

# ROCKY FLATS STEWARDSHIP COUNCIL

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Jefferson County -- Boulder County -- City and County of Broomfield -- City of Arvada -- City of Boulder  
City of Golden -- City of Northglenn -- City of Westminster -- Town of Superior  
League of Women Voters -- Rocky Flats Cold War Museum -- Rocky Flats Homesteaders -- Ken Foelske

## **Board of Directors Meeting – Agenda**

**Monday, May 7, 2007, 8:30 – 11:30 AM**  
**Jefferson County Airport, Terminal Building**  
**11755 Airport Way, Broomfield, Colorado**

- 8:30 AM Convene/Agenda Review
- 8:35 AM Business Items (briefing memo attached)
1. Consent Agenda
    - Approval of meeting minutes and checks
  2. Approval of letter re: “The Rocky Flats Special Exposure Cohort Act” (S. 729; H.R. 904)
  3. Executive Director’s Report
- 8:50 AM Public Comment
- 8:55 AM Receive Stewardship Council 2006 Financial Audit (briefing memo attached)
- At this meeting the Board will be briefed on the results of the audit.
  - No material problems were found and the Stewardship Council was found to be in compliance with all applicable law and regulations.
- Action item: Accept Stewardship Council 2006 Financial Audit**
- 9:10 AM Host DOE Annual Meeting (briefing memo attached)
- DOE will brief the Stewardship Council on site activities for calendar year 2006.
  - DOE has posted the report on their website and will provide a summary of activities to the Stewardship Council.
  - Activities included surface water monitoring, groundwater monitoring, air monitoring, ecological monitoring, and site operations (inspections, maintenance, etc.).

- 9:55 AM DOE Briefing on CERCLA Five-Year Review (briefing memo attached)
- DOE, EPA and CDPHE are in the early stages of preparing a CERCLA Five-Year Review for the DOE-retained lands.
  - These parties prepare the draft for EPA to approve.
  - The off-site and refuge lands are not part of the review as they are currently being deleted from the CERCLA National Priorities List and thus are no longer subject to CERCLA.
  - The purpose of the review is to make sure that the cleanup remains protective of human health and the environment.
  - The last CERCLA review was conducted in 2002.

11:15 AM Public comment

- 11:25 AM Updates/Big Picture Review
1. Executive Director
  2. Member Updates
  3. Review Big Picture

Adjourn

Next Meetings: August 6, 2007  
October 1, 2007  
November 5, 2007

## **Business Items**

- Cover memo
- February 5, 2007, draft board meeting minutes
- List of Stewardship Council checks
- Draft letter re: worker compensation bills
- Copy of H.R. 904, “The Rocky Flats Special Exposure Cohort Act”

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## MEMORANDUM

**TO:** Board

**FROM:** David Abelson

**SUBJECT:** Business Items

**DATE:** April 25, 2007

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In addition to approving the consent agenda (approval of minutes and checks), the Board will need to approve a letter supporting “The Rocky Flats Special Exposure Cohort Act” (S. 729; H.R. 904). A copy of the House bill is attached.

### **Letter re: Rocky Flats worker compensation**

At the January meeting the Board expressed interest in supporting former Rocky Flats workers in their bid to achieve special cohort status under the Energy Employees Occupational Illness Compensation Program Act (EEOIPCA). In February the Board wrote the Advisory Board on Radiation and Worker Health expressing concern about the ongoing delays in implementing the EEOIPCA and in ruling on the workers’ petition to seek special exposure cohort status. The Board asked that the Advisory Board not deny the petition if the outstanding issues regarding data reliability are not addressed and if missing records are not uncovered.

The letter being presented to the Board for approval at this meeting is to support “The Rocky Flats Special Exposure Cohort Act”. The bill would accomplish what the workers are seeking to accomplish through the petition process – be designated a special exposure cohort class under the EEOIPCA. Senator Salazar introduced the bill in the Senate; Representatives Udall and Perlmutter in the House. These bills are the same ones the Coalition supported in past years. Previously, former Rep. Beauprez sponsored the House bill with Rep. Udall.

This draft includes changes Board members requested I make to an earlier draft.

**Action Item: Approve letters supporting “The Rocky Flats Special Exposure Cohort Act”**

**Rocky Flats Stewardship Council Board Meeting Minutes**  
**Monday, February 5, 2007**  
**8:30 a.m. – 11:00 a.m.**  
**Jefferson County Airport, Broomfield**

**Board members in attendance:** Clark Johnson (Alternate, Arvada), Carl Castillo (Alternate, City of Boulder), Matt Jones (Alternate, City of Boulder), Jane Uitti (Alternate, Boulder County), Lori Cox (Director, Broomfield), Mike Bartleson (Alternate, Broomfield), Kate Newman (Alternate, Jefferson County), Sheri Paiz (Director, Northglenn), David Allen (Alternate, Northglenn), Karen Imbierowicz (Director, Superior), Martin Toth (Alternate, Superior), Jo Ann Price (Director, Westminster), Ron Hellbusch (Alternate, Westminster), Jeannette Hillery (Director, League of Women Voters), Marjory Beal (Alternate, League of Women Voters), Kim Grant (Director, Rocky Flats Cold War Museum), Roman Kohler (Director, Rocky Flats Homesteaders).

**Stewardship Council staff members and consultants in attendance:** David Abelson (Executive Director), Rik Getty (Technical Program Manager), Barb Vander Wall (Seter & Vander Wall, P.C.), Erin Rogers (consultant).

**Attendees:** Carl Spreng (CDPHE), Marion Galant (CDPHE), Mark Aguilar (EPA), Larry Kimmel (EPA), Rob Henneke (EPA), Sam Garcia (EPA), Erin Minks (Sen. Salazar), Shirley Garcia (Broomfield/Westminster), Linda Kaiser (Stoller), Frazer Lockhart (DOE), Scott Surovchak (DOE-LM), Bob Darr (Stoller/DOE-LM), Doug Hansen (Stoller), John Boylan (Stoller), Bob Nininger (Stoller), Jody Nelson (Stoller), George Squibb (Stoller), Jeremiah McLaughlin (Stoller), Leroy Moore (RMPJC), Judith Mohling (RMPJC), Sue Vaughan (League of Women Voters), Ann Lockhart (Rocky Flats Cold War Museum), Jennifer Bohn (RFSC accountant).

**Convene/Agenda Review**

Vice Chair Karen Imbierowicz convened the meeting at 8:35 a.m. She asked if there were any suggested changes to the agenda. There were none.

**Election of Stewardship Council 2007 Officers**

Karen Imbierowicz noted that Lori Cox had expressed a willingness to serve as the Stewardship Council's next Chair, and Jeannette Hillery was willing to serve as Vice Chair. Also, Lorraine Anderson, although not present, had previously indicated she was willing to serve if called upon. Karen said she also would serve if needed. It was asked what duties are assigned to the Secretary/Treasurer. Jeannette said the position mostly involves signing checks and tracking expenses. There are also periodic meetings with the rest of the Executive Committee.

Jo Ann Price moved to appoint Lori Cox as Chair of the Rocky Flats Stewardship Council for 2007. The motion was seconded by Jeannette Hillery. The motion passed 11-0. (Ken Foelske was not present.)

Clark Johnson moved to appoint Jeannette Hillery as Vice Chair of the Rocky Flats Stewardship Council for 2007. The motion was seconded by Jo Ann Price. The motion passed 11-0. (Ken Foelske was not present.)

Clark Johnson moved to appoint Karen Imbierowicz as Secretary/Treasurer of the Rocky Flats Stewardship Council for 2007. The motion was seconded by Jeannette Hillery. The motion passed 11-0. (Ken Foelske was not present.)

Lori Cox took over as Chair of the meeting.

### **Consent Agenda - Approval of Meeting Minutes and Checks**

There were no comments or questions.

Clark Johnson moved to approve the consent agenda. The motion was seconded by Jo Ann Price. The motion passed 11-0. (Ken Foelske was not present.)

### **Approval of Letter Regarding Worker Compensation Claims**

David Abelson noted that the Stewardship Council had planned to approve a letter at this meeting to be sent to the Advisory Board on Radiation and Worker Health advocating for approval of the Rocky Flats special exposure cohort petition. However, since that time, Senator Salazar and Congressmen Udall and Perlmutter sent a letter to the Advisory Board asking for a delay in acting on the petition until certain questions have been answered.

Therefore, the letter that the Stewardship Council is being asked to approve recommends that if the Advisory Board is unable to resolve the outstanding issues regarding records management and data reliability, the Board should still approve the Rocky Flats workers' petition. David has spoken with the staffs of Senator Salazar and Congressmen Udall and Perlmutter and they are in support of this strategy. David noted that, even though the review of the petition has been delayed, it is important for the Stewardship Council to be on the record early in process. Kim Grant asked if the entire Advisory Board meeting had been postponed. David said he was not sure about the Board meeting, but the Rocky Flats issue will not be addressed until May.

Roman Kohler moved to approve the letter as written. The motion was seconded by Jeannette Hillery.

Roman noted that he supports this letter 100% on behalf of Rocky Flats former workers. There have been so many delays, and they have already collected all the information that is available. Right now, workers and spouses are being denied. In many cases, certain information was never documented, so it is not going to turn up. Roman said it is time to just get the special exposure cohort approved and provide some justice for former workers. The motion passed 11-0. (Ken Foelske was not present.)

## **Executive Director Report**

- Part of the Stewardship Council's 2007 Work Plan includes communication with the public. David will be meeting with Scott Surovchak and Bob Darr (both DOE-LM) to develop informational tools, such as fact sheets. DOE-LM is in process of updating its website. David has been talking with DOE about the needs and desired role of the Stewardship Council as an LSO. It is important to make sure that there is information about Rocky Flats that is both accessible and understandable. Staff will be working on these tasks, and will be bringing updates to the Board. David is interested making the DOE-LM and Stewardship Council websites complementary. He is also trying to link up various perspectives on Rocky Flats through the Stewardship Council website, so that it does not reflect only a single viewpoint.
- CERCLA includes a provision for 5-year reviews at cleanup sites. It requires that EPA review any remedies to ensure they are performing as designed and look at making any updates. The last 5-year review at Rocky Flats took place during cleanup in 2002, so the next review will take place this year. CERCLA provides for a *Federal Register* announcement for public comment, and then a final notice once the review is complete. Local agencies are looking into enhancing the public process, but there will be no formal comment period. The ROD had full public dialogue, so there is no need for another one so soon after. There will be public discussions of the 5-year review at the Stewardship Council's May and August meetings.
- Regarding transferring Rocky Flats lands to the USFWS, DOE has a target date of late March. DOE and USFWS have agreed that an exterior boundary survey is needed, and are also looking at fencing issues. Mineral rights acquisition is also proceeding. Once titles for those areas are acquired, they will be part of the refuge. David noted that this could be complete by March. Karen Imbierowicz asked what the problem is with the boundary. David said that some acreage has been removed from the original Rocky Flats site over the years for the wind test facility, and DOE and USFWS need to make they are clear on the exact boundary.
- David and Lorraine are traveling to Washington, D.C. next week and the Board will be approving talking points today.
- The quarterly financial report was distributed to the Board last night. Call David if there are any questions.
- Each year Board members must complete oaths of office. Also, each member must officially designate their directors and alternates. Barb Vander Wall has circulated the oaths for signature. Also, Ann Lockhart is joining the Stewardship Council as the Alternate for the Cold War Museum, replacing Bryan Taylor.

## **Public Comment**

Leroy Moore (Rocky Mountain Peace and Justice Center) introduced himself as a member of an organization that has paid close attention to Rocky Flats since the 1980s. He said he wanted to address the Stewardship Council about its December 2006 letter to state legislators who supported Rep. Wes McKinley's Rocky Flats bill. The letter urged the legislators not to support this bill again should one be introduced during this session of the state legislature. He said what disturbed him was his view that the Stewardship Council spoke for the RMPJC at the end of the

letter, and misrepresented their views. Leroy has written a letter that he is sending to the same distribution list and will provide a copy to the Stewardship Council. He said he was a bit disturbed that Stewardship Council members were careless enough to let their names be attached to a letter that misrepresented the views of a community organization whose views are very well-known. He said his position is that when there is doubt, it is better to be careful.

Lori Cox told Leroy that if he would like to email the letter to David Abelson, the Stewardship Council would be happy to distribute it to the same email list. She added that she did not recall what was specifically said about the Peace Center in the letter. David said in June 2006 the Stewardship Council approved comments on draft entrance signs for Rocky Flats. It struck him that there were parallels between what the Stewardship Council and the Peace Center were advocating in terms of sign language. The Stewardship Council's letter included verbatim Erin Hamby's (Peace Center staff) proposed revisions to the USFWS draft language. Some of the similarities had to do with language referencing the Cold War and 'Is it Safe?' The two organizations had similar objections to USFWS' draft language and suggested similar changes, such as USFWS just providing factual information. The letter that Leroy referenced said, in effect, 'Until USFWS approves the signage, the Stewardship Council is providing a few pieces of information to review'. The Stewardship Council's letter also pointed out how the Peace Center's proposed revision stood in sharp contrast to the language that Rep. McKinley proposed. David said he does not see this as a misrepresentation.

Erin Minks (Senator Salazar) discussed the letter the Congressional representatives sent at the beginning of January requesting a delay in addressing the Rocky Flats special exposure cohort petition. They are concerned about the makeup of Advisory Board and the results if they were to cast vote now. Another outstanding concern is data reliability. Auditors have noted that they are still willing to review any new data. Senator Salazar would like to have a better balanced board and currently there are two available seats. Both Colorado Senators are monitoring this issue very closely. Erin has taken over as the primary contact on worker issues from David Hiller.

### **EPA Briefing on Deleting Rocky Flats and Adjacent Lands from CERCLA National Priorities List**

Mark Aguilar provided an update on EPA's process of deleting off-site lands and the lands DOE will transfer to the U.S. Fish and Wildlife Service from the CERCLA National Priorities List. The lands DOE will retain will not be deleted at this time.

NPL deletion requirements include documentation of site activities and decision-making; verification that activities were conducted and documented; and public notification and opportunity to comment before the site is deleted from the NPL.

EPA must determine, in consultation with the State, that one of the following criteria has been met: 1) DOE has implemented all appropriate response actions required, 2) All appropriate response under CERCLA has been implemented and no further response action is necessary, or 3) Remedial Investigation has shown that releases pose no significant threat to public health or the environment. Mark said that EPA could have used any of these for Rocky Flats, but they chose option 2.

Mark next ran through the official NPL deletion process flow chart:

- 1) Complete final closeout report
- 2) Prepare draft Notice of Intent to Partially Delete (NOIPD) and obtain EPA Headquarters and State comments and concurrence
- 3) Compile Deletion Docket materials
- 4) Place Deletion Docket in Regional Public Docket and local repository
- 5) Publish NOIPD in Federal Register
- 6) Provide 30-day Public Comment Period (if comments are received, prepare draft responsiveness summary and obtain EPA HQ comments)
- 7) Place final Responsiveness Summary in Regional Public Docket and local repository
- 8) Prepare Notice of Partial Deletion and publish in Federal Register

EPA cannot delist the site without State concurrence. EPA received a letter of concurrence from the State on January 16, 2007. EPA is now working with DOE to assure that the repositories have documentation. The draft NOIPD has been prepared and is in the Stewardship Council meeting packet.

