

ROCKY FLATS STEWARDSHIP COUNCIL

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

(303) 412-1200
(303) 600-7773 (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
Arthur Widdowfield

Monthly Status Report – August 2011

Board meeting summary

There was no meeting this month.

Legacy Management monthly site inspection summary

DOE's July 2011 Rocky Flats activities included:

Groundwater and Surface Water Monitoring

- Collected quarterly Original Landfill (OLF) well samples
- Completed quarterly water level measurements of 100 wells
- Conducted routine maintenance at monitoring wells and at surface water locations
- Collected and processed automated sample suites
- Collected the Walnut Creek ambient samples with three additional special sample locations
- Collected quarterly Present Landfill (PLF) surface water samples

Groundwater Treatment Systems

Routine inspections of the treatment systems were conducted as follows:

- East Trenches Plume Treatment System (ETPTS) – DOE reports the system is functioning normally.
- Mound System Plume Treatment System (MSPTS) – DOE reports the system is functioning normally.
- Solar Ponds Plume Treatment System (SPPTS) – DOE reports that optimization of the system is ongoing.

Ecology

- Herbicide applications were completed for the initial round of spraying.
- Ecology personnel escorted staff from Texas A&M, who were conducting biocontrol research monitoring under a contract with USFWS. They have four locations that are now within the DOE boundaries.
- Began monitoring to evaluate the success of revegetation efforts at various locations.
- Completed photopoint monitoring for Prebles Meadow Jumping Mouse (PMJM) monitoring.
- Began PMJM vegetation monitoring at mitigation locations.

- Conducted nest box surveys at bluebird boxes on site
- Mowed willows on the face of the OLF using the ATV and mower; also cut off elm trees on the PLF

Site Monitoring & Maintenance

- There were no significant changes to report at either landfill
- The July 2011 OLF Inspection Report was submitted
- Completed the PMJM erosion control inspections
- Stop logs from previously breached dams in the A-, B-, and C-series ponds were removed. The stop logs were originally designed to allow some water to pass through, but over time they swelled up which resulted in more water pooling behind them than desired. The logs were impacting the ability to re-establish vegetation along the shore lines.
- Completed removal of miscellaneous debris associated with the annual inspection.

DOI-IG Investigation

In a report dated July 21, 2011, the Department of the Interior's Inspector General (IG) issued a report that concluded that due to lack of funding, invasive weeds are displacing native species and thus risking the migration of nuclear contaminants to surface water. As the IG provided in the report, "We recognize the need for FWS to prioritize funding among numerous refuges and that this refuge was not provided funding for management and operational activities. EPA and [the Colorado Department of Public Health and the Environment] have warned, however, that plowing -- a preferred method for extirpating an invasive weed infestation of this extent -- would likely be restricted on the Refuge due to the concern that major soil disturbances could cause elevated levels of remaining radioactive materials to migrate."

In response to the report, EPA and CDPHE issued a letter in which they challenge the fundamental assertion of the report -- namely, that use restrictions have been placed on the refuge lands and that the two agencies are concerned about USFWS plowing or tilling land as part of its weed management work. As the EPA and CDPHE state in their letter, the IG's understanding of the agencies' position is based on a 2003 letter that EPA and CDPHE sent. What the IG missed is (1) in 2006, the entire Refuge was released for unlimited use without restriction, and (2) the Refuge boundaries were adjusted since the 2003 letter, so lands with use restrictions remain under DOE's jurisdiction

The entire report can be found at: http://www.eenews.net/assets/2011/08/01/document_gw_01.pdf

EPA and CDPHE's letter to the IG is attached.

CERCLA Five-Year 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.

CERCLA reviews are EPA's responsibility. 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 conducted and approved by the EPA in 2007; the next review must therefore be approved by the EPA in 2012 (specifically by September 14, 2012).

At Rocky Flats, EPA, DOE and CDPHE will conduct the review and produce the draft report, with formal approval by the EPA. This approach mirrors the approach these three agencies adopted during the 2007 review. That review can be found at: http://www.lm.doe.gov/Rocky_Flats/Sites.aspx?view=5

Additional information about EPA reviews can be found at: <http://www.epa.gov/superfund/cleanup/postconstruction/5yr.htm>

Pond Discharge

In late August, DOE notified the public that it would discharge water from terminal ponds A-4 and B-5 on Walnut Creek. According to the notice, "Pre-discharge samples for Ponds A-4 and B-5 were collected on 8/15/11. All results indicate that water quality standards at downstream Points of Compliance (POCs) will be met during discharge." Discharge of these ponds is scheduled to begin the week of September 12th. Pond A-4 discharge is expected to take 12 days. B-5 is expected to take 13 days.

DOE's notice provided that "Pond A-4 will be direct discharged using the outlet works to North Walnut Creek through AMP monitoring location GS11. All required monitoring at downstream POCs WALPOC (Walnut Creek at Site boundary) and GS03 (Walnut Creek at Indiana Street) will be performed according to the normal protocols in Attachment 2 to RFLMA." Following the discharge of A-4, the pond will be operated in a flow-through configuration.

