

Rocky Flats Coalition of Local Governments Board Meeting Minutes
Monday, April 5, 2004
8:30 – 12:00 p.m.
Mt. Evans Room in the Terminal Building
Jefferson County Airport, Broomfield

Board members in attendance: Gary Brosz (Director, Broomfield), Lori Cox (Alternate, Broomfield), Mike Bartleson (Alternate, Broomfield), Clark Johnson (Alternate, Arvada), Paul Danish (Director, Boulder County), Jane Uitti (Alternate, Boulder County), Sam Dixion (Director, Westminster), Ron Hellbusch (Alternate, Westminster), Michelle Lawrence (Director, Jefferson County), Nanette Neelan (Alternate, Jefferson County), Karen Imbierowicz (Director, Superior), Devin Granbery (Alternate, Superior), Shaun McGrath (Director, City of Boulder), Amy Mueller (Alternate, City of Boulder), Alice Guthrie (Alternate, City of Boulder), Hank Stovall (*Ex-officio*), Lisa Morzel (*Ex-officio*).

Coalition staff members and consultants in attendance: David Abelson (Executive Director), Kimberly Chleboun (Program Manager), Rik Getty (Technical Program Manager), Barb Vander Wall (Seter & Vander Wall, P.C.), Jennifer Bohn (Financial Consultant).

Members of the Public: Dave Shelton (Kaiser-Hill), John Corsi (Kaiser-Hill), Rick Dion (Kaiser-Hill), Frazer Lockhart (DOE), Joe Legare (DOE), Karen Lutz (DOE), John Rampe (DOE), Philip VanLoan (DOE), Scott Surovchak (DOE), Laurie Shannon (USFWS), Dean Rundle (USFWS), Rob Henneke (EPA), Mark Aguilar (EPA), Edgar Ethington (CDPHE), David Kruchek (CDPHE), Dan Miller (AG Ken Salazar), Shirley Garcia (Broomfield), Al Nelson (Westminster), Patricia Rice (RFCAB), Kristan Pritz (Broomfield), Bob Nelson (Golden), Jeanette Alberg (Senator Allard), Kim Cadena (Rep. Beauprez), Doug Young (Rep. Udall), Dan Chesshir (RFSOIU #1), Phil Cruz (RFSOIU #1), Chuck Miller (USWA Local 8031), Bob Santangelo (USWA Local 8031), Ron DiGiorgio (USWA Local 8031), Roman Kohler (Rocky Flats Homesteaders), Alisha Jeter (Broomfield Enterprise), Richard Valenty (Colorado Daily), Hildegard Hix (citizen).

Convene/Agenda Review

Chairwoman Karen Imbierowicz convened the meeting at 8:35 a.m.

Business Items

1) Motion to Approve Consent Agenda – Gary Brosz motioned to approve the consent agenda. Ron Hellbusch seconded the motion. The motion passed 6-0 (Jefferson County was not yet present).

2) Executive Director's Report - David Abelson reported on the following items.

- As reported over the past month, the Coalition's FY04 funding was restored, thanks in large part to Senator Allard. The Coalition sent letters (signed by Karen Imbierowicz and David Abelson) of thanks to the Senator and Reps. Udall and Beauprez for their role in this effort. David will be in Washington, D.C. the first week of May and will meet with Senator Allard's staff and staff from the Senate Armed Services Committee to begin discussing FY05 funding.
- The demolition of B991 is almost complete as Board members touring the Site last week saw. The investigative report on the fire in that building will be out shortly.
- DOE is hosting a stewardship workshop on April 21st to discuss the details of the transition from Environmental Management to Legacy Management.
- In light of public concern recently raised during meetings discussing refuge management, DOE is hosting an availability session on April 14th to discuss cleanup in the context of refuge planning.
- The Coalition will also receive a briefing from the RFCA parties on Buffer Zone sampling at the next Board meeting.
- David introduced Jennifer Bohn, the Coalition's financial consultant, and provided the Board with copies of the Coalition's quarterly financial report.

