

Rocky Flats Coalition of Local Governments Board Meeting Minutes
Monday, January 3, 2005
8:00 a.m. – 12:15 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), Lorraine Anderson (Director, Arvada), Sam Dixon (Director, Westminster), Jo Ann Price (Alternate, Westminster), Ron Hellbusch (Alternate, Westminster), Nanette Neelan (Alternate, Jefferson County), Karen Imbierowicz (Director, Superior), Devin Granbery (Alternate, Superior), Shaun McGrath (Director, City of Boulder), Carl Castillo (Alternate, City of Boulder), Jane Uitti (Alternate, Boulder County).

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

Members of the Public: Dave Shelton (Kaiser-Hill), John Corsi (Kaiser-Hill), Carol Deck (Kaiser-Hill), Joe Legare (DOE), Karen Lutz (DOE), John Rampe (DOE), Mark Sattelberg (USFWS), Amy Thornburg (USFWS), Mark Aguilar (EPA), Rob Henneke (EPA), Steve Gunderson (CDPHE), Marion Galant (CDPHE), Shirley Garcia (Broomfield), Al Nelson (Westminster), Bob Nelson (Golden), Jeanette Alberg (Senator Allard), Doug Young (Rep. Udall), Kimberly Cadena (Rep. Beauprez), Patricia Rice (RFCAB), Ken Korkia (RFCAB), Gerald DePoorter (RFCAB), Roman Kohler (Rocky Flats Homesteaders), Anne Fenerty (Boulder Valley League of Women Voters), Ron DiGiorgio (USWA Local 8031), Chuck Miller (USWA Local 8031), Hank Stovall (former Board member), Lisa Morzel (former Board member), Todd Neff (Daily Camera).

Convene/Agenda Review

Chairwoman Karen Imbierowicz convened the meeting at 8:07 a.m.

Business Items

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

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

- Wes McKinley, former Rocky Flats Grand Jury foreman and new State House representative, has stated he plans to introduce a bill regarding Rocky Flats.
- The comment period for the Original Landfill IM/IRA will close on January 19th, thus Coalition staff will be working with local government staff to draft comments based on

the presentation and comments at this Board meeting. Broomfield and Westminster requested an extension on the comment period.

- The comment period for the Groundwater IM/IRA has been extended thus the Coalition can approve a recommendation at the February 7th Board meeting.
- John Rampe (DOE) sent a detailed email following up on the elevated levels of americium found in ponds A-3 and A-4. Sampling suggests that americium is coming from the Building 771 area. The water has not been released and there is not enough capacity in either pond to dilute it. The key questions remain: why is it there; how should it be treated; what does its presence tell us; and, how does its presence relate to post-closure pond structure?
- Working with DOE Legacy Management (LM) is proving very difficult, and Senator Allard's office is concerned that LM is not properly oriented of how best to work with the Coalition. The LSO legislation clearly states DOE must work with local governments, but all actions point to LM looking to circumvent the Coalition, including recent letters that LM sent to all of the governments which did not mention the Coalition and were not copied to the Coalition. David suggested writing a letter to Mike Owen stating the Coalition's expectation that LM work with the Board. He is also working with Ken Korkia identifying areas of agreement between the Coalition and the RFCAB and discussing how the LSO might be run as a FACA group. The Board then discussed issues with being a FACA group, remaining independent of DOE, and the Coalition's relationship with Mike Owen. The Board agreed to send a letter to Mike Owen as David suggested, and invite him to the February 7th Board meeting to discuss the LSO further.

Public Comment

Anne Fenerty (Boulder Valley League of Women Voters) thanked Boulder, Boulder County, Superior, and Westminster for their concerns outlined in their white papers as she asserts that plutonium travels in groundwater. Anne restated her concern over refuge plans being made while the MOU is not yet published, and questioned whether DOE could deed the surface rights to the mineral rights owners. David Abelson explained that the land cannot be deeded because of restrictions on transferring lands in the refuge bill - the land will stay in federal ownership. Anne also stated the 18% slope for the Original Landfill may be too steep since slopes of 15 - 20% may be prone to erosion. Finally, she referred to the USFWS contaminant study on Rocky Flats deer and stated concerns about hunting due to the presence, even in low levels, of radionuclides.

Roman Kohler (Rocky Flats Homesteaders) recommended having LSO representation from Rocky Flats retirees and former workers, and noted that this idea is also supported by Mike Owen.

Original Landfill IM/IRA

Dave Shelton (Kaiser-Hill) stated remediation of the Original Landfill is a key element in terms of finishing the entire project. He noted the comment period for the Interim Measure/Interim

Remedial Action (IM/IRA) will end January 19th, and then described what has happened with the landfill remediation plans since he last spoke with the Board.