EPA has a new Docket Facility address at 1595 Wynkoop in Denver. The DOE Docket Facility is at the Rocky Flats Reading Room at Front Range Community College. Comments may be submitted, clearly identified with the Docket ID Number, via website, email, fax, mail or hand delivery.

EPA must publish the Notice of Intent to Partially Delete in a major local newspaper and the Federal Register. They will be doing this in the next two weeks. They also must provide a public comment period on the proposed deletion for at least 30 days. The Stewardship Council has had the draft Notice for a few days already, and the public comment period will not start for a couple weeks. All supporting information must be placed in the information repositories for public inspection.

EPA responds to all significant comments and any new data submitted during the public comment period. EPA must include the responsiveness summary in the final deletion package, which will be placed in the information repositories. Finally, EPA must publish the notice of final deletion in the Federal Register.

The EPA Site Deletion checklist includes:

- Provide documentation that supports the basis for deletion
- Apply NCP criteria to verify eligibility
- Obtain state concurrence
- Compile partial deletion docket
- Complete mapping requirements
- Complete NOIPD procedures
- Draft notice of NOIPD
- Publish NOIPD
- Notify Trustees listed in the Regional Contingency Plan

EPA's Administrator must certify via letter to the Secretaries of Energy and Interior that cleanup and closure of Rocky Flats has been completed. Transfer shall not be carried out before certification and not later than 30 business days after that date.

Mark said EPA will partially delete the peripheral OU and OU3 (offsite Areas). There are no institutional controls in OU3 (approximately 25,000 acres) or the peripheral OU. Karen Imbierowicz asked what it means to partially delete. Mark said this was a fairly new term. In 2001, Congress found that there were certain areas that could be delisted within whole site. Jane asked if the site is eligible for future funding. Mark replied that if they see something of interest in a 5-year review, EPA would require DOE to complete additional remedial actions.

### **Review Draft Washington, D.C. Talking Points**

As discussed at the January 2007 meeting, a few Board members and the Executive Director will meet in February in Washington, D.C. with Congressional staff and DOE staff. To ensure that the message these members and staff will carry reflects the position and policies of the Stewardship Council Board, the Board will approve talking points for their meetings.

David noted that, in his experience as a Congressional staffer, it is best to go into the meetings with a list of 3-5 issues to focus on so as not to overwhelm. David is looking at issues that should be on Congress' radar screen, even if no action is required at present. He will begin with background on this organization. Other issues include site transition and long term stewardship, worker issues, signage, and funding for the refuge.

Knowing he would not be at this Stewardship Council Board meeting, Ken Foelske asked David to bring two issues to the attention of the Board. On Page 1 of the draft talking points, in the Transition section, point 2, it reads '...or whether people will forget about Rocky Flats'. Ken sees a need to fold into this section a recognition that part of the opportunity of the Refuge is that the signage can be used to augment awareness about the site and educate people about what is going on in DOE-controlled lands. He suggests deleting that phrase. On Page 2, the last bullet in the Refuge section references the possibility of the site 'falling into disrepair'. He suggests modifying this to say that it is important that there is funding to implement the CCP, which in part includes integrating the responsibilities of DOE and DOI.

Jane Utti said she was surprised that mineral rights were not on this list. David said that Congress has already done what it could with regard to this issue, and that the mineral rights are either already in the process of being acquired or they are not available for purchase. No further Congressional action is required.

Carl Castillo asked if the group should include a reference as to when we expect the signage to be complete. David replied that this process has been slowed down due to personnel transition, but if they know something before the meetings, they will fill it in.

Ron Hellbusch noted that, in terms of funding for USFWS, the National Wildlife Association is a tremendous resource. He would like to make reference to this group when meeting with Congressional staffs. Last year, a group of Congressmen created a caucus to deal with refuge

issues. Ron suggested encouraging our delegation to learn more about this group and to possibly participate. David asked Ron to send him information about these topics.

Kim Grant noted that, as referenced in the cover memo from staff in the Board packet, the Cold War Museum was not on the list of talking points. He said he understands the reasoning behind this is that the Stewardship Council has not taken any position on the Museum. However, he said he hopes for some general expression of support from Council members. David pointed out that the Museum is mentioned in the 3e background section. Kim said that is helpful.

Carl Castillo asked if Board members will be receiving an updated version before they meet in D.C. in March. David said if anything changes, they will be updated prior to the meetings.

Roman Kohler recommended that those meeting in Washington pass along that Congress has the power to take action and move on with the Special Cohort and worker compensation. David said they will have copies of the letter approved today to distribute. He said he will be curious to see if they are intending to move forward, so the Stewardship Council can follow-up on any proposed legislation.

Karen Imbierowicz moved to approve the talking points as amended. The motion was seconded by Jeannette Hillery. The motion passed 11-0. (Ken Foelske was not present.)

David will distribute a revised version of the talking points before the March trip if necessary.

### **Host Legacy Management Quarterly Meeting**

There was a technical staff meeting last week to review the details of the quarterly report.

DOE handed out copies of the quarterly report, and also had copies of the last quarterly report available. This briefing covered site activities for the third quarter of 2006, July through September. LM has posted the report on their website. Activities included surface water monitoring, groundwater monitoring, air monitoring, ecological monitoring, and site operations (including inspections and maintenance).

Scott Surovchak showed some photographs of the site from last week. He said there is still about one half mile of posts to be set and wire to be strung on the remainder of the fence. Setting the H-braces and posts take the most time during this process. DOE hopes to be back working on fence later this week, depending on snow conditions.

### ***Groundwater Monitoring***

John Boylan provided the 3<sup>rd</sup> Calendar Quarter 2006 (7/1-9/30) Ground Water Monitoring update. The main activities included routine groundwater monitoring of 12 wells, non-routine monitoring of 3 wells and 5 treatment system locations, and extensive treatment system maintenance.

IMP monitoring included 6 RCRA wells at the Present Landfill (PLF), 4 RCRA wells at the Original Landfill (OLF), and 2 Decision Document wells at the OU1 Plume source area. 24 of 26 requested samples were collected. They had a 92% success rate, not including QA/QC samples.

The RCRA wells are sampled quarterly. One downgradient PLF well was dry. Evaluations will be included in the Annual Report. The OU1 Plume source area wells are also sampled quarterly. The conclusion of these results showed a need to continue routine quarterly monitoring.

Non-IMP monitoring included wells at the former Ryan's Pit source area, the south slump of former B991, and Walnut Creek at Indiana Street (at which a confirmatory sample for nitrate shows the previous high result was not representative of this location).

The Solar Ponds Plume Treatment System media and plumbing were inspected in August and repaired in August through September. Intensive monitoring (twice a week) was conducted following system repairs. A graph included in John's presentation shows an increase in nitrate levels at the Solar Ponds prior to repairs, followed by a decrease once repairs were completed. It also shows that system effluent levels remained virtually at zero throughout this period.

At the Mound Treatment System, the media was replaced in July and August. The site installed an automated instrumentation vault similar to that at the East Trenches. Details were reported to the Stewardship Council in September, 2006.

In new business, a seep has been observed near former B371. The flow appears to be from surface puddles, routed through buried railroad ballast. John estimated that the puddle is about 50 feet wide and 300 feet long.

Also, a slump south of B991 continues to move, however recent precipitation should assist with equilibration.

Mike Bartleson noted that he would like to thank DOE-LM for the technical pre-meeting last week, which he found to be very helpful.

### ***Surface Water Monitoring and Operations***

George Squibb presented the 3<sup>rd</sup> Calendar Quarter 2006 (7/1-9/30) Surface-Water Monitoring and Operations update.

Routine pond operations during this quarter did not include any discharges or transfers. The ponds are holding less than 10% of their capacity. However, with snowmelt, they are becoming fuller. DOE is looking at discharging ponds A4 and B5, probably around the beginning of March. Hydrologic data show average precipitation (103% of the WY93-05 average), and low flow rates (ranging from no flow to 9.9% of average).

All Points of Compliance (POCs) were fully within compliance levels. They continue to see very good water quality. RFCA POCs include GS01 (Woman Creek at Indiana), GS03 (Walnut Creek at Indiana), GS08 (Pond B-5 Outlet), GS11 (Pond A-4 Outlet), and GS31 (Pond C-2 Outlet). Walnut Creek had no flow during these measurements.

Points of Evaluation (POEs) are located at GS10 (S. Walnut Creek above B-series ponds), SW027 (S. Interceptor Ditch above Pond C-2), and SW093 (N. Walnut Creek above A-series ponds). At GS10, uranium was slightly above average. An updated source evaluation report is in the quarterly report. In general, because more groundwater is present, there is a higher level of naturally occurring uranium. All other water quality data at the RFCA POEs remain well below the applicable action levels using available data.

Routine quarterly performance sampling was conducted on July 25 at the Present Landfill in four locations: 1) N. GWIS Influent, 2) Seep Influent to Treatment System, 3) Effluent from Treatment System, and 4) S. GWIS Influent (which was dry).

Monthly sampling at the PLF for cadmium, silver and thallium was discontinued due to concentrations falling below the applicable standards. Consultation was enacted for arsenic, boron and manganese. For boron, DOE is planning to petition the CWQCC to change the segment standard. For arsenic, the forthcoming RFLMA standard will bring levels into compliance. The RFLMA will not have a standard for manganese.

At the Original Landfill, all quarterly concentrations for both upstream and downstream locations were below applicable standards.

David Allen noted that the OLF remedy was not designed for metals. He asked, if they have continuing problems with metals, if they are any plans to change the remedy. George replied that they do not anticipate a problem because the RFLMA has different standards, such as for arsenic. Scott Surovchak suggested a better example would be the boron standard. He said that this standard was based on using the water to grow fruit and nut trees. Carl Spreng said the arsenic standard was applied under RFCA, but was actually not required. Some standards under RFCA were higher than for other areas, and they are now bringing them more in line with comparable areas. Scott added that they are also just now starting to see what these natural systems really look like when they are not being diluted by millions of gallons of surface water runoff. He said it will probably be 5-15 years before we can really get an idea of natural trends. David Allen noted that the discharge gallery had higher levels of nitrate than allowed and asked if the POC standards apply to the discharge gallery. John Boylan said the POC is at the outfall of Pond A4 and Walnut Creek at Indiana. A temporary modification applies at GS13. David asked if there were any specific criteria or a timeframe to replace the monitoring well in the subsidence area. John Boylan said it first needs to stop slumping, so that they have better access to the location. David asked about plans to monitor this groundwater in another location. John said that currently they are still able to access the current well, but it may be something to consult about in the future.

### ***Air Quality Monitoring***

Bob Nininger reported on 3<sup>rd</sup> quarter monitoring results at the site's three air monitoring locations (two locations along Indiana Street and one along Highway 93). Continuous sampling is conducted for respirable particulate matter and coarse particulate matter at all three locations. Samples are analyzed monthly for Pu-239, Am-241 and U-234, -235, and -238.

From October, 2005 through September, 2006, nearly all of the results have been less than 1% of the standard. They found the first detectable Americium in September. The site believes this was due to road work. However, it was still far below the standard.

An historical dose rate comparison shows the lowest doses have been post-October 2005.

At the upwind location, the average estimated dose rate for this 12-month period is 0.8 percent of the EPA annual dose rate limit. At the two downwind locations, the estimated dose rates at 0.4 and 0.5 percent of the limit.

Jane Uitti asked Bob to explain why they would attribute the higher levels of airborne contamination to road work. Bob said that past studies have shown that Industrial Area soils contributed to one-third to one-half of air monitoring results. The rest was contributed from the buffer zone. The buffer zone was not cleaned up; therefore this could explain the higher levels in September.

Bob also reported that, starting in October, samples will not be analyzed when they are collected. DOE will send the samples to a lab to be prepped and then sent back to the site to be archived. They will have at least six months of samples archived at all times. David Allen asked what the additional cost would be to actually run the samples. Bob said it was probably around \$2500-3000 per month. The cost for prepping the samples is minimal, approximately \$30-50 per sample. Since routine operations are not showing any results of concern, this is a way to make the program more efficient. Matt Jones asked Bob if he had any idea what percentage of the results they are seeing is coming from naturally-occurring radiation. Bob said it was probably 60-80% of the results.

### ***Ecological Monitoring***

Jody Nelson reported on 3<sup>rd</sup> quarter ecological monitoring. This monitoring took place during the growing season.

Regulatory project support was provided for a road upgrade project, and the Solar Ponds Treatment Cell and discharge gallery. They also provided consultation work for the installation of the boundary fence. All of this support was related to protecting Preble's Meadow Jumping Mouse habitat.

Ecologists were also out collecting data, and doing data entry and QA on data collected during the quarter. Noxious weed control was another priority during the quarter. Applications were conducted on approximately 210 acres in the buffer zone along roads, revegetation areas, wetlands, and native grasslands. Weed monitoring was conducted in order to assess the effectiveness of their weed mitigation efforts. The site maps weeds when they are most visible, such as when they are flowering. Diffuse knapweed and other weeds were mapped across the site during the 3<sup>rd</sup> quarter.

Erosion control surveys continued at Preble's mitigation areas and other revegetation areas. Revegetation monitoring was conducted in late July and early August at revegetation areas across the Industrial Area. Preble's Mouse Mitigation Monitoring was conducted in late-August.

Wetland Mitigation Monitoring occurred during late August and early September. Weed surveys were conducted monthly (June-August) in wetlands.

In order to document the return of the prairie, photopoint monitoring was conducted from late August through early September at permanent photopoints throughout the buffer zone and industrial area. Rare plant monitoring for Forktip Three-awn grass was performed in September. Current conditions indicate that the snow from this winter may have positive effects for revegetation areas this spring.

David Allen asked if weed mitigation occurred on DOE lands, USFWS lands, or both. Jody responded that, for now, DOE is looking at the whole site. Once land is turned over to USFWS, DOE will look to coordinate these efforts.

### *Site Operations*

Doug Hansen reported on 3<sup>rd</sup> quarter site operations and noted that extra copies of the 2<sup>nd</sup> quarter reports were available at the back of the room.

Scheduled operations included inspections of landfills. They are looking for any change from intended conditions. No significant findings were identified in the three inspections that were conducted.

Inspections were performed at the Present Landfill in July, August and September, which followed the prescribed checklist in the Monitoring and Maintenance Plan. Areas inspected include: Subsidence/Consolidation, Stormwater Management Structures, Slope Stability, Soil Cover and Vegetation. In August, nine settlement monuments were installed across the top of the landfill, with the assistance of a backhoe. These locations correspond with waste settlement calculations. DOE also hand-installed six monuments on the east face of the PLF, which will identify any slope slippage.

Inspections were also performed in July, August and September at the Original Landfill, using the same prescribed checklist. At this location, they are watching two seeps, which were active in September. The seeps were photographed and surveyed with field GPS. A shallow trench was dug in July at Seep #4 in the trough of Diversion Berm #3 to drain standing water to the West Perimeter Ditch. A French drain system has been designed for this location in case it is needed in the future.

