

Rocky Flats Stewardship Council
Monday, April 6, 2009, 8:30 – 11:35 AM
Rocky Mountain Metropolitan Airport (formerly Jefferson County Airport)
Terminal Building
11755 Airport Way, Broomfield, Colorado

Board members in attendance: Lorraine Anderson (Director, Arvada), Marc Williams (Alternate, Arvada), Clark Johnson (Alternate, Arvada), Carl Castillo (Director, Boulder), Matt Jones (Alternate, Boulder), Meagan Davis (Alternate, Boulder County), David Allen (Alternate, Broomfield), Faye Griffin (Director, Jefferson County), Sheri Paiz (Director, Northglenn), Shelley Stanley (Alternate, Northglenn), Andrew Muckle (Director, Superior), Matt Magley (Alternate, Superior), Bob Briggs (Director, Westminster), Ron Hellbusch (Alternate, Westminster), Jeannette Hillery (Director, League of Women Voters), Sue Vaughan (Alternate, League of Women Voters), Shirley Garcia (Director, Rocky Flats Cold War Museum), Roman Kohler (Director, Rocky Flats Homesteaders), Karen Imbierowicz (citizen).

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: Margaret Patten (Rocky Flats mineral owner), Andy Patten (Rocky Flats mineral owner), Bill Carpenter (Patten's Attorney), Charlene Willey (former Rocky Flats worker), Briana Willey (former Rocky Flats worker), Dee Hasenkamp (former Rocky Flats worker), Jeff Schultz (former Rocky Flats worker), Laura Schultz (former Rocky Flats worker), Esther Cleek (former Rocky Flats worker), Charles Padilla (former Rocky Flats worker), Judy Padilla (former Rocky Flats worker), Jerry Harden (former Rocky Flats worker), Cliff DelForge (former Rocky Flats worker), Kim Tuck (former Rocky Flats workers), Laura Frank (ProPublica), Sen. Mark Udall, Jennifer Talhelm (Sen. Udall's office), Doug Young (Sen. Udall's office), Christopher Votoupe (Rep. Perlmutter's office), Andy Schultheiss (Rep. Polis' office), Ann Lockhart (Rocky Flats Cold War Museum), Cathy Shugarts (City of Westminster), Vera Moritz (EPA), John Dalton (EPA), Carl Spreng (CDPHE), Marilyn Null (CDPHE), Steve Berendzen (USFWS), Sherry James (USFWS), Linda Kaiser (DOE), Scott Surovchak (DOE-LM), Rick DiSalvo (Stoller), Bob Darr (Stoller), Jennifer Bohn (RFSC accountant).

Convene/Agenda Review

Chairman Jeannette Hillery convened the meeting at 8:30 a.m. She introduced and welcomed a new member of the Board, Marc Williams, from the City of Arvada. She also acknowledged Faye Griffin from Jefferson County, another new member. There were no changes to the agenda.

Business Items

The first item of business was the consent agenda. Bob Briggs moved to approve the February Board meeting minutes and checks. The motion was seconded Roman Kohler. The motion passed 12-0

The next business item was for the Board to ratify two letters that were sent on behalf of the Board in February. The first was a letter to the Colorado Natural Resource Trustees regarding the NRD Damage Fund. At the February 2 meeting, the Board directed staff to draft a letter in support of the NRD grant application that local governments and community groups submitted to the Natural Resource Trustees. The letter was vetted with the Board and was sent to the Trustees. Formal approval is needed at the meeting.

The second letter was sent to members of Congress regarding federal stimulus funding. At the February 2 meeting the Board directed staff to draft a letter to Colorado's Senators with copies to House members in support of funding for DOE's Environmental Management program in the federal stimulus bill that Congress was debating. The letter was vetted with the Board and was sent to Senators Udall and Bennet. Formal approval is needed at the meeting.

Roman Kohler moved to approve both letters. The motion was seconded by Lorraine Anderson. Prior to the vote, Andrew Muckle asked what the acronym INL stands for. David Abelson explained that it is Idaho National Laboratory, and that the name and acronym has changed several times. The motion passed 12-0.

