



Rocky Mountain Peace and Justice Center

Working for Nonviolent Social Change for Over 20 Years.

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May 12, 2008

Dear Boulder City Council:

The Rocky Mountain Peace & Justice Center has raised serious concerns to the City of Boulder concerning the Valmont Butte property it acquired in 2000.

These concerns were first itemized in a letter to council and then-candidates on October 31, 2007, and reiterated in a meeting with Frank Bruno and several other top city staff members on November 27, 2007. In reply, City Manager Bruno sent us a letter dated December 21, 2007. We wish to address the content of that letter in this communication. However, because Frank Bruno is soon to be leaving employment with the City of Boulder and a permanent replacement for the city manager position is being sought, we now address our concerns about several points to you, the elected officials of the city.

Since we first brought our concerns about the extent of Valmont Butte contamination to your attention last fall, we have conducted still further research about the site. We have reviewed additional documents originating from a number of agencies and other sources. We have met with numerous individuals and organizations knowledgeable and concerned about Valmont Butte. Collectively, we appreciate the butte's sacred meaning for Native Americans, its historic significance for early settlers of the town of Valmont, and the interests of those who live down-gradient of the butte, with land predominantly used for agricultural purposes.

Given this further inquiry, our initial concerns have only become more serious.

The records reviewed to date strongly suggest that the City of Boulder acquired this property in 2000 a) without exercise of due diligence to determine the full nature and extent of the property's potential environmental liabilities from contamination on and off the site; and/or b) on the basis of misrepresentations by various parties to the deal with apparent interests in minimizing - or even denying - the extent of pollution impacts known for 60 years of record. In any case, when the City acquired the property, potential liabilities known to have existed in the past were shifted onto members of the public, namely, the citizens of the City of Boulder.

We feel that the history of this deal warrants review for accountability to Boulder's residents and taxpayers. Any improprieties must be acknowledged and made right by the current and incoming city management with direction and oversight from the elected City Council. At issue is protection of:

- those to whom the City of Boulder officials have allowed access to the property, including Native Americans who have visited the land for traditional ceremonies and pioneer families of Valmont whose ancestors lie buried in the cemetery on the butte;
- occupational health of city employees tasked with conducting maintenance activities at the site, currently without proper protections;
- public health of down-gradient residents subject to dispersal of contaminants through wind or burrowing animals and/or whose principal source of drinking water is from groundwater subject to contamination from Valmont Butte-related wastes; and
- the sustainability and viability of the valley land and water used for agricultural and other purposes.

Specifically, we respond to the City of Boulder's position regarding Valmont Butte in the order of concerns raised in our October 31, 2007, letter, and in Mr. Bruno's response:

1) City of Boulder knowledge of off-site groundwater well contamination

City Manager Bruno stated in his letter: "There are no records that indicate that city officials were aware of any offsite contamination of neighboring wells when the Valmont Butte property was purchased."

RMPJC Response: We find this statement highly disturbing. Such an admission indicates that city officials failed in their fiduciary responsibilities to Boulder's taxpayers to adequately determine the potential liabilities posed by the site. Documents from Boulder County Health Department files evidencing official knowledge of off-site contamination by city/county health, state health and the EPA were readily accessible to any party. In fact, a decade earlier, key documents regarding the history of domestic well contamination down-gradient of Valmont Butte industrial operations were accessed by a student group conducting a semester research project for an Environmental Studies class at the University of Colorado at Boulder (see "Chronology of Key Documents" at www.rmpjc.org/vb_chron).

Aggravating this matter further is the apparent shift in the traditional oversight role of the Colorado Department of Public Health and Environment and EPA in recent years. Both of these agencies, records show, denied their own official history of record in claims made regarding the site around the time the City of Boulder's purchase of the site in 2000 was contemplated, with the an announced intent of using it for fire training and sewage sludge processing activities. What changed was not the radioactive threat, but the apparent willingness of these agencies to ignore facts of record as a polluted property was to be passed into the hands of the public, in this case, the taxpayers of the City of Boulder.

Valmont Butte in the 1980's was recommended by the Colorado Department of Health for Superfund investigation by the EPA. At that time, the EPA had scored Valmont Butte as among the top ten in the State of Colorado for the level of threat posed to environmental and public health from contamination at the site, a ranking that did not even include scoring for groundwater impacts, as they had yet to be assessed.

