primary and secondary documents to EPA and the State. As of the effective date of this Agreement, all documents identified herein or in the Cleanup Work Plan (CWP), shall be prepared, distributed, reviewed, and approved, approved with modifications, or disapproved, and subject to dispute in accordance with this Part. ~~The parties shall implement the provisions of this Part in consultation with each other.~~
- 2 DOE shall notify the designated Natural Resource Trustees, ~~the Citizen's Advisory Board (CAB), and the Technical Review Group (TRG),~~ of the issuance of any primary or secondary documents, ~~the deadlines for submitting comments thereon, and a notation that comments submitted after the specified deadlines may not be considered.~~ DOE shall ~~place a copy of any primary or secondary document in the public reading rooms at the same time it forwards the document to CDPHE and EPA.~~ If any of the State Trustees ~~(CDPHE, AG, CDNR)~~ elect to comment on any primary or secondary documents, CDPHE will forward their comments to DOE and EPA. ~~comments from State Trustees (CDPHE, AG, and CDNR),~~ Federal Trustees, ~~the CAB, and the TRG~~ will forward their comments directly to DOE, EPA and the State.
- 3 The designation of a document as "draft",

"draft final", or "final" is solely for purposes of consultation with EPA and the State in accordance with this Part. The designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "draft final", to the public for review and comment as appropriate and as required by law.

4 The Lead Regulatory Agency (LRA) shall be responsible for primary review and sole approval of all primary and secondary documents received pursuant to the terms of this Agreement except those primary documents listed in Paragraph 5 below.

5 For the following primary documents, approval of both the lead and support agencies pursuant to the terms of this Agreement will be required:

- ~~a) RFI/RI Work Description Documents~~
- a) Draft Permit Modifications/Proposed Plans
- b) IM/IRA Decision Documents
- c) ~~Closure Plans~~
- d) Corrective Action Decisions/Records of Decision
- e) Proposed Action Memoranda
- f) Annual updates of the CWP
- g) ~~Annual~~ updates to the Historical Release Report
- h) Community Relations Plans
- i) ~~Corrective/Remedial Design Plans~~

6 When drafting ~~its own~~ comments and ~~consolidating them with the Support Regulatory Agency's~~ comments, the LRA shall render responses which are, to the maximum extent possible, consistent with CERCLA, RCRA, and CHWA. For those activities for which the State is the LRA, it shall also take into account the technical requirements ~~of~~ the CERCLA process, in order to minimize conflict and to promote efficient regulatory efforts at the Site. For those activities for which EPA is the LRA, it shall also take into account the technical requirements ~~of~~ the RCRA/CHWA process, in order to minimize conflict and to promote efficient regulatory efforts at the Site.

7 The Project Coordinators for each Party shall meet monthly, except as otherwise agreed by the Parties, to review and jointly evaluate the progress of work being performed at the Site on the primary and secondary documents and implementation thereof. Prior to preparing any draft document ~~specified in Sections B and C of this Part~~, the Project Coordinators shall

discuss the document in an effort to reach a common understanding of expected content and purpose. In addition, staff level discussions shall be conducted throughout the document preparation and review process in order to avoid major revisions to draft documents by resolving contentious issues early in the process. Every effort will be made to update the CWP to include clear explanations, definitions, and requirements for the tasks to be performed pursuant to this Agreement.

- 8 Representatives of each Party shall make themselves readily available during the review and comment period for ~~purposes of informally responding to questions and comments on documents~~ consultation regarding documents and comments on documents. Oral comments made during such discussions need not be the subject of a written response by the DOE at the close of the review and comment period.

B Primary Documents.

- 9 DOE shall complete and transmit draft primary documents in accordance with the ~~baseline~~ established in the CWP. Though draft primary documents do not have an associated enforceable milestone, DOE recognizes that submittal of a draft document in a timely manner that facilitates review, comment, and revision is necessary to meet the enforceable milestones associated with draft final primary document submittal. Following receipt of comments on the draft primary document, DOE shall complete and transmit draft final primary documents in accordance with the ~~baseline~~ established in the CWP. DOE may not invoke dispute resolution regarding comments submitted on draft primary documents. It may only invoke dispute resolution for decisions to approve with modification or disapprove the draft final versions of the primary documents.
- 10 ~~As described in the CWP,~~ DOE shall complete and transmit for each IHSS, group of IHSSs, or Operable Unit (OU), ~~as presented in Part of this Agreement and the CWP,~~ the following draft primary documents to EPA and the State for review and comment in accordance with the provisions of this part:
- a RFI/RI Work Description Documents
 - b RFI/RI Reports
 - c CMS/FS Reports
 - d Draft permit modifications/Proposed

- Plans
- e IM/IRA Decision Documents
- f Closure Plans
- g Corrective Action Decisions/Records of Decisions/
- h Corrective/Remedial Design Plans
- i Corrective/Remedial Design Work Description Documents
- j Sampling and Analysis Plans
- k IM/IRA Implementation Documents
- l Certifications of Completion
- m Proposed Action Memoranda

