

ROCKY FLATS SITE

REGULATORY CONTACT RECORD 2018-03

Purpose: Documentation of *Rocky Flats Legacy Management Agreement* (RFLMA) Parties Agreement on Posting Written Correspondence and Attached *Guidelines for Posting Written Correspondence*

Contact Record Approval Date: June 4, 2018

Site Contact(s)/Affiliation(s): Scott Surovchak, Jeffrey Murl, U.S. Department of Energy (DOE); Linda Kaiser, David Ward, Patty Gallo (Navarro Research and Engineering, Inc. [Navarro])

Regulatory Contact(s)/Affiliation(s): Carl Spreng, Lindsay Masters, Colorado Department of Public Health and Environment (CDPHE); Vera Moritz, U.S. Environmental Protection Agency(EPA)

Date of Consultation Meeting: January 25, 2018, and March 20, 2018

Consultation Meeting Participants: Scott Surovchak, Jeffrey Murl, Carl Spreng, Lindsay Masters, Vera Moritz, Linda Kaiser, Jeremy Wehner, David Ward, Patty Gallo, John Boylan, George Squibb, Michelle Hanson

Related Contact Records: CR 2009-05

Introduction: The RFLMA establishes the consultation process for approving postclosure activities at the Rocky Flats Site (Site) (RFLMA Paragraph 11). The consultation process utilizes a cooperative approach in which the RFLMA Parties confer to reach agreement regarding a proposed course of action. A Contact Record (CR) is often the vehicle for documenting the consultation process. However, as recognized by RFLMA, written correspondence may also be used to document consultations (RFLMA Attachment 2, Section 4.0). The purpose of this CR is to document the RFLMA Parties agreement to (1) post written correspondence documenting consultations to the DOE's Office of Legacy Management (LM) website and (2) to use previously approved Soil Disturbance Review Plans (SDRPs) for new work when it falls within the scope of an SDRP. These efforts will provide greater transparency and reduce duplication in DOE's Central Operable Unit operations and maintenance work proposals.

Discussion: RFLMA, Attachment 2, Section 4.0, “Institutional Controls” states, “DOE shall follow the RFLMA consultative process pursuant to Part 5 of RFLMA for any regulatory determination required regarding activities subject to institutional control.” This section also states

Results of consultation will be documented in contact records or written correspondence. Except for situations where immediate action is warranted, DOE will not implement the activity for which the regulatory determination is required until 10 calendar days after the contact record or written correspondence approving the activity is posted on the Rocky Flats website and notification of the posting is made to stakeholders in accordance with the RFLMA Public Involvement Plan.

- The RFLMA Parties agree that “written correspondence” in the context of a RFLMA Paragraph 11 consultation, refers to RFLMA Party letters and emails, and the Site quarterly and annual reports. Examples of such written correspondence include regulatory determinations made by the RFLMA Parties that are not otherwise contained in CRs, notifications of actions not requiring a regulatory determination, and other documentation of RFLMA Party interactions.
- The RFLMA Parties agree that “the activity for which the regulatory determination is required” means an activity that requires approval by CDPHE, in accordance with the terms of RFLMA, CDPHE, and EPA’s Memorandum of Understanding (RFLMA, Appendix 1), as well as applicable laws, regulations, policy, and guidance.

Actions Addressed in Previously Approved CRs. A protocol was approved by the RFLMA Parties in CR 2009-05 pertaining to notification and CDPHE approval of actions and activities addressed in previously approved CRs. This protocol established that “CDPHE may receive notification of and approve the activities over the phone or in person, with e-mail follow-ups... The notification and approval of such work shall be reported in the next RFLMA annual report, in relation to the CR that originally covered the work.” However, in lieu of reporting these activities in Site annual reports, DOE may follow the documentation and posting process outlined in this CR. The RFLMA Parties will determine when it is appropriate to document and post written correspondence consistent with RFLMA. Attachment 1 to this CR, *Guidelines for Posting Written Correspondence*, may be considered by the Parties in making such determinations.

If DOE proposes an action discussed in a previously approved CR (with or without an attached SDRP), DOE will notify CDPHE via phone or in person and follow up with an email or other written correspondence. Upon approval or concurrence by CDPHE, a notification will be drafted using a standardized template. The notification will refer to the previously approved CR number and will be given a unique six-number identifier consisting of the date of CDPHE/EPA notification (month, day, and last two digits of the year). The completed notification will be posted on the *Contact Records* page of the LM website and a notice of posting will be sent to stakeholders via email. As long as the 10-day review period (if required) was satisfied with the posting of the previously approved CR, an additional 10-day review period upon posting the notification is not required.

RFLMA Paragraph 34 recognizes that field modifications that are within the scope of the previously approved CR may be necessary in implementing approved response actions. Although Paragraph 34 explicitly states that “no public notice is required for such field modifications,” DOE may choose to document and post the notification and approval using the process outlined in this CR at their discretion. The RFLMA Parties agreed that if DOE posts notification and approval of a field modification to the LM website, a 10-day waiting period prior to work commencing is not required.

