

ROCKY FLATS STEWARDSHIP COUNCIL

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Jefferson County -- Boulder County -- City and County of Broomfield -- City of Arvada -- City of Boulder
City of Golden -- City of Northglenn -- City of Westminster -- Town of Superior
League of Women Voters -- Rocky Flats Cold War Museum -- Rocky Flats Homesteaders -- Ken Foelske

November 6, 2006

Mr. Michael Owen
Director, Office of Legacy Management
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Mr. Robert Roberts
Regional Administrator
Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202

Mr. Dennis E. Ellis
Executive Director
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246

Dear Messers. Owen, Roberts and Ellis,

On behalf of the Board of Directors of the Rocky Flats Stewardship Council I am writing to update you on important issues affecting the working relationship between your agencies and the Rocky Flats Stewardship Council and its members, and to raise one important issue that we believe was improperly addressed in the CAD/ROD.

There were many reasons why the Department of Energy, Kaiser-Hill, the Environmental Protection Agency and the Colorado Department of Public Health and Environment were successful in remediating Rocky Flats. One of the critical elements that is often overlooked or not understood by some is the collaborative relationship that developed between these parties and local communities in addressing and solving complex technical and policy issues. While collaboration is not always an easy process, DOE and the regulators' commitment to view local communities as partners was instrumental in ensuring the final cleanup was not simply regulatory compliant but also met important community interests and goals. One of the critical reasons productive relationships developed was a result of your agencies' understanding that

regulatory requirements regarding community engagement were starting points, not regulatory maximums. With the cleanup project now approved, we are starting to see signs that community involvement will be more limited and in turn increasingly reactionary, a situation that neither benefits your agencies nor the Stewardship Council and its members.

The nature of the decisions that will be made post-closure will be fewer and less complex. For that reason the multi-layered public involvement processes that were followed during cleanup should change. Nevertheless, it remains imperative that the Stewardship Council and its members maintain a productive and proactive working relationship with DOE, EPA and CDPHE. We are concerned that the three agencies talk about the importance of maintaining productive relationships with the local community, but that the agencies' actions fall short.

Following are two examples. First, for many years the Rocky Flats Coalition of Local Governments, the Rocky Flats Citizens Advisory Board, local governments and others pressed DOE, EPA and CDPHE to specify the long-term controls the agencies would use to manage residual contamination. One of the agencies' mantras was that we needed to wait for the CAD/ROD. To specify such controls prior to the signing of the CAD/ROD, the agencies argued, would be pre-decisional and thus in violation of applicable federal and state regulations. We had been led to believe that at the time the CAD/ROD would be signed local communities would be afforded the opportunity to discuss and address their issues with DOE and the regulators. Our experience was mixed. While conversations on the Proposed Plan were many and were productive, the agencies allowed no time to discuss the CAD/ROD or how our issues would be addressed and resolved in this important regulatory document.

In fact, as you know, because the EPA-Headquarters wanted to meet an arbitrary goal of approving a certain number of remedial actions in fiscal year 2006, the agencies approved and signed the CAD/ROD sixteen days (including weekends) following the close of the Proposed Plan comment period. Prior to approval of the CAD/ROD, there was no discussion of how the issues the Stewardship Council and others raised in their comments on the Proposed Plan would be addressed – and in nearly all cases the issues we and others raised were rejected by your agencies. In one instance a key legal issue the Stewardship Council raised was not addressed in the agencies' response to comments. DOE did address the issue at our board meeting following the issuance of the CAD/ROD, but in the rush to finalize the CAD/ROD this important issue was overlooked.

Second, some of our member governments are increasingly worried that they will no longer have adequate access to information or be afforded the opportunity to continue to proactively address surveillance and maintenance issues directly with your agencies. As the Stewardship Council has noted previously and reiterates in this letter, the existence of the Stewardship Council should not become the sole forum for governments and others in the local community to address issues with your agencies. Direct communication remains important.

We believe Mike Owen shares this position. As he stated in his December 21, 2005, letter to the Rocky Flats Coalition of Local Governments in which he approved the Local Stakeholder Organization (LSO) plan for Rocky Flats, "it was never intended that the LSO would be the only forum for stakeholders to communicate with DOE." Similarly, the LSO plan Mr. Owen

approved provides “not all communication between LM and Rocky Flats constituencies will flow through the LSO.” The types of direct communication we would like your agencies to support are addressed in this letter.

With this background, we ask that you revisit the following issues. For ease of communication we have addressed this letter to the three agencies. However, in responding to these issues we request your agencies respond individually.

