

# Rocky Flats Coalition of Local Governments

Boulder County      City and County of Broomfield      Jefferson County  
 City of Arvada      City of Boulder      City of Westminster      Town of Superior

## Rocky Flats Coalition of Local Governments Board Meeting Minutes

**Monday, February 7, 2005**

**8:30 a.m. – 11:45 p.m.**

**Mt. Evans Room in the Terminal Building**

**Jefferson County Airport, Broomfield**

**Board members in attendance:** Lori Cox (Alternate, Broomfield), Mike Bartleson (Alternate, Broomfield), Sam Dixon (Director, Westminster), Jo Ann Price (Alternate, Westminster), Clark Johnson (Alternate, Arvada), Jim Congrove (Director, Jefferson County), Nanette Neelan (Alternate, Jefferson County), Karen Imbierowicz (Director, Superior), Devin Granbery (Alternate, Superior), Shaun McGrath (Director, City of Boulder), Carl Castillo (Alternate, City of Boulder), Ben Pearlman (Director, Boulder County), Jane Uitti (Alternate, Boulder County).

**Coalition staff members and consultants in attendance:** David Abelson (Executive Director), Kimberly Lohr (Assistant Director), Rik Getty (Technical Program Manager), Barb Vander Wall (Seter & Vander Wall, P.C.).

**Members of the Public:** Dave Shelton (Kaiser-Hill), John Corsi (Kaiser-Hill), Sam Marutzky (S.M. Stoller), Joe Legare (DOE), Frazer Lockhart (DOE), Karen Lutz (DOE), Scott Surovchak (DOE), Dave Geiser (DOE), Tony Carter (DOE), Mark Sattelberg (USFWS), Amy Thornburg (USFWS), Rob Henneke (EPA), Steve Gunderson (CDPHE), Carl Spreng (CDPHE), Edgar Ethington (CDPHE), Shirley Garcia (Broomfield), Al Nelson (Westminster), Bob Nelson (Golden), Jeanette Alberg (Senator Allard), Doug Young (Rep. Udall), Kimberly Cadena (Rep. Beauprez), David Hiller (Senator Salazar), Patricia Rice (RFCAB), Ken Korkia (RFCAB), Gerald DePoorter (RFCAB), Roman Kohler (Rocky Flats Homesteaders), Dan Chesshir (RFSOIU), F.P. Cruz (RFSOIU), Ron DiGiorgio (USWA Local 8031), Chuck Miller (USWA Local 8031), Hank Stovall (former Board member), Lisa Morzel (former Board member), Todd Neff (Daily Camera) Andrew Tirman (RMPJC), Erin Hamby (RMPJC).

### Convene/Agenda Review

Chairwoman Karen Imbierowicz convened the meeting at 8:35 a.m. The consent agenda was held until Westminster was in attendance, at Westminster's earlier request.

### Business Items

**1) Appoint New Coalition Officers** - In accordance with the Coalition's IGA, Shaun McGrath was appointed the Chairman for the upcoming year, Gary Brosz the Vice Chairman, and Jim Congrove the Treasurer/Secretary. Additionally, Shaun introduced the new Board members, Ben Pearlman and Jim Congrove. Barb Vander Wall distributed the oath of office to all Board members, requesting their signature and signature of a witness. The document must be signed annually to reflect the public official taking on the duties of public office:

**2) Executive Director's Report** - David Abelson reported on the following items.

- Requests for congressional committee assignments have been completed, and Rep. Udall has been assigned to the House ~~ADMIN RECORD~~es Committee. Senator Allard will no longer be on the Senate

ADMIN RECORD

- Armed Services Committee, but will be assigned to the Senate Appropriations Committee.
- Reps. Udall and Beauprez reintroduced special exposure cohort legislation, H.R. 428, which would streamline the process for approving Rocky Flats claims under the Energy Employee Occupational Illness Compensation Program Act.
- David is still working to communicate with Rep. McKinley as his bill continues to garner press. The bill was discussed later in the Board meeting.
- David attended the RFCAB meeting the week prior to participate in a productive, albeit frustrating, discussion of the Local Stakeholder Organization.
- Coalition staff will begin work on a new project reviewing Site transition from cleanup to stewardship, bringing together a long-term stewardship analysis from both policy and technical viewpoints. The project will fit into independent review, and was discussed later in the Board meeting.
- There have been a number of emails circulating in which statements made by David have been criticized by stakeholders. As these emails can be misleading and distort the facts, David urged Board members to contact him if issues arise over which they are unsure.
- The Coalition Quarterly Financial Report is available.