- 11 DOE shall also complete and transmit these additional site-wide draft primary documents to EPA and the State for review and comment in accordance with the provisions of this Part
- a Annual updates of the CWP
 - b Annual updates to the Historical Release Report
 - c Community Relations Plans
- 12 The following existing, approved final primary documents are incorporated by reference into this Agreement
- a Work Description Document to Implement Discharge Limits for Radionuclides
 - b Quality Assurance Plan
 - c Historical Release Report
 - d. ER Standard Operating Procedures
- 13 Unless the Parties mutually agree to another time period, all draft primary documents shall be subject to a forty-five (45) day period for review and comment. The Project Coordinator of the Support Regulatory Agency (SRA) shall provide any comments on draft primary documents to the Project Coordinator of the LRA within 30 days of receipt of the draft document. The LRA shall review the SRA comments and resolve any inconsistencies in consultation with the SRA. Should the Project Coordinators of the LRA and SRA be unable to resolve any inconsistencies within seven (7) days, the dispute resolution provisions of Paragraphs __, __, and __ of this Part shall immediately be invoked. Upon resolution of the inconsistencies or dispute, the LRA shall then submit a single set of consistent, consolidated comments to DOE on or before the close of the comment period which ensure compliance with CERCLA, RCRA, and CHWA. EPA and the State agree to use their best efforts to provide a comprehensive set of comments on draft primary documents to DOE so as to avoid, to the extent possible, raising issues of

first impression at the draft final document stage. Comments shall be provided with adequate specificity so that DOE may respond to the comments and, if appropriate, make changes to draft documents. In cases involving complex or unusually lengthy documents, the Lead Regulatory Agency may extend the review and comment period for an additional thirty (30) days by written notice to DOE on or before the close of the review and comment period [NOTE: THIS NEEDS TO BE RECONCILED WITH CREDIT PROVISIONS] [If the review and comment period has been extended, all subsequent affected milestones for affected units shall be automatically extended by the same period of time.]

14. [Comments which significantly expand previously agreed-to workscope may be considered sufficient basis for milestone schedule modifications. In that case, DOE shall formally notify the Lead Regulatory Agency within ~~20~~ 30 days of receipt of comments and request appropriate ~~milestone modifications in accordance with Part 20~~ (Change Control Process) changes to the baseline.]

15. Following the close of the review and comment period for a draft primary document, DOE shall give full consideration to all written comments on the document submitted during the review and comment period. Within forty (40) days of the receipt of comments on a draft primary document, DOE shall submit to EPA and the State a draft final primary document that incorporates DOE's response to the consolidated comments, along with a brief summary of how those comments were addressed in the draft final document.

16. Within thirty (30) days after receiving any of the following draft final primary documents, the LRA shall, in consultation with the SRA, approve, approve with modifications, or disapprove the document:

- a. RFI/RI Work Description Documents
- b. RFI/RI Reports
- c. CMS/FS Reports
- d. Corrective/Remedial Design Work Description Documents
- e. Sampling and Analysis Plans
- f. IM/IRA Implementation Documents
- g. Certifications of Completion

The SRA may not dispute the decision of the LRA under this paragraph.

17. Within thirty (30) days after receiving any

of the following draft final primary documents, the LRA and SRA shall approve, approve with modifications, or disapprove the following documents

- a) Annual updates of the CWP
- b) Annual updates to the Historical Release Report
- c) Community Relations Plans
- d) ~~Corrective/Remedial Design Plans~~

If the LRA and SRA are unable to concur on a decision to approve, approve with modification, or disapprove one of the draft final primary documents listed in this paragraph, either may invoke the dispute resolution provisions of Paragraphs ___ of this Part

- 18 If the draft final primary document is approved, that document shall become the final primary document. If the draft final primary document is approved with modifications, DOE shall prepare a final primary document in compliance with the required modifications within 20 days of receipt of the approval with modifications, unless DOE invokes dispute resolution pursuant to ___ within the same 20 day period of receipt of the approval with modifications. ~~If the draft final primary document is disapproved, DOE shall prepare a revised draft final primary document in compliance with the notice of disapproval within 20 days of receipt of the notice of disapproval, unless DOE invokes dispute resolution pursuant to ___ within the same 20 day period. of receipt of the notice of disapproval.~~ The revised draft final primary document is subject to the same approval process as any other draft final primary document. ~~If the draft final document is approved with modifications or disapproved, the LRA must clearly explain the necessary modifications or reasons for disapproval, give justification for the modifications, or the reasons for disapproval, and delineate the actions that must be taken for approval.~~ In responding to an approval with modifications or a disapproval of a draft final primary document, DOE shall revise and resubmit only such portions of the document as are necessary to comply with the approval with modifications or disapproval. When dispute resolution is invoked on a draft final primary document, work may be stopped in accordance with the procedures set forth in Part 13 (Work Stoppage). ~~When a draft final primary document with an enforceable milestone is not submitted or is disapproved, DOE will be in violation of~~

this Agreement pending resolution of any related dispute and the provisions of Part ~~---~~ (Stipulated Penalties) will apply.

19. ~~The~~ following draft final documents are required to go to public comment:

- a) Draft Permit Modifications/Proposed Plans
- b) IM/IRA Decision Documents
- c) Closure Plans
- d) Corrective Action Decisions/Records of Decision
- e) Proposed Action Memoranda

In these cases, the LRA and SRA shall review the draft final document for five (5) days. The purpose of this review is to ensure that the document is ready for public review. After the five (5) day period, a 60 day public comment period shall commence, or other appropriate public comment period as defined elsewhere in this Agreement. Within thirty (30) days of the conclusion of the public comment period, or as defined elsewhere in this Agreement, DOE shall submit to EPA and the State its written response summary to public comments received within the review and comment period and a revised draft final document that incorporates the comments received during the public comment period. The Parties agree that all public comments shall be resolved to the LRA's satisfaction within twenty (20) days of issuance of the public comment response summary or the dispute resolution procedures of Part ~~---~~ will be initiated. Upon approval of the public comment response summary by the LRA, DOE shall have ten (10) days to resubmit the draft final document to the LRA and the SRA, if necessary. After resubmittal, the LRA and SRA shall have ten (10) days to approve, approve with modification, or disapprove the document. The Parties may mutually agree to extend these time periods in writing. If the revised version is approved, it shall become the final primary document. If the revised version is approved with modifications or disapproved, the provisions of Paragraph 18 of this Part ~~---~~ apply.

