

**ROCKY FLATS CITIZENS ADVISORY BOARD
MINUTES OF WORK SESSION**

**April 5, 2001
6 — 9:30 p.m.**

Broomfield City Hall, One DesCombes Drive, Broomfield

FACILITATOR: Reed Hodgins

Jerry DePoorter, the Board's chair, called the meeting to order at 6 p.m.

BOARD / EX-OFFICIO MEMBERS PRESENT: Robin Byrnes, Jerry DePoorter, Joe Downey, Jeff Eggleston, Tom Gallegos, Shirley Garcia, Mary Harlow, Victor Holm, Jim Kinsinger, Bill Kossack, Nancy Peters, Bill Petersen, Earl Sorrels, Bryan Taylor / Steve Gunderson, Jeremy Karpatkin, John Rampe, Tim Rehder

BOARD / EX-OFFICIO MEMBERS ABSENT: Jeff Allen, Suzanne Allen, Paul Jurasin, Tom Marshall, Mary Mattson, LeRoy Moore, Markuené Sumler

PUBLIC / OBSERVERS PRESENT: David and Doris DePenning (Friends of the Foothills); Roman Kohler (RF Homesteaders) John Corsi (K-H); Steve Tarlton (CDPHE); Joe Rippetoe (citizen); Ravi Batra (DOE-RFFO); Tom Hoffman (Friends of the Foothills); Kristi Pollard (Wayne Allard's office); Kimberly Chleboun (RFCLoG); Doug Young (Mark Udall's office); Dean Rundle (USFWS); Ken Brakken (DOE-RFFO); Tom Lukow (DOE-RFFO); Ken Korkia (CAB staff); Deb Thompson (CAB staff); Noelle Stenger (CAB staff); Jerry Henderson (CAB staff)

PUBLIC COMMENT PERIOD:

Tom Hoffman: I'm with a group called Friends of the Foothills, and we have been actively involved in issues in the corridor between Golden and Boulder. There is a letter in your file from us, but I did want to come and make some comments tonight. We certainly appreciate the work and the time that you put in, because we know what we have put in. As citizens, it's very difficult for us to keep up with some of the things that are going on and we know it's the same way for you. We want to thank you for your past support for the use of the Rocky Flats site as open space and for supporting the Allard/Udall Wildlife Refuge Bill. While we appreciate this level of commitment to preserve the site, we want to urge the Board to take an ongoing, active role in helping to determine the future land use

issues for all the federally owned Rocky Flats land. During the past several years, our organization has been monitoring closure plans and future use. It has become very obvious that there has been, and no doubt will continue to be, a never-ending procession of ideas to develop the site one way or the other. From land swaps to shooting ranges to transportation corridors, the list goes on. We believe the CAB plays a very important role in helping to keep the regular citizens' desires and interests at the forefront as these decisions are made. Surveys done by the City of Westminster and one done by our organization shows that the citizens of the region overwhelmingly want the entire site preserved as open space. We are hopeful that through the cooperation of our congressional delegation, the refuge bill approval will be passed this session and that all necessary measures will be taken to preserve the entire site in perpetuity. While Senator Allard and Representative Udall do not want to carve up the site, there are others who insist that it may be necessary to carve a beltway across Section 13, leaving a sizeable orphan piece of the Buffer Zone. This is not in the best interest of the public. Within the past week, the Arvada Sentinel quoted Arvada's Mayor Fellman as saying that "if Section 13 is the only way to go, then obviously we'll have to do some redesign there." This week, CDOT stated that they would see what the alignment study shows. But further comments were made pointing out that certain transportation options might require the use of Section 13. As a local group representing citizens who are not in this for profit, political gain, campaign contributions, whatever, we are utterly amazed at the attempts to grab our federal land. A prime example is this beltway grab. Some local governments and even the state are, with no data or studies to support their position, flagrantly promoting the need for a beltway link in this area. They are even spending our tax dollars to do an alignment study for a roadway, which has been turned down by citizens previously and shown to be not needed by a recent study paid for by our tax dollars. Another example is that after years of booming development and growth nearby, suddenly we need more power and the lines must cross Rocky Flats land — land that we believe should not be disturbed. Surely the private landowners who are profiting from development can use their land for a utility easement. We are disappointed that approval of new construction to accommodate power lines was so quickly approved. Our role has been to watch the process and do what we can, to see that what is done is in the best interest of the citizens of this region, and to prevent any other uses than passive open space. We ask that the Board take an ongoing, active role in land use and stewardship issues to prevent these pressures from overriding the public will and welfare. Thank you.

