

# Rocky Flats Coalition of Local Governments

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January 6, 2003

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

Dear Mr. DiSalvo,

The Board of Directors of the Rocky Flats Coalition of Local Governments appreciates the opportunity to provide comments on *Proposed Modifications and Additions to Attachments to the Rocky Flats Cleanup Agreement*. In addition to this letter, the Coalition requests that its September 9, 2002 end-state letter be considered as part of public comment.

The Coalition recognizes the extent to which the draft RFCA language tracks the position stated in our September 9<sup>th</sup> letter. It is clear that the RFCA parties worked hard to address and include in the draft RFCA the myriad of interests and needs the Coalition expressed. We believe the draft RFCA language serves to improve the level of cleanup at Rocky Flats by better aligning cleanup priorities with community interests and goals.

In this context we offer the following additional comments and recommendations. It is our ongoing belief and expectation that implementation of the RFCA will continue to be conducted with the full input of the Coalition governments.

## **Subsurface Contamination Levels**

The Coalition remains concerned about the RFCA parties' approach to remediating plutonium in the subsurface three to six feet below grade. The Coalition stands behind its commitment to work with the RFCA parties to bridge the gap between its position (1nCi/g) and the RFCA parties' proposal (3nCi/g).

What the Coalition did not understand until the draft language was released for public comment was that 3nCi/g would be calculated across 80m<sup>2</sup>. As a result of this provision and another provision establishing a single point cleanup level for plutonium of 10nCi/g, concentrations as high as 9.9nCi/g could be left in the subsurface. The Coalition is troubled by the impact of the 80m<sup>2</sup> provision and cannot, as a matter of public policy, support leaving almost 10nCi/g in the subsurface. We are aware, however, that we do not know the extent of contamination between 1nCi/g and 9.9nCi/g and thus any dispute may be more intellectual than factual.

We therefore request that Section 5.3 be modified to clearly delineate the RFCA parties' obligations to the Coalition. Specifically, if contamination is found above 1nCi/g three to six feet below grade and the decision is made to not remediate it to 1nCi/g or less, the RFCA parties must inform the Coalition and provide, among other information, data detailing the areal extent and volume of contamination, concentration levels, basis for and results of the pathway analysis and risk assessment, the RFCA parties' recommended action and basis for action, and any other relevant information necessary to understand the basis for the decision. After completing the remedial action, the RFCA parties must then provide a written account of the action and basis for action, and any impacts of the action including, but not limited to, long-term stewardship requirements resulting from the action.

Finally, below six feet the Coalition recommended using a graded approach for remediating plutonium and pledged to work with the RFCA parties in developing such an analytical method. We are therefore not prepared to accept the RFCA parties' proposal to remediate below six feet based simply on a risk screen and pathway analysis, and welcome the opportunity to discuss this matter with the three agencies.

### **Surface Cleanup Levels**

The Coalition supports the draft RFCA language establishing a surface cleanup level of plutonium of 50pCi/g and the commitment to define surface as zero to three feet below grade. We also support the action level for americium.

The Coalition is concerned, however, about the following provision: "Where plutonium and/or americium soil contamination greater than the action level is present at a depth of less than 3 feet, but did not originate at the surface, soil contamination will be removed unless, after consultation with the Lead Regulatory Agency, it is decided that the concentration and aerial extent is such that removal is not warranted." The provision with the aforementioned caveat ("unless...it is decided...that removal is not warranted") may result in potentially high concentrations of radionuclides being left in soils that are easily accessible by a wildlife refuge worker.

As the Coalition stated in its September 9<sup>th</sup> letter, we support removal of all radionuclides in soil zero to three feet deep, regardless of the presence or absence of a surface expression. The importance of this point cannot be understated, for one of the key principles to which the Coalition agreed in modifying existing cleanup standards was increasing surface cleanup in exchange for relief on subsurface cleanup. Any language that would modify this agreement must be stricken.

### **Surface Water Quality**

The Coalition supports the draft RFCA surface water quality provisions including, but not limited to, the establishment of POCs at Indiana Street and at the outfall of the terminal ponds.

One key issue left unresolved in the draft RFCA is the details of when an exceedance would trigger an evaluation at onsite POCs. Similarly, the draft RFCA does not identify locations of POEs and bases for when an evaluation at a POE would be triggered. The Coalition agrees with

the RFCA parties' approach that these details can be developed and agreed to at a later date. Consistent with our support, and as stated in our September 9<sup>th</sup> letter, POEs must be "developed with the Coalition governments, and in particular the affected municipalities." However, the body of the RFCA only speaks to consulting with downstream users, and does not include provisions for consulting with the other five Coalition governments. We request that the draft attachments clearly specify a role for these governments as well.