Jo Ann Price asked what was coming out of this seep. Scott Surovchak said it has been there for years. This area used to be wetlands, and there is a great deal of historical data for this location.

There is also a West Perimeter Ditch Slump at the OLF, which is not on the landfill cap. It is showing as a wrinkle in the erosion matting. It has been field surveyed with GPS, photographed and pin-flagged around the perimeter. It does not appear to be a concern at this time.

Jo Ann Price asked if any calculations had been done about what could happen with the landfill cap in a wet year. Doug said there are drainages, and the system was built to sustain much more precipitation than we will ever get.

Routine site inspections are conducted annually, or after a 'significant' event, such as a large precipitation event, seismic event or deliberate human activity. These inspections are documented with photos and use applicable expertise, such as geotech engineers, geologists, or ecologists. These routine inspections cover groundwater, stormwater management, soil cover/erosion control and vegetation.

Routine site inspections involve fencing and postings, site markers and monuments, monitoring locations, landfills, ponds and surface water features, groundwater treatment systems and revegetation areas. Currently, it is known that the fence at Indiana Street is not in good shape, so they are watching this area closely.

Site operations also include site access and security. A surveillance subcontract is in effect with Wackenhut, which encompasses monitoring the West Access gate.

Finally, road upgrades were accomplished in August and September to allow for better all-weather access for surveillance and maintenance work. Upgrades included road base, geotextile fabric, rock water crossings, culverts and surfactant. The site is anticipating another road upgrade will be necessary this spring.

### **Public Comment**

There was none.

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

Next meeting -- May 7

- Host DOE-LM quarterly public meeting
- Briefing on CERCLA Five-Year Review
- Annual review of Stewardship Council activities
- DOE Briefing on Site Operations Guide – DOE's internal document

August 6

- Host LM Quarterly public meeting
- CERCLA Five-Year Review (i.e. what they are finding)
- Begin reviewing Stewardship Council communication

Kim Grant introduced Ann Lockhart, the new Alternate Director representing the Rocky Flats Cold War Museum. Ann just launched a newsletter for the Museum. If anyone would like to be on the distribution list, please let them know.

Clark Johnson referred to the letter distributed by Leroy Moore earlier in the meeting. He said that on the 2<sup>nd</sup> page, the letter questions legality of the Stewardship Council. He asked if the group would like to address these charges in some way. David and Barb will look into this issue. Karen Imbierowicz suggested that the Stewardship Council could create an informational piece about the background of this group and how it was formed. David recommends pulling together facts and information, so that members can address any questions with legislators in their discussions. Karen noted that it would be helpful to include information about the invitations that were sent to other groups asking for their participation in the development of the Stewardship Council. Jo Ann Price suggested that Stewardship Council members make sure their State legislators are aware of this information.

The meeting was adjourned at 11:00 a.m.

*Respectfully submitted by Erin Rogers.*

6:47 AM

04/21/07

**Rocky Flats Stewardship Council**  
**Check Detail**  
 January 24 through April 21, 2007

Type	Num	Date	Name	Account	Paid Amount	Original Amount
Check		1/29/2007		<b>CASH-Wells Fargo-Operating</b>		<b>-2.00</b>
				Admin Services-Misc Services	-2.00	2.00
TOTAL					-2.00	2.00
Check		2/28/2007		<b>CASH-Wells Fargo-Operating</b>		<b>-2.00</b>
				Admin Services-Misc Services	-2.00	2.00
TOTAL					-2.00	2.00
Check		3/31/2007		<b>CASH-Wells Fargo-Operating</b>		<b>-2.00</b>
				Admin Services-Misc Services	-2.00	2.00
TOTAL					-2.00	2.00
Check	1135	2/4/2007	Excel Micro	<b>CASH-Wells Fargo-Operating</b>		<b>-10.75</b>
				Telecommunications	-10.75	10.75
TOTAL					-10.75	10.75
Check	1136	2/4/2007	Jennifer A. Bohn	<b>CASH-Wells Fargo-Operating</b>		<b>-855.00</b>
				Accounting Fees	-855.00	855.00
TOTAL					-855.00	855.00
Check	1137	2/4/2007	Erin Rogers	<b>CASH-Wells Fargo-Operating</b>		<b>-400.00</b>
				Personnel - Contract	-400.00	400.00
TOTAL					-400.00	400.00
Check	1138	2/4/2007	Tricia Marsh	<b>CASH-Wells Fargo-Operating</b>		<b>-600.00</b>
				Website	-600.00	600.00
TOTAL					-600.00	600.00
Check	1139	2/4/2007	Crescent Strategies, LLC	<b>CASH-Wells Fargo-Operating</b>		<b>-7,411.75</b>
				Personnel - Contract	-7,100.00	7,100.00
				TRAVEL-Local	-68.09	68.09
				Telecommunications	-121.51	121.51
				Supplies	-11.99	11.99
				Printing	-110.16	110.16
TOTAL					-7,411.75	7,411.75
Check	1140	2/9/2007	Seter & Vander Wall, P.C.	<b>CASH-Wells Fargo-Operating</b>		<b>-1,385.31</b>
				Attorney Fees	-1,385.31	1,385.31
TOTAL					-1,385.31	1,385.31
Check	1141	2/9/2007	Qwest	<b>CASH-Wells Fargo-Operating</b>		<b>-74.77</b>
				Telecommunications	-74.77	74.77
TOTAL					-74.77	74.77
Check	1142	2/9/2007	Qwest	<b>CASH-Wells Fargo-Operating</b>		<b>-26.71</b>

6:47 AM

04/21/07

**Rocky Flats Stewardship Council**  
**Check Detail**  
 January 24 through April 21, 2007

Type	Num	Date	Name	Account	Paid Amount	Original Amount
				Telecommunications	-26.71	26.71
TOTAL					-26.71	26.71
<b>Check</b>	<b>1143</b>	<b>2/9/2007</b>	<b>Purchase Power</b>	<b>CASH-Wells Fargo-Operating</b>		<b>-250.00</b>
				Postage	-250.00	250.00
TOTAL					-250.00	250.00
<b>Bill Pmt...</b>	<b>1144</b>	<b>3/1/2007</b>	<b>Blue Sky Catering, Inc.</b>	<b>CASH-Wells Fargo-Operating</b>		<b>-225.00</b>
Bill	545	2/28/2007		Misc Expense-Local Government	-225.00	225.00
TOTAL					-225.00	225.00
<b>Bill Pmt...</b>	<b>1145</b>	<b>3/1/2007</b>	<b>Crescent Strategies, LLC</b>	<b>CASH-Wells Fargo-Operating</b>		<b>-8,230.65</b>
Bill	2/28/...	2/28/2007		Personnel - Contract	-6,650.00	6,650.00
				Telecommunications	-195.48	195.48
				TRAVEL-Local	-109.61	109.61
				TRAVEL-Out of State	-1,275.56	1,275.56
TOTAL					-8,230.65	8,230.65
<b>Bill Pmt...</b>	<b>1146</b>	<b>3/1/2007</b>	<b>Erin Rogers</b>	<b>CASH-Wells Fargo-Operating</b>		<b>-550.00</b>
Bill	2/27 ...	2/28/2007		Personnel - Contract	-550.00	550.00
TOTAL					-550.00	550.00
<b>Bill Pmt...</b>	<b>1147</b>	<b>3/1/2007</b>	<b>Excel Micro</b>	<b>CASH-Wells Fargo-Operating</b>		<b>-10.75</b>
Bill	0011...	3/1/2007		Telecommunications	-10.75	10.75
TOTAL					-10.75	10.75
<b>Bill Pmt...</b>	<b>1148</b>	<b>3/1/2007</b>	<b>Jennifer A. Bohn</b>	<b>CASH-Wells Fargo-Operating</b>		<b>-825.00</b>
Bill	0714	2/28/2007		Accounting Fees	-825.00	825.00
TOTAL					-825.00	825.00
<b>Bill Pmt...</b>	<b>1149</b>	<b>3/1/2007</b>	<b>The Hartford</b>	<b>CASH-Wells Fargo-Operating</b>		<b>-396.00</b>
Bill	34 11...	3/1/2007		Insurance	-396.00	396.00
TOTAL					-396.00	396.00
<b>Bill Pmt...</b>	<b>1150</b>	<b>3/1/2007</b>	<b>UCN</b>	<b>CASH-Wells Fargo-Operating</b>		<b>-8.16</b>
Bill	1149...	2/28/2007		Telecommunications	-8.16	8.16
TOTAL					-8.16	8.16
<b>Bill Pmt...</b>	<b>1151</b>	<b>3/16/2007</b>	<b>Seter &amp; Vander Wall, P.C.</b>	<b>CASH-Wells Fargo-Operating</b>		<b>-1,425.75</b>
Bill	51306	2/28/2007		Attorney Fees	-1,425.75	1,425.75
TOTAL					-1,425.75	1,425.75
<b>Bill Pmt...</b>	<b>1152</b>	<b>3/16/2007</b>	<b>UCN</b>	<b>CASH-Wells Fargo-Operating</b>		<b>-9.79</b>
Bill		2/28/2007		Telecommunications	-9.79	9.79
TOTAL					-9.79	9.79

6:47 AM

04/21/07

**Rocky Flats Stewardship Council**  
**Check Detail**  
 January 24 through April 21, 2007

Type	Num	Date	Name	Account	Paid Amount	Original Amount
Check	1153	3/16/2007	Qwest	CASH-Wells Fargo-Operating		-26.51
				Telecommunications	-26.51	26.51
TOTAL					-26.51	26.51
Check	1154	3/16/2007	Qwest	CASH-Wells Fargo-Operating		-74.66
				Telecommunications	-74.66	74.66
TOTAL					-74.66	74.66
Bill Pmt...	1155	4/9/2007	Jennifer A. Bohn	CASH-Wells Fargo-Operating		-750.00
Bill	0720	3/31/2007		Accounting Fees	-750.00	750.00
TOTAL					-750.00	750.00
Bill Pmt...	1156	4/9/2007	Crescent Strategies, LLC	CASH-Wells Fargo-Operating		-6,693.26
Bill	3/31/...	3/31/2007		Personnel - Contract	-6,450.00	6,450.00
				Telecommunications	-145.66	145.66
				TRAVEL-Local	-63.05	63.05
				Misc Expense-Local Government	-34.55	34.55
TOTAL					-6,693.26	6,693.26
Check	1157	4/9/2007	Qwest	CASH-Wells Fargo-Operating		-73.25
				Telecommunications	-73.25	73.25
TOTAL					-73.25	73.25
Check	1158	4/9/2007	Qwest	CASH-Wells Fargo-Operating		-27.13
				Telecommunications	-27.13	27.13
TOTAL					-27.13	27.13
Check	1159	4/9/2007	Simplified Computer Solutions, I...	CASH-Wells Fargo-Operating		-105.00
				Admin Services-Misc Services	-105.00	105.00
TOTAL					-105.00	105.00
Check	1160	4/9/2007	Pitney Bowes, Inc.	CASH-Wells Fargo-Operating		-163.10
				Postage	-163.10	163.10
TOTAL					-163.10	163.10
Check	1161	4/9/2007	Excel Micro	CASH-Wells Fargo-Operating		-10.75
				Telecommunications	-10.75	10.75
TOTAL					-10.75	10.75

# ROCKY FLATS STEWARDSHIP COUNCIL

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League of Women Voters -- Rocky Flats Cold War Museum -- Rocky Flats Homesteaders -- Ken Foelske

May \_\_\_\_\_, 2007

Honorable Edward M. Kennedy, Chairman  
Honorable Michael B. Enzi, Ranking Member  
Committee on Health, Education, Labor and Pensions  
428 Senate Dirksen Office Building  
Washington, D.C. 20510

## **Re: S. 729, "The Rocky Flats Special Exposure Cohort Act"**

Dear Chairman Kennedy and Ranking Member Enzi,

As the Board of Directors of the Rocky Flats Stewardship Council, we strongly support "The Rocky Flats Special Exposure Cohort Act" (S. 729). We ask that you schedule a hearing on this important and time-sensitive legislation and we urge its swift passage.

The Stewardship Council remains extremely concerned about ongoing delays former Rocky Flats workers have encountered in achieving just compensation under the Energy Employees Occupational Illness Compensation Program Act (EEOIPCA). The EEOIPCA is critical to ensuring that workers who have suffered as a result of exposures to radioactive and hazardous materials while working at Rocky Flats be compensated for their illnesses. The problems workers have faced throughout the DOE complex are particularly acute at Rocky Flats.

At Rocky Flats critical records are missing and data is unreliable. Yet, under the current rules governing implementation of the EEOIPCA, workers need to prove a causal connection between their cancers and exposures suffered while working at Rocky Flats – and to do so they are required to prove such a link using data that was beyond their control. The inability of the federal government and its contractors to maintain reliable data undermines the integrity of the process. The costs, however, continue to be borne by the Rocky Flats workers.

As Congress is keenly aware, the EEOIPCA has been fraught with problems. Special exposure cohort status under S. 729 would rectify problems Rocky Flats workers face by simplifying the process and altering the causal links necessary to achieve compensation under the EEOIPCA. For workers who were on the front line of the Cold War and who were later instrumental in

completing the \$6.9 billion cleanup below cost and ahead of schedule, it is due time they received compensation under the EEOIPCA.

We therefore respectfully request that the Committee provide a hearing on this legislation and we urge swift passage of S. 729.

Sincerely,

Lori Cox  
City and County of Broomfield  
Chairman

Jeannette Hillery  
League of Women Voters  
Vice Chairman

Karen Imbierowicz  
Town of Superior  
Secretary/Treasurer

Jim Congrove  
Jefferson County

Ben Pearlman  
Boulder County

Lorraine Anderson  
City of Arvada

Shaun McGrath  
City of Boulder

Chuck Baroch  
City of Golden

Sheri Paiz  
City of Northglenn

JoAnn Price  
City of Westminster

Kim Grant  
Rocky Flats Cold  
War Museum

Roman Kohler  
Rocky Flats Homesteaders

Ken Foelske  
Citizen

Cc: Senator Ken Salazar  
Senator Wayne Allard  
Representative Mark Udall  
Representative Ed Perlmutter  
Samuel Bodman, Secretary of Energy  
Elaine Chao, Secretary of Labor  
Michael Levitt, Secretary of Health and Human Services  
Paul L. Ziemer, Advisory Board on Radiation and Worker Health

110TH CONGRESS  
1ST SESSION

# H. R. 904

To better provide for compensation for certain persons injured in the course of employment at the Rocky Flats site in Colorado.

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2007

Mr. UDALL of Colorado (for himself and Mr. PERLMUTTER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To better provide for compensation for certain persons injured in the course of employment at the Rocky Flats site in Colorado.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rocky Flats Special  
5 Exposure Cohort Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds the following:

1           (1) The Energy Employees Occupational Illness  
2           Compensation Program Act of 2000 (42 U.S.C.  
3           7384 et seq.) (referred to in this section as the  
4           “Act”) was enacted to ensure fairness and equity for  
5           the civilian men and women who, during the past 50  
6           years, performed duties uniquely related to the nu-  
7           clear weapons production and testing programs of  
8           the Department of Energy and its predecessor agen-  
9           cies by establishing a program that would provide ef-  
10          ficient, uniform, and adequate compensation for be-  
11          ryllium-related health conditions and radiation-re-  
12          lated health conditions.