Executive Director's Report

David began his report by clarifying the Board's process for providing official approval of letters after they have been sent. In order to act between meetings, David drafts the given letter and Board members then respond to him with any comments, changes, suggestions or questions. David then incorporates changes into a final version. While the Board is aware of the final version and while that draft includes all recommended changes, formal Board approval occurs at the next meeting, despite the fact that the letter was signed by the Chairman and sent prior to that vote.

David also mentioned the attendance today of Senator Mark Udall, as well as members of his staff and the staffs of Representatives Perlmutter and Polis. They will be discussing Congressional efforts to fix the federal nuclear workers health compensation program.

The next item in this update was NRD funding. David sent out an email to the Board on this topic, but wanted to mention again to the whole group. In early March, the Trustees approved the funding proposals totaling approximately \$2.45 million. This leaves about \$2 million remaining in the fund. In their approval of the funding requests, the trustees cited the Stewardship Council's support for the projects as one of the reasons for their decision. One issue that has come about as a result of one of the proposals to preserve the prairie at the NREL wind test site has been a discussion about making sure other activities in this area also do not disturb the ecosystem. The parties will negotiate a Memorandum of Understanding to make sure all activities proceed in a way that is consistent with habitat protection.

Lorraine Anderson and David Abelson were in Washington, D.C in February to attend an Energy Communities Alliance conference. While there, they also met with three of Colorado's members of Congress, as well as staff from six other offices. David described these as good, substantive

meetings. They reported that virtually of the staff members are new to the issue of Rocky Flats, making these meetings very important. David and Lorraine's talking points included funding for DOE-LM, funding for the Rocky Flats National Wildlife Refuge, and funding for workers benefits. The comments were well received, and all were completely supportive of the Rocky Flats workers. The only question is how to best implement the needed changes.

David reported that it appears Rocky Flats is in good shape for DOE-LM funding for next year, as the President's budget request was essentially what the Department needs. There is a provision in the stimulus bill regarding National Wildlife Refuge visitor centers, and the funding must be obligated by September 30, 2011. These funds are available to be used for multi-year projects. Rep. Perlmutter saw this opportunity and will communicate with Interior Secretary Salazar about the possibility of using some of this funding at Rocky Flats. David also noted that there are still many vacant positions in federal agencies, however there do happen to be some key people in the Interior Department with Colorado ties. David will continue to follow up with Rep. Perlmutter's staff on this issue.

Rik Getty updated the Board on work at the solar ponds. The site is trying to improve the groundwater treatment system for nitrates and uranium. The project was originally designed to have four phases. Phase 1 is complete. The issue now is that the system is overloaded. Rik said the site has now come up with a well-thought out plan to develop a new treatment process. Construction starts today, and will provide greater flexibility in terms of treatment options. However, it will take some time for any results to come in.

Rik also mentioned that the Board is planning a site tour in June and will visit this area. David Abelson encouraged people to sign up for this tour, which will include a van ride around the site, as well as some walking. Staff is looking at a few dates, so anyone interested should contact Rik with their availability. David Allen asked if the Board could get more detailed update on the Solar Ponds at the next meeting. Rik said they are already planning this.

Public comment

Laura Schultz (former Rocky Flats worker) spoke on behalf of a group of sick Rocky Flats workers, and offered their thanks to the Board for its support. She also wanted to remind the members that May 11 will be the 40-year anniversary of the 1969 fire. She said that the workers do not have the funds to put together a day of remembrance, and asked if perhaps the Cold War Museum or Stewardship Council could help with this.

Briefing/Discussion on the Charlie Wolf Act

As the Board has discussed numerous times, implementation of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) is deeply flawed. Following the direction established by the Colorado's Congressional delegation regarding their concerns with the EEOICPA, the Stewardship Council has weighed in four times with its concerns about the program. Senator Udall, working with his colleagues in the Senate and House, drafted legislation to amend the EEOICPA to make it easier for former workers to receive compensation under the Act. This amendment is known as the 'Charlie Wolf Act', in honor of a former worker who had struggled with the system and recently passed away.