David then discussed recent concerns over how the Energy Employee Occupational Illness Compensation Program Act (EEOICPA) is being administered. He showed a chart showing the flow of how claims are processed under Subtitle B (administered by Department of Labor for workers with beryllium disease, radiation cancer, and silicosis) and Subtitle D (Administered by DOE and then individual states for workers with any illness caused by exposure to toxic substance). Claims are being held up in several different places: confirmation of DOE employment, NIOSH dose reconstruction under Subtitle B, and the review by a physician's panel under Subtitle D. David noted that Bob Card, DOE Under Secretary, and Bev Cook, DOE Assistant Secretary, had just resigned in the wake of the Senate Energy and Natural Resources Committee review of the program, although the stated reason for their resignations was being able to spend more time with their families.

David also stated that DOE is being urged to finalize the rules administering the program, and Reps. Udall and Beauprez are pushing legislation to make Rocky Flats a Special Exposure Cohort site, thus expediting radiation cancer claims. He said Bob Card provided testimony to Congress explaining changes in the Subtitle D program, but it is also possible that Congress created an incredibly complex program that is difficult to administer successfully. David also said that Karen Lutz had advised him that 95% of Rocky Flats employees have been successful in obtaining their employment records.

David next had Rik Getty provide a summary on recent cleanup issues in Building 774. Rik stated that Kaiser-Hill advised stakeholders that three rooms totaling approximately 4,500 feet² above grade in B774, sister building to B771, have not been decontaminated to free release criteria. The Site has made multiple hydrolasing passes and removed almost an inch of concrete, but had little success due to the poor and porous quality of the concrete. Free release criteria is

less than 20 disintegrations per minute (dpm), but there are spots in the concrete as high as 2500 dpm. Thus, CDPHE agreed to allow a minor modification to the Decommissioning Operations Plan so that sections of the floor and walls can be cut out and packaged as low-level waste (LLW). To protect from airborne contamination they will use a protective fixative.

Clark Johnson asked Coalition staff what they thought about this change in process and David replied it is his opinion that the Site tried to decontaminate to the extent possible but the nature of the concrete interfered. It will end up costing Kaiser-Hill more to dispose of the concrete as LLW. He added that staff will also consider air monitoring results from the Site and CDPHE/EPA. Hank Stovall asked about the lag time between monitoring and receiving the results. Dave Shelton (Kaiser-Hill) said turn-around time varies depending on the EPA lab in Las Vegas, but it is usually three days. He stated there are also real time alarms and worker lapel monitors for worker safety that would go off if there was a significant release just like with work being done inside a building. Lisa Morzel questioned the impact on schedule. David stated he had not asked as the schedule is less important to the Coalition than safety. Lisa asked how many other buildings might have this problem. Rik said the composition of this concrete was very different, especially when compared to the successful decontamination in B771. David said the key aspect is that these are surfaces above grade.

Public Comment

Doug Young (Rep. Udall) said the Colorado House congressional delegation has sent a letter to the Chairman and Ranking Members of the Energy and Water Subcommittee urging them to fully fund the Rocky Flats cleanup this fiscal cycle. He also said April 2nd was the deadline for congressional members to submit appropriations requests, specifically requesting money for the Land and Water Conservation Fund to purchase Rocky Flats mineral rights. Doug then stated that when Rep. Udall made this request the committee explained they are not going to earmark specific programs in FY05, but will instead appropriate a chunk of money to each agency which will then distribute it based on priorities already established. Rocky Flats minerals are not listed as a priority for DOI and USFWS.

Phil Cruz (RFSOIU #1) agreed the EEOICPA has been run poorly and he appreciates any assistance to fix the program that would not come at the worker's expense.

RFCA Post-closure Agreement

Joe Legare (DOE) began by explaining that the Rocky Flats Cleanup Agreement (RFCA) contains a provision to modify and extend the document once cleanup is completed. The RFCA parties are now investigating and pursuing how to make this document appropriate for post-closure. He then described key elements that are being considered for inclusion in this post-closure agreement, including long-term operations, maintenance, surveillance, and monitoring. Joe went into further detail providing examples of what will be included in each of these categories.