13          (2) The Act provides a process for consideration  
14          of claims for compensation by individuals who were  
15          employed at relevant times at various locations, but  
16          also includes provisions designating employees at  
17          certain other locations as members of a special expo-  
18          sure cohort whose claims are subject to a less-de-  
19          tailed administrative process.

20          (3) The Act also authorizes the President, upon  
21          recommendation of the Advisory Board on Radiation  
22          and Worker Health, to designate additional classes  
23          of employees at Department of Energy facilities as  
24          members of the special exposure cohort if the Presi-  
25          dent determines that—

1 (A) it is not feasible to estimate with suffi-  
2 cient accuracy the radiation dose that the class  
3 received; and

4 (B) there is a reasonable likelihood that  
5 the radiation dose may have endangered the  
6 health of members of the class.

7 (4) It has become evident that it is not feasible  
8 to estimate with sufficient accuracy the radiation  
9 dose received by employees at the Department of  
10 Energy facility in Colorado known as the Rocky  
11 Flats site for the following reasons:

12 (A) Many worker exposures were  
13 unmonitored or were not monitored adequately  
14 over the lifetime of the plant at the Rocky Flats  
15 site. Even in 2004, a former worker from the  
16 1950's agreed to be scanned under the former  
17 radiation worker program of the Department of  
18 Energy and was found to have a significant in-  
19 ternal deposition of radiation that had been un-  
20 detected and unrecorded for more than 50  
21 years.

22 (B) No lung counter for detecting and  
23 measuring plutonium and americium in the  
24 lungs existed at Rocky Flats until the late  
25 1960s. Without this equipment, the very insol-

1           uble oxide forms of plutonium cannot be de-  
2           tected, and a large number of workers had in-  
3           halation exposures that went undetected and  
4           unmeasured.

5           (C) Exposure to neutron radiation was not  
6           monitored at the Rocky Flats site until the late  
7           1950's, and most of those measurements  
8           through 1970 have been found to be in error.  
9           In some areas of the plant at the site, the neu-  
10          tron doses were as much as 2 to 10 times as  
11          great as the gamma doses received by workers,  
12          but only gamma doses were recorded.

13          (D) Radiation exposures of many workers  
14          at the Rocky Flats site were not measured (and  
15          in some cases estimated doses were assigned),  
16          while some records have been destroyed or lost.  
17          As a result, the exposure histories and other  
18          data available are not adequate to properly de-  
19          termine whether Rocky Flats workers qualify  
20          for compensation under the Act.

21          (E) The model that has been used for dose  
22          reconstruction by the National Institute for Oc-  
23          cupational Safety and Health (referred to in  
24          this section as the "Institute") in determining  
25          whether Rocky Flats workers qualify for com-

1           pensation under the Act is in error. The default  
2           values used for particle size and solubility of  
3           the internally deposited plutonium in workers  
4           are in error. Use of these erroneous values to  
5           calculate internal doses for claimants can result  
6           in dose calculations of as much as 3 to 10 times  
7           below what the Rocky Flats records and au-  
8           topsy data indicate.

9           (5) The administrative costs related to Rocky  
10          Flats claims have been disproportionately high rel-  
11          ative to the number of claims that have been proc-  
12          essed.

13          (6) Some Rocky Flats workers, despite having  
14          worked with tons of plutonium and having known  
15          exposures leading to serious health effects, have  
16          been denied compensation under the Act as a result  
17          of potentially flawed calculations based on records  
18          that are incomplete or in error, as well as the use  
19          of incorrect models.

20          (7) Achieving the purposes of the Act with re-  
21          spect to workers at Rocky Flats is more likely to be  
22          achieved if claims by those workers are subject to  
23          the administrative procedures applicable to members  
24          of the special exposure cohort.

1 (b) PURPOSE.—The purpose of this Act is to revise  
2 the Energy Employees Occupational Illness Compensation  
3 Program Act of 2000 to include certain Rocky Flats work-  
4 ers as members of the special exposure cohort.

5 **SEC. 3. DEFINITION OF MEMBER OF SPECIAL EXPOSURE**  
6 **COHORT.**

7 (a) IN GENERAL.—Section 3621(14) of the Energy  
8 Employees Occupational Illness Compensation Program  
9 Act of 2000 (42 U.S.C. 7384l(14)) is amended by adding  
10 at the end the following new subparagraph:

11 “(D) The employee was so employed for a  
12 number of work days aggregating at least 250  
13 work days before January 1, 2006, by the De-  
14 partment of Energy or a Department of Energy  
15 contractor or subcontractor at the Rocky Flats  
16 site in Colorado.”.

17 (b) REAPPLICATION.—A claim that an individual  
18 qualifies, by reason of section 3621(14)(D) of the Energy  
19 Employees Occupational Illness Compensation Program  
20 Act of 2000 (as added by subsection (a) of this Act), for  
21 compensation or benefits under such Act shall be consid-  
22 ered for compensation or benefits notwithstanding any de-  
23 nial of any other claim for compensation with respect to  
24 such individual.

○

## **2006 Financial Audit**

- Cover memo

(Draft audit is bound separately)

## **DOE Annual Meeting**

- Cover memo

## **DOE Briefing on CERCLA Five-Year Review**

- Cover memo
- CERLCA Guidance
- Timeline of CERCLA review activities

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League of Women Voters -- Rocky Flats Cold War Museum -- Rocky Flats Homesteaders -- Ken Foelske

## MEMORANDUM

**TO:** Board

**FROM:** David Abelson

**SUBJECT:** Rocky Flats Stewardship Council's 2006 Financial Audit

**DATE:** April 25, 2006

---

Attached for your review is Wagner, Burke and Barnes' draft 2006 financial audit of the Rocky Flats Stewardship Council. Eric Barnes will discuss the audit at the meeting and will be prepared to answer any questions. If you have any questions for the auditor prior to the meeting please email me your questions and I will forward them to the auditor.

The Stewardship Council will need to formally accept the audit at the meeting.

**Action Item: Approve motion accepting Stewardship Council's 2006 audit.**

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## MEMORANDUM

**TO:** Stewardship Council Board  
**FROM:** Rik Getty  
**SUBJECT:** DOE Annual Report Briefing  
**DATE:** April 25, 2007

---

We have scheduled 45 minutes for DOE to present its annual report on monitoring and maintenance for 2006. The briefing also serves as the fourth quarter DOE site update for 2006. DOE has requested that the briefing be shorter than normal to allow adequate time for the briefing on the CERCLA Five-Year Review (briefing memo in Board packet) which will immediately follow this briefing.

DOE released the annual report on their website on April 17<sup>th</sup>. The annual report is about 500 pages long, not including 3 CD's of data tables and analyses. DOE will brief on the following topics in a similar format to past quarterly report updates:

- surface water monitoring;
- groundwater monitoring;
- air monitoring;
- ecological monitoring; and,
- site operations (inspections, pond operations, security, general maintenance, etc.).

DOE has also agreed to have a more technical discussion for those interested in both the annual report as well as the CERCLA review on May 10<sup>th</sup> at the DOE office.

### **DOE Annual Report Highlights**

Each year DOE issues an annual report which is a compilation of the site's activities for the calendar year. As you know each quarter DOE provides updates "in arrears" for the previous quarter. The annual report includes updates for the 4<sup>th</sup> quarter "in arrears" as well as the other three quarters which have previously been reported.

I have reviewed the annual report and a few of the highlights are:

- Unfortunately 2006 was a dry year which affected revegetation efforts at the site. Only 9.2 inches of precipitation (water equivalent from snow and rain) were reported. This amounts

to only 72% of the average value of 12.8 inches for CYs 1993 through 2005. In addition, a significant amount of the total 2006 precipitation occurred during the two blizzards in late December well after the growing season. However those blizzards will help the 2007 growing season. Due to the low precipitation there were no terminal pond discharges in 2006. The site revegetated several hundred acres in order to help establish ground cover and minimize erosion.

- Over the course of 2006 DOE repaired damaged erosion control measures, primarily due to wind and water damage, within the DOE-retained lands.
- DOE also expended significant resources in 2006 for road upgrades and fence repairs/installation. The fence and associated signage surrounding the DOE-retained lands were not completed in 2006 due to the aforementioned December blizzards, but were instead completed in March 2007.
- DOE has concluded that reportable uranium values at several surface water monitoring stations in North and South Walnut Creek drainages are almost exclusively due to naturally-occurring uranium isotopes with only a very minor contribution from human activities. DOE believes that as the site's water balance changes – decreased surface water due to increased groundwater infiltration – increased levels of naturally-occurring uranium levels will continue. DOE postulates that the site's water balance is returning to its condition prior to the construction of the site in the early 1950's.
- The solar ponds groundwater treatment system was significantly rebuilt and effluent water samples indicate the system has returned to treating nitrates effectively. However, a treatability study for the treatment system, being performed by researchers from Colorado State University, encountered difficulties late in 2006. The study is aimed at process improvements for the solar ponds groundwater treatment system which treats nitrate and uranium contamination in groundwater before it enters North Walnut Creek. Due to cold weather the study had to be mothballed until the weather warms up in 2007 (**Note:** DOE reported in their March 2007 monthly report that they are evaluating the possibility of relocating the solar ponds treatment system closer to the solar ponds discharge gallery which would help treat any contaminated groundwater that may be bypassing the current treatment system location).

### **Final Thoughts**

DOE, EPA and CDPHE have learned a great deal in 2006 of what it will take to maintain environmental stewardship of the DOE-retained lands. In separate conversations with DOE and CDPHE we were all struck by the level of effort that was required in 2006. Many of the 2006 activities were “front-end loaded” – that is to say in subsequent years many of these activities will not be required. However, there will always be at least a minimum level of effort required to maintain the DOE-retained land for many years to come.

Please contact me if you have any questions.

# ROCKY FLATS STEWARDSHIP COUNCIL

P.O. Box 17670  
Boulder, CO 80308-0670  
www.rockyflatssc.org

(303) 412-1200  
(303) 412-1211 (f)

Jefferson County -- Boulder County -- City and County of Broomfield -- City of Arvada -- City of Boulder  
City of Golden -- City of Northglenn -- City of Westminster -- Town of Superior  
League of Women Voters -- Rocky Flats Cold War Museum -- Rocky Flats Homesteaders -- Ken Foelske

## MEMORANDUM

**TO:** Stewardship Council Board  
**FROM:** Rik Getty  
**SUBJECT:** Legacy Management briefing on CERCLA Five-Year Review  
**DATE:** April 25, 2007

---

We have scheduled 80minutes for DOE to brief the Stewardship Council on the CERCLA Five-Year Review (review). Under CERCLA Superfund regulations, the EPA is required to review the remedies at Superfund sites where hazardous substances remain at levels that potentially pose an unacceptable risk. The DOE-retained lands at Rocky Flats have residual contamination resulting in use restrictions, so a periodic review is required by CERCLA.

EPA guidance provides reviews must be conducted every five years and may be conducted more frequently if necessary to ensure the protectiveness of the remedy. The last review was approved by the EPA in September 2002 at the height of the site's cleanup activities; the next review must therefore be approved by the EPA in September 2007.

### **Site Review Background**

CERCLA reviews are EPA's responsibilities. At Rocky Flats, EPA, DOE and CPDHE will conduct the review and produce the draft report, with formal approval by the EPA. This collaborative approach mirrors the approach these three agencies adopted during cleanup activities.

To facilitate the review, the three agencies have formed a working group. At the start of the process in March (and in preparation for this Stewardship Council Board meeting), Stewardship Council staff met with the working group to better understand the scope of the review and the process the agencies would use at Rocky Flats. The working group provided Stewardship Council staff with EPA guidance for conducting reviews (attached), as well as a timeline of events for the review (attached).

Per EPA regulations, the public is invited to provide information to the EPA regarding the scope of the review and any information that would affect the agency's analysis and conclusions. However, the draft report is not subject to formal public comment. The three agencies have nevertheless agreed to provide a copy of the draft report to the community and seek their input on the draft findings. That draft report is expected in late July, just prior to the Stewardship

Council's August 6<sup>th</sup> meeting. Additionally, DOE has also invited those interested to attend a technical session with the working group on May 10<sup>th</sup> at the DOE office. Further review discussions may also be held at the DOE office if desired.

### **Components of a Five-year Review**

As stated in the EPA guidance, "The Five-Year Review process integrates information taken from decision documents and operational data with the experiences of those responsible for and affected by actions at the site." The six components for the review process are:

- Community involvement and notification;
- Document review;
- Data review and analysis;
- Site inspection;
- Interviews; and,
- Protectiveness determination.

Information from the first five components are used to formulate a conclusion for the sixth component, namely whether the site's remedial actions are protective of human health and the environment. A brief summary of each of these review components follows.

#### Community involvement and notification

The guidance states "The reviewer begins working with the site's Community Involvement Coordinator during the initial planning stages of the review to determine the appropriate level of community involvement and to notify all potentially interested parties that the review will be conducted." One component of this process is the Stewardship Council's May and August meetings.

#### Document review

One of the steps in the review is a document review. Relevant documents and data are reviewed to obtain information to assess performance of the environmental response actions taken at the site. Examples of documents which the working group will review are the Proposed Plan, RI/FS, CAD/ROD, decision documents (e.g., close-out reports for the Present and Original landfills), design and construction documents, remedy performance documents, and many others.

#### Data review and analysis

Data review forms the basis for the technical analyses and for the subsequent protectiveness determination. DOE, EPA and CDPHE working group will review sampling and monitoring plans and results from monitoring activities, operation and maintenance reports, or other documentation of remedy performance. They will also review the 2002 CERCLA review. In some cases additional sampling or other data collection may be required.

#### Site inspection

The site inspection is conducted to gather information about the current site status and to visually confirm and document the site conditions.

#### Interviews

The review process will include interviewing people who are knowledgeable about site conditions. The guidance states “As necessary, interviews may be conducted to provide additional information about a site’s status and/or identify remedy issues. Individuals who may be interviewed include: the site manager; site personnel; Federal, State, and Tribal regulatory authorities; and people who live or work near the site.”

#### Protectiveness determination

As part of the process, EPA conducts a technical assessment. This assessment focuses on three questions:

- Question A: Is the remedy functioning as intended? To answer this question the review focuses on the technical performance of the remedy. Data on monitoring, system performance and operation and maintenance of the remedy plays an important role in the determinations. In addition, the review confirms that access controls and institutional controls are in place and successfully prevent exposure.
- Question B: Are the exposure assumptions, toxicity data, cleanup levels, and Remedial Action Objectives still valid? The review examines all the risk parameters on which the original remedy decision was based. This assessment should test the validity of all assumptions that underlie the original risk calculations. To reach its conclusions, the review will generally consider changes in target populations, exposure routes, site characteristics and land use, reference doses and slope factors, ARARs, and Remedial Action Objectives.
- Question C: Has any other information come to light that could call into question the protectiveness of the remedy? The review considers new information that could call into question the protectiveness of the remedy. An example would be ecological risks which had not been adequately evaluated or address at a site, and there is no plan to address these risks through a future action.

