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Date By

Ref. Ltr. #

DOE ORDER #
NONE

Mr. Steve Gunderson
Rocky Flats Cleanup Agreement Project Coordinator
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Mr. Tim Rehder
Rocky Flats Cleanup Agreement Team Leader
United States Environmental Protection Agency
999 18th Street, Suite 500
Denver, Colorado 80202-2466

Dear Mr. Gunderson and Mr. Rehder:

Enclosed for your review is the Rocky Flats Cleanup Agreement (RFCA) Annual Review for fiscal year 2002. Included in the report is the summary of the annual review for RFCA Appendix 3, Implementation Guidance Document. The RFCA Parties agreed that updates to RFCA Appendix 3 be completed once the final modifications and additions to RFCA Attachments have been approved. Please provide your comments on this document as soon as possible.

If you have any questions or comments, please contact Rick DiSalvo at (303) 966-4765.

Sincerely,

for

Joseph A. Legare, Assistant Manager
for Environment and Stewardship

Enclosures
cc w/Enc:
R. DiSalvo, RC, RFFO
S. Bell, OCC, RFFO
D. Shelton, KH
L. Brooks, KH

# 2002 ROCKY FLATS CLEANUP AGREEMENT
# ANNUAL REVIEW
# DECEMBER 2002

## 1.0 BACKGROUND

The Rocky Flats Cleanup Agreement (RFCA or Agreement) was signed by the Department of Energy (DOE), the Environmental Protection Agency (EPA) and the Colorado Department of Public Health and Environment (CDPHE) on July 19, 1996. (DOE, EPA, and CDPHE are collectively referred to as the "RFCA Parties.") The RFCA Parties have committed to review the Agreement to determine if any revisions are necessary. RFCA paragraph 5 states:

*The Parties shall conduct an annual review of all applicable new and revised statutes and regulations and written policy and guidance to determine if an amendment pursuant to Part 19 (Amendment of Agreement) is necessary.*

In addition to the annual review prescribed in RFCA paragraph 5, the agencies committed to conducting an internal annual review of the radionuclide soil action levels (RSALs). Questions to be addressed on an annual basis include:

1. Is there new scientific information available that would impact the interim action levels?
2. Has a national soil action level been promulgated within the year? If yes, the parties commit to revisit the Rocky Flats interim action levels.
3. How were the interim action levels applied to the site over the course of the year?
4. Have the remedies been effective?

(See, Responsiveness Summary for Soil Action Levels released on November 6, 1996.)

This report is a summary of the Parties' calendar year 2002 regulatory/radionuclide soil action levels annual review.

### 1.1 What the Parties reviewed this year

The following environmental laws and associated regulations, written policy and guidance were reviewed:

Comprehensive Environmental Response, Compensation, and Liability Act;
Resource Conservation and Recovery Act/Colorado Hazardous Waste Act;
Toxic Substances Control Act;
Clean Water Act, Colorado Water Quality Control Act, Safe Drinking Water Act;
National Environmental Policy Act;
Endangered Species Act;
Radiation Related Document Review; and
Defense Authorization Acts and Appropriation Acts.

In addition to the above environmental laws and the radionuclide soil action levels, the Preliminary Remediation Goals (PRGs), RFCA Attachment 5, Action Levels and Standards Framework for Surface Water, Ground Water and Soils, and RFCA Appendix 3, Implementation Guidance Document (IGD) were reviewed. Summaries of these reviews are described below.

## 1.2 Other reviews

Pursuant to RFCA paragraph 281, DOE developed, in consultation with CDPHE and EPA, a revised Community Relations Plan entitled "Rocky Flats Site-wide Integrated Public Involvement Plan" (Plan). The Plan was completed in March 1998 and is available in the Rocky Flats Public Reading Rooms. RFCA requires an annual review of this document. The RFCA Parties updated the Plan in 2002. The Plan was available for a 30-day public comment period that closed on November 25, 2002. A final Plan is scheduled for completion in mid-2003.

The Integrated Monitoring Plan was updated in 2002 and is being reviewed for FY03. An Integrated Monitoring Plan Working Group was formed including members from DOE and its contractors, EPA, CDPHE, and stakeholders. The final FY03 Integrated Monitoring Plan is scheduled for completion in mid-2003.

DOE reviews and updates, as required: the Environmental Restoration Ranking (RFCA paragraph 79); the Administrative Record (RFCA paragraph 284); the summary level baseline (RFCA paragraph 141); and the Historical Release Report (RFCA paragraph 119(l) on an annual basis. These reviews were completed in September 2002.

The Integrated Water Management Plan is also reviewed annually; the Rocky Flats Water Working Group will conduct the next review of the Integrated Water Management Plan.