Joe also explained that the post-closure RFCA would describe post-closure authorities, a dispute resolution process, and reporting procedures. He noted that many of these procedures are already in the document, but they are working to forecast how to appropriately modify them for post-closure conditions and how to ensure the right conversations will happen. He emphasized that these negotiations are happening now, while they still have the available corporate knowledge, but the post-closure agreement would not be implemented until after the Corrective Action Decision/Record of Decision (CAD/ROD) is signed.

Dan Miller (AG Ken Salazar) then discussed why the RFCA parties are renegotiating the RFCA agreement. He explained how the current RFCA details cleanup activities and regulates State and EPA oversight. He noted that once cleanup is finished these oversight roles will change. Thus, the purpose of the post-closure RFCA is to streamline the regulatory process and to make sure they have a regulatory structure that will ensure the remedy remains protective via long-term stewardship.

Dan discussed the status of the revised document and noted he had distributed a draft of their first edits, which consisted primarily of striking out language that will no longer be necessary and creating placeholders for new language. He now has new draft which he has shared with EPA and DOE but they have not discussed it yet. When they have agreement on the draft it will be distributed to the public. Dan explained that the body of the document will lay out the legal framework and ensure the legal obligations for the remedy remain with DOE, and the details of stewardship will most likely be contained in legally enforceable attachments. Joe added that although USFWS is not a party to the current agreement they have been included in these meetings and have provided their input. USFWS level of signatory on the final document is still uncertain. Joe also said that the Office of Legacy Management (LM) is also involved in determining post-closure infrastructure and will be the principal DOE representative post-closure.

Hank Stovall asked how activities will be funded. Dan stated that DOE is obligated under CERCLA and RCRA to fund the actual work, and currently reimburses the State for their oversight, although the post-closure State reimbursement will be a topic for future negotiations. He said there have been no discussions of a trust fund. Hank said the issue of a trust fund needs to be addressed, perhaps requiring new federal legislation as the local people need an equal playing field. Dan said it should not require federal legislation to resolve and it is clear DOE will have to comply, especially under the State covenant law, although he has not seen any movement within DOE or DOD to acknowledge state institutional controls are response actions. Dan added that everything in the post-closure RFCA would be enforceable by the State outside the context of the covenant law. Joe said that DOE does not agree on the applicability of the State covenant law, but they are working on negotiating other non-contentious issues while they still have the personnel to do so.

Dan then provided further clarification by stating the RFCA parties have a conceptual level of agreement on land and water use restrictions and what type of uses would be appropriate and protective under the cleanup. He explained how the current RFCA combines the two legal

authorities of CERCLA and RCRA and is a legally enforceable document as the Interagency Agreement under CERCLA, section 120, and the Corrective Action Order under RCRA. The final post-closure agreement will reflect the enforcement schemes of both statutes, but oversight for long-term stewardship is not adequately addressed under either.

Paul Danish asked what would happen to the agreement if in the future these two statutes were modified or appealed. Dan said anything is possible and the agreement would not be as good if RCRA were narrowed, but he does not find that likely to happen. He stated that RCRA was amended in 1992, but with the current political situation it would be hard to amend these waivers in a broad way. Also, the issue of state authority is obviously extremely important to the states as evidenced by their united and strong opposition to DOD's recent attempts to weaken state authority.

Gary Brosz asked how monitoring and surveillance would be captured, and Dan stated the current RFCA refers to the Integrated Monitoring Plan (IMP). Joe said the post-closure RFCA would take a similar approach to the IMP and be included as an attachment to consolidate all monitoring requirements. The RFCA parties' technical staffs are currently discussing these details. Gary asked about the Coalition being included in these discussions and John Rampe (DOE) said they are already being included through discussions and documents distributed at the Stewardship Working Group. David Abelson said the Coalition has full access to the process, and varying levels of input are possible from macro to micro. Gary asked that Broomfield be informed of all meetings in the event they choose to be involved at the micro level.