These questions provide a framework for organizing and evaluating data and ensure that relevant issues are considered when determining the protectiveness of the remedy. Based on the answers to questions A, B and C, a determination will be made by the working group regarding whether the remedy remains protective of human health and the environment. A draft report will be submitted to EPA for their final review and approval.

Please contact me with any questions.



## Five-Year Review Process in the Superfund Program

April 2003

EPA as required by statute and, as a matter of policy, reviews the remedies at certain sites every five years. Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires that remedial actions which result in any hazardous substances, pollutants, or contaminants remaining at the site be subject to a Five-Year Review. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) defines this to mean contamination left at levels that do not allow for unlimited use and unrestricted exposure. This fact sheet summarizes the guidance document, *Comprehensive Five-Year Review Guidance (EPA 540-R-01-007)* that EPA issued in June 2001.

This document summarizes previously issued guidance to EPA personnel. It is not a regulation and does not create any legal obligations on any person or entity. EPA will apply the guidance referenced in this document to any particular project only to the extent appropriate in light of the facts. EPA welcomes public comment on this document at any time.

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#### A. Overview

Under CERCLA §121(c), EPA is required to review the remedies at Superfund sites where hazardous substances remain at levels that potentially pose an unacceptable risk. Such reviews must be conducted every five years or may be conducted more frequently if necessary to ensure the protectiveness of the remedy. The Five-Year Review requirement applies to remedial actions selected under CERCLA §121 upon completion of which, hazardous substances, pollutants, or contaminants will remain on

site. Five-Year Reviews are also conducted as a matter of policy for other CERCLA actions. Removal actions conducted under CERCLA §104 and Corrective Actions conducted under the Resource Conservation and Recovery Act (RCRA) are not subject to the Five-Year Review requirement; however, Regions may conduct Five-Year Reviews for these or other remedies as a matter of policy or at their discretion. In June 2001, EPA issued the *Comprehensive Five-Year Review Guidance (EPA 540-R-01-007)* to aid Regions and other agencies with responsibilities for conducting Five-Year Reviews. This fact sheet was prepared as a brief summary of that guidance document.

#### B. When is a Five-Year Review conducted?

A Five-Year Review may be required or appropriate when a remedial action leaves hazardous substances on the site at levels that do not allow for unlimited use and unrestricted exposure. Unlimited use and

unrestricted exposure (UU/UE) means that there are no restrictions placed on the potential use of land or other natural resources. In general, if the selected remedy relies on restrictions of land, ground water, or surface water use by humans or if any physical or engineered barrier is part of the remedy, then the use has been limited and a Five-Year Review should be conducted. There are two types of Five-Year Reviews, statutory and policy. Statutory reviews are required by CERCLA at post-SARA remedial actions that upon completion of the action leave hazardous substances, pollutants or contaminants on site. Policy reviews are performed, as a matter of policy, for pre-SARA remedial actions that leave hazardous substances, pollutants or contaminants on site, and at removal-only NPL sites where hazardous substances, pollutants or contaminants were left on site at levels that do not permit unlimited use and unrestricted exposure. Policy reviews are also conducted at other sites, including pre- or post-SARA remedial actions, that will take more than five years to complete.

The initiation, or trigger date, that starts the Five-Year Review period depends upon whether it is a statutory or policy review and if the review is a first or subsequent review. A statutory review is triggered by the initiation of the first remedial action that leaves hazardous substances, pollutants or contaminants on site at levels that do not allow for unlimited use and unrestricted exposure. In cases where there are multiple remedial actions, the earliest remedial action that leaves such substances on site should trigger the initial review, even if it is an interim remedial action.

A policy review is initially triggered by the date that the construction phase for all remedies is completed at a site. The date of

construction completion is generally the date of the Preliminary Close Out Report (PCOR) or the date of the Final Close Out Report (FCOR) for sites that do not have a PCOR.

After completion of the first statutory or policy Five-Year Review, the trigger for subsequent reviews is the signature date of the previous Five-Year Review report. Lead agencies may choose to conduct a Five-Year Review earlier or more frequently than every five years to ensure protection of human health and the environment.

Five-Year Reviews continue throughout the life of the site until hazardous substances, pollutants or contaminants no longer remain on site at levels that do not allow for unlimited use and unrestricted exposure. The basis for this finding should be documented in the final Five-Year Review report.

### **C. Who is responsible for conducting the Five-Year Review?**

The lead agency, the agency providing the remedial project manager, has primary responsibility for conducting the Five-Year Review, while the support agency provides information and review support.

EPA also encourages appropriate State and Tribal involvement for Fund-financed and Enforcement-lead remedial actions. Where the State or Tribe is the lead agency, the NCP provides that EPA concurrence is needed on the protectiveness determination contained in the Five-Year Review. At federal facilities, the Federal agency in charge of the facility has the responsibility to conduct the Five-Year Review. EPA should provide concurrence with the protectiveness determinations, or develop its own independent determinations.

## **D. What are the components of a Five-Year Review?**

The Five-Year Review process integrates information taken from decision documents and operational data with the experiences of those responsible for and affected by actions at the site. There are six components to the Five-Year Review process: 1) community involvement and notification, 2) document review, 3) data review and analysis, 4) site inspection, 5) interviews and 6) protectiveness determination as shown in Figure 1. Together, the reviewer uses these components to assess the remedy's performance, and, ultimately, to determine the protectiveness of that remedy.

### ***Community Involvement and Notification***

The reviewer begins working with the site's Community Involvement Coordinator (CIC) during the initial planning stages of the Five-Year Review to determine the appropriate level of community involvement and to notify all potentially interested parties that the Five-Year Review will be conducted. This notification may include States, Tribes, appropriate representatives of the community, local officials, potentially responsible parties (PRPs), Federal and/or State Trustees for Natural Resources (Trustees) and appropriate EPA offices. It is recommended that EPA's community involvement activities during the review include notifying the community that the Five-Year Review will be conducted, notifying the community that the Five-Year Review has been completed, and providing the results of the review to the local site repository.

### ***Document Review***

A review of documents is an early step in the Five-Year Review process. All relevant documents and data are reviewed to obtain

information to assess performance of the response action. The lead agency reviews various documents to obtain the necessary information, including those for remedy decisions (*e.g.*, Records of Decision, Explanation of Significant Differences), enforcement decisions (*e.g.*, Consent Decrees, Administrative Orders on Consent), site investigations, remedial design and construction, and remedy performance.

### ***Data Review and Analysis***

The lead agency also reviews sampling and monitoring plans and results from monitoring activities, operation and maintenance (O&M) reports or other documentation of remedy performance, including previous Five-Year Review reports. The data contained in these reports form the primary basis for the technical analyses and for the subsequent protectiveness determination. The type and quality of these data will have a significant impact on findings and conclusions. In some cases, the lead agency may also need to conduct supplemental sampling or collect other data.

### ***Site Inspections***

EPA or the lead agency conducts site inspections to gather information about a site's current status and to visually confirm and document the conditions of the remedy, the site, and the surrounding area. The inspection should be recent, and be conducted no more than nine months before the expected signature date of the review. At Federal facility sites, a State and/or EPA representative may wish to be present and/or participate in site inspections.



**Figure 1: Components of the Five-Year Review Process**

### *Interviews*

As necessary, interviews may be conducted to provide additional information about a site's status and/or identify remedy issues. Individuals who may be interviewed include: the site manager; site personnel; Federal, State, and Tribal regulatory authorities; and people who live or work near the site.

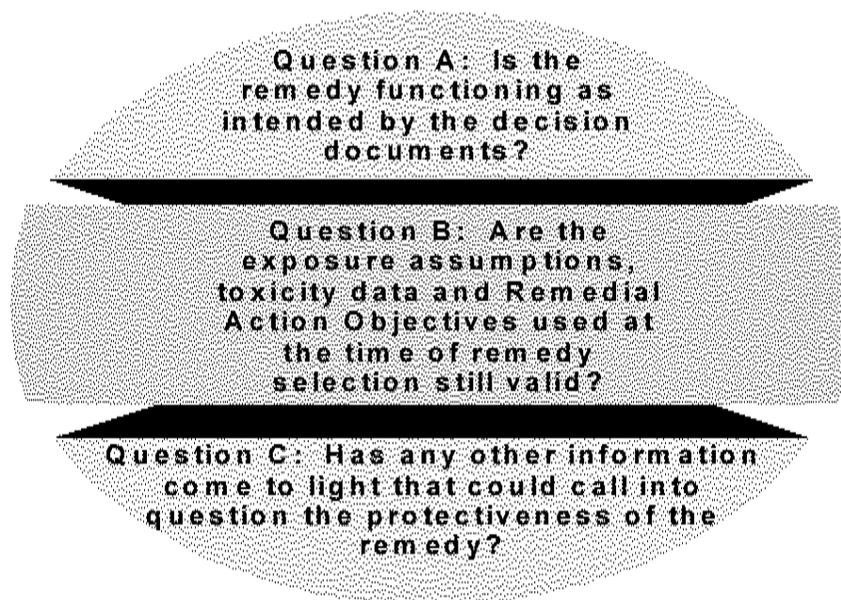
### **E. How does EPA assess the protectiveness of a remedy?**

The purpose of a Five-Year Review is to determine whether the remedy at a site is, or upon completion will be, protective of human health and the environment. EPA's technical assessment of a remedy examines the three questions shown in Figure 2. These questions provide a framework for

organizing and evaluating data and ensure that all relevant issues are considered when determining the protectiveness of the remedy.

### ***Question A: Is the remedy functioning as intended?***

When answering Question A, the reviewer focuses on the technical performance of the remedy, whether that remedy is related to a single Operable Unit (OU) or the entire site. Data on monitoring, system performance and operation and maintenance of the remedy plays an important role in the determinations. In addition, EPA confirms that access and institutional controls (ICs) are in place and successfully prevent exposure. In answering Question A, the reviewer should consider the implementation status of the remedy.



**Figure 2: Three Questions for Assessing Protectiveness**

**When the Remedy is under Construction**

The focus of the review is to determine if the remedy is being constructed in accordance with the requirements of the decision documents and design specifications, and if the remedy is expected to be protective when it is completed.

**When the Remedy is Operating or Completed**

Additional aspects of remedy implementation are addressed. In general, the following will be assessed:

- Remedial action performance,
- System operations/operation and maintenance (O&M),
- Costs of system operations/O&M,
- Implementation of institutional controls and other measures,
- Monitoring activities,
- Opportunities for optimization, and
- Early indicators of potential remedy problems.

***Question B: Are the exposure assumptions, toxicity data, cleanup levels, and Remedial Action Objectives still valid?***

In answering Question B, the lead agency should review all the risk parameters on which the original remedy decision was based. This assessment should test the validity of all assumptions that underlie the original risk calculation. To reach its conclusions, the lead agency will generally consider changes in:

- Target populations,
- Exposure routes,
- Site characteristics and land use,
- Reference doses and slope factors,
- Applicable or Relevant and Appropriate Requirements (ARARs) and To Be Considereds (TBCs), and
- Remedial Action Objectives (RAOs).

EPA generally will not reopen remedy selection decisions contained in RODs unless a new or modified requirement calls into question the protectiveness of the selected remedy.

***Question C: Has any other information come to light that could call into question the protectiveness of the remedy?***

The reviewer considers any other information that comes to light that could call into question the protectiveness of the remedy. Situations of interest to EPA may include the following:

- Ecological risks had not been adequately evaluated or addressed at a site, and there is no plan in place to address these risks through a future action;
- The site, although located entirely above the 500-year flood boundary, was partially inundated by a 100-year flood; and
- Land use changes that are being considered by local officials.

**F. How does the lead agency formulate its conclusions?**

The conclusions of the Five-Year Review should include:

- Identification of issues,
- Recommendations and follow-up actions, and
- A determination of whether the remedy is, or is expected to be, protective of human health and the environment.

The reviewer arrives at these conclusions through a technical assessment of the information collected during the document review, data collection, interviews, site inspection, and other activities.

The reviewer identifies all issues that currently prevent or may prevent the response action from being protective. Examples of issues that may be identified in a Five-Year Review report include the following:

- Inadequate ICs,

- Cleanup levels are not protective due to changes in chemical characteristics, and
- Remedial Action Objectives will not be achieved.

Section 4.4.1 of the Guidance contains additional examples.

The reviewer documents all such issues and follow-up actions needed to ensure the proper management of the remedy in the Five-Year Review report. The reviewer should also identify early indicators of potential remedy problems.

For each issue identified, the reviewer documents and ensures implementation of recommendations to resolve those issues. These recommendations are linked to follow-up actions in the Five-Year Review report. In addition, the reviewer may make additional recommendations that do not directly relate to achieving or maintaining the protectiveness of the remedy, such as activities related to O&M of the remedy and coordination with other public and government authorities. The following are the types of additional recommendations that may be included in the report:

- Provide additional response actions,
- Improve O&M activities,
- Optimize remedy,
- Enforce access controls and ICs, and
- Conduct additional studies or investigations.

After addressing Questions A, B, and C, the reviewer determines the protectiveness of the remedy or remedies at a site and documents the rationale for its determination(s). The reviewer should make a protectiveness determination for each OU. For sites that have reached construction completion, it is recommended

the review include an additional, comprehensive site-wide protectiveness statement.

The determination of whether the remedy remains protective of human health and the environment generally will be based on the answers to Questions A, B, and C and the information obtained in the process of answering them. Although protectiveness generally is defined by the risk range and hazard index (HI), the answers to Questions A, B, and C may identify other factors and issues that may impact the protectiveness of a remedy.

At the end of the technical analysis and evaluation, if the answers to Questions A, B, and C are *yes, yes, and no*, respectively, then the remedy normally will be considered protective. However, if the answers to the three questions are other than *yes, yes, and no*, depending on the elements that affect each question, the remedy may be one of the following:

- Protective,
- Will be protective once the remedy is completed,
- Protective in the short-term; however, in order for the remedy to be protective in the long-term, follow-up actions need to be taken,
- Not protective, unless the following action(s) are taken in order to ensure protectiveness, or
- Protectiveness cannot be determined until further information is obtained.

If a protectiveness statement cannot be made, a time frame should be provided when a protectiveness determination will be made. This is done through an addendum. If this is the case, the next Five-Year Review is due five years from the date that

the report is signed, not from the signature date of the addendum.

Even if there is a need to conduct further actions, it does not mean that the remedy is not protective. Normally, the remedy may be considered not protective when the following occur:

- An immediate threat is present (*e.g.* exposure pathways that could result in unacceptable risks are not being controlled);
- Migration of contaminants is uncontrolled and poses an unacceptable risk to human health or the environment;
- Potential or actual exposure is present or there is evidence of exposure (*e.g.*, institutional controls are not in place or not enforced and exposure is occurring); or
- The remedy cannot meet a new cleanup level and the previous cleanup level is outside of the risk range.

Once the Five-Year Review report is signed and placed in the local site repository, the lead agency should notify community members that the review is complete and the report is available.

As discussed in Section 1.3.3, the date EPA signs the report is the official completion date for the Five-Year Review, and this date becomes the trigger date for subsequent reviews. This date should be entered into WasteLan as soon as possible.