For more information on any of the above documents, contact either a RFCA Project Coordinator or an Agency community relations representative.

# 2.0 ENVIRONMENTAL STATUTES

As stated above, all major environmental laws, regulations, written policy, and guidance were reviewed. If there was a change to an environmental law, regulation, written policy or guidance, the Rocky Flats Environmental Technology Site (RFETS, includes the physical site itself, and, in context, the DOE and Kaiser-Hill, LLC) reviewed whether the change had been implemented at the site and whether the change impacted RFCA. This review was completed by RFETS and reviewed by the RFCA Parties.

## 2.1 Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was not reauthorized or amended in 2002. EPA has not amended or promulgated new regulations on the National Oil and Hazardous Substances Pollution Contingency Plan; however, EPA has issued several new polices and guidance documents that may be used at Superfund sites. Here is a partial list of EPA's new policy and guidance documents that were issued since July 1, 2001 that may be relevant to RFETS:

1. Risk Assessment Guidance for Superfund: Volume I Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments), December 2001. Part D provides guidance on risk assessment planning, reporting, and review throughout the CERCLA remedial process. Part D strives for effective and efficient implementation of Superfund risk assessment practice described in Parts A, B, C, and E, supplemental Office of Solid Waste and Emergency Response (OSWER) directives and other Agency risk assessment guidance. OSWER Directive 9285.7-47. (URL: www.epa.gov/superfund/programs/risk/ragsd/index.htm.)

2. Principles for Managing Contaminated Sediment Risks at Hazardous Waste Sites, February 12, 2002. The purpose of this guidance is to help EPA site managers make scientifically sound and nationally consistent risk management decisions at contaminated sediment sites. It presents 11 risk management principles that should be considered when planning and conducting site investigations, and selecting and implementing a response. OSWER Directive 9285.6-08.
3. Risk Assessment Guidance for Superfund: Volume III Part A: Process for Conducting Probabilistic Risk Assessment, April 18, 2002. This guidance document was created to establish national criteria to conduct and review Superfund probabilistic risk assessments. OSWER Directive 9285.7-45. (UTL: www.epa.gov/superfund/RAGS3A/index.htm.)
4. Role of Background in the CERCLA Cleanup Program, May 1, 2002. This policy statement clarifies EPA's preferred approach for the consideration of background constituents concentrations of hazardous substances, pollutants, and contaminants in certain steps of the remedy selection process, such as risk assessment and risk management, at CERCLA sites. OSWER Directive 9285.6-07P.

## 2.2 Resource Conservation and Recovery Act/Colorado Hazardous Waste Act

EPA issued a final rule in the Federal Register on October 3, 2001 at 66 FR 50332 entitled, "Correction to the Hazardous Waste Identification Rule: Revisions to the Mixture and Derived-from Rules; Direct Final Rule." The effective date of this rule was February 1, 2002. Because the rule is less stringent than current Colorado Hazardous Waste Act requirements, the State of Colorado must adopt the regulation prior to the regulation being implemented at RFETS. RFETS is monitoring the State of Colorado regulatory activities related to this rule.

On January 22, 2002 at 67 FR 2961, EPA promulgated six amendments to the 1993 Corrective Action Management Unit (CAMU) regulations:

1. Established a specific definition, distinct from the definition of remediation waste, to govern the types of wastes that are eligible for placement in CAMUs.
2. Established more detailed minimum design and operating standards for CAMUs in which waste will remain after closure, with opportunities for Regional Administrators to approve alternate design standards under certain circumstances.
3. Established treatment requirements for wastes that are placed in CAMUs, including minimum treatment standards, with opportunities to adjust treatment requirements under certain circumstances.
4. Established more specific information requirements for CAMU applications and is explicitly requiring that the public be given notice and a reasonable opportunity for public comments before final CAMU determinations are made.
5. Established new requirements for CAMUs that will be used only for treatment and storage.
6. "Grandfathered" certain types of existing CAMUs and allows them to continue to operate under the 1993 rule.

The regulation was effective on April 22, 2002. This regulation is more stringent than the Colorado Hazardous Waste Act provisions and will be applicable if CAMUs are used during RFETS actions.