Shaun McGrath asked if the document will treat DOE retained land differently than USFWS land. Dan and Joe explained institutional controls will be different as the only control necessary for the Buffer Zone will be the restriction on residential use. DOE areas, however, will require restrictions to prevent erosion, digging, and the like. Jane asked if DOE would further clarify access restrictions at their April 14th public meeting, and Joe confirmed they would, but he added that the issue is not how to restrict access to DOE lands, but how to prevent digging, erosion, etc., and who would be responsible and when.

DOE Environmental Management Transition to Legacy Management

Joe Legare (DOE) began his presentation by first explaining the overall mission for the transition from the Office of Environmental Management (EM) to the Office of Legacy Management (LM). They intend to identify all programs, initiatives, and activities requiring transition to LM from Kaiser-Hill, the Rocky Flats Project Office (RFPO), and from EM without disrupting critical activities or negatively impacting the closure mission. Transition is now ongoing.

Joe next described the approach the Site is taking to the transition. They have identified programs and activities requiring transition versus termination and are bringing together separate organizational initiatives, including the Kaiser-Hill termination and transition initiative and the RFPO sunset project. LM is also considering lessons learned from Weldon Spring. Joe said they have also identified the principal functional areas to manage as well as schedule drivers in order

to develop and implement an action plan for each transition element. This action plan is tied into a long checklist and is independent of closure activities. Joe distributed a copy of the checklist so the Board could get an idea of the number of activities involved in this undertaking. Joe also reviewed the members from RFPO, Kaiser-Hill, LM, and S.M. Stoller who make up the transition team. S.M. Stoller will be the post-closure Site contractor.

Joe then reviewed transition categories and the issues tied to them. The primary categories are: environmental; community relations; records; information systems/databases; and, personnel, procurement, and finance. He noted that maintaining the records will be one of their biggest costs. Joe stated that transfer from EM to LM will be complete once active remediation is completed and Kaiser-Hill's active role onsite is completed. Ongoing physical activities such as maintenance, surveillance, monitoring and the operations of remedies will continue, along with administrative activities including data and records management, and administering pensions and other benefits. However, these activities will be under the management of LM once transition is complete.

Joe described the process for getting to the final Corrective Action Decision/Record of Decision (CAD/ROD) and the transition milestones of physical completion and regulatory completion. Physical completion will mean all buildings and structures will be removed to at least three feet below grade, except the east and west inspection sheds (requested by USFWS) and Lindsay Ranch. All hazardous substance sites will have been remediated, all waste shipped offsite, and the on- and off-site water will meet applicable standards. Some sampling, inspection of landfill covers, and groundwater treatment will continue beyond physical completion. Regulatory completion will be defined by the regulatory approval of the CAD/ROD. Joe noted that Kaiser-Hill will be involved in the drafting of the Remedial Investigation/Feasibility Study, but the CAD/ROD will be completed after Kaiser-Hill departs the Site. EM will have continued involvement in regulatory completion.

Joe also addressed transition to USFWS and explained that transition of jurisdiction from DOE to DOI would occur upon certification of completion to be finalized by EM. This certification is denoted in the Refuge Act and can occur concurrent with regulatory completion. It is different than certification by EPA for delisting. Jane Uitti questioned whether the MOU will be agreed upon by regulatory completion, and Joe said the MOU will be in place prior to this transition. Joe reiterated that transition to LM is independent of jurisdictional transfer to USFWS.

Paul Danish raised the issue of keeping people out of the Industrial Area (IA). Joe said they are rephrasing the question as who is responsible and how to implement institutional controls in the IA. He said the control could be a fence, but they have not yet determined that restricting access is the way to achieve no digging. Paul said those responsible for cleanup have a clear responsibility to keep teenagers and terrorists of the IA. Joe agreed that DOE is responsible for ensuring the effectiveness of the remedy, but they are reviewing specific mechanisms and the nuances of the dynamics between USFWS, Stoller, DOE, and the other parties. Sam Dixon echoed Paul's concerns over preventing access to the IA. Joe again stated they are negotiating the controls, but it must also be considered within the context of refuge management. Joe stated

they are not ambiguous about ensuring institutional controls are maintained. Sam asked about the cost of leasing the reading room at College Hill Library. Karen Lutz (DOE) replied it is under \$10,000 per year.