Doris DePenning: I'm also with Friends of the Foothills, and just wanted to add one thing. As I was reading the memorandum that staff put out for you to look at this evening, I would say that we heartily agree and encourage you to push forward with this one statement, "since urban sprawl is a reality in the Denver metro area, it is imperative that DOE establish property use restrictions in forceful and legitimate ways." We hope that you do stick with that goal. Thanks so much for what is on the agenda tonight, very good information about institutional controls. I appreciate that. Thanks for your support; we appreciate what you do.

REGULATOR UPDATE — CDPHE: Steve Gunderson gave a quarterly update to the Board on Rocky Flats issues.

- Last week CDPHE approved the **Decommissioning Operations Plan (DOP) for Building 371**, which allows the site to begin decommissioning work on this plutonium building. DOPs exist for all major plutonium buildings. A major modification to the Building 771 DOP was approved about a month ago. Also, three RFCA Standard Operating Protocols (RSOPs) were approved by CDPHE and EPA. These RSOPs cover disposition of building rubble, facility demolition, and equipment removal.
- **CDPHE and EPA assessed a \$40,000 penalty** to DOE for missing the RFCA milestone of storing TRU waste in Building 906 by September 1, 2000. The penalty funds will be provided to the Colorado Emergency Planning Commission to address removal and disposal of hazardous chemicals from public schools.
- Kaiser-Hill completed a review of the source of radiological **exposures to 11 personnel in Building 771**. The report concludes that the doses for 10 of the workers were the result of very low-level chronic exposures and not related to a specific incident. Kaiser-Hill has lifted the requirement for respiratory protection for the entire building when D&D work is being performed. A separate DOE-Headquarters report on the incident is due later this month.
- The Material Access Area for Building 707 should be closed this weekend, which will allow for the **reduction of the Protected Area** to the Building 371 complex. Final reduction will likely occur in mid-April.
- **Documents** in the works include: 1) the draft Soil Management RSOP, which addresses regulatory issues in soil management; 2) the Environmental Restoration RSOP, which will be ready for review in a couple of months; and 3) the Industrial Area Sampling and Analysis Plan, which is under final review by the state and should be approved within the next couple of weeks.
- The site is making progress with **waste shipments**, currently making shipments to WIPP at a rate of four per week, compared to one per week last summer. Kaiser-Hill's goal is to reach shipping rates of nine per week by the end of the year.

UPDATE BY THE STEWARDSHIP COMMITTEE: Noelle Stenger gave a brief update to the Board on activities of the Stewardship Committee and general stewardship issues. Institutional control issues include:

- The proposed end state and whether it is based on the current driver, the RFCA, or the pending Wildlife Bill before Congress;
- Urban development and the numerous projects proposed for the areas south and east of the Rocky Flats boundaries, including business and industrial parks, a golf course community, a power plant, hotel and convention center, and a 500-resident development;

- Above-ground utility lines proposed to run along Rocky Flats property, and the power plant is proposed near Highways 72 and 93; and
- DOE's directive from Congress to promulgate a rule that makes it easier to transfer DOE property to local governments. Such a rule would include provisions for indemnification, which would relieve future landowners of liability (the issue at Love Canal) and the rule encourages the sale of property at below fair market value.