Additionally, at David's request, Dave Shelton (Kaiser-Hill) reported the Site is treating americium contaminated water from Pond A-4 at approximately 450 gallons per minute, and pumping it back into Pond A-3. They are continuing to adjust the treatment system in order to optimize performance. Dave also stated that they expect their first samples back, confirming americium levels, later in the week.

**3) Motion to Approve Consent Agenda** – Karen Imbierowicz motioned to approve the consent agenda. Clark Johnson seconded the motion. Sam Dixon requested that the Coalition's letter commenting on the Original Landfill IM/IRA be removed from the consent agenda. The standing motion then passed 7-0. Sam explained that Westminster disagrees with the landfill remediation decision based on a new report, although they also objected prior to the report. The report by Dr. Dwyer evaluates the Original Landfill IM/IRA and was commissioned by the Woman Creek Reservoir Authority. Lori Cox added that Broomfield has also hired a consultant to review the Groundwater IM/IRA (a Coalition letter commenting on the Groundwater IM/IRA was approved under the consent agenda). Karen asked if the Coalition could issue a revised position if they so choose after reviewing the latest independent reviews and David responded affirmatively. Karen Imbierowicz motioned to approve the Coalition's letter commenting on the Original Landfill IM/IRA. Clark Johnson seconded the motion. The motion passed 6-1 (with Westminster opposing).

### **Public Comment**

There was no public comment at this time.

### **H.B. 1179**

David Abelson provided background on Rep. McKinley's bill which would require information about contamination left onsite be provided to Rocky Flats refuge visitors. The bill was redrafted by Rep. Weissman and approved by the House Health and Human Services Committee (HHS). David stated the Board has the option to oppose the bill, work to make it better, or sit back and do nothing, an option he recommended against. He then listed his three major concerns with the bill as drafted:

1. Inform vs. warn - As the Board has advocated for some time, it is important to inform visitors of the site history, ongoing management needs and monitoring results. However, a warning suggests that the cleanup threshold, as required by the refuge bill, has not been met.
2. Inaccurate information - There are inaccurate statements within the bill language regarding issues of risk from and uncertainty over impacts of low level radiation.

3. Role of State Legislature - The cleanup is not yet complete and long-term stewardship planning is ongoing; thus, for the legislature to step into the process at this point suggests the current process and dialogue is broken.

Sam Dixon said she supports the bill and believes changes can be made to address the inaccuracies. Karen Imbierowicz asked about the appropriations process. David said the fiscal note attached to the prior version of the bill was \$1.16 million, but the revised fiscal note for the bill as approved by HHS has not been released. He explained that there is a question of whether signs would be on federal lands or not, which could have a huge fiscal impact, but the expensive provision requiring the State to hire consultants was struck from the current language. Sam noted the signs themselves should be paid for by DOE.

Shaun McGrath said he spoke with Lorraine Anderson the week prior and they agreed with Sam that the bill is not fatally flawed and it would be worth pursuing amendments to change problematic provisions. He then suggested amendments, striking Section D and amending Section B to require information being provided be developed by CDPHE in consultation with EPA and the LSO. Clark Johnson said he had also talked with Lorraine and her biggest issue is that she does not believe State Legislature should write the language of the Site's signage, but should instead be put back into the hands of those involved in the process. He said she would oppose the bill unless there is major amendment. Clark said he also has concerns about Rep. McKinley's motives, and although he is clearly knowledgeable about Rocky Flats when it was in operation he has been absent from the cleanup process. He suggested working with Rep. McKinley on better language and have him postpone the bill until next year.

Jim Congrove said the Board should first decide whether they support the State Legislature's involvement. If yes, then it would be appropriate to work on the wording and talk with the Chair of the committee and the bill sponsor. Sam agreed it would be good idea to work with the sponsors as a group and stated she has no objections to the Legislature's involvement. Karen disagreed and said she does not think it is helpful to have the Legislature involved at this point as this bill does not add anything to the process that is not already being done. She suggested working to kill the bill as long as it would not eliminate Coalition efforts to revise the bill if it is approved. Jim noted there are not yet any Senate sponsors, and asked if there are any other citizen groups involved in Rocky Flats like the Coalition. David described the RFCAB, Rocky Mountain Peace and Justice Center, and the Rocky Flats Homesteaders. Jim then suggested all the groups work together to determine if local stakeholders believe Legislative involvement is currently necessary and then talk with people in the Senate. He added the bill will go nowhere without a sponsor or if a big fiscal note is attached. Clark said his direction from Lorraine was to kill the bill, but if that is not possible then they should work to redraft the language. David confirmed that is also what he heard from Lorraine. The Board discussed in further depth the idea of having the Coalition send the message that it opposes the bill, but if it goes forward then it should provide suggested amended language. Gerald DePoorter (RFCAB) said since the RFCAB is a consensus organization and will not be meeting again until March it will not issue a recommendation on this bill, although individual members did speak at the hearing. Doug Young (Rep. Udall) said his office is interested in the Coalition's position and will help promote the direction the Coalition wants to take.