Recognizing this area of Rocky Flats has some historic landsliding, the Site performed a detailed geotechnical investigation due to concerns about stability, along with additional groundwater modeling since a key element to stability is groundwater. Additionally, contaminant transport modeling shows low levels of contamination in the landfill.

Landfill performance is normally measured by leachate water quality, waste exposure, and methane levels. As this landfill has no methane the focus is on water quality and stability. After performing all the above mentioned analyses the Site proposed a remedy which will cover the landfill and reshape it to a slope of 18% maximum. The regulators are also arguing for a buttress at the toe to further ensure stability, although the Site does not believe it is necessary as it may only reduce deformation of failure from ten inches to five. This type of failure would only be caused by an extremely wet year, on the order of a 100-year wet year.

The decision to not use a geosynthetic cover was based on the lack of necessity, but also because the graded surface would fill Woman Creek. They believe the Subtitle C cover is not necessary as the landfill has been there for 50 years and does not generate contaminated groundwater or sediment outside its footprint, even when the Site dumped surface water on it. Additionally, a more sophisticated infiltration barrier is not necessary for the same reasons. Since landfills are heterogeneous, characterization is based on physical examination, history, and leachate. Based on this characterization the Site is confident the landfill contents are innocuous.

As to long-term stewardship, physical barriers and signs will be present and institutional controls limiting access will be implemented, including prohibitions on excavation, construction of roads and trails, drilling, and disturbing monitoring points. Monitoring of surface water, groundwater, and erosion will continue into the future. Dave then opened the floor for questions.

Jane Uitti referred to a chart comparing the four remedy alternatives and asked about the additional risk to workers in building a buttress, and why it would be so much more difficult to implement. Dave said building a buttress would involve more heavy equipment moving more material, and it would also be a matter of ensuring that groundwater would be able to move through the buttress which would be difficult. Jane asked why tritium is not mentioned, and Dave said the tritium release was never tied specifically to the landfill, but rather Building 776.

Gary Brosz asked what had changed since the original plans to build a slurry wall and buttress. Dave responded that the geotechnical investigation and stability analysis showed the landfill would be stable without a buttress, and groundwater modeling shows a cutoff trench on the upgradient side of the landfill would essentially make no difference. Gary commented that Broomfield staff believes the monitoring and surveillance is inadequately defined. Dave said they have been working with the Integrated Monitoring Plan Working Group to determine the ultimately layout for monitoring, and they have also committed to putting more monitoring specificity in the decision document. Gary then said he is uncomfortable with the assumptions

which determine how this landfill has been categorized. Dave explained it is an ARAR (Applicable or Relevant and Appropriate Requirements) issue. The EPA made the determination to start with Subtitle C as an ARAR, but only choosing those parts that are relevant and appropriate for this landfill. He noted the EPA selects the appropriate ARARs and the Site applies them, even though he does not agree with this one. Gary said it appears that by identifying this as a military landfill they are taking advantage of an exemption for remediation. Dave said he knew nothing about this issue and would check back. Gary next asked if there had been any independent outside experts brought in for any type of peer review. Steve Gunderson (CDPHE) said Kaiser-Hill had hired experts from California who deal with landfills in earthquake environments, and Dave added they had an engineering firm doing the landfill design and had external seismic review for stability. Gary emphasized Broomfield's request for an extension on the comment period.

Sam Dixon asked why they decided not to extend the South Interceptor Ditch further east. Dave said that was part of the 903 Pad decision document which analyzed the potential for contamination erosion from the hillside, but it was not part of the landfill decision. Sam said if they were so confident in this decision then she did not understand why they were fighting independent review. She also asked for an extension on the comment period.

Shaun McGrath asked over what time period the estimated deformation could occur. Dave stated that there is a 1% chance per year for the five to ten inches of deformation, and it would occur during one event which would likely involve a seismic event during a wet year. He noted there would be regular surveys for surface erosion and slope stability. Shaun then asked why the estimated cost for the alternative of removal with offsite disposal is so high. Dave replied the wide range of \$100 million to \$260 million is for total excavation, characterization, and disposal of an enormous amount of waste and soil.

David Abelson then asked the Board for direction in drafting comments on the IM/IRA. Gary and Shaun both expressed interest in an independent review of the type of cap chosen, and Shaun advocated for supporting inclusion of a buttress. Sam said if the cap will not be Subtitle C then perhaps the entire landfill should be removed. Lorraine Anderson and Nanette Neelan asked the regulators why they approved a Subtitle D cap and are pushing for a buttress, and Nanette stressed the need for adequate long-term stewardship planning. Steve Gunderson said it is the State's position, based on historic and recent data and characterization, that the only real issue with the landfill is stability. The EPA lawyers mandated Subtitle C ARARs because of the industrial setting, not because of any contamination. He noted that more stringent ARARs are being applied to this landfill than to the Marshall or Lowry landfills, which have far more contamination problems. Steve also said that adding a buttress would increase the likelihood of long-term low maintenance. Mark Aguilar (EPA) said the landfill predated RCRA regulation so Subtitle C is not an applicable requirement but it is relevant and appropriate. Lorraine and Nanette agreed that their concerns had been addressed, keeping in mind that Broomfield and Westminster still had water quality concerns. Lorraine also said she supported use of a buttress.