An Institutional Controls interim policy was signed in January and serves as the interim policy. The final policy should be signed in October 2001. This policy emphasizes the need to evaluate institutional controls during the remedy selection process. The policy requires the enforcement and management mechanisms be defined, that the regulators, stakeholders, and local governments participate in the process, that the requirements be defined in decision documents, that life cycle costs be evaluated, that a periodic review process is established to measure their effectiveness, and that the specific restrictions be available on the national electronic database, the Facility Information Management System.

Carolyn Huntoon signed the National Policy on Stewardship on January 19, 2001. This policy requires an extensive long-term stewardship plan. It requires DOE to document every aspect of stewardship including, the physical baseline conditions of the site at closure, monitoring and surveillance plans, equipment and labor resources, emergency contingency plans, even personnel training. The policy also requires that DOE must transfer budgetary and management authority to the new landowner, in the case of Rocky Flats that would be the U.S. Fish and Wildlife Service (USFWS). This means that USFWS will be responsible for lobbying Congress for appropriations and provide Congress with annual financial reports.

Finally, the DOE-EM sites submitted a report to Congress, as required by the National Defense Authorization Act. The Rocky Flats report provides a brief glimpse of what the site envisions as the future end state scenario. This report will be used by DOE as the framework for their long-term stewardship plan.

PRESENTATION AND DISCUSSION ON INSTITUTIONAL CONTROLS: Dan Miller, First Assistant Attorney General for the State of Colorado, gave a presentation to the Board on Institutional Controls. Long-term stewardship is needed because sites can't always be cleaned up, many sites require long-term management, and other methods may be necessary to protect human health and environment — such as containment, treatment systems, and monitoring. The elements of long-term stewardship consist of institutional controls, information management, monitoring, re-evaluation of remedies, and research and development. Stewardship for Rocky Flats may include six miles of buried process lines left in place, residual soil contamination, caps and retention ponds, and groundwater treatment for as long as 100 years. Stewardship activities at Rocky Flats will include regular monitoring of groundwater quality, regular inspections and maintenance of caps

and retention ponds, and monitoring and enforcing land and groundwater use restrictions.

Institutional controls do have weaknesses, however, and some legal constraints may limit the ability of regulators to enforce either common law easements or common law covenants against subsequent owners. In addition, there are institutional limitations. For instance, oversight of long-term care sites may be a low priority, maintaining knowledge of use restrictions over time can be difficult, records may be lost, and project managers will leave. Dan then brought up some examples where institutional controls failed. The most widely recognized is that of Love Canal, where a notice that the site was used for chemical disposal was part of the deed to the town's school board, but one year later a school was built over the landfill. A second example was the transfer of land in Oak Ridge from DOE to a local government. The deed included a restriction prohibiting groundwater wells, yet within 10 years, wells were dug to irrigate a golf course. In order to create institutional controls, it is necessary to develop a statutory program for overseeing and enforcing institutional controls. Such a program would by design have a clear legal enforceability, built-in layering of controls, multiple enforcers, communication among stewards, adequate funding, an institutionalized mission, and a way to evaluate its own effectiveness.

Next, Dan discussed Colorado's proposed legislation SB01-145, recently introduced in the legislature. This legislation would create statutory "environmental covenants" to restrict land or groundwater use, or require actions necessary to maintain restrictions. A covenant is required when a remedial decision requires land or water use restrictions or relies on an engineered structure; however, the property owner must propose creation of a covenant. The legislation would allow a waiver from the covenant requirement if there is off-site contamination and the property owner does not grant a covenant; if a local ordinance imposes relevant institutional controls; and if the local government and the environmental regulator enter into an intergovernmental agreement that allows the regulator to enforce the ordinance. The proposed legislation calls for multiple enforcers, including a state agency, the grantor, the affected local government, and any entity named in the covenant. The enforcement is for injunctive relief only, not for penalties. There are provisions in the legislation to ensure state regulator and local government communication. The covenants must be consistent with local zoning. A state regulatory agency would maintain the registry of covenants, and creation, modification, or termination of covenants would require notice to holders of interest in the property. The state agency must approve the creation, modification, and termination of covenants. The covenants must contain provisions regarding use restrictions, duration, notices of property transfer or building permits or land use changes, a right of entry for the state to monitor compliance, and an agreement to notify affected lessees of the covenant. To monitor the progress of the bill, visit www.state.co.us/gov_dir/stateleg.html, and select Senate Bill 01-145 for review.