C **Secondary Documents**

20 Secondary documents include those documents that are ~~discrete portions of the primary documents and are typically~~ input or feeder documents to a primary document, documents that act as discreet portions of other primary or secondary documents, and

program-wide support documents. Though secondary documents do not have enforceable milestones associated with them, DOE recognizes that submittal of secondary documents in a timely manner is necessary to meet enforceable milestones associated with primary documents. Failure to adhere to the baseline for submittal of secondary documents may result in the establishment of remedial milestones by EPA and the State that are enforceable. ~~Draft secondary documents shall be issued by DOE subject to review and comment by EPA and the State. Although DOE shall respond to comments received, the draft secondary documents may be finalized in the context of the corresponding draft final primary document to be issued. It is DOE's intention to incorporate comments received on secondary draft documents into draft final primary documents. Therefore, the Responsible Regulatory Agency shall provide comments within 30 days of receipt of draft secondary documents. A secondary document may be disputed at the time the corresponding draft primary document is issued.~~

21 DOE, as required by this Agreement and the CWP, shall complete and transmit the following ~~draft~~ applicable secondary documents to EPA and/or the State for review and comment in accordance with the provisions of this part

- a Periodic Progress Reports
- b Baseline Risk Assessment Technical Memoranda
- c CMS/FS Technical Memoranda
- d RFI/RI Work Description Document Technical Memoranda
- e Responsiveness Summaries
- f Background Study Plan for Surface Soils
- g. Other support documents for any activity covered by this Agreement as deemed appropriate by the Parties
- ~~2 Health & Safety Plan~~
- ~~7 Plan for Prevention of Contaminant Dispersion~~
- ~~9 Treatability Study Plan~~
- ~~10 Historical Release Report~~

22. The following existing final secondary documents are incorporated by reference into this Agreement:

- a. Health and Safety Plan
- b. Plan for Prevention of Contaminant Dispersion
- c. Background Geochemical Characterization Report

d , Treatability Study Plan

- 23 ~~The EPA and The State may comment on draft secondary documents listed above. The Responsible Regulatory Agency will review and resolve the other agency comments prior to submitting such comments to DOE. Such Secondary documents shall not be subject to dispute resolution by DOE except as provided in Paragraphs D and F. Target dates are established in the CWP baseline for the completion, and transmission, submittal, and review of draft secondary documents in accordance with the CWP. All secondary documents are subject to LRA approval except those listed in Items 20.a and 21.a above.~~
- 24 Unless the Parties mutually agree to another time period, all draft secondary documents shall be subject to a twenty (20) ~~fifteen (15)~~ day period for review and comment. ~~Review of any document by EPA and/or the State may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with laws, regulations, and any pertinent guidance or policy promulgated by the Responsible Regulatory Agency. The project Coordinator of the SRA shall provide comments on draft secondary documents to the Project Coordinator of the LRA within ten (10) days of receipt of the draft document. The LRA shall review the SRA comments and resolve any inconsistencies in consultation with the SRA. Should the Project Coordinators of the LRA and SRA be unable to resolve any inconsistencies within five (5) days, the dispute resolution provisions of Paragraphs 33, 34, and 35 of this Part shall immediately be invoked. Upon resolution of the inconsistencies or dispute, the LRA shall then submit a single set of comments to DOE on or before the close of the comment period which ensure compliance with CERCLA, RCRA, and CWA. EPA and the State agree to use their best efforts to provide a comprehensive set of comments on draft secondary documents to DOE so as to avoid, to the extent possible, raising issues of first impression at the draft final document stage. Comments by EPA and the State shall be provided with adequate specificity so that DOE may respond to the comments and, if appropriate, make changes to draft documents. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request by DOE, EPA or the State shall provide a copy of the cited~~

~~authority or reference~~ On or before the close of the review and comment period, the Lead Regulatory Agency shall transmit their written comments to the DOE. In cases involving complex or unusually lengthy documents, EPA the Lead Regulatory Agency may extend the review and comment period for an additional twenty (20) ~~thirty (30)~~ days by written notice to DOE on or before ~~prior to~~ the close end of the review and comment period. [NOTE. THIS NEEDS TO BE RECONCILED WITH CREDIT PROVISIONS] [If the review and comment period has been extended, all subsequent affected milestones for affected units shall be automatically extended by the same period of time.]