Collaborative Approaches to Water Quality Issues

As you know, monitoring, particularly water quality monitoring, is a critical post-closure stewardship responsibility and a high priority issue for the Stewardship Council and its members. We are concerned that the changes the agencies are making to the current Integrated Monitoring Program (IMP) process will hamper the ability of the community to substantively engage DOE, EPA and CDPHE as data is evaluated and changes to the monitoring network are made.

The process DOE, EPA and CDPHE utilized in developing the monitoring program included substantive dialogue with local governments and other community members – identifying and discussing the technical needs of the monitoring program, discussing and, in large part, agreeing to the specific locations of the surface water monitoring stations and groundwater well locations, and other issues central to the establishment and management of the current water quality monitoring program. The decisions, importantly, reflect technical and policy considerations. This process, which was part of the IMP, included collaborating with local governments and others on the establishment of the post-closure monitoring network. The Stewardship Council wants to ensure this important dialogue continues post-closure.

The Stewardship Council has been informed by DOE, EPA and CPDHE that post-closure the IMP will be replaced by the standards and protocols captured in the Rocky Flats Legacy Management Agreement. We recognize that with closure changes to the regulatory framework will and should be made, and we are not asking that the IMP process (or whatever name the agencies apply post-closure) be maintained without change. However, we remain concerned that one of the cornerstones of the IMP – proactively addressing issues with local governments and others – will be replaced by a more traditional, limited regulatory approach to decision making, namely the agencies reaching agreement on changes and then notifying the Stewardship Council and others of the changes.

Among others steps, we request DOE and the agencies work with the Stewardship Council and its members as issues are being debated, options to addressing issues are identified and actions are designed and implemented. We do not want to be brought to the table at the end of the process when decisions have been made, regardless of whether there is ultimately a public comment period. To bring the Stewardship Council and its members in at the end of the dialogue would set in motion a decision making framework that resembles the often maligned “announce-and-defend” policies that, while regulatory compliant, frequently lead to lack of community acceptance and support of agency actions.

To be clear, we are not asking to serve as a *de facto* regulator, nor are we asking that the agencies not alter the existing IMP. Rather, we are asking that the collaborative approach that

characterized community involvement under the IMP issues be maintained post-closure – and importantly, we are asking that conversations take place at Stewardship Council meetings, during agency working group meetings in which our staff and members can attend, and, as necessary, with individual governments and other members of the community.

DOE, more so than EPA or CDPHE, reminds the Stewardship Council that Congress established and provided funding for our organization and that the role of the Stewardship Council, as the DOE-designated Local Stakeholder Organization (LSO) for Rocky Flats, is to be the primary community forum for addressing site issues. While we agree with DOE's understanding of the role and purpose of the LSO, it is also important to bear in mind that as the LSO for Rocky Flats we have consistently stated that dialogue outside of the periodic LSO meetings remains essential. We have also indicated that the partnerships that were established during cleanup must be maintained. One of the most fruitful dialogues was IMP meetings.

We understand based on conversations with your staff that DOE, EPA and CDPHE have different understandings of the utilitarian value of this request. We would therefore request that each agency clarify its position on proactively addressing water quality issues with the community, including working with us as (a) issues are being debated, (b) options to addressing such issues are identified, and (c) actions are designed and implemented.

Quarterly Data Meetings

One area where conversations with DOE, EPA and CDPHE have proven fruitful concerns DOE's quarterly community briefing during which time they evaluate monitoring data from the prior quarter. As the Stewardship Council has stated publicly, and as we have discussed with your staffs, we continue to support these important meetings. These conversations, however, must continue to include two related but separate meetings – high-level public briefings (briefings that will likely continue to take place at Stewardship Council board meetings) and more technical briefings as requested by the community. This format allows the Stewardship Council to be briefed on the monitoring results while continuing to allow technical staff to more freely engage DOE, EPA and CDPHE on the detailed technical issues that are beyond the depth of conversation that occurs at the board level. The cities of Westminster and Broomfield have offered to host the technical briefings, and along with the city of Northglenn, these governments are the prime beneficiaries of these meetings.

We are pleased to report that for now DOE has agreed to this format and EPA and CDPHE have supported DOE's decision. While this format requires additional work on behalf of DOE, EPA and CDPHE, we believe this approach of two meetings meets the interests and needs of our membership. As we move forward, and as DOE revises the Post-Closure Public Involvement Plan in the coming months, we want to reiterate the importance of these meetings for the Stewardship Council and its members.