While the group awaited the arrival of Sen. Udall, Doug Young from his staff gave an introduction to the new bill, which is co-sponsored by Sen. Bennet (Colorado) and Sen. Tom Udall (New Mexico). Also, Rep. Polis has introduced the bill in the House, co-sponsored by all members of the Colorado delegation with the exception of Reps. Markey and Lamborn. The bill replicates one that then-Rep. Udall introduced in the House last year, but has been broadened and expanded. Doug noted that the passing of Charlie Wolf, whose story had been told publicly by *Rocky Mountain News* reporter Laura Frank, really brought some urgency and a new focus to this effort.

Doug described three similar compensation systems within the federal government. One addresses Black Lung disease in coal miners, and uses an excise tax on coal to fund the program. There is an excise tax on vaccines that is used to compensate people who suffer complications from vaccinations. Finally, the Radiation Exposure Compensation Act applies to uranium miners and above ground nuclear testing. Originally, the congressional representatives wanted to create a similar system for Rocky Flats workers. However, the program was difficult to establish, and ended up placing the entire burden on the worker to find data to back-up their claims, which was extremely difficult. Doug said they decided enough is enough, and have worked all year on this new bill to broaden and make the program more user-friendly.

This bill would also expand the definition of the 'special exposure cohort'. It also makes a presumption of exposure and that certain illnesses were caused by this exposure. It also eliminates any need for a dose reconstruction. The last act of the Bush Administration's former Health and Human Services Secretary, Michael Levitt, was to deny the Rocky Flats worker's special exposure cohort petition. Rather than the burden being placed on the worker to prove that his/her work caused their illness, this bill reverses that scenario and provides benefits unless the government can prove that the illness is related to a different cause. Doug noted that it is high time that the government acknowledges its obligation to these Cold Warriors. Sen. Udall is hoping to create some grassroots support for the legislation in states that house nuclear facilities.

Lorraine Anderson asked where new claims would be filed when this bill passes. Doug said he is not sure about how the government would go about implementing the new rules. However, the Wolf bill does allow for re-filing and it is their intention that the process be simple.

David Abelson introduced Andy Schultheiss, District Director for Rep. Polis, who is also working on this legislation. David explained how hard it has been for the workers to rely on finding records to prove their exposures. That is what led to this flip in presumption, since it was an undue and difficult, or even impossible, burden to overcome.

David added that similar problems are happening at other sites as well. He said that it is important to look for opportunities to communicate more broadly about this bill and partner with other groups. Lorraine Anderson announced that the Arvada City Council passed a resolution supporting this bill and added that that she would like to see the Stewardship Council do the same. Jeannette Hillery noted that this is on the agenda at the conclusion of this discussion. Lorraine also mentioned that an Energy Community Alliance (ECA) Peer Exchange meeting is coming up and that she will bring up this issue to that group. Also, ECA mentioned it in a recent publication. David clarified that this is not a Rocky Flats-specific bill. It covers all nuclear workers. In fact, Charlie Wolf himself worked at the Savannah River Site for years.

Andy Schultheiss noted that Rep. Polis is overseas and apologized for not being able to be here. He sits on the committee that will be addressing this bill, and is looking forward to a hearing on the bill. Rep. Polis would also like to commend Sen. Udall for not giving up on this issue. Andy noted that this is a bi-partisan bill and that some of the leadership has expressed an interest in moving forward on it. He is confident that there will be hearings this year. However, one primary concern is the big price tag.

Carl Castillo asked how many states are involved, and whether those involved have a feel for the level of national support. Andy noted that Tennessee and New Mexico are very interested, based on their facilities. David also mentioned Washington, Idaho, Nevada (the Senate majority leader is from there), California, South Carolina, Ohio, and Texas. He pointed to several well-positioned members of congress in these states. Karen Imbierowicz asked if they had any sense of cost for this proposed program compared to the other three existing programs that were mentioned. Andy said that they are trying not to attach a price tag, but it has been talked about in the billions. Roman Kohler said that this bill was well written, and that he hopes that it does not get torn up in committees. He added that President Obama spoke to the Radiation Advisory Board in support of extending benefits for workers at a lab in Chicago while he was a Senator. Roman noted that the application of the special cohort status was extremely important for Rocky Flats workers, because of the problems involved regarding lack of exposure records here.