#### **FOR MORE INFORMATION**

For additional information on the Five-Year Review process, please contact your Regional or Headquarters Five-Year Review Coordinator.

Office of Solid Waste and Emergency Response  
Washington, D.C. 20460

OSWER 9355.7-08FS  
EPA 540-F-02-004

	A	B	C	D	E	F	G	H	
1		<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>August</b>	<b>September</b>	
2		<u>Review and Report Drafting</u> →							
3		<u>Public Notice</u>		<u>Stewardship Council Briefing</u>			<u>Draft Available</u>	<u>Final - Approval</u>	
4		<u>Consider public feedback at Team Meetings</u> →							
5		<u>Interviews?</u>	<u>Consider feedback at Team meetings</u> →						
6		<u>5 Year Review AR</u> <u>File guidance</u>							
7		<u>Laws, Regs, Guidance Change?</u>	<u>Address issues for current remedy implementation</u> →						
8		<u>ARARs, CRA change?</u>	<u>Address issues for current remedy implementation</u> →						
9		<u>New Tech Review</u>	<u>Status Summary</u>	<u>Team Review</u>	→				
10		<u>1<sup>st</sup> 5-Year Issues</u>	<u>Status Summary</u>						
11		<u>Review ICs 1-7; IC Docs; Covenant</u>	<u>Status Summary</u>	<u>Team Review</u>	→				
12				<u>Tours(?)</u>					
13		<u>Data Assessment</u>	<u>Team Review</u> →			<u>Evaluation</u> →			
14		<u>GW+Treatment systems; SW + Pre discharge; Bio monitoring; O&amp;M</u>		<u>OU Inspection</u> Review annual inspection and identify Items* for this Review Inspection Document on recording forms and photos.	<u>Team Review</u>	<u>Criteria A, B, C; Compare to RAOs; Draft Protectiveness Statement</u>	<u>Issues? (e.g., SW temp mods expire)</u>	<u>Final Protectiveness Statement</u>	
15						<u>Continue, discontinue or change component?</u>	<u>Recommendations</u>		
16						<u>Pursue New Tech?</u>			
17		* IC Implementation; Monitoring; Physical Controls; Subsurface Evaluation; Operational Monitoring (adverse Bio?); GW treatment systems; Landfills							

## Letters and News Clips

- Westminster letter re: deletion of off-site and refuge lands from CERCLA NPL
- Broomfield letter re: deletion of off-site and refuge lands from CERCLA NPL
- News clip re: Rocky Flats grand jury
- News clip re: sick nuclear workers
- News clip re: Rocky Flats worker receiving compensation
- News clip re: cuts to USFWS funding
- *Denver Post* editorial re: Jim Stone's Supreme Court case
- *Westword* article re: Jim Stone's Supreme Court case
- *Rocky Mountain News* article re: death of Jim Stone



## WESTMINSTER

April 12, 2007

Rob Henneke, Community Involvement Coordinator  
U.S. Environmental Protection Agency  
Region 8  
1595 Wynkoop Street,  
Denver Colorado 80202-1129

City of Westminster  
Department of  
Public Works  
and Utilities

4800 West 92nd Avenue  
Westminster, Colorado  
80031

303-430-2400  
FAX 303-706-3927

RE: Docket ID no. EPA-HQ-SFUND-1989-0011, Partial Deletion of the Rocky  
Flats Plant Peripheral Operable Unit and Operable Unit 3

Dear Mr. Henneke:

The City of Westminster is providing comments to the above mentioned document. Westminster strongly supports the future use of the Peripheral Operable Unit (OU) as a wildlife refuge. We have been intimately involved with the closure activities at the Rocky Flats site and agree with the Environmental Protection Agency's (EPA) risk assessment and deletion of the Peripheral OU and OU 3.

City staff has very thoughtfully and thoroughly reviewed the notice of intent for partial deletion of the Rocky Flats Plant from the National Priorities List and has both general and specific comments. With remaining residual contamination on-site, Westminster wants to ensure the site will remain in a safe configuration to protect human health and the environment for the life of the remaining contaminants. As a community directly impacted by Rocky Flats, we want to ensure the contamination remains stabilized and does not migrate into or through the Peripheral OU or off-site. Westminster will continue to assess the ongoing custody and control of the Central OU by Legacy Management. To adequately evaluate the controlled risk of the Central OU, we will continue to review monitoring data and associated procedures and programs. We will also monitor restriction of public access to the Central OU to protect the remedy.

Continued open communication with the Rocky Flats Legacy Management Agreement (RFLMA) Parties is fundamental for the long-term success of the wildlife refuge and the monumental cleanup project. Attachment 1 contains the references to the partial deletion of the Rocky Flats Plant and Westminster's general and specific comments.



Rob Henneke, Community Involvement Coordinator  
April 12, 2007  
Page 2

Thank you for the opportunity to comment on this notice of intent for partial deletion of the Rocky Flats Plant. We would like an opportunity to review and discuss your response to our comments. If you have any questions, please feel free to call our staff, Shirley Garcia, Rocky Flats Coordinator, at 303-438-6329.

Yours truly,

Ronald A. Hellbusch  
Director of Public Works and Utilities

cc: Lori Cox, City Council, City & County of Broomfield  
JoAnn Price, City Councillor, City of Westminster  
Mike Bartleson, Deputy Director of Public Works, Broomfield  
Kath Schnoor, Superintendent Environmental Services, City & County of Broomfield  
Shirley Garcia, Environmental Coordinator, City & County of Broomfield and City of Westminster  
David Allen, Director of Water and Environmental Services, City of Northglenn  
Shelley Stanley, Northglenn Wter Resources Coordinator, City of Northglenn  
Lee Johnson, Woman Creek Reservoir Authority  
Carl Spreng, Colorado Department of Public Health and Environment  
Mark Aguilar, Environmental Protection Agency  
Ray Plieness, Legacy Management  
Scott Surovchak, Legacy Management  
✓ Rocky Flats Stewardship Council

## Attachment 1

Westminster acknowledges and supports EPA's assessment of the partial deletion of the Rocky Flats Plant; however we have a few concerns or comments that still require additional consideration. White Papers, regulatory citations, EPA Guidance, or quotes from the deletion notification in the Federal Register are italicized in this letter to distinguish cited language from Westminster's comments and recommendations.

1. *This partial deletion pertains to the surface media (soil, surface water, sediment) and subsurface media, including groundwater, within the Peripheral OU and OU 3 of the Rocky Flats Plant.*

The point-of-compliance for the Central OU is located within the Peripheral OU. The partial deletion assumes all surface water leaving the Central OU flowing through the Peripheral OU will meet surface water quality standards at the site boundary. There is a potential for the drainages to become contaminated by contaminated surface water or contaminated sediment flowing through the drainages.

- Language in the Federal Register states *the Department of Energy (DOE) will be responsible for all future remedial actions required at the area deleted if future site conditions warrant such actions.* We support the language in the Federal Register. Our concern is the Department of Energy will only be evaluating surface water quality for uranium, plutonium, and americium as it flows from the Central OU. Other potential analytes that could be considered contaminants will not be evaluated to determine potential impacts to surface water or the drainages within the Peripheral OU.
  - Westminster is concerned previous closure documents did not address how the points-of-compliance would be secured and controlled if they are not in an area located within DOE's jurisdiction. It is very important to us, as a downstream community, to ensure the integrity of the monitoring stations within the deleted area are maintained and secured.
  - Westminster believes the protection of the monitoring stations within the proposed deleted area is a significant and valid concern because there were no institutional controls identified to protect the only enforceable monitoring stations at the site. EPA should be responsive and proactive and identify how these stations will be controlled and protected to prevent access to the general public. It is not good management to develop a protocol to protect the monitoring stations after their integrity has been jeopardized.
2. Westminster will continue to evaluate surface water quality leaving the site to ensure Rocky Flats does not impact the water quality in the Woman Creek Reservoir. This ongoing monitoring will ensure the protectiveness of water quality in the reservoir.
  3. Community involvement and open communication with Legacy Management, EPA, and the Colorado Department of Public Health and the Environment will serve to transition the Peripheral OU to a wildlife refuge. Our ongoing involvement will provide assurances to our residents that the refuge can be utilized and enjoyed by everyone. We strongly support the refuge and the activities identified in the Comprehensive Conservation Plan. Westminster can clearly recognize that there is a gap of responsibility for the monitoring stations outside of the Central OU to control, protect, and restrict access to the monitoring stations. Their integrity has to be maintained so data can be generated to evaluate the effectiveness of the remedy in the Central OU and potentially the impact to the Peripheral OU if the remedy fails.



April 12, 2007

Rob Henneke, Community Involvement Coordinator  
U.S. Environmental Protection Agency  
Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

RE: Docket ID no. EPA-HQ-SFUND-1989-0011, Partial Deletion of the Rocky Flats Plant Peripheral Operable Unit and Operable Unit 3

Dear Mr. Henneke:

The City and County of Broomfield is providing comments to the abovementioned document. Broomfield supports the future use of the Peripheral Operable Unit (OU) as a wildlife refuge. We have been intimately involved with the closure activities at the Rocky Flats site and agree with the Environmental Protection Agency's (EPA) risk assessment and deletion of the Peripheral OU and OU 3.

City staff has very thoughtfully and thoroughly reviewed the notice of intent for partial deletion of the Rocky Flats Plant from the National Priorities List and has both general and specific comments. With remaining residual contamination on site, Broomfield wants to ensure the site will remain in a safe configuration to protect human health and the environment for the life of the remaining contaminants. As a community directly impacted by Rocky Flats, we want to ensure the contamination remains stabilized and does not migrate into or through the Peripheral OU or off site. Broomfield will continue to assess the ongoing custody and control of the Central OU by Legacy Management. To adequately evaluate the controlled risk of the Central OU, we will continue to review monitoring data and associated procedures and programs. We will also monitor restriction of public access to the Central OU to protect the remedy.

Continued open communication with the Rocky Flats Legacy Management Agreement (RFLMA) Parties is fundamental for the long-term success of the wildlife refuge and the monumental cleanup project. Attachment 1 contains the references to the partial deletion of the Rocky Flats Plant and Broomfield's general and specific comments.

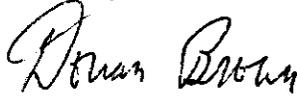
Thank you for the opportunity to comment on this notice of intent for partial deletion of the Rocky Flats Plant. We would like an opportunity to review and discuss your response to our comments. If you have any questions, please feel free to call Shirley Garcia of my staff, at 303-438-6329.

Mr. Rob Henneke

April 12, 2007

Page 2 of 4

Sincerely,



Dorian Brown

Director of Public Works

pc: Lori Cox, City Council, City and County of Broomfield

JoAnn Price, City Councillor, City of Westminster

Mike Bartleson, Deputy Director of Public Works, City and County of Broomfield

Kathy Schnoor, Superintendent Environmental Services, City and County of  
Broomfield

Jim Arndt, Director Public Works and Utilities, City of Westminster

Shirley Garcia, Environmental Coordinator, City and County of Broomfield and City  
of Westminster

Ron Hellbusch, Special Projects Coordinator, City of Westminster

David Allen, Director of Water and Environmental Services, City of Northglenn

Shelley Stanley, Northglenn Wter Resources Coordinator, City of Northglenn

Lee Johnson, Woman Creek Reservoir Authority

Carl Spreng, Colorado Department of Public Health and Environment

Mark Aguilar, Environmental Protection Agency

Ray Plieness, Legacy Management

Scott Surovchak, Legacy Management

Rocky Flats Stewardship Council

Broomfield acknowledges and supports EPA's assessment of the partial deletion of the Rocky Flats Plant; however we have a few concerns or comments that still require additional consideration. White Papers, regulatory citations, EPA Guidance, or quotes from the deletion notification in the Federal Register are italicized in this letter to distinguish cited language from Broomfield's comments and recommendations.

1. *This partial deletion pertains to the surface media (soil, surface water, sediment) and subsurface media, including groundwater, within the Peripheral OU and OU 3 of the Rocky Flats Plant.*

The point-of-compliance for the Central OU is located within the Peripheral OU. The partial deletion assumes all surface water leaving the Central OU flowing through the Peripheral OU will meet surface water quality standards at the site boundary. There is a potential for the drainages to become contaminated by contaminated surface water or contaminated sediment flowing through the drainages.

- Language in the Federal Register states *the Department of Energy (DOE) will be responsible for all future remedial actions required at the area deleted if future site conditions warrant such actions.* We support the language in the Federal Register. Our concern is the Department of Energy will only be evaluating surface water quality for uranium, plutonium, and americium as it flows from the Central OU. Other potential analytes that could be considered contaminants will not be evaluated to determine potential impacts to surface water or the drainages within the Peripheral OU.
  - Broomfield is concerned previous closure documents did not address how the points-of-compliance would be secured and controlled if they are not in an area located within DOE's jurisdiction. It is very important to us, as a downstream community, to ensure the integrity of the monitoring stations within the deleted area are maintained and secured.
  - Broomfield believes the protection of the monitoring stations within the proposed deleted area is a significant and valid concern because there were no institutional controls identified to protect the only enforceable monitoring stations at the site. EPA should be responsive and proactive and identify how these stations will be controlled and protected to prevent access to the general public. It is not good management to develop a protocol to protect the monitoring stations after their integrity has been jeopardized.
2. Broomfield will continue to evaluate surface water quality in Great Western Reservoir to ensure Rocky Flats does not impact the water quality in the reservoir. This ongoing monitoring will ensure the protectiveness of water quality in Great Western Reservoir.
  3. Community involvement and open communication with Legacy Management, EPA, and the Colorado Department of Public Health and the Environment will serve to transition the Peripheral OU to a wildlife refuge. Our ongoing involvement will provide assurances to our residents that the refuge can be utilized and enjoyed by everyone. We strongly support the refuge and the activities identified in the Comprehensive Conservation Plan. Broomfield can

Mr. Rob Henneke

April 12, 2007

Page 4 of 4

clearly distinguish that there is a gap of responsibility for the monitoring stations outside of the Central OU to control, protect, and restrict access to the monitoring stations. Their integrity has to be maintained so data can be generated to evaluate the effectiveness of the remedy in the Central OU and potentially the impact to the Peripheral OU if the remedy fails.

## Matsch wants to release Rocky Flats jury info

By The Denver Post  
Denver Post

Article Launched: 02/01/2007 03:29:24 PM MST

A federal judge said today he wants to release as much information as the law allows from a grand jury investigation of alleged environmental crimes at the former Rocky Flats nuclear weapons plant.

But U.S. District Judge Richard Matsch said a federal appeals court that instructed him to consider what could be released "cast us adrift in uncharted waters." Matsch asked for guidance from attorneys for former grand jurors who want to publicize alleged misconduct by prosecutors and from government attorneys who argue none of the information can be released.

Matsch had ruled in March 2004 that grand jury secrecy rules prevented the release of testimony transcripts and other documents that 18 of the 23 former grand jurors want the public to see. He also had ruled that he didn't have the authority to release material that might not be covered by those rules.

The 10th U.S. Circuit Court of Appeals last year reversed that ruling and sent the case back to Matsch, instructing him to determine what could be released.