Nanette Neelan again posed the question of whether or not the Board supports State legislature involvement, and noted it could set a precedent and open the door for other involvement. Shaun said he does not believe it is a good statement to say elected officials should not be involved. Ben Pearlman suggested that opposing the bill in its current form is different than telling the State legislature to not get involved. Instead the Coalition could state it is not the right way to get involved and the Legislature should work with the Coalition to find a solution that would make sense. The Board had further discussion clarifying whether they were "opposing and then amending" or "opposing unless amended".

Karen Imbierowicz motioned to oppose H.B. 1079 unless amended. Ben Pearlman seconded the motion. The motion passed 7-0. The Board directed Coalition staff to begin drafting suggested amendments.

### **Local Stakeholder Organization**

Shaun McGrath introduced Dave Geiser and Tony Carter from the office of DOE Legacy Management (LM) Headquarters. David Abelson reviewed the legislation establishing the Local Stakeholder Organizations (LSO) as well as the related issues the stakeholders have been working on. Although the Coalition and RFCAB agree on LSO mission, objectives, and scope of work, there is still disagreement over LSO member composition, specifically, the role and level of involvement of non-elected officials.

Dave Geiser then described the role and mission of LM, primarily the long-term management of sites that no longer have a DOE mission. There are approximately 70 of these sites, including sites from the Army Corp of Engineers and uranium mill tailings sites. LM works to transition these sites into surveillance and maintenance mode while incorporating public involvement, which ranges widely from very little public interest to sites like Rocky Flats with intense public scrutiny. Thus, LM designs each public participation plan uniquely, based on the site and the surrounding community. LM also does a lot of work with local governments, which ranges from limited annual meetings to active local government work onsite. Within that context Congress directed the Secretary of Energy to create LSOs for Rocky Flats, Fernald and Mound. Currently LM is working to get input from the communities, local governments, and congressional staff to make sure they understand the intent of the legislation and how it can be implemented for each of those very different three sites. Dave emphasized four points:

1. DOE's preference is an inclusive approach to public participation.
2. DOE benefits from interaction with local governments, and it is up to the local governments to decide how active a role they would like to play.
3. The LSO is aimed at transition, but more importantly, it will focus on what happens after the remedies are in place and the future of the site.
4. The number of decisions and their importance will go down dramatically after site transition.

Dave next stated DOE is ultimately responsible for carrying congressional direction to establish the LSO. He said the legislation is clear that the LSO would consist of locally elected officials or their designees and that the LSO must be in place six months prior to closure. LM, in consultation with congressional staff, interpret this to mean physical closure as opposed to regulatory completion. Thus, the Rocky Flats LSO should be in place by this June. Dave said it is important to move forward quickly, but not so fast the organization is set up incorrectly or doomed to failure. He then considered the role of the Coalition and RFCAB, noting the mindset has been that the Coalition would morph into the LSO. However, it may also be possible for the LSO to start in parallel operation with the Coalition and RFCAB so that those two organizations could continue to provide recommendations on cleanup and closure while the LSO focused on transition. Dave added that the Federal Advisory Committee Act (FACA) was designed to put structure around the public input process, but the way the legislation is crafted the LSO will be performing actual duties instead of just advising. Thus, the LSO would be an activity based organization and exempt from FACA. However, the legislation requires compliance with FACA, which is contradictory to the intent of FACA. LM has asked DOE general counsel for a legal opinion on how to move forward.

Gerald DePoorter (RFCAB) provided the three major points which arose from the RFCAB discussion of this issue the week prior: 1) non-elected officials should have substantive participation, 2) substantive participation means full and equal participation in all activities and decision-making, and, 3) equal participation is important for all members to feel their participation is validated in order to continue efforts. Gerald cited the example of the Radionuclide Soil Action Level Oversight Panel as a successful

group. Ken Korkia (RFCAB) said other themes which emerged from their discussion included the importance of keeping expertise and institutional memory involved, looking forward to the future needs of the site, and diverse membership.

