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Rocky Flats Site Proposed Plan Comments
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SUBJECT: Proposed Changes to the CAD/ROD, RFLMA, Environmental Covenant

During my years of working on the Cleanup and Closure of Rocky Flats I have witnessed many unusual communications from the Department of Energy. This current proposal, which modifies the CAD/ROD, RFLMA and the Environmental Covenant, certainly sets a new precedent for major language changes to important documents being decided in advance before being presented to the public. The three entities, DOE, CDPHE, DOE and the Attorney General's Office all agreed to the proposed new language in the referenced documents before the information was presented to the public.

The Department of Energy has been digging below three feet for the past five years. **The original Environmental Covenant States that Property restrictions against digging below three feet do not apply to authorized response actions, including monitoring and maintenance activities.** DOE now wants to change the language to allow digging, soil disturbance below three feet if first approved by CDPHE. All this to occur without input from the public.

The DOE reply to common concerns statement on proposed 2010 Mods Control to Institutional Controls requirements of the RFLMA Agreement raised at the first public meeting to obtain comments states that:

DOE Interpretation: "The Objective of IC-2 regarding excavation that exceeds 3 feet is to maintain the current depth to surface contamination or contaminated structures. This IC also results in achieving compliance with the CDHE risk management policy of ensuring that residual risks to the site user are at or below a 1x10⁻⁶ excess lifetime cancer risk.

Objective as it exists: The written objective of this institutional control was to prevent unacceptable exposure to residual subsurface contamination. The community interpretation of this objective is that digging below 3 feet can result in exposure to workers, downwind communities from airborne resuspension of contamination during digging as well as opening up new pathways of contamination to surface water. Although the water leaving the site is not a source of drinking water it does go downstream where it is used by farming communities.

There is a big disconnect between the DOE and the citizens definition of the purpose of this Institutional Control. THE CONTROL NEEDS TO STAND AS WRITTEN, IT IS NOT BROKEN, DON'T FIX IT.

ENVIRONMENTAL COVENANTS FOR ROCKY FLATS AS THEY CURRENTLY EXIST: COVENANT SUMMARY FOR RFETS

Summary www.cdphe.state.co.us/hm/covenant/summary lists surface water, groundwater as media of concern. Air, soil are not listed. Property restrictions do not apply to authorized response actions, including monitoring and maintenance activities. Contaminants of concern listed in this summary are asbestos and benzene.

I downloaded the entire original 20006 document to see if it was as lacking in important information as the Summary. I was disappointed and amazed at the lack of attention to detail in this important document.

The entire document consists of a description of the central operating unit with a legal land survey map attached. There is no mention of contaminants of concern. However, there is an attachment that modifies the covenant to remove the current landfill. Contaminants of concern for the landfill are asbestos and benzene. It further states that the landfill may contain low levels of Plutonium and Depleted Uranium. The two contaminants listed as a concern for Rocky Flats on the summary document came from a change to the original covenant for removal of the current landfill.

Plutonium, Americium, Uranium VOC,s etc. are not listed as contaminants of concern for Rocky Flats..

Digging Drilling, tilling, grading, excavation, construction and vehicular traffic are prohibited. However, the Rocky Flats Industrial Park Environmental Covenant under control of the Union Pacific Railway lists groundwater and soil as a concern. The contaminants of concern are VOC's. The industrial park prohibits residential use and public use as well as agriculture. Protection of remedy is also included.

Question: Why is there more detail included in the Rocky Flats Industrial Park Covenant than there is in the former nuclear trigger factory Rocky Flats? Why aren't the contaminants of concern listed for Rocky Flats? Isn't it appropriate for future generations to have knowledge concerning the contamination and risks posed at the nuclear weapons site? Institutional Controls fail over time. It is critical to provide a

thorough CRS Restrictive Notice document that is detailed with the risks. This document must ensure perpetuity for the Institutional Controls. The public needs to be part of the process for any proposed changes to this document requested by DOE or other entities.