Hank Stovall asked how LM intends to improve access to records at the Federal Center since employees are having difficulties getting their health records. Lisa Morzel asked what criteria are applied for deciding what is maintained. David Abelson said the issue of records management was discussed at the last Stewardship Working Group meeting. At that meeting Site representatives explained that location of and access to records depends on the record. Some records will go to the Federal Center, but classified records go to Missouri. David advised the Board that LM will be holding an in-depth workshop on issues such as this on April 21st. Joe added there are different criteria for different programs and most programs have destruction guidelines. Sam said she had been at the Stewardship Working Group meeting when records destruction had been discussed, but she believes the criteria for determining destruction do not take into account the long-lived nature of the contamination at the Site. John Rampe (DOE) stated there is a 75-year review where records are reviewed for retention, and they are not automatically destroyed.

Lisa again raised the issue of demarcating DOE retained lands so visitors will keep out. Joe said they are also looking what they need in terms of protecting the property against deliberate acts of vandalism. Amy Mueller asked about the process for deciding what LM needs, or if they automatically get everything they ask for. Joe said it is ultimately LM's decision, but there have been a couple cases where EM convinced them they really needed something like data and software. However, in terms of field monitoring EM and LM have been in total agreement. Paul asked if there would be a residual security presence like a guard, and Joe said no. Shaun asked about the process if there is a dispute between EM and LM. Joe said compliance monitoring is well-defined, but if LM believes additional feel-good monitoring is called for then EM would acquiesce since LM will be responsible post-closure.

Draft Refuge Comprehensive Conservation Plan/Environmental Impact Statement

David Abelson began the discussion of the Coalition position on the draft refuge Comprehensive Conservation Plan/Environmental Impact Statement (CCP/EIS) by providing a background on the formation of the Coalition and its purpose in bringing together the local governments to discuss Rocky Flats issues and work through solutions. He emphasized that the value in the Coalition, especially in this instance, lies in its role as a forum to discuss these issues even when the Board may not be in agreement.

David then drew a diagram of the Site showing lands to be retained by DOE with plutonium cleanup levels of 7 pCi/g and above, lands permitted for mining, and refuge land. He also pointed out where the local governments would like to link the refuge to their surrounding open space. Shaun McGrath clarified that the City of Boulder suggests their access point only if Alternative B is chosen, although their preferred choice is Alt. C. David stated that the Board is almost evenly divided over public use, with Boulder County, the City of Boulder, and Superior

preferring alternatives A or C, and Jefferson County, Arvada, Broomfield, and Westminster preferring Alt. B (with some governments supporting the loop trail and equestrian access from Alt. D). Considering these differences in opinion, the Board can either: 1) work individually and not submit comments as an organization; or, 2) submit the letter drafted by Coalition staff and vetted with the local governments. The letter contains four statements:

1. The Coalition supports the refuge.
2. The Coalition requests that the federal government define how they will restrict access to DOE retained lands.
3. The Coalition requests additional analysis be completed in the Buffer Zone.
4. The Coalition believes the lands being transferred to USFWS contain levels of residual contamination that are protective of refuge workers and visitors, provided that the additional sampling confirms it.

David said these four statements contain core issues the Coalition has been committed to since its inception, specifically a protective cleanup and having robust post-closure systems in place. Gary Brosz asked if the additional sampling requested is above and beyond the Site's current sampling plans. David said he is not sure about the specifics and this is an issue that will be discussed at the next Board meeting. He then asked if the Board agreed on these four issues.

Paul Danish said he originally supported the refuge because he thought public access would be more restricted than a national park, and pointed to the Rocky Mountain Arsenal as being a good model. He stated USFWS does not have the resources to manage a large number of people. David said there are important distinctions between the Arsenal and Rocky Flats, primarily the Arsenal site being designated a refuge prior to completion of cleanup. Also, the Arsenal has one large external fence and no inner fences. He reiterated the challenge the Coalition faces in moving forward while not all governments have the same opinion. Paul stated Rocky Flats has a long track record of negligence and he is concerned about access and undetected contamination. Paul questioned why the Site should even bother getting more information and what they would do with it.