EPA and CDPHE have issued several new polices and guidance documents that may be used at Superfund sites. Here is a partial list of EPA's and CDPHE's new policy and guidance documents that were issued since July 1, 2001 that may be relevant to RFETS:

1. TANKS Version 4.09b, posted September 27, 2001. TANKS is a Windows-based computer software program that estimates volatile organic compound and hazardous air pollutant emissions from fixed- and floating-roof storage tanks. This program is used, when necessary, for emission calculations. (http://www.epa.gov/ttn/chief/software/tanks/index.html.)
2. Universal Waste Rule Compliance Bulletin, September 2001. (http://www.cdphe.state.co.us/hm/hmwhatsnew.asp.)
3. Guidance on Demonstrating Compliance With the Land Disposal Restrictions (LDR) Alternative Soil Treatment Standards, July 2002. The purpose of this guidance is to provide suggestions and perspectives on how to demonstrate compliance with the alternative treatment standards for certain contaminated soils that will be land disposed and, therefore, will be subject to the RCRA LDR regulations. OSWER Directive 530-R-02-003.

## 2.3 Toxic Substances Control Act

Within the review period, DOE and EPA clarified implementation of EPA's Polychlorinated Biphenyls (PCBs) bulk product waste rule (40 CFR 761.62) at RFETS. Pursuant to a letter from Kerrigan Clough to Joe Legare, Approval of Risk-Based Approach for PCB– Based Painted Concrete, November 2001, concrete painted with PCB-based paints may be left in place in the basements of demolished buildings, and concrete rubble containing PCB-based paints may be stored onsite and used as backfill. This clarification will be added to the comment for 40 CFR 761.62 in the Master List of Potential Applicable or Relevant and Appropriate Requirements (ARARs) contained in RFCA Appendix 3 IGD, Appendix K, Master List of Potential ARARs.

## 2.4 Clean Water Act, Colorado Water Quality Control Act, and Safe Drinking Water Act

### 2.4.1 Clean Water Act

There were numerous federal actions taken under authority of the Clean Water Act in the period July 1, 2001 through June 30, 2002, some of which impact RFETS, either immediately or in the long term.

Water Quality Standards

In May 2002, EPA issued a Draft Strategy for Water Quality Standards and Criteria to lay out the long range planning for development of water quality standards. In June 2002, the agency issued draft guidance on water quality criteria for bacteria, *Implementation Guidance for Ambient Water Quality Criteria for Bacteria.* Both documents were intended to initiate public discussion leading to final development of a long-range strategy for standards and criteria and for the development of criteria for bacteria. While there is no immediate impact to RFETS, long-range planning and criteria development may lead to eventual applications to the Site. RFETS will continue to monitor regulatory activities associated with water quality standards.

Permit for the Management of Biosolids

EPA Region VIII promulgated a general permit for biosolids management at federal facilities in the State of Colorado. The permit was published in June 2002 for final comment. The permit covers facilities that generate biosolids from wastewater treatment and allows management by land application, disposal at a sanitary landfill or surface disposal. The general permit is applicable to the Site.

### 2.4.2 Colorado Water Quality Control Act

Section 309

In the 2002 legislative session, Colorado adopted a new section to the Water Quality Control Act, Section 309. In addition to authorizing changes in the permit fee structure, Section 309 also required the health department to initiate a thorough review of water quality standards and use classifications for all Colorado waters, with a special charge to consider the "unique" characteristics of the state's water. The health department has convened a work group to help guide it through this complex task. A final report from the Water Quality Control Division is due to the legislature in December 2003. Site personnel have participated in the work group to monitor progress. Water quality information collected at RFETS may be valuable in clarifying the discussion of the "unique" characteristics of state waters, especially for intermittent streams and effluent-dominated streams with periodic flow.

Commission Actions

The Colorado Water Quality Control Commission did not take any formal action from July 1, 2001 through June 30, 2002 that would result in any changes to RFCA.

### 2.4.3 Safe Drinking Water Act

No new or revised Maximum Contaminant Levels were adopted since the last update or any other changes to the Safe Drinking Water Act that would apply to RFETS activities.

## 2.5 Clean Air Act

EPA and the State of Colorado continued to promulgate regulations under the existing Act, but the majority is not applicable to RFETS activities. Where new regulations were applicable there were no new compliance requirements. RFETS will continue to monitor regulatory activity associated with this effort.

Colorado Air Quality Control Commission (CAQCC) Regulation No. 3

The CAQCC revised the "Air Contaminant Emissions Notices" regulations on July 18, 2002. The provisions concerning nonroad engines have changed substantially. The prior regulation exempted certain nonroad engines from Air Pollutant Emission Notice (APEN) and permitting requirements (fuel-fired generators, pumps, and compressors). To reconcile air quality concerns with these nonroad engines, the State has created a new state-only nonroad engine program for certain nonroad engines. An APEN must be filed for a nonroad engine if a trigger level will be exceeded (based on hours of operation). While these changes are significant, RFETS already has a program in place to identify and track these engines.