PRESENTATION ON THE ROCKY MOUNTAIN ARSENAL WILDLIFE REFUGE: Dean Rundle, the refuge manager for the U.S. Fish and Wildlife Service

(USFWS) at the Rocky Mountain Arsenal, attended the Board meeting to discuss management and transition issues at the Arsenal. He answered a number of questions that were posed to him prior to the meeting; those comments are summarized below.

- The USFWS was involved in selecting remedy for the Arsenal, one that would be protective of human health and preserve and enhance wildlife habitat. Cleanup levels were designed to be protective of refuge biological workers.
- USFWS entered into a partnership agreement with both the Army and Shell Oil, and formed the Remediation Venture Office with a dual mission of executing safe and effective remedy, and transitioning the Arsenal into a refuge. The Refuge Act provides USFWS with primary jurisdiction over fish, wildlife, and habitat, so long as it does not interfere with remedy. The Arsenal Refuge Act provides for management "as if it were a National Wildlife Refuge" during cleanup. However, there is no such language in the Rocky Flats legislation. Memorandums of Understanding and Cooperative Agreements provide mechanisms for Army funding to USFWS and handling property transfers.
- The Army will always have a role at the Arsenal. The central portion of the Arsenal, where landfills are located, will not be transferred and the Army will have perpetual responsibility for stewardship. In addition, groundwater remedy will continue for decades under Army management. USFWS may agree to perform some aspects of oversight and management of the remedy, with reimbursement.
- After completion of all or parts of the remedy, the Army and USFWS will petition EPA to delete the cleaned areas from the National Priorities List. Following that, USFWS and the Army will mutually negotiate final boundaries of the land to be transferred.
- All refuge employees have special OSHA hazardous substance response training and annual refresher courses. There is also an intense safety-training program at the Arsenal. All USFWS employees who enter remedy areas are on a medical monitoring program.
- The USFWS has an approved Comprehensive Management Plan for managing the refuge. The Institutional Control plan for the remedy will be prepared jointly, but that plan is not finalized.
- Where remediation has been completed and signed off by regulators, the land will be transferred to USFWS and become a refuge. USFWS will be responsible for management, but the Army will always be responsible for any liability for contaminant issues.
- There is an active biological monitoring program to assure that the remedy is effective in cutting off pathways for contaminants to reach the wildlife food chain.
- There are restricted areas such as landfills; other restricted areas will likely be closed within the refuge land, but those areas will be closed to the public to provide sanctuary to wildlife, not because they are contaminated.
- The Federal Facilities Agreement at the Arsenal prohibits agricultural and livestock production, housing, and human consumption of fish and wildlife from the

Arsenal. After completion of remedy and land transfer, the Arsenal National Wildlife Refuge would not be considered a contaminated refuge, since all human health and risk materials will have been removed.

- Hunting and fishing are two of the public uses of the National Wildlife Refuges, designated by Congress.
- The Record of Decision calls for the Army to investigate establishment of a trust fund for long-term stewardship. The trust fund is still under investigation. The Army develops the budgets for long-term stewardship activities.

PRESENTATION AND DISCUSSION ON THE STEWARDSHIP WORKING GROUP REPORT, AND DRAFT TRANSMITTAL LETTER:

Jerry DePoorter gave a presentation to the Board on the recently completed report developed by the Stewardship Working Group, entitled Hand in Hand, Stewardship and Cleanup. The theme of the report is that stewardship and cleanup decisions must be integrated, and that stewardship must be considered during remedy selection. The report's format includes information on previous Records of Decision (RODs), a case study of the Solar Ponds Plume, the "Toolbox," Rocky Flats stewardship needs, and conclusions. Previous RODs included the 881 Hillside and areas outside the site boundary. The Solar Ponds Plume case study showed that previous remedies were ineffective and Kaiser-Hill evaluated and selected a new remedy with different stewardship considerations. The conclusion of the case study was that long-term effectiveness influences the remedy selection indirectly, and that more consideration of stewardship is needed. For example, it may be necessary to define access restrictions, define the duration of the remedy, define the remedy termination, or define long-term monitoring needs.