DOE's notice also provides "Pond B-5 will be direct discharged using the outlet works to South Walnut Creek through AMP monitoring location GS08. All required monitoring at downstream POCs WALPOC (Walnut Creek at Site boundary) and GS03 (Walnut Creek at Indiana Street) will be performed according to the normal protocols in Attachment 2 to RFLMA." Following the discharge of B-5, the pond will be operated in a flow-through configuration.

The notification including pre-discharge monitoring results can be found at: http://www.lm.doe.gov/Rocky_Flats/Documents.aspx

Site Document Update

None at this time.

Stewardship Council update

In September, the board will begin accepting applications for the four non-governmental seats on the board of directors. Interviews will be conducted at the November 14th meeting, and two-year terms will begin at the February 6, 2012, meeting. More information will be forwarded to the board and public in the coming days.

Next meetings:

November 14 (second Monday)

February 6, 2012



Colorado Department
of Public Health
and Environment



August 22, 2011

Mary L. Kendall
Acting Inspector General
Office of Inspector General
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

RE: Inspector General Report on Noxious Weeds at Rocky Flats

Dear Ms. Kendall:

We are writing on behalf of the Colorado Department of Public Health and Environment (CDPHE) and the U.S. Environmental Protection Agency Region VIII (EPA), with regard to Report No. C-IS-FWS-0017-2010, "Status of the Rocky Flats National Wildlife Refuge" (hereafter, "IG Report"). This report contains several factual inaccuracies, and attributes to CDPHE and EPA views that they do not hold. In short, the report makes it appear that CDPHE and EPA believe there is a need to restrict the Fish and Wildlife Service (FWS) from utilizing plowing as a noxious weed management strategy on the Rocky Flats Refuge because the resulting soil disturbance could contaminate surface water with radioactive materials. These statements were all based on letters written by EPA and CDPHE to the FWS in 2003, years before the investigation and cleanup of the Site was complete.

Subsequent to the time these letters were written, the boundaries of the portion of the Rocky Flats site that was anticipated to be transferred to the FWS were re-configured, additional sampling of the area that was to become the Refuge was performed, and numerous environmental analyses, including the Comprehensive Risk Assessment (CRA) for the Rocky Flats Site, were completed. The additional data and the results of the CRA demonstrated that no use restrictions on the Refuge were necessary, and the final remedial decisions for the site did not impose any restrictions. Our page-by-page comments on the report are listed below.

Cover letter to the report

Three separate passages on the first page of the cover letter to the report allude to problems allegedly presented by residual contamination on the surface of the Refuge:

"While the Refuge sat idle, invasive weeds displaced native species and increased the potential risk for migration of nuclear contaminants to surface water."

“The U.S. Environmental Protection Agency and the Colorado Department of Public Health and Environment warned that plowing on the Refuge would likely be restricted because major soil disturbances could cause ‘elevated levels of contaminants to migrate to surface water.’”

“Failure to remediate promptly at this Refuge may preclude FWS from remediating in the future, given the complication presented by the nuclear contamination.”

As noted above, the IG Report relied on letters written by CDPHE and EPA in 2003, long before the investigation and cleanup of the Rocky Flats Site was complete. The IG Report thus overlooks subsequently-collected data and analyses that demonstrated that Refuge conditions support unlimited use and unrestricted exposure. It also overlooks an administrative change that affected the boundaries of the Refuge.

CERCLA sites are often divided geographically (and/or by media) into what are called “operable units” (“OUs”) to facilitate the orderly investigation and cleanup of the site. In the final stages of the cleanup of the Rocky Flats Site, EPA, CDPHE and the Department of Energy decided to re-configure the Site OU boundaries to consolidate all areas of the Site that might require further remedial action into a single OU named the Central OU. The Central OU includes the formerly industrialized portion of the site, along with an adjoining area that contains some windblown plutonium-contaminated soils. *Corrective Action Decision/Record of Decision for Rocky Flats Plant (USDOE) Peripheral Operable Unit and Central Operable Unit Jefferson and Boulder Counties, Colorado (hereafter, “Final CAD/ROD”), p. 16 (document available on-line at: http://www.lm.doe.gov/Rocky_Flats/Regulations.aspx).* The remainder of the federal land at the Rocky Flats Site was designated as the Peripheral OU. The Peripheral OU is largely co-terminous with the boundaries of the Refuge.¹ Most of the Peripheral OU was completely unaffected by Site operations. A small portion of the Peripheral OU contains very low levels of residual contamination. This re-configuration of OU boundaries consequently affected the boundaries of what would become the Refuge.