- 25 Comments which significantly expand previously agreed-to workscope may be considered sufficient basis for milestone schedule modifications. In that case, DOE shall formally notify the Lead Regulatory Agency within ten (10) ~~30~~ days of receipt of comments and request appropriate milestone modifications in accordance with Part 20 (Change Control Process).]
- 26 Following the close of the review and comment period, DOE shall give full consideration to all written comments on the document submitted during the review and comment period. Within fifteen (15) ~~twenty (20)~~ days of the receipt of comments on a draft secondary document, the DOE shall submit to EPA and/or the State a draft final secondary document that incorporates DOE's response to the consolidated comments, along with a brief summary of how those comments were addressed in the draft final document. ~~its written response to comments received within the review/comment period.~~ The Parties agree that all comments shall be resolved within 25 days of issuance of the response summary or dispute resolution will be initiated. Upon approval of the response summary, DOE shall issue a draft final document. ~~The Parties may mutually agree to extend these time periods in writing.~~
- 27 Within ten (10) days after receiving a draft final secondary document the LRA shall, in consultation with the SRA, approve, approve with modifications, or disapprove of the document. If, after ten (10) days, DOE has not received any response from the LRA, the draft final secondary document will be considered approved. The SRA may not dispute the decision of the LRA on draft final

secondary documents.

- 28 If the draft final secondary document is approved, that document shall become the final secondary document. If the draft final secondary document is approved with modifications, DOE shall prepare a final secondary document within 15 days of the receipt of, and in compliance with, the approval with modifications. If the draft final secondary document is disapproved, DOE shall prepare a revised draft final secondary document within 15 days of the receipt of, and in compliance with, the notice of disapproval. The revised draft final secondary document is subject to the same approval process as any other draft final secondary document. If the draft final document is approved with modifications or disapproved, the LRA must clearly explain the necessary modifications or reasons for disapproval, give justification for the modifications or the reasons for disapproval, and delineate the actions that must be taken for approval. In responding to an approval with modifications or a disapproval of a draft final secondary document, DOE shall revise and resubmit only such portions of the document as are necessary to comply with modifications or disapproval.

D ARAR Considerations:

- 29 For those primary or secondary documents that consist of or include Applicable or Relevant and Appropriate Requirement (ARAR) determinations, the Project Coordinators, or their designated staff, shall meet prior to the issuance of a draft document to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. Draft ARAR determinations shall be prepared by DOE in accordance with § 121 (d) (2) of CERCLA, 42 U S C § 9621 (d) (2), the NCP, and pertinent guidance issued by the Lead Regulatory Agency which shall be consistent with CERCLA and the NCP.
- 30 In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances at a site, the particular actions proposed as a remedy, and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is

issued

- 31 In commenting on a document which contains a proposed ARAR determination, the Lead Regulatory Agency shall include a reasoned statement of whether it objects to any portion of the proposed ARAR determination. To the extent that the Lead Regulatory Agency objects, they shall explain the basis for their objection in detail and shall identify any ARARs which they believe were not properly addressed in the proposed ARAR determination.

E. Modification of Approved Documents

- 32 Following final approval finalization of any document pursuant to the provisions of this Part, any Party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling, or other supporting technical work, only as provided in Part ____ (Modification to Work) of this Agreement Paragraphs 31 and 32.
- ~~31 Any Party may seek to modify a primary or secondary document after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. A Party may seek such a modification by submitting a concise written request, in accordance with Part 20 (Change Control Process). The request shall specify the nature of the requested modification and the new information upon which the request is based.~~
- ~~32 In the event that the Parties Project Coordinators reach agreement on the modification, the modification shall be incorporated by reference and become fully enforceable under this Agreement pursuant to Part 22 (Amendment of Agreement). In the event that the Parties Project Coordinators do not reach agreement on the modification, any Party may invoke dispute resolution as provided in Part ____ to determine if such modification shall be made, except as provided in Section C of this Part (Secondary Documents). In the case of changes to secondary documents, the LRA shall make a final determination on whether or not the requested change is made. Modifications of a document shall be required upon showing that (1) the requested modification is based on significant new information; and (2) the requested modification could be of~~

~~significant assistance in evaluating impacts on the public health or welfare or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment~~

E. State--EPA Dispute Resolution

33 Any disputes arising between EPA and the State in the review and comment process related to any secondary documents and those primary documents that are not decision documents, shall be resolved in accordance with Section E of this Part. Decision documents shall be defined as:

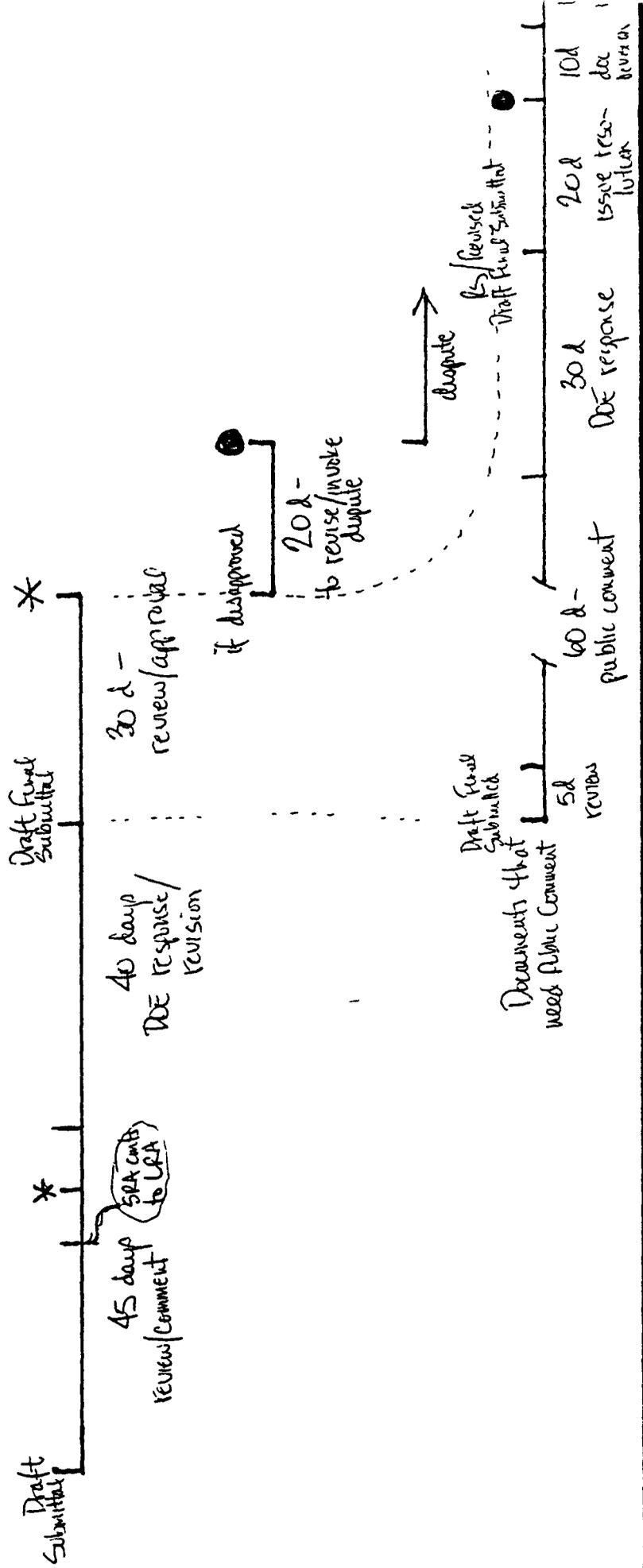
- a) Draft Permit Modifications/Proposed Plans
- b) IM/IRA Decision Documents
- c) Closure Plans
- d) Corrective Action Decisions/Records of Decision
- e) Proposed Action Memoranda

Disputes between the LRA and the SRA related to decision documents shall be resolved pursuant to Part _____.

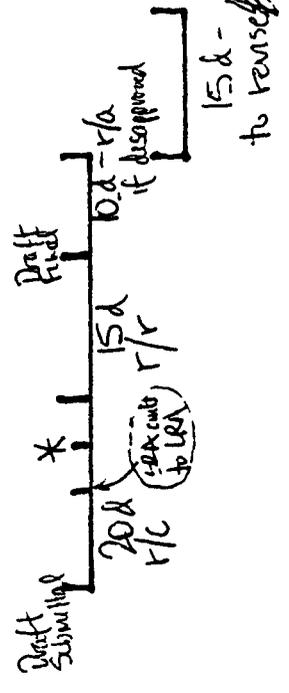
34 With the exception of those primary documents listed in Paragraph 33 above, if the Project Coordinators for EPA and the State are unable to resolve a dispute or inconsistency regarding comments on a draft primary or secondary document within the timeframes set forth in Paragraphs 13 and 23 above (relating to review of draft primary and secondary documents), they shall immediately prepare a written statement of dispute and submit it to the DRC representatives for EPA and the State ~~within the time frames set forth in paragraphs 13 and 23 above~~

35 The State and EPA DRC members shall have seven (7) days to resolve the dispute. In the event the DRC members are unable to agree on a resolution, the DRC member of the LRA shall issue a written decision resolving the dispute. The determination of the LRA DRC member shall not be subject to further dispute, provided, however, that the SRA may, at the time any decision document is approved, approved with modifications, or disapproved of the CAD/ROD, in an action to enforce its own requirements or challenging the LRA's remedial or corrective action decision, assert the disputed issue as a grounds in support of its position

PRIMARY DOCUMENTS



SECONDARY DOCUMENTS



- * EPA/CDM dispute possible pursuant to Part 16, P 33, 34, 35.
- Δ EPA/CDM dispute " " Part --
- DOE Agency " " " " " "

Part 22
EPA Revisions August 16, 1994

A If a dispute arises under this Agreement, the procedures of this Part shall apply, unless otherwise expressly addressed in this Agreement. It is the intent of the Parties to informally resolve issues at the Operable Unit Manager or Project Coordinator level, and that Parties shall invoke Dispute Resolution only for significant issues. The Parties agree to utilize the dispute resolution process only in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

B If any Party objects to any action taken by another Party, the Project Coordinator of the disputing Party shall submit to the other Project Coordinators within 14 days of such disputed action, a draft Written Statement of Dispute, setting forth in a clear and precise manner the particular issues in dispute, the nature of the dispute, the disputing Party's position with respect to the dispute, and the information relied upon to support its position. The Parties agree to raise disputes within fourteen days of any disputed action, however, failure to raise a dispute within this timeframe shall not affect any response action selection authorities pursuant to Chapter 2.

C If the Project Coordinators are unable to informally resolve such dispute within fourteen (14) days of receipt of the draft Written Statement of Dispute described above, the Project Coordinator of the disputing Party shall provide a Written Notice of Dispute describing the issues underlying the dispute and attempts to resolve the dispute, and shall provide this notice along with the formal Written Statement of Dispute to the Dispute Resolution Committee (DRC) by the end of the 14 day period. Failure to provide a Written Statement of Dispute by the end of the 14 day period shall render the dispute moot. Additional information relied upon to support a position may be provided by any the disputing Party anytime prior to a final decision. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution.