Shaun said the City of Boulder is comfortable in general with the four areas outlined by David, but he suggested amendments to the letter to tighten the language and help focus the letter. He then distributed his suggested amendments and said the letter should focus on the positive rather than the negative, and he also said he was concerned the original draft was too ambiguous over who had responsibility for limiting access. Shaun also had an amendment requiring post-closure monitoring for the Buffer Zone. He stated the letter looked like the Coalition was picking a fight, and should instead be more of a policy statement with all Board members signing it. David and Shaun then discussed the history of soil cleanup levels.

Gary said he has looked at the draft letter closely and understands the need for it, and although there are areas he would word differently he agrees for the most part with its message. He said if the Coalition agrees to look at Shaun's rewrites it should spend the same amount of time it did in reviewing the original. As it is a massive rewrite there is not enough time to do so at the current meeting. David said the deadline for public comment is April 26th, and he then explained the

process for getting local government comment prior to the Board meeting. Lisa Morzel said this letter should not let frustration drive policy, but should be clear on Coalition policy. She suggested writing an op-ed to discuss the issue of the cleanup being protective. Michelle Lawrence said she had plenty of time to review the draft letter carefully and is comfortable with the letter as it is. She said that considering what the Coalition has had to go through with different government positions, she would prefer to send the letter as it is and not change it at the last minute. She said an op-ed can be sent any time in addition to the letter. Clark Johnson agreed. Ron Hellbusch said Westminster supports the original draft and moving ahead with it. Karen Imbierowicz said she had already vetted the original draft with Superior's Board of Trustees and they were fine with it in this state. She said she appreciates Shaun's amendments, but as the timeline presents difficulties the Board should consider sending a separate op-ed at the next Board meeting.

Karen Imbierowicz moved to approve the draft letter to the USFWS as it is. Gary Brosz seconded the motion. Shaun McGrath opposed the motion. He said the ambiguity regarding responsibility for access restrictions to DOE retained lands is problematic, and the CCP does not address post-closure monitoring. Shaun raised concerns over the Coalition process for approving letters, and the Board then had an extensive discussion on this process. Karen again put forth the motion. Lisa suggested amending the letter adding the sentence from Shaun's amendments, "Additionally, we believe ongoing post-closure monitoring must be conducted in the buffer zone to verify the ongoing safety of these lands." Gary asked David if he had any issues with the sentence, and Karen and David questioned what type of monitoring it referred to. Michelle said she was comfortable with the letter as currently reads. Paul Danish motioned to amend the letter by added the sentence suggested by Lisa Morzel. Sam Dixon seconded the motion. The motion to amend the letter passed 6-1, with Broomfield opposing. The motion to approve the letter to USFWS, amended as approved, passed 6-1, with City of Boulder opposing.

Round Robin

Due to time constraints the governments had no further comment.

Public Comment

Bob Nelson (Golden) commended the Board for making a reasonable recommendation regarding the refuge and said he supported their resolution.

Big Picture

David Abelson discussed items for discussion for future meetings. At the May meeting the Board will receive the Coalition's 2003 audit and briefings on Buffer Zone sampling and Site safety and work scope.

At 11:38 a.m. Karen Imbierowicz motioned to move into Executive Session for the purposes of discussing personnel issues involving Executive Director evaluation, and receiving legal advice

on such issues, as authorized under Sections 24-6-402 (4) (f) and 24-6-402 (4) (b), C.R.S. Amy Mueller seconded the motion. The motion passed 7-0.

The Board reconvened from Executive Session at 11:52 a.m. and affirmed that no actions had been taken during Executive Session. Sam Dixon motioned to approve the Board proposal regarding the evaluation and bonus increase for the Executive Director. Paul Danish seconded the motion. The motion passed 7-0. The Board directed Ms. Vander Wall to revise Mr. Abelson's employment letter agreement to reflect the adopted proposal changes approved.

The meeting was adjourned by Karen Imbierowicz at 11:53 a.m.

Respectfully submitted by Kimberly Chleboun, Program Manager