It appears there were a number of factors operating that led EPA not to list the site for Superfund action at that time. One claim was that there were too few people affected at the time to warrant listing. Yet EPA was also being subjected to obstructionist and high-pressure tactics by agents of the then-owner and lessee of the site, Tusco and Hendricks Milling and Mining, as they sought to deter proper assessment of the site and its offsite impacts, and even demanded that EPA not use the Hendricks name in any way associated with the contaminated site.ⁱ

Mr. Bruno cites a 1985 EPA document to suggest that no groundwater exists or has been impacted by Valmont Butte activities, though documents proving the opposite is true is evident in Boulder County files and other documents that the City of Boulder failed to review prior to acquiring the contaminated property. In fact, two documents RMPJC provided to Mr. Bruno during our November 27, 2007, meeting conclusively show that radioactive contamination was affecting several domestic wells across the road from Valmont Butte, some in excess of standards now considered acceptable.ⁱⁱ

Continuing official knowledge of contamination at Valmont Butte is further evidenced in records reviewed for subsequent years. For example, a Boulder County Health Department record reveals that in 1976, a sample collected from the Valmont Butte onsite well was “very turbid and yellow in color.” It was further noted that this well was not being used for drinking water onsite by the employees, and that instead, they were being provided bottled water.

In fact, officials’ knowledge of contamination by industrial activities at Valmont Butte dates back to the 1940’s, with impacts to offsite domestic well(s) north of the site. RMPJC has reviewed evidence that General Chemical (predecessor company to Allied Chemical) drilled a new and deeper well for a property owner just north of Valmont Butte at that time, more than 60 years ago. Boulder County officials were aware of this at the time.

In March 1985, the Colorado Geological Survey advised the Colorado Department of Health’s Radiation Control Division that there had not been an adequate effort to determine the “potential impacts of seepage and offsite migration” for “probable contamination pathways, especially toward the north.” They urged the CDH and EPA to conduct a further evaluation because of the “proximity of the site to water supplies and future population growth.”ⁱⁱⁱ

2) The City of Boulder’s disposal of radium-contaminated wastes at Valmont Butte in 1971

Frank Bruno asserts “1,500 cubic yards of soil containing low concentrations of radium was moved from a housing construction site to Valmont Butte in 1971.”

RMPJC Response: Records reviewed indicate that tests of soil samples taken by the Colorado Health Department at the time showed radiation levels 20,000 to 50,000 times above normal background, and that 150 truckloads of the radioactive soils were dumped atop Valmont Butte. In published accounts at the time, Colorado Health Department officials stated that these soils were too radioactive under existing state laws to be buried anywhere in the state and would have to be shipped out of state. Subsequently a deal was

struck with Allied Chemical to dump the wastes atop the Valmont Butte. Along the south face of the butte's high point where these wastes were reportedly dumped, radiation levels of up to 30 times above the background levels at the site itself were recorded in a 1982 surface survey by the Colorado Health Department and EPA.^{iv}

3) Adequacy of a soil cover to abate the hazards of radioactive wastes

Mr. Bruno stated in his letter "the remediation method is a 200-year cap method."

RMPJC Response: Within only a couple of months of this statement, the assurance has proven false. As the City of Boulder itself has acknowledged in an April 15, 2008 public notice, hundreds of prairie dogs estimated to be living atop the butte have unearthed the dirt overlaying the radioactive wastes, thereby revealing the inadequacy of the "cap" as a suitable form of remediation. These little burrowing critters have done just what is predictable for terrain that is such ideal habitat: dig tunnels throughout the site. As prairie dogs typically tunnel down to as much as 16 feet and 100 feet laterally, the extent of their networks only makes it evident that the radioactive wastes cannot be stabilized *in situ*. RMPJC would argue that it is the tailings and other wastes that must be excavated and removed, not the prairie dogs. Given the prairie dogs' intrusion, it is now even more likely that water infiltration of the radioactive wastes poses a continuing problem for down-gradient groundwater contamination.

In that notice, the public was also advised that unless volunteers could come up with places to relocate the prairie dogs, they would be exterminated by lethal methods. Yet within a couple of weeks, city staff told parties that have been granted access to the site that they should not enter the site, on the City of Boulder's suspicion that the prairie dogs were dying of plague.