D The State designated member of the DRC is the Chief of the Hazardous Waste Control Section. DOE's designated member of the DRC is the Assistant Manager for Environmental Restoration, Rocky Flats Field Office. The EPA member of the DRC is the Region VIII Chief of the Federal Facilities Branch, Hazardous Waste Management Division. Written notice of any delegation of authority from a Party's designated DRC member shall be provided to the other Parties, pursuant to the procedures of Part 25 (Notification). The DRC shall have 21 days from receipt of the Written Notice of Dispute and statement described in paragraphs B and C to unanimously resolve the dispute and issue a written decision. If the DRC is unable to resolve the dispute within this 21-day period, the Written Notice of Dispute and statement shall be forwarded along with any

supporting information to the Senior Executive Committee (SEC) for resolution

E The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The State's representative on the SEC shall be the Assistant Director for the Office of Health and Environmental Protection of the Department of Health (Assistant Director). The EPA's representative on the SEC is the Region VIII Hazardous Waste Management Division Director. The DOE's representative on the SEC is the Manager, Rocky Flats Field Office.

F The SEC members shall as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within 21 days, the Lead Regulatory Agency SEC member shall issue a written final decision. ~~A decision by the Assistant Director shall in no way impair or limit EPA's responsibilities for oversight pursuant to Federal authorization of the hazardous waste program(s) [<-- This was moved below]~~ For Baseline changes not impacting enforceable milestones, the DOE-RFFO Manager shall issue a written final decision for disputes arising from the baseline change process and emerging work pursuant to Part 18 (Project Baseline and Milestones) ~~DELETE??~~ [If there is disagreement between Regulatory Agencies regarding a final written decision, the other Regulatory Agency shall issue a written position within twenty-one (21) days. This written statement of position shall specify the nature of the disagreement and the further actions needed, <-- What is the purpose of these last two sentences???]

G Where EPA is the Lead Regulatory Agency, ^{DOE or the State} may, within 21 days of the Region VIII Hazardous Waste Division Director's issuance of EPA's position, issue a written notice elevating the dispute to the Regional Administrator of EPA for resolution. In the event that DOE or the State elects not to elevate the dispute to the Regional Administrator within the designated 21-day escalation period, DOE and the State shall be deemed to have agreed with the Region VIII Hazardous Waste Management Division Director's written position with respect to the dispute. If, prior to elevation of the dispute to the Region VIII Regional Administrator, the members of the SEC unanimously determine that the nature of the dispute is nationally significant or the Secretary of Energy makes a written determination that the dispute is nationally significant, the dispute may be elevated to the Administrator of EPA, instead of the Regional Administrator.

H Upon escalation of a dispute to the EPA Region VIII Regional Administrator or the Administrator of EPA pursuant to paragraph G, the Regional Administrator or the Administrator will review and resolve the dispute within 21 days. Upon request and prior to resolving the dispute, the EPA Region VIII Administrator or the Administrator of EPA shall meet and confer with the Secretary of DOE and the Colorado Department of Health Executive Director to discuss the issue(s) under dispute. Upon resolution, the Regional Administrator or the

Administrator shall provide DOE and the State with a written decision setting forth final resolution of the dispute

I Where the State is the Lead Regulatory Agency, the decision of the Assistant Director shall be considered final agency action for the purposes of judicial review under § 24-4-106, C.R.S. (1988). If DOE or EPA objects to such decision or determination, DOE or EPA may appeal to the appropriate tribunal for review. A decision by the Assistant Director shall in no way impair or limit EPA's responsibilities for oversight pursuant to Federal authorization of the hazardous waste program(s).

J Subject to Parts 15 (RCRA/CERCLA Reservation Of Rights) and 36 (Reservation Of Rights) the Parties shall be bound by and abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part

K The pendency of any dispute under this Chapter shall not affect DOE's responsibility for timely performance of the work required by this Agreement, except as provided in Part XXX (Extensions), that the time period for completion of work affected by such dispute, shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein, or as mutually agreed. All elements of the work required by this Agreement which are not directly affected by the dispute shall continue and be completed in accordance with the applicable schedule.

Original
not
lined out

L Within 21 days of the final resolution of any dispute under this Part, DOE shall incorporate the resolution and final determination into the appropriate plan, schedule, or procedure(s) and proceed to implement this Agreement according to the amended plan, schedule, or procedure(s). DOE shall notify the other Parties as to the action(s) taken to comply with the final resolution of a dispute. This time period may be extended as provided in Part XXX (Extensions), appropriate by DOE, with formal notification to the Regulatory Parties if plan(s), schedule(s), or procedure(s) require additional time to finalize.

