



Department of Energy

Washington, DC 20585

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MEMORANDUM FOR DAVID GEISER
 DIRECTOR
 OFFICE OF LEGACY MANAGEMENT

FROM: SUSAN BEARD *Susan Beard*
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The Department received an inquiry regarding the operation of the Rocky Flats Stewardship Council (RFSC), Department of Energy (DOE)'s Local Stakeholder Organization (LSO) for the Rocky Flats Site. The inquiry claims the RFSC is operating in violation of the Federal Advisory Committee Act (FACA), Public Law 92-463. Under the FACA, an agency that establishes or utilizes a group of non-Federal individuals for the purpose of providing it with consensus or group advice is required to have: a charter approved by the General Services Administration (GSA), registration with GSA, all meetings noticed in the Federal Register, members appointed on a balanced basis, all documents provided to the committee publicly available, and an opportunity for the public to participate in the deliberations of the committee as it fulfills its charge from DOE.

To the extent that (1) DOE requests information from RFSC on the basis of group deliberations or (2) RFSC filters or otherwise edits comments from the public before providing information to DOE with the knowledge of DOE, it may be subject to claims that it is a federal advisory committee and bound by the requirements of FACA. Potential lawsuits may enjoin the proceedings of the RFSC.

The RFSC was established, pursuant to section 3118 of Public Law 108-375, to be the Rocky Flats Site LSO. Based on the statute, the LSO "shall: (1) solicit and encourage public participation in appropriate activities relating to the closure and post-closure operations of the site; (2) disseminate information on the closure and post-closure operations of the site" to other interested stakeholders; (3) transmit to appropriate officers and employees of DOE "questions and concerns" of other interested stakeholders; and (4) perform such other duties as the Secretary and the LSO jointly determine appropriate to assist the Secretary in meeting post-closure obligations of the Department at the site. Based on this statute, the LSO role is to provide a two-way conduit for information between the DOE and all local stakeholders regarding the closure and post-closure operations of the Rocky Flats Site. Congress did not intend the LSO to be utilized by DOE to seek consensus or group advice from its membership, nor was it intended to edit or filter comments received from stakeholders for DOE.

Therefore, any charges to the LSO that request the gathering of information must make clear that it is a request for the opinions of individual members of the public and all information received must be passed on to DOE without edit or further comment by committee members. To the



extent that DOE has a need to disseminate information to stakeholders, that information should be disseminated through the RFSC to the general public in a manner that is most likely to get the broadest possible distribution ensuring anyone who desires to comment has an opportunity to communicate with DOE unrestricted. In addition, the Department can use other methods to disseminate such information.

To minimize the appearance of engaging in activities that would violate the FACA, it is strongly recommended that, if you are not doing so already, you post all comments received from the general public and all informational communications to the public on the RFSC website, with or without attribution as appropriate. Public meetings must also be conducted in a manner that public comment and feedback are collected and passed on to DOE.

Likewise, DOE must not request the RFSC to provide its views to DOE. Accordingly, DOE must make clear in any communications with the RFSC that DOE is not seeking the collective or consensus advice from its membership. All RFSC activities must be exercised in a manner that is consistent with functioning solely as an outreach tool of DOE to provide information to as many stakeholders as possible and to provide an avenue through which all members of the public may communicate with DOE without edit or comment by the RFSC.

We greatly appreciate your consideration of this matter. If you or your staff have any questions about implementing this guidance, please contact Mell Roy at (513)246-0585.

cc: Mell Roy
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