UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2466

FEB - 7 1996

Ref: 8WM-SP

Bob April, Group Lead
Stakeholder & Environmental Liaison
Department of Energy
Rocky Flats Field Office
P.O. Box 928
Golden, Colorado 80402-0928

Re: Request for Determinations of Wetland Issues at Rocky Flats

Dear Mr. April:

Your January 2, 1996 letter to Mr. Carey of the Corps of Engineers and me has been reviewed and carefully considered. Your letter asks a number of complex and thought-provoking questions relating to wetland regulation and mitigation. However, your letter also suggests that there is some question at the Department of Energy as to the wetland status of the subject area. This issue should be resolved as soon as possible since the absence of wetlands in the area would mean that no questions about wetland regulation and mitigation would be necessary. If you have uncertainty relating to the delineation of the wetlands at the site, please contact Bill Fraser, Remedial Project Manager, at 312-6580.

Your letter specifically asks for our determinations on four points related to wetlands. These questions were:

1. Which agency will have the lead on this project,
2. The use of Nationwide Permit #26,
3. The need for mitigation for the proposed work, and
4. Consideration of the proposed work independently from other activities at Rocky Flats.

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To Cam Owen	From Cheryl Kay	
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In the absence of an affirmative determination as to the presence or absence of wetlands, these questions are answered below in the order they were presented:

1. First, the Construction of sewage treatment facility components is typically a non-CERCLA activity. However, the tanks in question were required under terms of a Dispute Resolution Settlement concluded pursuant to the CERCLA-driven Interagency Agreement. If needed, these tanks will be used to store liquids derived from CERCLA cleanup activities within the industrial area. As such, constructing of these tanks is clearly a CERCLA-related activity. Accordingly, EPA will serve as the lead for this project.

2. In CERCLA-related activities EPA must comply with the substantive requirements of the Section 404(b)(1) Guidelines and Executive Order 11990 (Protection of Wetlands). The Section 404(b)(1) Guidelines direct the application of mitigation to offset wetland impacts that cannot be avoided and EO 11990 also extends the standard of wetland protection for EPA and other federal government agencies. Inasmuch as EPA has determined that this activity is CERCLA-related, that EPA is bound to comply with the substantive requirements of the 404(b)(1) Guidelines and Executive Order 11990 (both of which require wetland mitigation for unavoidable impacts), and that the cumulative impacts of CERCLA-related activities at the site exceed the limitations of Nationwide Permit #26; the standards for Nationwide Permit #26 would not be available to this project.

3. Clearly, from the discussions above, any loss of wetlands resulting from activities related to the construction of sewage treatment facility components in this case must be mitigated. While other means of wetland mitigation are, of course, available, the use of the wetlands mitigation bank would appear to be appropriate and desirable.

4. As discussed above, this project is CERCLA-related and, as such, it is not considered independently.

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I hope these responses are helpful to you in the design and construction of the planned improvements at the Rocky Flats site. If you have any additional questions concerning wetlands at the plant site or other issues, please contact Bill Frasex at 312-6580.

Sincerely,

Bradley Miller
Physical Scientist

cc: Tim Carey, COE
Bill Frasex, EPA

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