ENVIRONMENTAL USE RESTRICTION PROPOSAL UNDER 25-15-321.5, CRS

NOTICE OF ENVIRONMENTAL USE RESTRICTIONS Revised 2-25-11

Page 2. 1) **Use Restrictions:** The language reads ...To the extent possible, the restrictions must be finite, subject to change only by modifying the Restrictive Notice (cannot be changed with division approval alone) The division is attempting to write boilerplate restriction language. **Question:** Has the boiler plate been written or is this something that will happen in the distant future? This statement does not assure me that the State Statute will be enforced properly.

Page 2, 2) **Modifications:** This Restrictive Notice runs with the land and is perpetual unless modified or terminated pursuant to this paragraph. OWNER may request that the Department approve a modification or termination of the Restrictive Notice. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment.Information to support a request for modification or termination may include one or more of the following.

- a) A proposal to perform additional remedial work.
- b) New information regarding the risks posed by the residual contamination
- c) Information demonstrating that residual contamination has diminished
- d) Information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment and
- e) Other appropriate supporting information.

Question: Does the State Health Department and the Attorney General's office believe that allowing removal of Institutional Controls, deleting the word perpetual and using perpetual unless modified will protect the downwind communities and future generations?

I agree that inserting the institutional controls into this document and the purpose for those controls is important but I also believe future generations need to know that this site should never be built on and that long lived radioactive contamination is a permanent resident. Plutonium is just a metal was stated by a DOE representative at the last public meeting to discuss the proposed changes. **Any changes to the Restrictive Notice should go to the local governments and the public for input prior to any decisions and agreements being made by the controlling parties.**

PROPOSED CHANGES TO THE RFLMA

Proposed language modification: “Proposed activities that may damage or impair the proper functioning of any engineered components of the response action, including but not limited to any treatment system, monitoring well, landfill cap, or surveyed benchmark are prohibited. The preceding sentence shall not be construed to **prohibit the modification removal, replacement or relocation of any engineered component** of the response action in accordance with the action determinations in RFLMA.

This modification is unacceptable. It gives DOE the freedom to re-design, modify, remove or relocate engineering components without public input. The present locations of engineering components contain and treat contaminants that would otherwise end up in the environment. Removal or replacement with cheaper treatments could result in unknown or uncalculated risks to the community and the environment. DOE Office of Legacy Management Goals and Objectives for 2011 include reducing operating and monitoring costs.

CONTACT RECORD LANGUAGE

The current CDPHE contact record language relies on DOE to provide information for any digging or remedy replacement. It asks for information related to remaining subsurface structures and information on IHSS's/PAC's. **It requires DOE to resurvey any new surface established on subsurface soil unless sufficient existing data is available to characterize the surface, or state soil will be replaced and original contour restored.**

DOE provides the required IHSS's/PAC information. DOE further states on every contact record that I have reviewed for 2011 that **“Grade of the surrounding soil will be generally consistent with currently existing grade.” Does this statement meet the CDPHE requirement as stated above?**

NEW CHECKLIST PROPOSAL

CDPHE needs to add additional language to the three items currently required from DOE on the Contact Record:

1. Provide Documentation of the final survey to ensure the three foot cover is maintained
2. If work is in known area of contamination provide Rad tech. to monitor radiation levels.
3. Provide CDPHE a record of dpm, Rad tech name, map of location upon completion.
4. Provide notation whether this action is an upgrade, downgrade of engineered structure equipment, or replacement of original equipment.
5. Provide proposed date of excavation, time required to perform action.

DOE is required to provide a section in the annual report noting actions taken in each contact record with a map of the location, contamination encountered, depth of dig, so as to keep the public informed.

Institutional Controls were supported by this community with the commitment that they would be enforced in perpetuity. Regulations related to CERCLA/RCRA are continually being modified. It would be important to include language in the RFLMA that regulations in force at the time of the CAD/ROD cannot be made less restrictive but can be more restrictive.