In a hearing today, government attorneys told Matsch they believed the materials cannot be released. Matsch gave them a month to file supporting arguments, saying the Colorado U.S. attorney's office should consult with Justice Department officials in Washington because the outcome of the case could affect how the agency conducts grand jury investigations in the future.

Matsch also said he wanted both sides to determine how best to notify the prosecutors who worked with the grand jury that some of the information could be released.

"These allegations being made against counsel are very serious, and the allegations being made against the Department of Justice are very serious," Matsch said.

Attorney Kenneth Peck, a former grand juror who is pursuing his case separately from the other 17 former grand jurors, said it was "ludicrous" that he and other grand jurors were prohibited from reporting what he said were possibly criminal acts by prosecutors.

Details of the allegations by the former grand jurors are sealed.

But attorney Jonathan Turley, who represents 17 former grand jurors, said releasing information about the allegations could spark congressional and criminal investigations.

Rocky Flats, about 10 miles northwest of Denver, made plutonium bomb triggers from the 1950s until it was shut down in 1989. The Energy Department has said a seven-year cleanup of the site is complete, and portions are to become a wildlife refuge.

From 1989 to 1992, the grand jury reviewed evidence and heard testimony from more than 100 witnesses about alleged environmental crimes. The grand jury recommended indictments against two corporations and eight people.

Prosecutors refused to sign the indictments and instead reached a plea agreement with former plant operator Rockwell International, now part of aerospace giant Boeing Co., calling for the company to pay an \$18.5 million fine.

In 1996, 18 members of the grand jury asked Matsch to release them from secrecy rules. At the time, Turley

said he wanted the judge to determine if prosecutors had deliberately undermined the case to protect a government contractor.

He said the alleged misconduct should be punished, and said the grand jurors wanted to use the information to counter public statements that former prosecutors made about them after the grand jury was disbanded.

Turley submitted a sealed document in 1997 detailing the allegations, and interviewed former grand jurors under oath in closed hearings that year. He said Thursday that he was most interested in winning the release of that document and transcripts of the grand jurors' testimony.

"You have a grand jury accusing prosecutors of serious misconduct including possibly lying to Congress," Turley told Matsch. "I believe the people of the state of Colorado and of the United States have a right to know what it is that has motivated (my clients) for so long." Peck wants Matsch to allow him to submit to legal regulators and investigative agencies an affidavit he submitted under seal detailing his allegations of prosecutorial misconduct.

Henry Solano, who was U.S. attorney for Colorado when the grand jury was working, has denied the allegations by the former grand jurors.

# Rocky Mountain News

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## Cold War, hellish consequences

Ex-nuke weapons workers caught in medical crossfire

By **Laura Frank, Rocky Mountain News**  
April 7, 2007

Harold Hinton is dying.

He is slowly suffocating from incurable lung disease that the government acknowledges is linked to his work making nuclear bomb fuel during the Cold War.

Hinton, of Cortez, is eligible for medical care through a federal program designed to compensate ill nuclear weapons workers who weren't fully warned by the government of the dangers they faced.

His physician said Hinton needed around-the-clock nursing care at his home in southwestern Colorado, but a government worker reduced the doctor's orders to eight hours a day.

Hinton is not alone, says the president of a Denver-based company that provides nursing care to Hinton and about 60 other former nuclear weapons workers across the country.

The U.S. Department of Labor is disregarding doctors' orders and approving less care than doctors say is medically necessary, said Greg Austin, president of Professional Case Management. Department officials have also called family members and doctors, pressuring both to agree to lower levels of care, he said.

Labor Department officials said they are simply trying to be good stewards of public funds while getting ill workers the help they need.

Assistant Deputy Labor Secretary Shelby Hallmark, who oversees the program, said Professional Case Management is pressuring doctors to prescribe 24-hour home nursing care when less costly care would do.

"I think what's going on here is (PCM) wants to maximize cash flow," Hallmark said, adding that he has referred PCM's cases to the Labor Department's Office of Inspector General for review.

Austin says the Labor Department's decisions are dangerous.



Barry Gutierrez © The Rocky

Harold Hinton, 76, gets an insulin shot from his full-time nurse at his Cortez home. Hinton - as a young man he ground up uranium ore that became the feedstock for atomic bombs at a plant in Utah - fears he may lose his around-the-clock health care because the Department of Labor wants to reduce it.

"If we do what the Department of Labor says instead of what the doctors say, literally, lives could be put at risk," he said.

## Crying himself to sleep

PCM has served more than 100 ill weapons workers in 11 states during the past five years. The total bill for those five years has approached \$30 million, Hallmark said.

Austin said Labor Department officials have created such an "adversarial culture" toward ill workers that it is affecting workers' already fragile health. The company is considering assisting some patients with a class-action lawsuit against the Labor Department. The suit would ask a judge to stop officials from ignoring medical directives.

Verna Keaton, of Ohio, said her husband, Addison, cried himself to sleep Wednesday night after learning that the Labor Department was trying to take away the nursing care that keeps him home with his wife of 44 years.

Addison Keaton is dying of cancer that the government says was caused by exposure to radioactive uranium at the Portsmouth Gaseous Diffusion Plant in Portsmouth, Ohio. His colon cancer has spread to his lungs, heart and esophagus.

On Wednesday, a Labor Department doctor called Addison Keaton's doctor to question his home health-care order, Verna Keaton said. Unbeknownst to the Keatons, the government doctor had already contacted a hospice-care company, which would be less expensive than full-time nursing care, to open a case on Addison Keaton.

"I think they want him to hurry up and die because it's costing them too much money," said Verna Keaton. "How can a doctor in Washington, D.C., determine what kind of help my husband needs?"

She said the Labor Department doctor was relying on reports from case managers without medical degrees.

"I don't know what's going to happen next because I haven't gotten hold of DOL to answer my questions," she said. "They won't return my calls."

The Labor Department runs the program that Congress created in 2001 to compensate nuclear weapons workers whose toxic exposures made them ill, including those from the now-defunct Rocky Flats weapons plant northwest of Denver. The program includes coverage of medical bills for illnesses linked to those exposures.

The Labor Department and the White House have come under fire recently from the ill, their advocates and several federal lawmakers. The critics say recently released internal communications show the Bush administration has been more concerned about containing costs than helping the ill workers, whom they call Cold War veterans.

"These brave Americans are suffering, and in some cases, dying, because of the hazardous service they performed for their country," said U.S. Rep. Zoe Lofgren, D-Calif., who heads the congressional committee

with oversight of the Labor Department program. "These people deserve better, and I will work with my colleagues in Congress to ensure that they receive the benefits that they were promised."

## Producing yellowcake

As a young man during the Cold War, Harold Hinton ground up uranium ore and moved it from one chemical solution to another until it was a fine yellow powder that became the feedstock for atomic bombs.

His bosses at the mill just over the Colorado border in Utah told him the radioactive ore was safe. His only protective gear was a hard hat, as he toiled at the mill, coming home covered in yellow uranium dust.

The product of the mill - uranium 308, or yellowcake as it was known for its appearance - was shipped to nuclear facilities at Oak Ridge, Tenn., and later to Portsmouth.

Hinton knew that Portsmouth workers such as Addison Keaton were turning the yellowcake into fuel for atomic bombs. But he and his fellow workers didn't know the yellowcake itself was radioactive.

"We were never warned," he said.

Oak Ridge workers recalled being told in the 1950s that yellowcake was safe enough to eat.

"Remember, at that time, they were trying real hard to get the warheads on the missiles," Hinton said. "They needed it real bad to protect the nation."

In 1986, two decades after he left the mill, Hinton began having trouble breathing. The radioactive uranium dust had scarred his lungs. He developed pulmonary fibrosis, a disease with no cure and no effective treatment.

"I have anywhere from six months to two or three years (to live)," Hinton said. "To me, believe me, (the home health care) is a godsend. I have thanked God for it many times."

On the last Friday of February, Hinton's doctor was ready to discharge him from the hospital after a particularly severe episode of breathing difficulty. But there was no one to care for Hinton once he got home. His wife is on oxygen and struggles to care for their son's children, a teenager and a disabled 21-year-old. The Hinton's son is in a Tulsa, Okla., hospital fighting lung cancer.

Harold Hinton believes his wife's and son's lung problems resulted from contamination he brought home from the uranium mill.

At the request of Professional Case Management, Hinton's doctor delayed his discharge until the next Monday in hopes of getting quick approval for Hinton's home care. But the Department of Labor took two weeks to approve the care and reduced the order to eight hours a day instead of the 24 hours ordered by the doctor.

E-mail and voice-mail messages provided by PCM indicate a case manager in Denver made the decision to offer less care without consulting Hinton's doctor.

Dr. Leonard Cain, Hinton's doctor in Cortez, said ordering 24-hour nursing care is not an easy decision.

"It's complicated," Cain said. "If I put a home-health aide (instead of a nurse) in the home and the patient has a medical need during the night, that can't be handled by a home-health aide."

Such aides, known as certified nursing assistants, are qualified to help patients bathe or move from a bed to a chair, PCM's Austin said. But they legally cannot administer medications, draw blood, change oxygen levels or do many other things that these patients might require at any time.

"Yes, this program covers more than Medicare or some other social safety net," Austin said. "But this isn't a social program - it's a compensation program. These workers' illnesses were caused by their work for this country. They can never get their health back, but they can get some relief and be with their families until they pass away."

## Caught in the middle

As a doctor, Cain said he feels caught between Professional Case Management advocating for patient care and the Labor Department trying to save money.

"I'm going to err on the side of providing the most care for the patient," Cain said. "This level of care is not provided to anyone else in our health-care system. But (the law creating the workers' compensation program) says we're going to provide this level of care for these people who need it."

Cain said he resents being put in the middle.

"There should be negotiation and communication on this," he said.

PCM's Austin agreed, saying his company has requested that the Labor Department participate in discussing patients' care with health professionals.

"They have said they are not interested," Austin said.

Hallmark said he was not aware that PCM had asked the Labor Department to participate in patient case conferences. However, he said, PCM complained when the department talked directly with the physicians.

Austin said PCM nurses should always be involved in decisions because they see the patients more than their doctors do.

Meanwhile, PCM has been providing full-time nursing care to Hinton since Feb. 26 with no guarantee of payment.

"There would be a huge liability for us if we didn't do what the doctor ordered," Austin said. "But we can't afford to do that forever."

## How it happened

At the height of the Cold War, thousands of Americans were busy at urgent work they couldn't discuss with their neighbors: building atomic bombs for the arms race with the Soviet Union.

At the Rocky Flats plant northwest of Denver - and at scores of other sites across the nation - workers were exposed daily to myriad poisons. Radiation. Exotic heavy metals. Chemicals in uncommon variety and quantity.

The government routinely withheld information about the risk workers faced. Records of exposures were often incomplete; others were later destroyed.

Today, more than 60,000 former nuclear weapons workers are ill and believe that their ailments are linked to their Cold War work. The government denied almost all such links until 2000.

The next year, Congress created a compensation program to give lump-sum payments and medical coverage to workers whose illnesses were likely caused by workplace exposures.

*[frankl@RockyMountainNews.com](mailto:frankl@RockyMountainNews.com) or 303-954-5091*

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# Rocky Mountain News

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## Stricken ex-Flats engineer finally wins appeal for help

By Ann Imse, Rocky Mountain News  
March 27, 2007

A 48-year-old former Rocky Flats engineer battling a normally fatal brain cancer learned Monday that he has won his four-year quest for help from a federal program for sick nuclear weapons workers.

The program has come under heavy criticism by members of Congress for first delaying and then denying help to tens of thousands of sick atomic bomb makers. Many workers have been unable to prove that their illnesses were caused by radiation or toxic chemicals on the job because records are missing or inaccurate.

Harry Charles Wolf, who has a 6-inch scar on his head, stepped forward to become a spokesman for the sick workers. He told a public hearing on the program in May that he routinely supervised demolition of one of the world's most dangerous buildings at Rocky Flats.

Wolf's claim for aid was denied originally. On Monday, he learned that his appeal had been approved.

He was rated as 100 percent disabled and thus qualified for \$250,000 of compensation. He also is eligible for reimbursement of his medical bills, which have reached \$600,000.

The attorney on his appeal, Bill Brady, of Denver, called Wolf with the news Monday. "The first thing out of his mouth was, 'Gee, I hope it makes it easier for other people,'" Brady said.

Wolf's wife, Kathy, another former Rocky Flats engineer, said they were "in shock" after struggling to deal with the program's complex paperwork since shortly after her husband's diagnosis in 2003.

"It's like, OK, pinch me, this can't be right," she said.

The news came just two weeks after Wolf found out that his tumor, now on its second appearance, had shrunk 90 percent under a new chemotherapy.

The Department of Labor originally denied Wolf's claim, after it paid \$900 to an Ohio cardiologist named Suthil M. Sethi for a three-hour review of his medical records. Sethi said there was no connection between radiation and brain tumors.



Wolf performed dangerous jobs in the nuclear industry.

Wolf appealed, and his Littleton-based neuro-oncologist, Dr. Edward Arenson, testified that there is no question that Wolf's malignant tumor was caused by his exposure to radiation and toxic chemicals on the job.

Arenson also said in his testimony that Wolf is likely to die from his type of brain tumor. Glioblastoma kills most of its victims within one year.

Dr. James Rутtenber, an epidemiologist at the University of Colorado, testified that "there appears to be something associated with plutonium processing" that results in an unusually large number of brain cancers among workers at Rocky Flats.

The Department of Labor sent Wolf's appeal to a different medical consultant for review. This time, Dr. William Milliken, a Fort Collins specialist in occupational medicine, advised that Wolf's exposure to PCBs and carbon tetrachloride on the job were at least 50 percent likely to have caused his cancer, thus meeting the requirement for compensation.

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**YAHOO!** NEWS

**AP** Associated Press

## Wildlife refuges suffer heavy job losses

By MATTHEW DALY, Associated Press Writer *52 minutes ago*

Faced with a \$2.5 billion budget shortfall, the U.S. Fish and Wildlife Service is eliminating hundreds of jobs, cutting back programs and leaving more than 200 national wildlife refuges unstaffed.

In all, the agency is planning to cut 565 jobs from wildlife refuges by 2009 — a 20 percent reduction.

The national refuge system encompasses 547 wildlife refuges and more than 96 million acres in all 50 states, attracting more than 40 million visitors a year.

Environmentalists say the staffing cuts — which follow two years of reductions — will leave an already lean work force depleted and result in a decrease in habitat management, restoration projects and education projects. More than 200 wildlife refuges across the country will be unstaffed.

"Our national wildlife refuges are literally crumbling before our eyes. Across the country we're seeing how the culmination of years of negligent funding devastates these special places," said Rodger Schlickeisen, president of Defenders of Wildlife.

William Reffalt, director of the National Wildlife Refuge System in the 1980s, lamented the deterioration in the refuge system, which celebrated its 104th anniversary this week.

"Our nation had the foresight to establish these sanctuaries to conserve fish and wildlife, but we are failing to provide the ongoing stewardship that is required," he said. "We need leadership in the spirit of Theodore Roosevelt," who established the first wildlife refuge in Florida in 1903.

Agency officials acknowledged that the budget cuts will affect services, but said that with a \$2.5 billion backlog in operations and maintenance, the reductions were unavoidable. Few, if any, layoffs will be needed, they said, with most job losses occurring through attrition.