Karen Imbierowicz asked Dave if they had other sites that could provide an example of successful roles for non-elected members. Dave explained they do not have any sites which have an LSO yet, and he again reviewed the wide spectrum of public involvement at different sites. Karen acknowledged that the LSO would not address cleanup issues, and she asked how long-term stewardship issues would affect LSO formation. Dave says he sees it as remedy decisions establishing stewardship requirements, and if the remedies operate correctly then LM would not be dealing with any regulatory decisions. He also differentiated between long-term stewardship and surveillance and monitoring, explaining that long-term stewardship can be broken down into three areas: maintaining the remedy and protecting human health and the environment; managing the natural, cultural, and historical resources associated with the property; and, maintaining records and disseminating information.

Nanette Neelan asked more about his suggestion of having three organizations operate in parallel. Dave clarified that he is not yet recommending three separate organizations, but the legislation appears to focus on transition to long-term stewardship and then post-closure. If the Coalition as an organization ended June 1<sup>st</sup> when the LSO starts up, technically the LSO does not have a role in providing advice on remedy decisions. Thus, he is trying to allow time for the Coalition to continue to provide input to DOE on remedy decisions while still allowing the LSO to begin operations. David Abelson added his concern that if the Coalition changes June 1<sup>st</sup> to include mandated involvement from non-elected officials it could have the unintended consequence of hamstringing Coalition process. Dave Geiser said any remedy decisions brought to LM would be deferred to DOE Environmental Management (EM). Sam asked what would happen in the event of remedy failure. Dave said it would depend on the magnitude of failure, and if it were a minor issue LM would continue to execute management but a significant problem could require a whole new round of remediation and EM involvement. Frazer Lockhart (DOE-RFPO Manager) stated that when physical completion is accomplished DOE will have a small office locally to complete regulatory issues, and when that is finished they will have no onsite presence. Thus, if there is a major breakdown after closure, EM would have to remobilize and determine how to deal with it.

Jane Uitti suggested continuing as a Coalition in order to comment on cleanup decisions, but also begin meeting as part of the LSO in June. Shaun referred to the legislative language "local elected officials or their designees" and asked if this is being interpreted as non-elected member participation. David Abelson clarified that the term "designees" refers to an elected official or someone within that local government. The Coalition's decision to involve non-elected members goes above and beyond what is mandated, but is good public policy. Sam asked what kind of staffing needs LM foresees for the LSO. Dave Geiser responded that Congress appropriated \$500,000 to establish and run the Rocky Flats LSO which should translate into some amount of professional staff, but they have no preconceived notions on what that might look like. David Abelson added that the money will likely cover multiple year operations through a grant mechanism, and he also presumes part-time staff or consultants. Sam asked if LM still expects to reduce the amount spent on long-term stewardship by 10% each year, which is unrealistic since plutonium has a half-life of 24,000 years. Dave Geiser said they are trying to reduce the cost of maintaining remedies by 5% per year, based on the previous year's baseline, with the intention of maintaining remedies in the most efficient and effective manner possible. Shaun said the Coalition would continue to work with LM on these issues through David Abelson.

### **Independent Review**

Shaun McGrath said it is his expectation that this conversation will wrap up the discussion concerning

how to proceed on independent reviews, including the allocation of the Coalition's \$25,000 budget line item for hiring consultants. He noted the Coalition had also discussed hiring a communication strategy consultant.

Sam Dixon said Westminster and the Woman Creek Reservoir Authority decided to commission their own review of the Original Landfill remediation decision since the Coalition did not think it was important enough. Conversely, Westminster thinks the landfill and ponds are very important and needed to be reviewed right away. Lori Cox stated that given the unique circumstances Broomfield and Westminster find themselves in regarding water, it is also important to have accurate and timely responses to the Groundwater IM/IRA so Broomfield hired a consultant to review that document as well. Shaun commended Broomfield and Westminster for taking these tasks on, noting there is no conflict with Coalition position, and asked what the cities would like from the Coalition. Sam said she would like the backing of the Coalition to support their consultant's findings. Lori said Broomfield is willing to share the findings of their reviews with the Coalition and suggested it would make sense for the other governments to adopt their same concerns and have a unified view. She noted that if other governments find the information unacceptable then they could consider additional independent review, although that would seem redundant. Clark Johnson, Nanette Neelan, and Karen Imbierowicz acknowledged the frustration that can come with the organization not moving fast enough, and thanked Broomfield and Westminster for moving forward especially since the Coalition would likely not have the type of funds necessary for this work.

