

Rocky Flats Coalition of Local Governments

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Mr. Gene Schmitt
U.S. Department of Energy
Rocky Flats Field Office
10808 Highway 93, Unit A
Golden, CO 80403

Mr. Doug Benevento
CDPHE
4300 Cherry Creek Dr. South
Denver, CO 80246

Mr. Max Dodson
EPA
999 18th Street, Suite 500
Denver, CO 80202

Dear Mr. Schmitt, Mr. Benevento, and Mr. Dodson:

The Board of Directors of the Rocky Flats Coalition of Local Governments has reviewed the revised RFCA language and accompanying response to comments, and DOE's revised draft of the Rocky Flats stewardship strategy. We are disappointed to learn that little progress has been made as a matter of both process and substance regarding key elements of long-term stewardship at Rocky Flats. We believe the RFCA parties must be more forthcoming about their intentions regarding long-term stewardship and begin tackling the tough, likely contentious, regulatory issues. This issue is of utmost importance to the Board.

The Coalition remains a partner in defining the end-state for Rocky Flats. Our support for the revised RFCA remains predicated in part on implementing an enforceable stewardship plan. Throughout the RFCA negotiations, the RFCA parties assured the Board that they would work with us towards this end. We believe we have met our commitments and also believe the RFCA parties have not met theirs.

Clearly, little progress has been made on key questions such as regulator enforcement of long-term stewardship, including the applicability of federal and state environmental laws and regulations, and commitments regarding the use and enforcement of institutional controls (specifically what controls will the RFCA parties implement, how will these controls be enforced, etc.). The RFCA parties' decision to delay resolution of these issues until closure is not acceptable to the Coalition. The Board understands that some of the details of the long-term stewardship plan will be addressed and decided in due time (e.g., the specifics on the number of ground water monitoring wells, the specific locations of the air monitors, document repository, etc.). However, the fundamental legal and regulatory issues that are central to the stewardship plan must be addressed without further delay.

It remains in our collective interest to minimize the amount of time between physical and regulatory closure. We fear that given the continued lack of detail on key long-term stewardship issues and the disputes that the response to comments forecasts, resolution of the legal and regulatory issues will take a significant amount of time, thus delaying closure. We understand that the RFCA parties are now considering moving forward the timeline for developing the RI/FS and not waiting until the final regulatory documents (including the CAD/ROD) are signed at closure to address certain stewardship issues. We request that these discussions begin immediately and include, among other topics, a detailed examination of the enforcement of long-term stewardship at Rocky Flats.

When DOE began developing the stewardship strategy in fall 2001, the Board was lead to believe that the document would serve as the conduit to identify the specific controls the RFCA parties will utilize post-closure and the specific regulatory roles EPA and CDPHE will occupy. Instead, as we know from discussions in the Stewardship Working Group, the draft document has morphed into a policy statement regarding what DOE may consider and options the agency could utilize in implementing stewardship. By relying on words such as “anticipates”, “could”, and “may”, and containing statements such as “environmental monitoring will *likely* be a key component of the Rocky Flats long-term stewardship program” (emphasis added), and “the RFCA parties *anticipate* that enforceable post-closure requirements will exist to ensure the protectiveness of the remedy” (emphasis added), the value of the document for the community is minimized. We are not interested in knowing what DOE may do or anticipates doing. What we need to know is what the RFCA parties will do in implementing long-term stewardship.

Similarly, the Board remains concerned about the scope of legal enforcement of long-term stewardship. Self-regulation is not acceptable, yet there are signs suggesting that DOE may be moving in that direction. Public accountability is critical, and to be accountable, the stewardship plan must be enforceable. Intentions without the regulators having a legal mechanism to enforce such intentions would be insufficient and therefore unacceptable.

In our September 2002 and January 2003 letters, the Coalition raised two critical issues that the RFCA parties have yet to address:

- 1) The enforcement roles that both the EPA and CDPHE will occupy must be specified. The RFCA parties need to start discussing the applicability of a RCRA/CHWA permit, Clean Water Act permit, CERCLA, state environmental covenant, and other laws and regulations. This need remains rooted in the fact that the Defense Department is questioning the enforceability of implementing, operating, maintaining, and reviewing land use controls, as well as the EPA enforcement authority.
- 2) DOE must also specify how the federal government will enforce access restrictions and other use restrictions, including the specific institutional controls that will be used.

The following RFCA parties’ response in the aforementioned response to comments on the question of the role of CDPHE post-closure concerns us: “As of May 2003, DOE and CDPHE have not reached agreement as to whether a post-closure permit (or alternatively, an enforceable document as defined in 6 CCR 1007-3 § 100.10(d)) will be required for Rocky Flats, and if so, whether that permit (or enforceable document) will also contain appropriate requirements for

institutional controls and other long-term stewardship activities.” This disagreement suggests that DOE will argue against the issuance of a RCRA/CHWA permit and in turn a substantive post-closure enforcement role for CDPHE. Alternatively, it suggests that CDPHE may not push for a substantive role post-closure.

The RFCA parties’ responses also do not answer questions regarding the role of the EPA post-closure. The document states numerous times, “the RFCA parties *anticipate* that CDPHE and EPA will have a continuing regulatory role post-closure at Rocky Flats” (emphasis added). “Anticipate” is insufficient, especially in light of the ongoing dispute between DOD and EPA.

The answers to these issues are not contingent upon completion of the comprehensive risk assessment or determination that the “interim actions” under RFCA are final CERCLA actions. Therefore there is no reason as a matter of law or policy that the RFCA parties cannot expedite their timeline for discussing, debating, and resolving these issues.

In responding to this letter we are not interested in generic language regarding your commitment to these issues but rather detailed, specific answers to the interests and needs addressed above. An effective stewardship plan hinges on a number of interrelated factors, but at the core lie ability and commitment. We hope the RFCA parties use the coming months to show their ability and commitment to meet these important goals. The Coalition remains a committed partner in ensuring the success of the cleanup, and as always, we look forward to working with you to resolve these pivotal issues.

Sincerely yours,

/s/

Lorraine Anderson
Chairman

Cc: Jessie Roberson, DOE
Mike Owen, DOE
Governor Bill Owens
Senator Wayne Allard
Representative Mark Udall
Representative Bob Beauprez
Attorney General Ken Salazar