CAQCC Regulation No. 8 Part A, Subpart H (40 CFR 61, Subpart H)

EPA revised the "Control of Hazardous Air Pollutants" regulations on September 9, 2002 at 67 FR 57159. The revisions incorporated ANSI 13.1-1999 by reference, making shrouded-probe sampling systems mandatory for significant new or modified effluent release points. The revisions also add new Inspection and Maintenance requirements for all sampling systems (new and existing). The revisions are anticipated to have minimal impact on the Site, if adopted by the State of Colorado. RFETS has already upgraded existing sampling systems to included shrouded

probes and has agreed to install shrouded probe systems in any new significant source of radionuclide emissions. DOE is reviewing with CDPHE whether the new Inspection and Maintenance requirements will apply to existing effluent sampling systems at RFETS since these systems are no longer used to demonstrate compliance with the radionuclide National Emission Standards for Hazardous Air Pollutants standard. This could have an impact on the Integrated Monitoring Plan, which implements RFCA compliance for all monitoring systems.

### 2.6 National Environmental Policy Act

No separate National Environmental Policy Act reviews have been required or performed under RFCA pursuant to RFCA paragraph 95.

### 2.7 Endangered Species Act

On July 17, 2002, the Department of Interior Fish and Wildlife Service issued a proposed rule (67 FR 47154) that would designate critical habitat for the Preble's meadow jumping mouse pursuant to the Endangered Species Act of 1973, as amended. DOE submitted comments during the public comment period.

### 2.8 Radiation Related Document Review

See, Section 3.0 Radionuclide Soil Action Levels, below.

### 2.9 Summary

Based on the review of the environmental statues and associated regulations, written policy, and guidance, no amendment to RFCA is required at this time. However, the comment concerning Section 2.3, TSCA, PCBs, 40 CFR 761.62, will be incorporated in the RFETS Master List of Potential ARARs and updated as described in §2.3 of TSCA (RFCA Appendix 3 IGD Appendix K.)

## 3.0 RADIONUCLIDE SOIL ACTION LEVELS

The RFCA Parties continued their review of the RSALs during the review period. The RFCA Parties completed their review and summarized their results in *Results of the Interagency Review of Radionuclide Soil Action Levels*, September 30, 2002, which is online at www.rfets.gov. The RFCA Parties have proposed that RFCA Attachment 5 be modified to reflect the new RSALs. Proposed modifications to Attachment 5 were available for public comment in accordance with RFCA paragraph 117 from November 12, 2002 through January 31, 2003. A public meeting was held on December 17, 2002.

In addition to the annual review requirements prescribed in RFCA paragraph 5, the RFCA Parties also addressed the four questions discussed in the introduction. The RSAL working group reviewed questions 1 and 2 as part of its review. Findings are included in the Agency report discussed above. Regarding question 3, while interim RSALs were applied as data quality objectives for a number of accelerated actions taken at the site over the course of the review period, the results of these actions were also compared to the new proposed RSALs to ensure the actions met the proposed requirements. Monitoring of past remedies, e.g., Mound Site Plume and T-1, continues; the effectiveness of past remedial actions is still being determined by the ground water monitoring program.

## 4.0 PRELIMINARY REMEDIATION GOALS

The RFCA Parties updated the risk-based PRGs (formerly known as Preliminary Programmatic Remediation Goals or PPRGs) in 2002, including a new future land use scenario and receptor, the wildlife refuge worker. The new scenario and receptor were deemed appropriate after the passage in December 2001 of the Rocky Flats National Wildlife Refuge Act, designating RFETS as a National Wildlife Refuge. The exposure pathways; methodology, equations, and assumptions; and chemical toxicity information for both human and ecological receptors can be found in RFCA Appendix 3 IGD, Appendix N, Preliminary Remediation Goals.

## 5.0 RFCA ATTACHMENT 5: ACTION LEVELS AND STANDARDS FRAMEWORK FOR SURFACE WATER, GROUND WATER AND SOILS

The RFCA Parties have identified changes to action levels that impact RFCA Attachment 5. Proposed modifications to Attachment 5 were available for public comment in accordance with RFCA paragraph 117 from November 12, 2002 through January 31, 2003. A public meeting was held on December 17, 2002.

## 6.0 IMPLEMENTATION GUIDANCE DOCUMENT

RFCA Appendix 3, IGD was reviewed by the RFCA Parties to determine if an update was necessary. Appendices K, Master List of Potential ARARs, and N, Preliminary Remediation Goals to the IGD were updated. Appendix M, Action Levels for Radionuclides in Soils was deleted. Information on Action Levels for Radionuclides in Soils can be found in *Results of the Interagency Review of Radionuclide Soil Action Levels*, September 30, 2002, which is online at www.rfets.gov. Stakeholders interested in obtaining copies of the updated appendices should contact either a RFCA Project Coordinator or an Agency community relations representative.