Karen Imbierowicz agreed, noting the necessity of long-term stewardship and having systems in place in case of future failure. The Board extended an official request to DOE to extend the comment period until after the February 7th Board meeting.

Joe Legare (DOE) objected to the assertion that the remedy decision had not received outside expertise. He said the project is low-risk but has been exhaustively reviewed and run the gauntlet with the EPA and State, including State experts on seismology and stability. Joe stated that independent review of the Original Landfill may not be the best place to spend time or money.

Independent Review White Papers

David Abelson reviewed the following recommendations from the Coalition's independent review subcommittee:

- Expand the ORISE review to include the subsurface soils below 3-feet of grade
- Review the Site's groundwater program
- Examine key elements of the surface water program (specifically the pond configuration)
- Review issues associated with the Present and Original Landfills
- Continue to study air monitoring to determine whether independent verification is necessary

Nanette Neelan raised the issue of cost and commented that the Coalition's budget of \$25,000 for independent review would only go so far. The Board discussed cost, where funds would come from, and prioritizing the recommendations before determining cost. Gary Brosz clarified that the goal for this conversation is to get approval from the Board, confirming that the subcommittee is on track with these issues and should continue to move forward in this direction.

The Board then extensively discussed how to set priorities for the above listed recommendations. Karen Imbierowicz and Lorraine Anderson stressed that they need to concentrate focus as not everything can or should be independently reviewed. Gary argued for the importance of a groundwater review, while Shaun McGrath made a strong plea for subsurface soils. Lorraine said she did not believe it necessary to review the Original Landfill based on the information heard earlier. Sam Dixion agreed with Gary that groundwater should be the first priority, and she added that the pond configuration and Original Landfill would go together but air monitoring would fall last. Nanette said she is less inclined to support review of surface water as it would be addressed through a groundwater review, and she added that the goal is meeting water quality standards which can be addressed without independent review.

Jane Uitti asked what would be included in an expanded ORISE review, and David said it would target areas of known contamination such as original process waste lines and trenches, but not landfills as they are not homogeneous. Jo Ann Price asked how many documents were available from DOE to answer the subcommittee's questions, and David responded that they have had access to all of DOE's documents for years. Gary said he does not consider the Coalition outside

experts in reviewing these documents. He added that he understands Nanette's comments regarding surface water, but argued that no outside expert has looked at the pond configuration proposed and confirmed whether it is a good plan. David said it is his opinion that surface water and the ponds should be prioritized ahead of groundwater since groundwater has already received extensive outside review while the ponds are necessary for contaminant containment and preventing future problems.

Joe Legare (DOE) referred to independent review of the subsurface and explained that ORISE would not be appropriate as there is no analogous map of contamination like there is for the surface. The subsurface uses biased sampling and you cannot apply analogous statistical methodology or extrapolate information to some other area to draw conclusions about the entire subsurface. Shaun asked how to understand and confirm what residual contaminants would be left in the subsurface. Joe suggested reviewing the Administrative Record.

Karen said it appears the different governments have different goals for independent review, and she was concerned that they were not including work done by regulators as the regulators should be considered auditors with a legitimate process. Karen also questioned the need for a review of the groundwater program. The Board debated these ideas, and Gary emphasized that the goal is to enhance confidence. Shaun McGrath motioned to direct staff to pursue independent review of groundwater, surface water, and subsurface soils, engaging the RFCA parties, looking for additional funding, and reporting back to the Board at the February 7th Board meeting. Karen Imbierowicz seconded the motion. There was further discussion and Sam said she could not support a proposal that does not include the landfills. Gary Brosz presented a substitute motion to direct staff to pursue independent review of groundwater, surface water, subsurface soils, and landfills, engaging the RFCA parties, looking for additional funding, and reporting back to the Board at the February 7th Board meeting. Sam Dixon seconded the substitute motion. The substitute motion failed 3-4 (with Broomfield, Westminster, and City of Boulder voting in favor). The original motion was put back on the table and passed 5-2 (with Broomfield, City of Boulder, Boulder County, Jefferson County, and Superior voting in favor). Lorraine said she could not support the motion as it was ill-conceived.

