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Sent via Email to rfinfo@lm.doe.gov

Attn: Rocky Flats Site Proposed Plan Comments

Mr. Scott Surovchak
DOE RFLMA Coordinator
U.S. Department of Energy
11025 Dover Street, Suite 1000
Westminster, CO 80021

Ms Vera Moritz
Environmental Protection Agency, Region 8
1595 Wynkoop St.
Mail code 8EPR-F
Denver, Colorado 80202-1129

Mr. Carl Spreng
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

RE: Proposed Plan for Amendment of Corrective Action Decision/Record of Decision, dated June 2011 and to the Rocky Flats Legacy Management Agreement (RFLMA) Attachment 2

Dear Mr. Surovchak, Ms Moritz, and Mr. Spreng:

The City of Northglenn (Northglenn) cannot support the proposed amendments to the Rocky Flats Corrective Action Decision/Record of Decision (CAD/ROD) and RFLMA Attachment 2. As part of their proposed plan to modify the CAD/ROD, the Department of Energy (DOE) proposed the following modifications:

1. Clarification of the description of certain Institutional Controls (ICs) and inclusion of a regulatory review and approval process to implement ICs in the CAD/ROD
2. Amendments to the current environmental covenant or issuance of a restrictive notice to incorporate the proposed CAD/ROD ICs changes
3. Modification of text in the current CAD/ROD such that any future modification or termination of ICs will not require formal amendment to the CAD/ROD

Northglenn asserts that the proposed changes go beyond the stated purposes and, if adopted, will undermine the safeguards embodied in the Institutional Controls (ICs), eliminate the formal

amendment requirement for any future modifications to ICs, discourage and limit public involvement, and unnecessarily expand allowable activities.

The accelerated cleanup at Rocky Flats (or Site) was made possible, in part, by development of physical and ICs as part of the remedy. These controls made it possible to leave residual contamination in place, while still making the closure protective of human health and the environment. Institutional Controls limiting activities that could expose or influence residual contaminant sources were carefully developed and incorporated into the CAD/ROD. Additionally, land use limitations were captured in an Environmental Covenant (EC). The ICs are a critical component of the long-term remedy that stops or substantially reduces a release or threat of a release of hazardous substances that remain on site. The ICs work in tandem with physical controls providing an additional layer of protection. Monitoring evaluates whether the remedies are functioning properly as well as the effectiveness of the ICs. Employing multiple mechanisms (ICs, physical controls, monitoring, and an EC) provides a higher degree of certainty that the remedy will remain protective - a protectiveness that Northglenn believes exists under the current CAD/ROD.

The City of Northglenn has no interest in preventing DOE from implementing the remedy and maintaining the Site. To that end we would like to work with DOE on language that addresses our concerns and permits DOE to conduct required site maintenance. The following section outlines the rationale for Northglenn's concerns:

Proposed "Clarifications" of IC Descriptions:

Following accelerated site closure, residual contamination remains in the surface and subsurface of the site. IC 2 and IC 3 both address remaining uncertainties about the exact distribution of remaining contamination on a fine scale. Soil disturbance activities have the potential to expose residual contamination, expose buried utilities/ infrastructure, create new surface water and ground water pathways, and/or create unstable soil and slope conditions.

The current version of IC 2 reads - *Excavation, drilling and other intrusive activities below a depth of three feet are prohibited, except for remedy-related purposes and routine or emergency maintenance of existing utility easements, in accordance with pre-approved procedures.*

Proposed changes would allow soil moving activities below 3 feet, regardless of whether the activity is remedy related, upon review and approval by CDPHE. No risk analysis was conducted for digging deeper than 3 feet. Exposing subsoil that is not fully characterized to erosion is not protective of surface water quality. Additionally, intrusive actions at this depth can create new flow paths for ground water. Ground water on the Site is known to be hydrologically connected to surface water. Digging below 3 feet could impact surface water quality by changing gradients in areas of contaminated ground water, reducing slope stability, or moving contaminated soil to surface water through runoff.

If adopted, the proposed changes would relegate IC2 to RFLMA party review and approval pursuant to the Soil Disturbance Review Plan. In this process, the public is notified via Contact Record as to the proposed action. Also, in this process not all of the supporting documents used to

make the decision are fully disclosed and the supporting documents are not made part of the administrative record (AR). This process effectively puts the public in response mode while limiting access to background documents relevant to CDPHE's decision.

Under the ROD, the initiation of a formal public comment period is required only in the case of a "fundamental" update (i.e., formal ROD Amendment). However, most remedy updates, regardless of their significance, have a substantial community involvement component (see NCP §300.435(c)(2)(i) and (ii)). Memorializing the discussion and decision processes through the AR provides a foundational understanding of the decision making process, so that future generations can use what was learned and possibly do better.

Actions that reduce public involvement raise concerns for Northglenn. Concerns relate to fairness, openness, transparency, trust, and the ability to address uneven impacts to communities. Furthermore, Northglenn believes that public participation leads to more informed and better decisions by DOE and the regulators.