Potential Non-ER Milestones for RFCA

- 1 Rocky Flats will have a defined process, involving stakeholders and regulators, to develop and annually update a site-wide integrated baseline. This site-wide integrated baseline will depict timing and inter-relationships of activities by which the site will achieve its mission and vision. The initial and annually updated baseline will include scope, schedule and cost components to provide progress tracking. The baseline development process will also include prioritization of activities on the site as a tool for management to review resource application on a yearly basis.
- 2 Commence Phase 2 liquid treatment in Solution Stabilization Program
- 3 Drain all low concentration Pu tanks in Building 771
- 4 Transfer of SNM from Building 991 to Building 371
- 5 Complete 6 shipments totaling 550 kg of HEU off-site
- 6 Complete construction and begin operation of the Centralized Waste Storage Facility
- 7 Remove ion exchange resins from columns in Building 771

REVISED BUDGET PLANNING AND EXECUTION LANGUAGE
AUGUST 18, 1994

Reflects August 11 Discussions

- DOE has indicated that they cannot currently agree to items in bold and brackets.
- DOE is checking about the acceptability of items in bold, italics and brackets

A. **BUDGET PLANNING** -- DOE shall use its best efforts and take all necessary steps to obtain timely funding to meet its obligations under this Agreement and shall include sufficient funds in its budget request to the President to support the activities to be conducted under the agreement ~~In addition, the parties agree to consult during the planning and execution of the budget to propose and evaluate creative ways to decrease costs and improve productivity during the implementation of this agreement~~ DOE shall ensure that any such realized cost savings will be used to accelerate the cleanup program at Rocky Flats ~~In addition, the Parties agree to consult during the RFETS budget planning and execution processes to identify and evaluate opportunities and incentives to reduce the costs and improve productivity associated with environmental management activities at RFETS and whenever reasonable, implement any such measures.~~ This shall be accomplished as described in this paragraph and paragraphs ____ It is the intent of the parties that the Environmental Management (EM) actions at the Rocky Flats Environmental Technology Site (RFETS) governed by this Agreement shall reflect the parties commitment to proactively pursue and implement productivity gains and cost savings and shall consider, but not be strictly driven by the budget targets provided by OMB or DOE-HQ Specifically, the cost of projects governed by this Agreement, along with the overall constraints of the Federal budget process, timing of financial decisions, and allocation of funds, shall be considered by all parties when establishing the scope and schedule of EM projects The parties acknowledge that this expanded consideration of costs as described in paragraph F provides significant incentive to reduce EM costs and increase productivity while implementing the EM program at RFETS The parties further agree that this process has been developed to impart flexibility in implementing a jointly developed and agreed upon baseline schedule for EM activities at Rocky Flats In accordance with the provisions of this Part, the parties agree that DOE, in consultation with EPA and CDPHE, will maintain and revise the baselines of site activities, and EPA and CDPHE, in consultation with DOE, will set the enforceable milestones *including enforceable completion dates for specific activities.* *DOE further recognizes that the flexibility imparted through adoption of this budget planning and execution process allows DOE to identify methods to mitigate impacts to*

as a result of this evaluation and improvements in cost and productivity, it is determined that the projected cost for the scope defined for FY ~~can be implemented for~~ is less than the DOE allotment to RFETS for the FY, DOE shall recommend ~~the implementation of additional scope or the acceleration of activities to enhance the RFETS-EM program for implementation~~ during FY commensurate with the difference in projected costs. Finally, as part of this evaluation, DOE shall recommend to EPA and CDPHE revisions to the baselines and enforceable milestones for the FY and FY+1. In consideration of these recommendations, EPA and CDPHE may elect to change enforceable milestones for the FY and FY+1. Should this occur, EPA and CDPHE may recommend to DOE appropriate changes to the baselines. DOE shall revise the baselines to ensure that the modified enforceable milestones are fully incorporated therein.

- e If there is a delay in Congressional appropriations beyond the first of the new federal fiscal year, DOE-RFETS shall inform EPA and CDPHE of any continuing resolutions, and of the impact of the delay on its ability to meet milestones and other requirements of this Agreement. EPA and CDPHE will review these actions and may recommend reallocation of available funds.
 - f The Parties will use their best efforts to complete the processes described in A 1 by the end of the first quarter of each fiscal year. In the event the parties cannot reach consensus regarding either the baselines or enforceable milestones for FY and FY+1, those portions of the baselines or enforceable milestones that are in dispute shall be subject to the dispute resolution provisions of paragraph ____ Existing milestones will remain binding pending resolution of the dispute.
- 2 Within two weeks after DOE-HQ issuance of EM planning and/or budget guidance for FY+2, including target level funding guidance, to DOE-RFETS, DOE-RFETS shall provide a copy of such guidance to CDPHE and EPA along with a preliminary assessment of its impacts. DOE-RFETS shall also provide a copy of its initial contractor budget guidance to CDPHE and EPA within two weeks after its issuance.
- 3 Subsequent to the process of preparing for and submitting the President's budget to Congress, the parties will accomplish the following:
- a [DOE-HQ shall submit to EPA and CDPHE a copy of the OMB passback letter and associated correspondence for the FY+1 budget request.] *

milestones that are in dispute The enforceable milestones established by EPA and CDPHE shall be binding pending resolution of the dispute

- 5 The factors to be considered in implementing paragraphs 1 and 5 above shall include, among other things
- a the impact of rescheduling or rescoping a project on a logical progression toward cleanup and the reduction of human health and environmental risk,
 - b the impact of rescheduling or rescoping a project on the life-cycle cost of that project,
 - c the impact of rescheduling or rescoping a project on logistic, engineering, technical, health and safety concerns related to that project,
 - d any impacts of rescheduling or rescoping a project on other projects, including the costs and scheduling of such projects,
 - e whether the rescheduling or rescoping will exacerbate or reduce significant fluctuations in resource requirements from year to year,
 - f the impact on DOE's management capabilities,
 - g new or emerging technologies,
 - h the impact on CDPHE's and EPA's oversight capabilities,
 - i any change in the human health and environmental risk associated with rescheduling or rescoping a project,
 - j changing priorities as a result of new information,
 - k the values expressed by the public,
 - l any consensus views expressed by the Rocky Flats Citizen Advisory Board,
 - m the Congressional budget appropriation, OMB apportionment, and DOE allotment for FY, as well as the President's Budget for FY+1 and associated outyear funding targets,