Putting a heavier lid on top of a bottomless pot unfortunately does not contain the pot's contents. "Capping" a site of this nature by a dirt or any other type of cover – with highly radioactive contents that will pose ongoing risks to the regional valley and associated groundwater below for eons - is simply an inadequate remedy for the site. RMPJC recommends that the radioactive and toxic contents be excavated and removed to an approved facility that does not pose such risks.

A precedent for such an action for radium-contaminated wastes has occurred elsewhere in Colorado, with the excavation of radioactive soils that had been improperly capped by cement at the Shattuck site in Denver. The City of Denver supported such an excavation upon neighboring residents' appeals, and took action against the EPA toward that end. The U.S. EPA Ombudsman's office was investigating the EPA's failure to properly remediate the radioactive wastes on the Shattuck Superfund site, contaminating groundwater migrating to the South Platte River. In that investigation, questions of undue influence from the liable party's attorney to EPA were being examined. Of interest, this was the same individual who is of record seeking to influence EPA and CDPHE on behalf of Valmont Butte's owner/operator Tusco and Hendricks Milling Company at the time Superfund listing was a consideration.

It should be further noted that the CDPHE during the prior administration of Governor Bill Owens approved a covenant agreement for the site that obfuscated the fact that groundwater impacts were not only likely, but were in fact already well-known to be a

problem from the agency's prior years of tests. Perhaps the Boulder City Council will decide that this warrants an audit by the Colorado State Legislature and will call for it.

4) Who are the parties that should be held responsible for the contamination of the Valmont site and any clean-up?

Mr. Bruno asserts "unknown at this time."

RMPJC Response: The primary potentially liable parties are clear from EPA's investigations and include Allied Chemical (subsequently re-named Allied Signal and later acquired by Honeywell), Tusco, Hendricks Mining & Milling, and the City of Boulder (for the disposal of radium-contaminated soils atop Valmont Butte from the 3rd & Pearl site in 1971). Other entities may also be potentially liable parties for disposing of wastes from off-site. Deserving close attention is Strategic Metals International, Inc., a company that in 1983 had gotten an agreement from Tom Hendricks of Hendricks Mining to dispose of "mineral tailings" from its "Rocky Flats facility" onto Hendricks' tailings pond on Valmont Butte, then estimated to begin at 25 tons per week and go up to 50 tons per week.^v While CDH at first approved this deal,^{vi} it subsequently withdrew its consent, telling Tom Hendricks "we feel it is inappropriate to add this material to the existing radioactive waste at your site," having found upon sampling that the wastes included cadmium and lead at high levels which exceeded EPA toxic limits for hazardous wastes.^{vii} It is not clear from the records reviewed whether by the time of CDPHE's withdrawal of consent, some of the SMI waste had already been dumped at Valmont. This warrants further investigation.

5) If the property is sold, would the liability for cleanup transfer to the new owner?

Mr. Bruno replied "unknown at this time."

RMPJC Response: At the January 30, 2007, Boulder City Council Study Session on Valmont Butte, council members were provided background materials discussing the option with the Trust for Public Lands, and their plans to then re-sell the butte land to Native Americans.

Of note, the Council was advised "Indian lands acquired and held in trust by the federal government are probably not subject to prior restrictive use covenants." Given this reading, under the TPL option, the butte could end up in the ownership of an entity that may not be subject to even the weak 1999 CDPHE covenant agreement, one which contains misleading and even factually inaccurate statements apparently intended to minimize and even deny known environmental threats of record.

If the Valmont Butte property in such a contaminated state with associated potential liabilities is sold to the Trust for Public Lands - with plans to then transfer it to Native American entities - an already inadequate remedial effort could expose Native Americans and other future visitors to the site to still further hazards and related health risks. Meanwhile, costs for still-needed remediation would likely be transferred to the acquiring party. If under the conditions described, the property, with all its undisclosed hazards and potential liabilities, is transferred to Native Americans, would this constitute environmental racism? The City Council ought to consider this important question. The Council might also ask whether in acquiring the Valmont property, the new Native owners

might also become liable for any health damages related to past or prospective exposures at the site. If so, could they some day find themselves pitted against other Native Americans who have visited Valmont Butte for traditional ceremonies and may have been subject to harmful exposures while at the site? Risking scenarios such as this could prove more costly and damaging to the City of Boulder's relationships as a municipality fostering diversity and respect for all cultures than whatever it might recoup by selling the property.