In the final cleanup decision for the Site, CDPHE and EPA concurred that “Conditions in the Peripheral OU are acceptable for unlimited use and unrestricted exposure.” *Final CAD/ROD, p. 65.* The final cleanup decision for the Peripheral OU was “no action.” This decision means that no land use restrictions of any sort were imposed on the Refuge. To be perfectly clear on this point, neither EPA nor CDPHE has any concern that plowing portions of the Refuge would cause elevated levels of radioactive contamination to migrate to surface water.

Page one of the Report, “background” section

The second paragraph of the Background section of the report states “In 2007, EPA and CDPHE certified cleanup of the Refuge to non-residential, restricted use standards.” This statement is incorrect.

As noted above, in the Final CAD/ROD, dated September 2006, the agencies selected the “no action” alternative for the Peripheral OU. No use restrictions were imposed on the Peripheral OU. On March 13, 2007, EPA published in the Federal Register a notice of intent to delete the Peripheral

¹ Some portions of the Peripheral OU have not been transferred to FWS yet because of past or potential future gravel mining activity. Once these parcels have been reclaimed or the potential for future mining is eliminated, they will be transferred to FWS.

OU² from the Superfund National Priorities List. With regard to the Peripheral OU, the Notice of Intent states, in part, that “no hazardous substances, pollutants, or contaminants occur in the Peripheral OU above levels that allow for unlimited use and unrestricted exposure.” On May 25, EPA deleted the Peripheral OU from the National Priorities List (72 Fed. Reg. 29276, May 25, 2007).

On June 11, 2007, EPA sent a letter to the Secretaries of Energy and the Interior certifying that the cleanup and closure of Rocky Flats had been completed. That letter incorporated the Federal Register notice announcing the deletion of the Peripheral Operable Unit from the Superfund National Priorities List. The only portion of the Rocky Flats site that has land use restrictions is the Central OU. In accordance with the Rocky Flats Refuge Act (Pub. L. No. 107-107, sec. 3175(d)), this area will remain under DOE management.

On July 10, 2007, the DOE Environmental Management Consolidated Business Center submitted a package of all historical real estate documents and the notice of transfer of administrative jurisdiction of the lands included within the Peripheral OU to the U.S. Fish and Wildlife Service, pursuant to the Rocky Flats National Wildlife Refuge Act of 2001, (16 U.S.C. Section 668dd note; Public Law 107-107). The Fish and Wildlife Service responded on July 12, 2007 with an acceptance of the transfer of administrative jurisdiction of the Peripheral OU and the establishment of the new refuge.

Pages 2-3 of the Report, “Findings” and “Recommendation” sections

Five passages in these sections of the report refer to the problems allegedly posed by the presence of noxious weeds in contaminated areas:

“... we found that while the Refuge sat idle, invasive weeds displaced native species, which potentially increases the risk for migration of nuclear contaminants to surface water.”

“Plowing activities at this Refuge, however, could cause ‘elevated levels of contaminants to migrate to surface water,’ according to the EPA.”

“EPA and CDPHE have warned, however, that plowing – a preferred method for extirpating an invasive weed infestation of this extent – would likely be restricted on the Refuge due to the concern that major soil disturbances could cause elevated levels of remaining radioactive materials to migrate into surface water.”

“The increased costs do not reflect administrative costs, additional soil sampling, or regulatory consultations that also would be required.”

“... failure to act promptly may preclude FWS from remediating the problem in the future, given the complication presented by the nuclear contamination.”

Again, all of these passages are based on the 2003 letters from EPA and CDPHE, and thus do not reflect the agencies’ final remedial decision, any of the sampling and analyses that occurred after the date of the letter, or the OU re-configuration. The potential restrictions on plowing in the Refuge mentioned in the 2003 letters were not imposed in the final cleanup decision, because the

² This Notice also proposed to delete another OU called OU 3, which was comprised of approximately 20,480 acres of non-federal lands adjacent to Rocky Flats.

levels of contamination that do exist in the Refuge are low enough that they allow for unlimited use and unrestricted exposure.

It is our understanding that the only areas of the Refuge where FWS is considering plowing as a management strategy are in the far southeastern portion, where a former owner had planted smooth brome, a non-native grass, as a hay crop. Smooth brome is not a noxious weed. However, to re-vegetate this area with native grasses would likely require plowing. As is the case with the rest of the Refuge, there are no environmental restrictions that would prohibit the FWS from plowing these non-native grasses, should it decide to do so.

Please feel free to contact us if you have any questions regarding this letter.

Sincerely,



Gary W. Baughman, Division Director
Hazardous Materials and Waste
Management Division
Colorado Dept. of Public Health and
Environment



Carol L. Campbell, Asst. Regional Administrator
Ecosystems Protection and Remediation
U.S. Environmental Protection Agency
Region 8

cc: Daniel M. Ashe, Director, FWS
Ken Lane, Office of the Secretary of the Interior
Barbara Boyle, FWS
Steve Berendzen, FWS
Scott Surovchak, DOE-LM
Lorraine Ross, EPA
Vera Moritz, EPA
Carl Spreng, CDPHE
Dan Miller, AGO