- 1 DOE, CDPHE and EPA project managers shall meet periodically throughout the FY to monitor and discuss the status of projects scheduled during the year and cost savings initiatives and productivity improvements associated with those projects
- 2 DOE-RFETS shall provide EPA and CDPHE with copies of the Program Execution Guidance at the same time it provides such guidance to its management and operations contractor
- 3 DOE-RFETS shall consult with EPA and CDPHE in reviewing the work package guidance summaries prepared by its contractor
- 4 Throughout the FY, DOE shall promptly notify EPA and CDPHE of any proposed site-specific or programmatic action, if such action may have a impact on DOE's ability to meet the baselines or enforceable milestones in this Agreement DOE shall consider any comments CDPHE or EPA may provide prior to implementing the proposed action
- 5 **DOE to revise** Monthly Site Management System (SMS) reports shall be provided to EPA and Ecology to identify any anticipated delays in meeting time schedules, the reason(s) for such delay and actions taken to prevent or mitigate the delay, and any potential problems that may result in a departure from the requirements and time schedules In accomplishing this, the SMS reports shall, as a minimum, include for each program monthly and cumulative budget, actual monthly and cumulative costs, performance measurement information including explanations of cost/schedule variances, progress in achievement of milestones, and notification of problems and program/project delays The appropriate contractor program managers shall sign the monthly Site Management System report The signature block shall contain the statement "The information contained within this report is complete and accurate to the best of my knowledge " At the monthly milestone review meetings, the appropriate DOE program manager will provide DOE's assessment of milestone progress and the extent to which DOE agrees or disagrees with the minutes signed by the three parties With regard to these assessments, signature of the minutes by Ecology and EPA shall indicate only that assessment information was provided by DOE RL The Monthly Site Management System report shall also be placed in the Public Information Repositories as identified in Section 10 2 of the Action Plan
- 6 Within 30 days following the completion of DOE_s annual midyear management review (approximately April-May of each year), RFETS shall brief EPA and the State on any decisions that significantly affect milestones under this Agreement

identify and evaluate opportunities and incentives to reduce the costs and improve productivity associated with environmental management activities at RFETS and whenever reasonable, implement any such measures.

G. DISPUTE RESOLUTION

The following section is intended to provide an expedited dispute resolution process regarding disputes which arise under paragraphs A 1 f and A 4 b. The proposed expedited process takes into consideration that the consultative process at the staff level will obviate the need to reperform such consultations as part of the expedited dispute resolution process. In addition, it takes into consideration that the DRC members would most likely be involved in reviewing the staff recommendations resulting from the staff level consultative process.

- 1 If, at any time during the consultative process in paragraphs A.1.a. through A.1.e., any party determines that consensus on some or all revisions to the baseline and enforceable milestones for FY and FY+1 is not likely to be reached, that party may initiate dispute resolution by providing notice to the other parties. Within 7 days of such notice, the RFCA Project Coordinators in consultation with the Dispute Resolution Committee (DRC) shall prepare a Written Notice of Dispute regarding those portions of the baselines or enforceable milestones for which the parties were not able to reach a consensus.

For style purposes may want to add that DRC is defined in Part 22 D of this Agreement (Resolution of Disputes) and Written Notice of Dispute is defined in Part 22 C of this Agreement

- 2 If, at any time during the consultative process in paragraph A.4.b., any party determines that consensus on some or all revisions to the baseline and enforceable milestones for FY+2 is not likely to be reached, that party may initiate dispute resolution by providing notice to the other parties. Within 7 days of such notice, the RFCA Project Coordinators in consultation with the DRC shall prepare a Written Notice of Dispute regarding those portions of the baselines or enforceable milestones for which the parties were not able to reach a consensus.
- 3 Upon completion of the Written Notice of Dispute, the DRC shall forward it along with any supporting information to the Senior Executive Committee (SEC) *

- * The parties have discussed the possibility of adding language here that would allow the DRC to resolve disputes prior to elevation of the Written Notice of Dispute to the SEC.

From: Peter Ornstein
Subject: Budget Language and CERCLA 120(e)(5)(B)
To: Todd Barker
Cc: Martin Hestmark
Clifford J. VillaPE=<ÇsSâ;FTRR1875,-5PE=<ÇiSâ;RR1875,-4PE=<ÇsSâ;RR

Todd:

Here is language that should go in place of the bracketed language at the end of paragraph A.3 in the Budget Planning and Execution section:

"This written description shall be included within DOE's Annual Report, as required by section 120(e)(5)(B) of CERCLA, and submitted to Congress within 30 days of the submission of the President's budget to Congress."

Budget Reduction Fair Share Allocation Language

If the Congressional appropriation for ER or any other EM program from which any ER milestone has been set is lower than the budget request, DOE may elect to reduce the subsequent allocations in a "fair share" manner. "Fair share" shall mean that DOE will reduce all site's EM allocations by a percentage equal to the percentage of congressional appropriation reduction from the budget request. Upon a clear showing by DOE that a "fair share" reduction has been made in its EM allocations and that the budget request contained sufficient funds to conduct the activities to meet enforceable milestones, EPA and CDPHE agree to negotiate in good faith changes to the baseline and enforceable milestone which will be caused by the reduced allocation.