Senator Udall arrived and spoke about living for the day when we can honor Charlie Wolf's memory. He said Charlie motivated him and his colleagues to do even more for the workers. The Senator said he is guardedly optimistic about the future of this bill. He said everyone knows why this is so important, and that it would also make a statement to workers at active sites that they will be taken care of. He said that he has seen exciting indications that other members of Congress will join them. Senator Harry Reid of Nevada, majority leader of the Senate, has expressed some interest. He said Rep. Perlmutter has been working tirelessly on this issue, as did former Rep. Beauprez and former Sen. Allard. Sen. Udall noted that Board members and other attendees can also help the effort by utilizing existing connections to talk to members of Congress. He said this is not about politics. He concluded by saying that he would love to hear any questions or stories from people involved in this issue. At this point, he also mentioned the ongoing work regarding Rocky Flats monitoring and the Refuge, as well as plans for the Cold War Museum.

Marc Williams told the Senator that he thought it was tremendous that they named this act after Charlie. He said his wife works at the neurological center that treated Charlie. He said Dr Aronson there was very involved in this issue. He added that Charlie was avid bicyclist, and helped raise money for the institute. This year's ride will be in honor of Charlie, and Marc invited the Senator to participate on June 7 in Castle Rock.

Lorraine Anderson thanked Sen. Udall on behalf of everyone working on Rocky Flats issues for his support for the former Rocky Flats Coalition of Local Government and for helping form the Stewardship Council. She said she was proud of this group's diversity and noted that the current Chairperson represents the League of Women Voters. She added that she is active in nuclear site issues across the nation and thinks that Rocky Flats is the most successful. Sen. Udall said that other sites must be looking to this one for advice and counsel. Lorraine added that she will take

this bill to the ECA peer exchange for their information and discussion. Sen. Udall again pointed to the help of Representatives Polis and Perlmutter. He also mentioned former Energy Secretary Bill Richardson, who took a stand in 2000 not to stand behind sovereign immunity.

Roman Kohler added his thanks to the Senator on behalf of former workers, who think that they did an excellent job putting this bill together. He asked the Senator if he knew which committees it may go to and how long it may take. Doug Young responded that it would be Committee on Health, Education, Labor and Pensions in the Senate, and the Committee on Education and Labor and the Committee on the Judiciary in the House. He said the progress and speed will depend on what kind of a movement gets going in support of the bill. At this point, they need to get in touch with the committee chairs, and will look at which branch might be able to move quicker. They will also work with the new Labor, Health and Human Services and Energy Secretaries. Sen. Udall has already spoken to the Energy Secretary to see if he would work on this issue and was told he would. The appointment of Ken Salazar as Interior Secretary is also a plus. Sen. Udall said that a great group of people know how important this is. He added that while the cost is not insignificant, the existence of similar compensation programs can be seen as a good precedent. He referred to all of the time and energy spent denying these claims, and we just need to find a way to expedite the claims and get the money to the workers. He said most people involved really want to do the right thing, but feel hamstrung by rules and directives from higher levels.

Jeannette Hillery asked for motion to endorse the bill. Lorraine Anderson moved that the Stewardship Council officially support the passage of the Charlie Wolf Act in the U.S. Congress. The motion was seconded Roman Kohler. The motion passed 12-0. Jeannette asked Sen. Udall to let the Board know what else it may be able to do to support this bill. The senator said that all of us can continue to build a movement in support of the legislation.

From the audience, Laura Schultz acknowledged reporter Laura Frank for her work on Charlie Wolf's story. She said that without Laura, no one would know the struggles of the workers.

Sen. Udall noted that we have a lot on our table as a country, but that he is optimistic about moving forward. He said he knows we will get it right, and that this is when America is at its best. He said Colorado is well situated to be in the lead on education reform, new energy economy, and health care. While job number one is the economy, which will not be back on track overnight, he said there are positive signs. His staff is available for questions on the recovery package, and how it affects various entities such as school districts and small business. They are available to answer questions and direct people to further information and resources.

David said he wanted to put on the Senator's radar screen Rep. Perlmutter's idea about using stimulus money for the Rocky Flats Wildlife Refuge. David suggested having someone in the Senate look at the appropriateness of using this dedicated funding at Rocky Flats. He said the idea is based on specific language in bill, and pointed to the opportunity to take advantage of all the new Colorado connections in the Interior Department.