The current version of IC 3 reads – *no grading, excavation, digging, tilling, or other disturbance of any kind of surface soil is permitted except in accordance with an erosion control plan (including Surface Water Protection Plans submitted to EPA under the Clean Water Act) approved by CDPHE or EPA. Any such soil disturbance will restore the soil surface to preexisting grade.*

The Rationale for IC3 includes the sentence: "Restoring the soil surface to preexisting grade maintains the current depth to subsurface contamination or contaminated structures." By allowing activities that may reduce the depth to subsurface soil contamination or buried contaminated structure, the IC is weakened and the assumptions incorporated into the risk assessment are invalidated. Uncertainty remains about the fine-scale distribution of contaminants at the site. Unintended consequences of modifying soil surface grade could include:

Alteration of water flow paths which may:

- Redirect water over potentially contaminated surface soil
- Increase the erosive power of runoff through consolidation of multiple flow paths

Alteration of infiltration zones which may:

- Direct infiltration over ground water contamination plumes
- Introduce contaminants to surface water, which is hydrologically connected to ground water sources

The current version of IC 7 reads - *Activities that may damage or impair the proper functioning of any engineered component of the response action, including but not limited to any treatment system, monitoring well, landfill cap, or surveyed benchmark, are prohibited.*

DOE proposes to add the sentence: *The preceding sentence shall not be construed to prohibit the modification, removal, replacement, or relocation of any engineered component of the response action in accordance with the action determinations in RFLMA Attachment 2.*

Removal, replacement, or relocation is unnecessarily broad language that goes beyond the original intent of IC7 by expanding allowable activities beyond the need to maintain the remedy.

Northglenn's primary concern is protection of surface water. All of the proposed IC changes pose increased risks to surface water quality.

Other Proposed Changes to the CAD/ROD

Language in this table pertains to removal of the requirement to formally amend the CAD/ROD in the event of future changes to the ICs and replacing the formal process with what amounts to an internal, RFLMA-party-only review and approval process. Removal of the formal amendment process would:

- Make it easier to further erode the protection afforded by the ICs
- Limit public involvement

These changes appear to be an expansion of regulatory powers and are a radical departure from the collaborative approach used during accelerated closure. Adoption of the proposed language would remove the checks and balances intentionally set in place by the design of the remedy as described in the original CAD/ROD. This includes the current requirement to review the nine CERCLA criteria evaluated for a formal CAD/ROD amendment. The formal CAD/ROD amendment process also requires public comment, promoting dialog and creating an administrative record that can serve to guide future decisions.

In summary

The selected Site remedy/corrective action includes environmental monitoring, institutional controls, and physical controls, as a layered, defense-in depth type remedy. All three controls must remain intact to ensure that the remedy is protective of human health and the environment for both current and future generations. Northglenn believes that the proposed changes could create opportunities for movement of contaminant sources and limit the public process, eroding the protective foundation that the ICs provide. Institutional controls address the uncertainties inherent in accelerated closure, uncertainties that will exist for many years to come. The proposed language does not, in our view, simply clarify the original intent. As such, the proposed plan cannot be supported by Northglenn.

Northglenn has not offered any alternative language at this time, preferring to meet with DOE, EPA, and CDPHE staff, and other interested parties to discuss the issues and reach a solution. We believe there is a solution that would allow DOE to perform Site maintenance without violating the CAD/ROD and address Northglenn's and other affected communities concerns. DOE has recently worked with Northglenn, Thornton, Westminster, and Broomfield on an adaptive management plan related to the Surface Water Reconfiguration Environmental Assessment, this was a productive and meaningful effort that bodes well for a similar effort on new Proposed Plan language. Now is the time to engage in thoughtful discussion, exchange of ideas, and careful

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consideration of those ideas before amending a document that presumably went through an equally or more rigorous process.

Thank you for the opportunity to comment on the proposed revisions to the CAD/ROD. Northglenn appreciates the opportunity to submit comments and is hopeful that DOE will consider our concerns. Please, do not hesitate to contact my staff, Tami Moon-Carlson, at 303.450.4070 or tmoon@northglenn.org should you have any questions.

Sincerely,



William A. Simmons

City Manager

Cc via email: Governor John Hickenlooper
Senator Michael Bennett
Senator Mark Udall
Representative Jared Polis
Tom Pauling, DOE-LM
Carol Rushin, EPA
James Martin, EPA
Vera Moritz, EPA
Joe Schieffelin, CDPHE
Chris Urbina, CDPHE
Martha Rudolph, CDPHE
Josh Nims, Woman Creek Reservoir Authority
Charles Ozaki, City and County of Broomfield
Jack Etheredge, City of Thornton
Brent McFall, City of Westminster
David Abelson, Rocky Flats Stewardship Council
Carolyn Boller, Senator Udall's Office
Zane Kessler, Senator Bennett's Office
Stuart Feinhor, Representative Polis' Office
Bill Holen, Representative Perlmutter's Office
Doug Young, Governor Hickenlooper's Office