LSO Membership

David Abelson began by reviewing LSO topics discussed thus far, including a draft mission statement, draft organizational objectives/interests, and draft responsibilities/scope of work. At this meeting the Board, along with Gerald DePoorter and Ken Korkia with the RFCAB, will discuss the more difficult topic of LSO membership. David said he sees three questions emerge: 1) which governments should be part of the LSO, 2) which, if any, non-elected officials should be involved, and 3) what should be the role of the non-elected officials? David said the goal should be to create an organization that can withstand changes over time as interests fade and focus changes. He cited the examples of elected officials appointing members to commissions and boards, and listed potential members coming from refuge user groups and former employees. David said it would be a mistake to exclude non-elected officials, but he also reminded the Board to consider lessons learned from RFLII.

Gerald stated the RFCAB agreed with the Coalition on the prior LSO topics, but there is a vast difference of opinion over LSO membership, specifically the role of non-elected members. The RFCAB would like to see an approach in which everyone sits at the table equally, as worked for the RSAL Oversight Panel. Karen Imbierowicz asked if it was David's perception that RFLII did not work because non-elected members had voting power. David said it fell apart for multiple reasons including the dialogue growing stale and people stopped showing up, but there was general sentiment among the elected officials that it did not work to have equal voting. Lisa Morzel said another problem with RFLII had been the huge size of the group becoming unmanageable, while the RSALOP had consisted of sixteen people. Barb Vander Wall said the key to both RFLII and the Coalition was in keeping them a unit of local government following a statutory framework, establishing a contract amongst the governments, but under each government members were eligible to participate in discussions.

Lorraine Anderson said that governments currently involved in the Coalition are the governments most directly affected by Rocky Flats and should thus be the governments involved in the LSO, especially the first five years of monitoring and refuge implementation. As far as non-elected members, Lorraine suggested people who would be onsite such as DOE, regulators and USFWS. She questioned whether each government or the Board as a whole would appoint these members. David said the RFCAB recommends the latter approach, having potential non-elected members apply directly to the Board, thus creating greater Board ownership and not locking any members in. Ken suggested finding a way to designate certain categories of interest and allowing these groups to designate an official representative. Shaun McGrath said it would also be important to involve the congressional delegation, finding a way to allow them to make appointments or put their designee on the Board. Lorraine also suggested finding a way to weight the votes.

Gary Brosz said local government boards and commissions are focused on topic areas and are viewed as being biased stakeholders in that general topic area. Although he greatly values their recommendations to city council, they are not involved in final decisions and he would be uncomfortable allowing them a voting decision. Ken said the distinction is that non-elected members on the LSO would not be involved in local government fiduciary decisions. Lorraine responded that the decisions could affect the health, safety, and welfare of the community, a job which they were elected by the citizens to do. Ken said he worries about creating a bureaucratic level of government between citizen voices and DOE, noting that citizen advisory boards have successfully worked with DOE for twenty years. He suggested finding a way to allow citizens to have a voice, perhaps by creating an executive committee of elected officials responsible for management and making decisions while still allowing the opportunity for everyone to sit at the table and speak as equals.

Shaun said he did not see a problem with allowing non-elected members equal decision-making capacity, especially since post-closure there will be fewer decisions. He also agreed with Lisa that the Board should probably be no larger than fifteen members, perhaps expanding to involve Golden and Northglenn. Gary disagreed, and said there have been several times as an elected

official when he has voted to represent the view of Broomfield when it was not his personal view. He said stakeholders are not under the same constraints to represent the broad community, and to be statistically balanced then their representative would have to be very small. Sam Dixon said she has no problem with non-elected involvement, especially citizens who had been involved with Rocky Flats and retirees. She added that federal government and regulator positions on the Board would not be necessary since they are already involved in meetings and have the opportunity to speak. Nanette Neelan noted that although there is not agreement on the issue of voting versus non-voting, it appears everyone agrees that non-elected members must be actively engaged at the table. Jane Uitti also raised the issue of governments paying annual dues and how that might impact perceived status of members. David said reaching agreement on allowing non-voting members substantive involvement is a huge step, and they can now move forward to the next level of dialogue. He said the LSO discussion will continue at the next Board meeting, to which Mike Owen, Director DOE Office of Legacy Management, has been invited.

Public Comment

There was no further public comment.

Updates/Big Picture Review

Broomfield - Gary Brosz asked if the independent review subcommittee's function would now be closed. David said the subcommittee is affectively in hibernation as it had served its purpose, but could regroup if needed.

Big Picture - The Board reviewed the Big Picture. The February 7th meeting will include a report back on independent review, continued discussion of the LSO, a review of draft lobbying materials, and possibly a discussion on the Coalition communication strategy.

The meeting was adjourned by Karen Imbierowicz at 12:14 p.m.

Respectfully submitted by Kimberly Lohr, Assistant Director