Bob Briggs asked the Senator if he was moved into his new office. Sen. Udall said he was, and added that Sen. Bennet is also on board with these issues and is very supportive.

Jeannette Hillery said David will draft a letter reflecting the Board's support for this legislation. David said he will send the letter to the Chairman and ranking members of the relevant committees and copy the Colorado delegation. Sen. Udall thanked the Board having him at this meeting. He pointed to the effort involved at the local government level, working through all the tough issues. Jerry Harden, a former worker said there is a need to put this legislation on the fast track, because people are sick and dying. He also asked the Senator for a meeting with some of the workers. Sen. Udall said he would love to hear their stories. Jeannette thanked all the workers and family members for coming today.

Briefing on Triennial Review of Site Water

In June 2009, the Colorado Water Quality Control Commission will review water standards for various basins on the South Platte, including Woman Creek and Walnut Creek as they pass through Rocky Flats. Rick DiSalvo, assistant project manager at Rocky Flats, was on hand to brief the Board on the review, including proposed changes to the supply usage classification and expiration of the temporary modifications for nitrate. Rick explained that the process calls for the proponents of the change to submit their proposed changes. In this case, the Water Quality Control Division proposed the revisions.

There was a controversial change to arsenic standards in 2001. The State changed its standard from 50 micrograms per liter (ug/l), which was a health-based standard (mcl), to .02-10 ug/l. At Rocky Flats, the average levels are usually above .02 ug/l but lower than 10. However, Rick noted that it is too expensive for them to use the technology necessary to monitor to this specific detection level, so their figures are an educated guess. Occasionally, there are results slightly greater than 10 ug/l, but these are not maintained for very long. Under the Rocky Flats Legacy Management Agreement (RFLMA), the site samples for metals in streams and groundwater wells. There are very slight detectable levels of arsenic in groundwater. The present landfill treatment system effluent is also tested, as well as the landfill pond if triggered by results upstream. Because arsenic is ubiquitous in soils along the Front Range, it is usually found in surface water rather than groundwater. Under RFLMA, if there is an exceedance of these levels, monthly sampling is triggered. If there are three exceedances in a row, the site will then enter into consultations with the regulators to determine any follow-up requirements.

It is now Rocky Flats' turn to respond to the proposed changes. At this point, they are considering suggesting adjustments for segments 5, 4a and 4b. This may be an ambient standard or something similar. These areas are at Woman Creek and upstream and downstream of the present landfill. Typically, if the levels are high downstream, they are high upstream as well.

There is also a proposed change to the recreational classification of stream segments at Rocky Flats. Rick said this is most likely due to the mistaken belief that Rocky Flats is now open to the public. DOE will respond and clarify this point. This change would only affect the E Coli standard, and the site does not have a sewage treatment plant anyway. However, in the future, if Rocky Flats were to be given this classification, other changes may come about that would be more problematic.

Andrew Muckle asked why arsenic levels fluctuate at the site. Rick said that there is no clear explanation, but it may have something to do with runoff. Shirley asked that an ambient

standard might be. Rick said it might be as high as 20 ug/l, as 85% of the time the levels are below this concentration. However, they do not have a lot of data because of the significant changes at the site since cleanup. They are still in data collection mode for more long term results. Karen asked what caused the WQCC to change the site specific standard. Rick said that whenever the statewide standard is changed, all site-specific standards are reviewed. EPA changed the MCL from 50 to 10, under the Clean Water Act. In terms of the historical basis of arsenic standard, when the rule was published in 2001, it was so controversial that EPA convened a National Academy of Sciences panel to study the issue. David Allen asked who is consulted upon an exceedance. Rick said CDPHE is the lead and EPA is also involved.

The temporary modifications (TM's) at Rocky Flats will expire at the end of December. This includes standards for six volatile organic compounds (VOCs). The site is in compliance with the underlying standards, so they do not see any problems ahead when these temporary standards expire. The site has not yet met the underlying standards for nitrate and uranium, but is currently working on upgrades to address these issues. The WQCC does not see any regulatory avenues to be able to extend the TM's, which are now held in disfavor by EPA and the State, and Rocky Flats is not requesting an extension. The current situation would see the Rocky Flats standard moving from 100 mg/l to 10 mg/l. DOE will keep everyone informed.