A subcommittee of the working group developed the basis for a stewardship "Toolbox," which provides a framework for evaluating remedial action alternatives. The Toolbox will be developed more fully and finalized in Phase II of the report. Ken Korkia then discussed the steps involved in using the Toolbox Matrix and demonstrated how it would work by using a few examples.

The conclusions summarized in the report are as follows:

1. Stewardship must be considered during remedy selection
2. Remedies selected should include measures with a high degree of certainty, and controls should be layered;
3. The DOE manager must provide guidance for integrating stewardship into the remedy selection process;
4. DOE and Kaiser-Hill should each designate an onsite stewardship program manager;
5. DOE and Kaiser-Hill should clarify stewardship responsibilities under the closure contract; and
6. RFCA principals need to establish guidelines directing how stewardship will be

integrated in the remedy selection process.

The Board then approved a letter transmitting the report on behalf of RFCAB to Barbara Mazurowski and Tom Lukow at DOE-Rocky Flats.

ENVIRONMENTAL RESTORATION COMMITTEE UPDATE: Jerry Henderson briefly discussed the recent activities of the Environmental Restoration Committee, including the ALARA process and the RSAL review. The two main questions the committee identified with respect to ALARA are where and how it should be applied. The agencies have proposed applying ALARA only at sites exceeding the RSAL, a rather limited scope of application. As yet, the agencies have offered no specific proposal on how to apply ALARA. Draft DOE guidance encourages a strict economic application of ALARA, but many committee members were unhappy with this approach because it minimized other factors deemed more important.

For several months, the RSAL review has been on the committee's agenda. At least one Board member expressed frustration that the only fruit of this labor has been a workshop recommendation passed by the Board in December. The committee responded by saying that its meetings are so poorly attended that any recommendation drafted would not likely be representative of the Board as a whole. This was followed by a plea for greater participation by the full Board. Currently these meetings are held at the RFCAB office due to low turnout, but Mary Harlow offered the committee use of a larger room at Westminster City Hall if more members would agree to attend. The committee will continue to discuss these issues at upcoming committee meetings, and talk to the Board as a whole at the May meeting.

NEW BOARD MEMBER: The Membership Committee recommended, and the Board approved, the addition of a new member. Maureen Eldredge is a resident of Lyons in Boulder County, and recently moved to this area from Washington, DC. She worked in Washington on nuclear weapons production and cleanup issues with the Alliance for Nuclear Accountability, and also served as a member of DOE's Environmental Management Advisory Board, where she was a member of the subcommittee on public participation and stewardship. Maureen also worked with the Center for Marine Conservation, and the National Oceanic and Atmospheric Administration in Washington, DC. She has a BA in Biology and an MA in Marine Affairs, and will serve as a community representative.

NEXT MEETING:

Date: May 3, 2001, 6 - 9:30 p.m.

Location: Rocky Flats Environmental Technology Site, Rocky Flats Visitor Center, Building 060

Agenda: Rocky Flats site tour focusing on environmental restoration and natural resource management; presentation on Kaiser-Hill report on worker contamination in Building 771; Environmental Restoration Committee discussion

ACTION ITEM:

**ASSIGNED
TO:**

None

MEETING ADJOURNED AT 9:45 P.M. *

(* Taped transcript of full meeting is available in the RFCAB office.)

RESPECTFULLY SUBMITTED:

Jeffrey Eggleston, Secretary
Rocky Flats Citizens Advisory Board

The Rocky Flats Citizens Advisory Board is a community advisory group that reviews and provides recommendations on cleanup plans for Rocky Flats, a former nuclear weapons plant outside of Denver, Colorado.

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