Sam and Jo Ann Price voiced disappointment that the Coalition governments had not supported them and their concerns over the landfill. Shaun said he had heard the discussion differently, and said the Coalition hopes to benefit from the work the two cities are doing. He added that although the Coalition is set up to allow for differences of opinion and a super majority, it is his hope the organization will work together as it is only as strong as its ability to speak with one voice. Lori said it is up to each government's discretion whether it chooses to adopt their same concerns upon reviewing the results of their reports, but it is important for the process to remain transparent so it does not appear as if decisions are being made behind closed doors. Karen added that time is essential thus it may be necessary to converse between meetings as well.

Shaun said the one outstanding item originally suggested for independent review is the issue of residual contamination to be left in subsurface soils and the related long-term stewardship controls. As the Board learned at the last Board meeting, an expanded ORISE review would not be able to address this issue. However, Shaun has been in discussions with Steve Gunderson (CDPHE) and Coalition staff about addressing the issue by reviewing such documents as the Historical Release Report, closeout reports and individual hazardous substance site lists to create a roadmap of what contamination is there and the controls in place to monitor it. Shaun said David suggested that Rik Getty review these documents as he clearly meets the test of being independent from DOE, and Shaun also directed local government staff to begin providing input on the project. Joe Legare (DOE) agreed it is a great starting point and a worthwhile analysis, and DOE will be available to provide or direct to the appropriate resources. He also noted that DOE would be performing a review of the Administrative Record over the next couple of months with EM, LM, and Kaiser-Hill. The Coalition is welcome to join them in the role of observer or active participant. The Board discussed addressing allegations made against the cleanup through the independent review process, the potential for additional sampling, and the fact that much of the information has already been known for decades. Joe also said that how Rik's findings are communicated to the Board and future Site users is equally as important. David said Kimberly Lohr would be working in parallel to match-up how various levels of information could be communicated.

### **March 2005 D.C. Briefing Materials**

David Abelson said the briefing packets contain standard information as in previous years, and are geared toward the person they will be meeting, and are useful for organizing their thoughts. Shaun McGrath suggested including a slide listing Coalition accomplishments. Sam Dixon asked to include information about the onsite failure resulting in americium in the A series ponds and how it can impact local governments. Karen Imbierowicz said this example of failure could show why finding a long-term funding source is important. David also noted that reference to Rep. Udall and Beauprez' special exposure cohort legislation is missing. Shaun asked if the Coalition supported this bill, and David said the Coalition had supported the general concept in the past. Doug Young referred to the page on mineral rights acquisition and said it is his hope that by the time the Coalition presents this information that the Udall-Beauprez bill addressing this issue will have been reintroduced.

### **Public Comment**

Lisa Morzel said that earlier in the meeting the Board spoke of its good relationship with DOE, but she wanted to emphasize that the Coalition also has good relationships with the regulators and citizens. Second, she urged the local governments to work together and support individual government goals, especially as they transition into the LSO. Third, she stated there still may be need for individual sampling after Rik's document review, and fourth, the Coalition needs to arrange a meeting for the owners of the mineral rights. David said he had talked with Kim Cadena about scheduling such a meeting, and Kim requested staff level discussions in advance of a Board meeting discussion in order to work on issues of trust. Karen Imbierowicz asked Jefferson County if they had established relationships with the mineral rights owners in order to begin addressing trust issues, and Nanette Neelan said they had a sense of where the owners are coming from, but a bigger discussion is still warranted.

David Hiller, the staffer responsible for the State issues council for Senator Salazar, introduced himself.

Bob Nelson said he had worked at Rocky Flats from 1963 to 1966 and the people working there were dedicated and sincere. Most people worked for Dow Chemical and then transferred to Rockwell and did their job to the best of their ability.

### **Updates/Big Picture Review**

**City of Boulder** - Shaun McGrath will be unable to attend the next Board meeting, thus Gary Brosz will chair it.

**Jefferson County** - Jim Congrove pointed out that the State Legislature had never passed a bill regarding Rocky Mountain Arsenal and that was once one listed as one of the most polluted square miles on the planet. He also noted that the Rocky Flats bill could bring about a liability factor for the State. David Abelson said that point had been made by Ann McGhion at the hearing, but Paul Weissman had allayed the committee's concerns. He added that the State's environmental covenant bill could act as a formal mechanism to track the management of the property. Shaun commented that the Coalition's suggested amendments would be drafted and finalized amongst the Board via email, and discussed at the next Board meeting.

**Big Picture** - The Board reviewed the Big Picture. The February 28<sup>th</sup> meeting will include finalization of the D.C. briefing packets, an annual briefing on cleanup progress by Kaiser-Hill and DOE, and updates on independent reviews.

The meeting was adjourned by Shaun McGrath at 11:44 a.m.

*Respectfully submitted by Kimberly Lohr, Assistant Director*

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