### **Long-Term Stewardship**

The Coalition supports the inclusion of long-term stewardship into the RFCA, including the language in Section 1.2 specifying stewardship will be in all final CAD/ROD(s), in any post-closure CHWA permits, and in any modified RFCA agreement. This provision clearly meets the Coalition's interest in making certain that both EPA and CDPHE have enforcement roles post-closure.

In addition, the Coalition supports the provisions delineating lands that may require continuing restrictions post-closure, and provisions outlining the types of institutional controls that will be needed at closure. As discussed below, we believe that the language can be strengthened and thus offer the following recommendations.

#### **1. Include provisions expressly prohibiting residential development**

"The Rocky Flats National Wildlife Refuge Act of 2001" serves as an important institutional control by, among other things, prohibiting certain uses such as residential use. However, as with all acts of Congress, future congresses can enact laws that undermine key elements of the refuge bill, including prohibitions on residential uses and other uses inconsistent with final site remedies. Thus the draft RFCA language, "[t]he Parties additionally presume that there will be no residential development at Rocky Flats," remains insufficient. The RFCA and subsequent regulatory documents must explicitly state that residential use of the Site and other such uses inconsistent with the final remedies shall be prohibited, as current reliance on the refuge bill alone does not provide the necessary restrictions.

We believe such a provision is consistent with the intent of the refuge bill. The bill presumes institutional controls would be implemented to prohibit a number of uses – drilling of groundwater, access to areas with residual contamination, restrictions in areas above subsurface contamination, and other restrictions to protect engineered controls and monitoring stations. Some might argue that including a provision prohibiting residential uses is redundant and not necessary. However, as the National Research Council pointed out in a comprehensive report to DOE, layering of stewardship controls remains imperative. In this case, the additional control should not increase the federal government's long-term stewardship costs.

#### **2. RFCA milestones must be established for the development of the stewardship strategy and plan**

One of the core elements of the Coalition's stewardship comments in its September 9<sup>th</sup> letter is EPA and CDPHE enforcement of long-term stewardship. The Coalition continues to believe that

DOE has made great progress over the past twelve months to elevate stewardship, and believes that the ongoing dialogue with the community has served to resolve numerous issues.

Nonetheless, as Coalition staff noted in a recent memo to DOE, key elements of long-term stewardship planning have been bucked from regulator-enforceable documents to the long-term stewardship plan. We are concerned about relegating stewardship to a document (the Site's long-term stewardship strategy) that does not require regulator approval and is subject to changing policy direction and commitment by DOE.

Without regulator approval of the stewardship plan as it is developed, the potential exists that the development of the CAD/ROD and other closure/post-closure regulatory documents could become mired in differing expectations about the scope of the stewardship plan. While we presume this situation would not surface at Rocky Flats, DOE is facing such a situation at its Weldon Spring site.

One way to avoid such a situation and bring greater parity to the development and approval of the final site-wide stewardship plan is to establish RFCA milestones for the development of the stewardship plan. The Coalition therefore requests that a RFCA milestone be crafted that both holds DOE accountable to a timeline for developing the long-term stewardship plan and, more importantly, establishes a common set of criteria between the RFCA parties as to the scope and content of the stewardship plan. We believe the establishment of such a milestone is consistent with RFCA paragraph 142 because long-term stewardship is part of the remedy.

We recognize that crafting such a milestone is difficult, but we suggest DOE – Headquarters' guidance for the development of site stewardship plans is a good place to start. We trust that the RFCA parties can agree to a timeline that is achievable and that provides sufficient time to develop a plan that meets all reasonable and necessary expectations.

If you have any questions about this letter, please contact David Abelson, Coalition executive director, at (303) 412-1200.

Sincerely,

/s/

Sam Dixon  
Chairwoman

Cc: Gene Schmitt, DOE  
Doug Benevento, CDPHE  
Jack McGraw, EPA  
Senator Wayne Allard  
Representative Mark Udall  
Governor Bill Owens  
Assistant Secretary Jessie Roberson, DOE-HQ  
Alan Parker, Kaiser-Hill  
Rocky Flats Citizens Advisory Board