"If the Service does not act decisively now, it will become unable to effectively operate most national wildlife refuges within a few years, even if budgets remain level," said David Eisenhauer, an agency spokesman.

The job cuts should increase efficiency and free up funding for refuge management and operations, Eisenhauer said.

But critics said leaving refuges unstaffed could lead to problems with invasive species — and increased crime or vandalism on the rustic sites, many of which are within an hour's drive of a major city.

"In this day and age, no land can really be left alone," said Noah Matson, director of federal lands programs for Defenders of Wildlife. About 8 million refuge acres nationwide are infested with invasive species such as beetles and carp, Matson said.

The cuts also mean fewer law enforcement officers. In the Pacific region, only six officers will patrol a four-state area. In Oregon, just one full-time officer patrols the entire coastline, with a half-dozen wildlife refuges.

"That's just pathetic," Matson said.

President Bush has requested about \$398 million for the National Wildlife Refuge System for the next budget year, a \$12 million increase over current spending but far short of what is needed, critics say.

The agency estimates it needs a \$15 million annual increase to keep pace with inflation, and a much larger amount to chip into the \$2.5 billion backlog for maintenance and operations.

About 221 refuges will be unstaffed after the staffing reductions are finished, Eisenhower said. All refuges will continue to be managed, he said, although some will become unstaffed "satellite units" of larger refuge complexes with no day-to-day management.

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On the Net:

Fish and Wildlife Service: <http://www.fws.gov>

Defenders of Wildlife: <http://www.defenders.org>

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## editorial

# A sad final note for Flats whistleblower

**An engineer who helped expose problems at the former nuclear plant deserves thanks, even if the Supreme Court denied his monetary claims.**

By The Denver Post Editorial Board  
The Denver Post

Article Launched: 03/29/2007 01:00:00 AM MDT

James Stone was disturbed by the things he had seen while working at the Rocky Flats nuclear weapons plant, including overflowing hazardous waste "lagoons" and a plan to stabilize toxic wastes by mixing them with cement.

The engineer took 2,300 pages of documents to the FBI in 1987 and was a driving force behind the agency's raid of the plant, which ultimately resulted in defense contractor Rockwell International pleading guilty to 10 environmental crimes and paying \$18.5 million in fines.

A 6-2 decision by the U.S. Supreme Court Tuesday that cut him out of sharing in \$4.2 million in civil penalties assessed against Rockwell is an affront to the legacy of the 82-year-old, now suffering from Alzheimer's, whose career was ruined by his decision to step forward. But more than that, the court's strict definition of who is an "original source," a prerequisite to bringing a federal whistleblower lawsuit, could discourage others from calling attention to government waste and fraud.

"Fewer whistleblowers are going to come forward to take action," predicted James Moorman, president of Taxpayers Against Fraud, a non-profit that guides whistleblowers and lawyers.

The False Claims Act is a tool that has been used to recover billions stolen by government contractors. It includes a provision that allows citizens who know of fraud to sue contractors on behalf of the government. The citizen, who must have original knowledge of fraud, as opposed to, say, reading about it in the newspaper, can share in any funds recovered.

In 1999, Stone won a \$4.2 million judgment against the contractor. He had sued along with the federal government to recover environmental cleanup costs and bonuses paid to Rockwell. As part of the lawsuit, he produced a 1982 order he had written in which he explained how mixing toxins in cement to create solid blocks "would result in an unstable mixture that would later deteriorate and cause unwanted release of toxic wastes to the environment." The so-called pondcrete blocks ultimately caused significant pollution at the site northwest of Denver.

After 18 years of legal wrangling in several different courts, the Supreme Court decided that Stone's *prediction* that the plan to mix toxins with cement would fail wasn't the same as *knowing* it had. The justices also took issue with Stone's explanation of how the failure would occur, which wasn't exact.

The decision is a sad final note to what was, by all accounts, an honorable course of action by a man with the best intentions. Congress should revisit this law to ensure that whistleblowers like Stone are treated more fairly in the future.



## Carved in Stone

Twenty years after Jim Stone first blew the whistle on Rockwell International, he got his day in court -- the Supreme Court.

**By Patricia Calhoun**

Published: April 12, 2007

Pondcrete.

The word echoed off the marble walls of the U.S. Supreme Court, the bedrock of a legal system that's lasted well over two centuries, with the eight judges considering the case of Rockwell International Corp. et al. v. United States et al. (Justice Stephen Breyer had recused himself) possessing a collective legal experience almost as lengthy.

But plutonium has a half-life of 24,000 years -- and the pondcrete that was supposed to safely store the toxic pond sludge created at Rocky Flats Nuclear Weapons Plant lasted barely a year before the blocks started falling apart.



Jim Stone had warned Rockwell International, which ran the plant sixteen miles upwind of Denver for the Department of Energy from 1978 to 1989, that the pondcrete process wouldn't work. Hired at the plant as an engineer in 1980, in October 1982 he'd sent a memo to Rockwell's management detailing his concerns about a proposal to mix sludge from the waste-storage ponds with concrete -- and suggested some tests. Instead, Rockwell went ahead and manufactured the pondcrete as originally proposed.

Stone wasn't around to see the pondcrete fail. In March 1986, Rockwell laid off its principal troubleshooter.

On July 5, 1989, Stone became its principal troublemaker, filing suit under the federal False Claims Act, which prohibits a contractor from submitting fraudulent claims to the U.S. government, and charging that Rockwell had concealed environmental, safety and health problems from the DOE. By then, it was no secret that there were big problems at Rocky Flats, which had produced plutonium triggers in almost complete secrecy for decades. On June 6, 1989, the FBI had led a pre-dawn raid on the facility, with 75 FBI and EPA agents joining in the search. What they were looking for was revealed three days later when the search warrant obtained by lead FBI investigator Jon Lipsky was unsealed, spilling out allegations that Rocky Flats had illegally disposed of dangerous waste.

Some of those allegations had come straight from Stone.

"We'd been working on the investigation for almost a year," Lipsky says of his first meeting with Stone. "He was my first insider. I had a pretty good idea of how Rocky Flats was put together, but it was almost unbelievable. He was talking about stuff he knew -- and he was a very intelligent man, an engineer, on a different plane than I am. He was rattling it all off, and I had to stop to ask questions. Some of the stuff I could corroborate because I'd reviewed the waste streams out there."

But Stone had many more surprises for him, including 2,300 pages of documents -- one of them his 1982 memo -- and the stunning revelation that the plant's ductwork was full of lost plutonium.

The evidence seized in the raid was presented to a grand jury -- the first special grand jury in Colorado history -- that was convened in August 1989. Two years later, the jurors were getting ready to indict eight individuals -- some from Rockwell, some from the DOE -- in connection with what they regarded as an "ongoing criminal enterprise" at Rocky Flats. Instead, the government cut a deal with Rockwell. In March 1992, the corporation pleaded guilty to ten environmental violations at Rocky Flats. As part of the deal, Rockwell was to pay \$18.5 million in fines -- less than it had earned in bonuses for operating the plant. Lipsky was prohibited from mentioning Stone's charges in the plea agreement.

That December, Rockwell filed a motion to dismiss Stone's complaint, claiming that the whistleblower was not an "original source," as required under the False Claims Act. A judge disagreed, and in 1995 the U.S. government joined the case on Stone's side. Four years later, a jury decided many points in favor of Stone, and on June 10, 1999, the court awarded the plaintiffs treble damages of \$4.2 million.

Stone has yet to collect a cent.

Rockwell appealed, again arguing that Stone was not the original source of the pondcrete allegations. The 10th Circuit Court disagreed, twice. And finally, Rockwell petitioned the U.S. Supreme Court.

On December 5, 2006, more than twenty years after Stone was dismissed by Rockwell, seventeen years after the government raided its own plant, Stone's case finally reached the Supreme Court, and the word "pondcrete" echoed off those marble walls.

Jim Stone wasn't there to hear it. The 82-year-old has Alzheimer's and wasn't well enough to travel. But his original attorney, Hartley Alley, was there, sitting in the courtroom while a lawyer with the big New York City firm he'd long ago brought in argued on Stone's behalf. (Stone's lawyers also have yet to collect a cent; meanwhile, Rockwell's lawyers are asking the government to foot their \$20 million bill.)

The first case that morning had devolved into a discussion of California's definition of "joyriding." "Where's the joy in that?" asked Chief Justice John Roberts. "The joy, apparently, is you don't get convicted of theft," responded Justice Antonin Scalia. Of course, neither had anyone at Rockwell, since the 1992 deal precluded prosecuting any individuals.

And any remaining joy left the courtroom when Rockwell's attorney repeated the argument that Stone could not have been an "original source" of the allegations. Although the 10th Circuit had determined that Stone had "direct and independent knowledge," the lawyer said that the pondcrete hadn't been made until after Stone left Rocky Flats, and that he could have learned of its subsequent failure in the media. Stone's "central observation was not even presented to the jury" that decided the initial case in favor of the whistleblower, Scalia pointed out. But then, Justice Ruth Ginsberg noted, Rockwell had misrepresented the safety of pondcrete, too. In fact, one exec had told the jury that pondcrete would be just like the concrete in your driveway.

After less than an hour, the case was closed.

Three months later, on March 27, the Supreme Court handed down its decision -- and any hopes that there would one day be justice for Jim Stone crumbled like rotting pondcrete.

Scalia wrote the 6-2 decision in favor of Rockwell. "Stone did not know that the pondcrete failed; he *predicted* it," the court ruled. And that was not enough for an "original source."

But the legal cases connected with Rocky Flats have a half-life on their own. In February 2006, a class-

action suit filed against Rockwell and Dow Chemical, a previous plant operator, on behalf of 12,000 property owners who'd owned land around Rocky Flats resulted in a record-breaking \$554 million judgment. Although motions have stayed that judgment from being dispersed to the plaintiffs, U.S. District Judge John Kane is expected to rule on those soon.

And by April 20, the U.S. Attorney's Office must respond to an argument that the Rocky Flats grand jurors finally be allowed to tell their story in court. Back in 1996, attorney Jonathan Turley asked that the jurors be released from grand jury secrecy rules in order to talk about what had gone on behind closed doors; in February, he again argued their case before U.S. District Judge Richard Matsch.

The grand jury foreman, Wes McKinley, is not part of that action. He's now a state representative, and has twice pushed for legislation that would require that warning signs be posted outside the former nuclear weapons plant -- which was declared cleaned up last fall and is slated to become a 6,500-acre wildlife refuge. The DOE may turn over that land to the U.S. Fish & Wildlife Service as early as this month, according to David Abelson, who heads the Rocky Flats Stewardship Council. Although the refuge will not be open to the public for at least five years, the signs are already in place. "We want to be sure that people understand what happened at Rocky Flats," Abelson says. "There's disagreement, but the big picture is shared." And it's not pretty.

Alley, who's stuck by Stone for twenty years, isn't about to give up now. The engineer's allegations about the missing plutonium were never adjudicated -- and they make for a strong case. "When Stone met with the government team, he told them where to look," Alley says. "They found 61 pounds of plutonium in the air ducts, enough to make several Hiroshima bombs." But while he contemplates dropping that legal bombshell, he's already taken his client's case to another court: the court of public opinion.

Three days after the Supreme Court's decision came down, Alley sent a letter to this state's senators on behalf of a "true hero in Colorado history," asking that Ken Salazar and Wayne Allard support a bipartisan resolution that Stone receive a just share of the government's recovery, a share the government itself had told the Supreme Court that Stone deserved. "Had Rockwell's crimes and practices gone unchecked, there is no telling what further injuries and harm would have befallen Colorado and the health of its citizens," he wrote. "Mr. Stone's career was ruined because of his reporting the crimes at Rocky Flats -- something he did as a patriot on behalf of the people of Colorado and the U.S. taxpayers. That he has not received a single penny for his trouble is an injustice, pure and simple. It cries out for redress."

It's a sin -- an original sin.

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## Rocky Flats whistle-blower dies at 82

James Stone recently lost bid for \$1 million

By **Laura Frank And Ann Imse, Rocky Mountain News**  
April 12, 2007

James Stone was an engineer to the core. And that made it impossible for him to leave a problem until it was solved.

His hardscrabble life in a Depression-era orphanage and his hard-won engineering degree led to his career-defining challenge: being the chief whistle-blower on environmental crimes at the Rocky Flats nuclear weapons site near Denver.

"He would work on a problem round the clock," son Bob said. "That's what got him in trouble at Rocky Flats. He wanted to solve the problems, not ignore them."

Stone, who suffered from Alzheimer's, died Wednesday at the Julia Temple Center in Englewood. He was 82.

Stone, who worked at Rocky Flats from 1980 to 1986, was the first Flats insider to go to the FBI with details of the radioactive pollution released by the site contractor, Rockwell International.

Rockwell pleaded guilty to 10 environmental crimes and paid \$18.5 million in fines.

Stone filed a whistle-blower fraud case against Rockwell and won \$4.2 million in damages for the federal government. Just two weeks ago, after an 18-year fight, the U.S. Supreme Court denied him a \$1 million share in those damages.

"He died with nothing more than the clothes on his back and the love of his family and friends," Bob Stone said. "I know if he had it to do all over again, even knowing how it turned out, he would have done it just the same."

Stone was born in 1924. His parents couldn't afford to keep him during the Depression, his son said, so he went to a Catholic orphanage in St. Louis. As a young teen, a family with a coal business took him in.

Barred from World War II because of a hearing problem, he worked on engineering jobs in Alaska, on the Air Force Academy chapel and on the Brown Palace heating system. He worked on missile silos in Idaho and Wyoming, and surveyed a pipeline across Greenland. He also invented a sewage treatment system for rural mountain homes and a municipal trash incinerator.



James Stone "wanted to solve the problems, not ignore them."

Stone helped design Rocky Flats before it opened in 1952, and he warned against the location "because Denver was downwind a few miles away," said his longtime attorney and friend Hartley Alley.

Jon Lipsky, the FBI agent who led the 1989 raid on Rocky Flats, said Stone "was the first one who worked at the plant to talk to me."

Stone's job was to identify problems at the plant and recommend solutions. So he was able to give the FBI a road map, Alley said.

Alley said Stone was the source of a key allegation in the FBI search warrant - that Rockwell was incinerating radioactive waste in secret at night. That charge was dropped when Rockwell settled the criminal case, and prosecutors said it wasn't true. But Alley says he had two other clients who witnessed it.

Stone's motivation for filing the whistle-blower lawsuit in 1989 was patriotic, Alley said. "He felt the people who operated Rocky Flats in the 1980s were guilty of treason" by building nuclear weapons that wouldn't explode, Alley said.

In the fraud suit, Stone alleged that Rockwell was defrauding the government by taking money for building faulty weapons while polluting the environment. Proving faulty production was impossible because the evidence was classified, Alley said.

Jim Stone "wasn't afraid of jumping into anything," his son said. "The world is a better place with people like him."

Stone is survived by his wife Virginia, sons Bob, of Lakewood, and Randy, of Wheat Ridge, five grandchildren and 13 great-grandchildren. He was preceded in death by his eldest son, James Stone Jr.

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