As the LSO for Rocky Flats, one of our goals is to work with DOE to ensure that the communication systems DOE and the agencies adopt meet the needs of the Rocky Flats community. For now it is clear that DOE should continue to host two quarterly meetings. If this request becomes overly burdensome then the solution lies in providing additional monies for

Rocky Flats, not in limiting community interaction on important issues that go to the heart of evaluating the long-term protectiveness of the cleanup.

In order to ensure we understand each agency's position on these meetings, we request that each agency clarify its position on the data exchanges, including, as requested by the community, holding two meetings.

Communication with Downstream Communities

One of the unforeseen reactions stemming from the legislation authorizing the creation of the LSO for Rocky Flats is differences of opinion regarding the role of the LSO relative to the role of individual governments and community organizations. The Stewardship Council believes strongly in its mandate to serve as the LSO, but as stated repeatedly, while the Stewardship Council is the central forum for community engagement, the organization should not be the exclusive forum.

The cities of Westminster, Broomfield and Northglenn remain concerned that DOE, in particular, is trying to limit working with them on a government-to-government basis. These governments actively participate in the Stewardship Council and strongly believe in the vision and role of the Stewardship Council as the LSO. Additionally, historically these governments have put great emphasis on direct dialogue with DOE, EPA and CDPHE. The Stewardship Council supports its members' request that your agencies maintain direct communication with these governments (and for that matter, direct interaction with any other local government or community group that so requests such interaction).

In past years, agency communication with these governments included pre-discharge notification of the terminal ponds, notification of elevated levels of contamination at the surface water points of compliance and points of evaluation, notification of elevated levels of contamination in groundwater wells, and notification of the use of herbicides or other constituents that could be detected at downstream water monitoring locations prior to their application.

At this time we do not know the extent to which DOE, EPA and CDPHE will maintain these avenues of direct communication. We therefore request your agencies let us know its intentions for post-closure communication. Specifically, we would like you to identify your commitment to communicate directly with both the Stewardship Council and with its members, and your commitment to notify communities of actions or monitoring results that could affect their communities.

Annual Sampling of Terminal Ponds

The sole non-process issue we ask you to address at this time concerns an issue the Stewardship Council and some of its members raised in comments on the Proposed Plan – annual sampling of the terminal ponds (A-4, B-5, C-2). Our letter on the Proposed Plan included the following provision:

A related issue concerns testing water in years where there are no discharges. Specifically, water in the terminal ponds is only tested prior to releases – and yet, in some years there will be no discharges. Thus, in those years, water in the

terminal ponds will not be tested. The Stewardship Council strongly recommends that in the event water is not discharged in a given year, DOE should nevertheless test water in the terminal ponds no less than one time per year to measure water quality and thus help determine remedy effectiveness.

Like other issues the Stewardship Council and its members raised – identifying the controls DOE will use to protect monitoring stations located on Refuge lands, additional layering of controls, to name two – the agencies rejected this request for annual sampling of the terminal ponds with little explanation. We ask you to revisit this issue. Specifically, as CDPHE noted in recent conversations with our staff, if five years pass in which the terminal ponds are not discharged, there will be a data gap when the agencies undertake their CERCLA five-year review. Without data indicating changes in concentrations of contaminants in the terminal ponds, there will be little regulatory basis for determining whether changes to the ponds to address either human or ecological risk issues are warranted. We support the monitoring system that has been established. However, we do not agree with DOE's conclusion that upstream monitoring stations will alone provide the qualitative information the agencies will need to determine remedy effectiveness and thus regulatory compliance.

Again, we request you review this decision.

The Stewardship Council commends DOE, EPA and CDPHE for achieving a cleanup that meets or exceeds stringent regulatory requirements and that meets critical community interests. As we move forward we remain committed to objectively reviewing site activities and collaborating on future decisions. The communication mechanisms developed and implemented during cleanup activities established an important model that others should appropriate when addressing complex environmental remediations. What we are seeking is to continue these types of dialogues and establish a framework for how governments can collaborate following the completion of cleanup activities to ensure the cleanup remains protective.

Should you have any questions about the issues raised in this letter, please contact me or our Executive Director, David Abelson.

Sincerely,



Lorraine Anderson
Chairman

Cc: Senator Wayne Allard
Senator Ken Salazar
Representative Mark Udall
Representative Bob Beauprez
Frazer Lockhart, DOE
Scott Surovchak, DOE
Mark Aguilar, EPA
Carl Spreng, CDPHE
David Kruczek, CDPHE
Dean Rundle, USFWS