Note: CR 2009-05 utilized the terms ‘closed out’ and ‘closed’ in reference to previously approved CRs for which actions had already been implemented. In that CR, the RFLMA Parties agreed to document the status of the actions or activities in approved CRs in the quarterly or annual reports. Although CRs have been referred to as ‘open’ or ‘closed’ for some time, it is necessary to make the distinction that it is the action or activity that is ‘open’ or ‘closed’ and not the CR or its regulatory determinations. The regulatory determinations and approvals documented in CRs do not become obsolete after an action is implemented or an evaluation is completed. The RFLMA Parties agree that in the future, CRs will not be referenced as ‘closed,’ ‘open,’ or ‘closed out’ and future quarterly and annual reports shall be written to reflect this distinction.

Actions Not Addressed in Previously Approved CRs. If DOE proposes an action not covered by a previously approved CR, but wants to use and refer to an existing SDRP attached to an approved CR, DOE will:

- Write a new CR proposing the new action.
- Review the existing SDRP for applicability to the activities covered by the new CR.
- Revise as necessary and republish the SDRP with the new CR.

The new CR (and attached SDRP) will be posted on the LM website and a notice of posting will be sent to stakeholders via email. There will be a 10-day public review period before the action is implemented. During this time, the RFLMA Parties will consider any public input.

An existing SDRP may be used if three conditions are met:

- (1) The conditions under which the SDRP was written have not significantly changed.
- (2) The location of the proposed action is the same or within the area covered under the existing SDRP.
- (3) The proposed action is similar to the action for which the existing SDRP was written.

Summary Table. The following table presents the RFLMA Parties consensus on the general approach to implementing this CR. However, consistent with the intent of the RFLMA consultation process, the RFLMA Parties may assess situations and make determinations on a case-by-case basis, at their discretion.

Action	Related Action	Regulatory Review	Post On Website?	10-Day Wait Period?
New activity with SDRP	None	CR and SDRP	Yes	Yes
Field modification to an ongoing activity	Previously approved CR and SDRP	Email of oral agreement	Yes	No
Additional activity in a SDRP area that is similar to the previously approved CR activity	Previously approved CR and SDRP activity that was already implemented	Email with results	Yes	No
Additional activity in a SDRP area that is <i>not</i> similar to the previously approved CR activity	Previously approved CR and SDRP activity that was already implemented	CR review	Yes	Yes
Routine maintenance activities authorized by an M&M plan or another approved plan	None	None	No	No

Resolution: CDPHE, after consultation with EPA, has determined that the written correspondence posting process provided in this CR is consistent with RFLMA and approves this CR and the attached *Guidelines for Posting Written Correspondence*.

Contact Record Prepared by: David Ward and Patty Gallo

Distribution:

Carl Spreng, CDPHE
Vera Moritz, EPA
Lindsay Masters, CDPHE
Scott Surovchak, DOE
Jeffrey Murl, DOE
Linda Kaiser, Navarro
Rocky Flats Contact Record File

Attachment 1

Guidelines for Posting Written Correspondence

The RFLMA Parties agree that the following guidelines may be considered for determining when written correspondence should be posted to the LM website. These guidelines do not address all situations or actions, but are intended as a tool to facilitate discussion among the Parties.

Written correspondence and posting to the LM website are appropriate for the following types of activities:

1. Activities directly associated with reportable conditions
 - For example, if analytical data is collected at a surface water (SW) location, the email notification that sampling was conducted and that results will be presented in a quarterly or annual report should be posted; the actual sample results do not need to be posted.
2. Nonroutine activities at landfills (i.e., activities not authorized by monitoring and maintenance [M&M] plans)

Written correspondence and posting to the LM website are typically not necessary for the following types of activities:

1. Routine maintenance activities authorized by the Original Landfill (OLF) and Present Landfill (PLF) M&M plans (CDPHE are notified of these actions in monthly and quarterly inspection reports and stakeholders are notified in quarterly reports), for example:
 - Removing sediment buildup
 - Filling and regrading of cracks, crevices, or eroded areas
 - Installing drainage improvements to maintain positive drainage
 - Constructing seep drains
 - Replacing or installing temporary erosion controls
2. Routine maintenance activities at groundwater (GW) treatment systems (CDPHE and stakeholders are notified in quarterly reports), for example:
 - Tray cleaning and changeout at the East Trenches Plume Treatment System (ETPTS)
 - Sludge removal at the Present Landfill Treatment System (PLFTS)
 - Media changeout (like-for-like)
3. Maintenance activities at SW or GW monitoring locations (CDPHE and stakeholders are notified in annual reports), for example:
 - Replacing dedicated sampling components
 - Well development
 - Cleaning solar panels and changing out batteries
 - Removing obstructions

4. Follow-on activities from annual site inspections (not associated with a reportable condition) (CDPHE and stakeholders are notified in annual reports), for example:
 - Filling subsidence at buried buildings and infrastructure
 - Surface debris cleanup and disposal
 - Sign replacement
5. Routine activities related to ecology and erosion control
6. Road maintenance
7. Actions not requiring an SDRP in areas other than landfills or associated with and contaminated buried infrastructure
 - Crack filling and grading at NWCS (if CR not required)