Sue Vaughan asked why this issue is so difficult. Rick said Rocky Flats is one of most monitored places in the state. They are required to monitor for things that were not even related to operations.

Briefing/Conversation on Rocky Flats Cleanup

David Abelson introduced this topic by recounting that he realized at the hearing for State Rep. McKinley's Rocky Flats signage bill that there was a need for good review of the cleanup history at the site. He felt it was important to increase the Board's understanding of the history of the cleanup and how those actions influence and inform site activities and the Stewardship Council's focus. At this point, Jeannette Hillery suggested postponing the Board's signage discussion to the June meeting so that they are able to give this discussion more time.

Scott Surovchak discussed the history of the cleanup and basis for ongoing management activities. Scott reviewed the overall history of the site, which consisted of a 385-acre industrial area with several hundred thousand square feet of production space, surrounded by 5,800 acres of open space.

Although a fair amount of cleanup work was done even prior to 1995, most of the work was done in the last five years and most of the buildings were taken down during the last two years. The cleanup included disposition of approximately 800 structures. Most were aging facilities, and included improperly stored nuclear materials, as the production was stopped abruptly. Two of the buildings had been classified as among the most dangerous in the U.S. The size of Rocky Flats was comparable to a city of 10,000.

There were also 360 potentially contaminated sites, more than 10,000 meters of underground old process waste lines, and two landfills covering more than 40 acres. The site housed more than

21 metric tons of weapons-grade nuclear materials; more than 100 metric tons of plutonium residues with no treatment or disposal path; 30,000 liters of plutonium and enriched uranium solutions; and 275,000 m³ of radioactive waste.

Scott also discussed how the Rocky Flats Cleanup Agreement (RFCA) integrated the national CERCLA requirements as well as the State's RCRA requirements during the cleanup process. RFCA allowed accelerated actions, and required significant public participation. All buildings were removed with the exceptions of the east and west inspection sheds. Surface soil was remediated, and most ended up well below (cleaner) RFCA's defined action levels of 50 pCi/g. The vast majority of the site is now less than 7 pCi/g. The two landfills are in place with covers. Passive groundwater treatment systems are operating and there is continued evaluation of groundwater and surface water through a sampling network.

The Rocky Flats CAD/ROD was issued in September 2006, less than a year after the official site closure on October 13, 2005. The CAD/ROD established two operable units at the site, the Central Operable Unit (COU) and the Peripheral Operable Unit (POU). The final remedy for the POU was no action, and it was subsequently deleted from the National Priorities List (NPL). The Central OU is comprised of about 1,300 acres. The remedy for this area consists of institutional controls, physical controls and continued monitoring. Five-year reviews under CERCLA ensure continued protectiveness, with the next being scheduled for 2012.

Scott then presented a very thorough slideshow which covered the very beginnings of the Rocky Flats Plant, through the production years, the cleanup years and finally post-cleanup. He added that there is some very comprehensive information about Rocky Flats' history in a report called the Historical American Engineering Record (HAER) report, which can be found on the DOE website at: www.LM.DOE.gov.

Public Comment

There was none.

Updates/Big Picture Review

June 1, 2009

Potential Business Items

- Receive RFSC 2008 Audit

Potential Briefing Items

- Host LM quarterly public meeting
- Discuss interpretive signage for Rocky Flats
- Briefing on overview of monitoring program

September 14, 2009

Potential Business Items

- Initial review 2010 budget

Potential Briefing Items

- Host LM quarterly public meeting
- Annual review of RFSC activities
- Begin discussing 2010 Work Plan
- Continue discussing interpretive signage for Rocky Flats
- Role of regulators – update on lessons learned under RFLMA

November 2, 2009

Potential Business Items

- Budget hearing for 2010 budget

Potential Briefing Items

- Host LM quarterly public meeting
- Approve 2010 work plan
- Update on Cold War Museum

The meeting was adjourned at 11:35 a.m.

Respectfully submitted by Erin Rogers.