

To: Rocky Flats Stewardship Council

From: Anne Fenerty and Jon Lipsky

Date: October 26, 2015

Reference David Abelson's and Rik Getty's inquiry following Anne Fenerty's and Jon Lipsky's rebuttal of September 14, 2015.

Anne Fenerty and I appreciated the opportunity to rebut the Department of Energy's presentation of April 6, 2015 afforded by the Rocky Flats Stewardship Council and Executive Committee on September 14, 2015.

On October 19, 2015 David Abelson and Rik Getty claimed that our rebuttal did not follow the scripted narrative advocated by the Government. Mr. Abelson's email argued that Anne's and my rebuttal was inconsistent with the Administrative Record (AR), which established Operating Unit (OU) designations and Individual Hazardous Substance Sites (IHSSs). The emails from Mr. Abelson and Mr. Getty began on October 16, 2015 involving two (2) requests for clarification that were answered within the context of the RFSC Mission Statement, DOE Grant parameters and DOE, Office of General Counsel guidance. (See below). To highlight:

- **"To provide a mechanism for educating succeeding generations about the residual hazards and the continuing need for a comprehensive site-wide stewardship program;"**
- **"To act as a spokesperson for the community's interest in Rocky Flats in discussions with other public and private entities concerning local issues affecting Rocky Flats."**
- **In 2010 Susan Beard, Assistant General Counsel, stated that "... it was not intended to edit or filter comments received from Stakeholders for DOE."**

The DOE and Rocky Flats regulators have framed a regulatory action plan that omits certain Rocky Flats activities in order to promote an "essentially uncontaminated former Buffer Zone" that the Rocky Flats National Wildlife Refuge (Refuge) is safe for humans and the environment. They are minimizing the potential imminent harm that the Rocky Flats Superfund site, which is completely surrounded by the Refuge, is capable of causing.

It is logically inconsistent to believe that the Refuge is safe when anchored with the "essentially uncontaminated former Buffer Zone" script. Vital facts concerning the former Rocky Flats Nuclear Weapons Plant activities were not part of a proper CERCLA remedy and are not presently considered in the treatment of the Rocky Flats Superfund site. Anne and I believe that Mr. Abelson's assumptions and request for "pieces of the puzzle" are not within the scope of the RFSC. Mr. Abelson's line of questioning contributes to community concern regarding the scripted narrative necessitating a public education process to ensure that "openness prevails."

Anne and I trust that openness will prevail when the DOE and the regulatory agencies participate in an open dialogue regarding the incongruity of all Rocky Flats activities as a nuclear weapons plant, the accelerated cleanup, and the present Superfund monitoring. The RFSC exists to promote openness between the public and DOE and the residual hazards of the Rocky Flats Superfund site.

The Administrative Record and IHSSs are from a later era. I might add that the AR was established without potentially important evidence. For example, the results of the EPA seized environmental samples during the June 1989 search warrant execution have yet to be publicly available. In 1996 a DOE memo declared a moratorium on the destruction of Rocky Flats documents while the nature of the documents was not disclosed. In 2004 the EPA and the CDPHE did not publicly accept then U.S. Attorney John Suthers' offer to review the Rocky Flats Special Federal Grand Jury evidence. In what amounts to denying "meaningful community involvement" for a proper CERCLA investigation of Rocky Flats.

In about 2008 the Rocky Flats Reading Room documents at the Front Range Community College (FRCC) were returned to the DOE and Mr. Abelson was quoted by the Denver Post that the documents contained "personal identifying information" (PII). Slides 41 and 42 of our presentation show a copy of the 1987 "Waste Stream Identification Characterization, Area 4, Rocky Flats Plant" and the "Building 373 Blowdown" waste stream and characterization document. The Building 373 Blowdown information and in fact the entire document does not contain PII.

This past week the Building 373 document was provided to a nuclear worker advocate regarding a Rocky Flats nuclear worker EEOICPA claim. I was able to provide that document as I had retrieved the document from the Reading Room in 2005. Many additional documents have been placed under lock and key at the Denver Federal Center away from the public and former Rocky Flats nuclear workers seeking "long-term health benefits."

The RFSC is requested to communicate the fact that DOE has restricted access to important Rocky Flats documents from nuclear workers and the public. Documents were in the public domain. And many documents do not have PII restrictions.

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References regarding RFSC Mission Statement and DOE, OGC guidance:

If you will recall that the basis for Anne's and my September 14, 2015 presentation began on Slide 11, the "essentially uncontaminated former Buffer Zone" comments by Mr. Surovchak. The subsequent slides of the presentation were demonstrable charts and graphs accompanied by narrative that constituted the complete presentation. Unfortunately our request, as well as many other requests, to record the presentations was not acted upon.

Anne and my rebuttal also included what Mr. Surovchak presentation of April 6, 2015 that the Government purchased the remaining acreage, amounting to about 4000 acres, or

Buffer Zone, to provide further protections for the public. Mr. Surovchak omitted many important events, known and not so well known, leading up to the land purchase in the early 1970s. The Government paid money for the Buffer Zone. The Government also reached a Settlement Agreement in 1985 that resulted in an additional \$10+ million compensation payment for the contaminated land. The 1985 Settlement Agreement is not indicative of an “essentially uncontaminated former Buffer Zone.” We all know that Settlement Agreements involve compromise – give and take – to avoid a trial. Mr. Surovchak possessed no license or authority and certainly is not able to competently defend that statement.

In January 2009 President Obama emphasized transparency and accountability in his “Memorandum for the Heads of Executive Departments and Agencies” regarding the Freedom of Information Act at [https://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct](https://www.whitehouse.gov/the_press_office/FreedomofInformationAct), to emphasize that “openness prevails” – “The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because speculative or abstract fears.”

The Rocky Flats Stewardship Council Mission Statement, in part, is “to provide continuing local oversight of activities occurring at the Rocky Flats site; to ensure that local government and community interests are to be met with regards to long time stewardship of residual contamination and refuge management and track issues related to former site employees including ... long-term health benefits and pension.” And the Rocky Flats Stewardship Council purposes are to:

1. "To provide a mechanism for educating succeeding generations about the residual hazards and the continuing need for a comprehensive site-wide stewardship program;"
2. "To serve as a participating agency under NEPA for preparation of EISs and under CERCLA for RFCA to assist Parties in a consultative role;" and
3. "To act as a spokesperson for the community's interest in Rocky Flats in discussions with other public and private entities concerning local issues affecting Rocky Flats."

In 2010 and again in 2015 LeRoy Moore, Ph.D., sought guidance with the DOE, Office of General Counsel concerning the Rocky Flats Stewardship Council. In 2010 Susan Beard, Assistant General Counsel, stated that "... it was not intended to edit or filter comments received from Stakeholders for DOE." Based upon Ms. Beard's opinion Anne and I were expecting that Mr. Surovchak receive our unedited and unfiltered comments. Anne and I expect that the Rocky Flats Stewardship Council will communicate with DOE without edit or comment by the Rocky Flats Stewardship Council.