From our review, the Valmont Butte site is clearly not suitable for Brownfields-type redevelopment, a program essentially designed to turn lands deemed as "lightly contaminated" over to profit-making entities for development or other uses. Rather than attempting to pass such liabilities on, would it not be best for the City of Boulder to pursue any potential for recovery of clean-up costs from the other potentially liable parties who were past owners and operators of the site and may further have allowed disposal from off-site parties, as well? RMPJC would advocate such a plan, and suggests that all current monies presently designated for remedial efforts instead be directed toward a permanent solution, a comprehensive clean-up and compensation fund for any potentially damaged parties.

6. Did the EPA inform the City that there was off-site contamination?

While Frank Bruno acknowledges, "there had been several investigations of the Valmont Butte site conducted by the EPA and CDPHE" he indicates that "the reports state that there is no off-site contamination..."

RMPJC response: Mr. Bruno only selectively discussed the reports of record, to which we have referred above. He opts not to acknowledge the previously cited documents RMPJC personally provided him during our meeting of November 27, 2007, that refute the reports he does cite. We have discussed evidence contradicting the claims in those reports, which seem to have been done in such a way as to minimize or deny facts of off-site contamination evident in the agencies' own prior records.

7. Will the City contact the EPA and CDPHE to request all information on the Valmont Butte site be made available for review?

Mr. Bruno states "The city has done a thorough search of the BCHD and City of Boulder records and files on Valmont Butte" and requests that RMPJC inform the city if it has "specific information the city does not have in its files."

RMPJC Response: RMPJC appreciates that the City of Boulder, subsequent to our meeting and requests of November 27, 2007, has reviewed some of the pertinent documents about the Valmont Butte site and posted some of them to the city website. However, RMPJC has requested that the City of Boulder not only review but obtain the entire record on the site from not only the Boulder County Health Department, but all state and federal agency files regarding the property, and make them all accessible for citizens of Boulder - who now own this property - and other potentially affected parties to review, without cost. At the minimum, this record should include the entire site files of the CDPHE divisions of Hazardous Waste, Radiation Control (including all radioactive materials licenses and inspections), Water Quality and Air Quality (including any inspections and notices of violations), and those of the Region VIII EPA. Other

documents are known to exist in the office of the Colorado Geological Survey and are likely exist in other agency files, as well. The City of Boulder, as the owner of the Valmont Butte property, is the appropriate entity to compile and make available to all interested and affected parties the full record regarding the history of conditions at the site.

Of interest and concern, the EPA Region VIII office is now claiming that all of its records on Valmont Butte are “confidential.”^{viii} RMPJC again requests that the City of Boulder initiate a request that all of the documents be obtained, and then be made available within the city for its citizens to review, without cost.

8. Will the city delay selling the property until a full investigation of the site contamination is completed?

According to Mr. Bruno, “staff continues its negotiations for the sale of the property with TPL...” and acknowledges that “decisions regarding the sale or delay of sale of this property rest with the Boulder City Council.”

RMPJC Response: Given all of the problems that we have earlier discussed and made known to the City of Boulder, and additional information researched, we strongly feel it would be inappropriate for the city to proceed toward a sale of this land that could in any way lead to it being transferred in its present condition into the hands of non-profit organizations or Native American interests.

9. Should the city ask Congress to investigate the EPA about their inconsistent reporting of information about Valmont Butte?

Frank Bruno asserts that “the city staff and the city’s consultants, Alisto Engineering Group, performed due diligence in 2000 when examining the potential purchase of the Valmont Butte property...” and further states that these documents “indicate that there was no off-site contamination and documented the known conditions...”

RMPJC Response: RMPJC respectfully submits to this present Boulder City Council and any incoming management to the city that this assurance is simply not supported by the record. That students of the University of Colorado at Boulder in 1998-99 were able to conduct a more thorough assessment of the environmental conditions of the property and its history of off-site contamination for a semester research project than what Boulder City officials performed prior to the property’s acquisition in 2000 is strongly suggestive that this entire deal warrants close scrutiny, for the apparent misrepresentations by state and federal agencies tasked with protecting public health and the environment and those by city officials tasked with protecting the pocketbooks of City of Boulder taxpayers.

From our independent review, we conclude that calling for a Congressional investigation of EPA Region VIII’s handling of information regarding the Valmont Butte site should be considered. At this time, EPA’s misuse of science and caving in to political pressure - as detailed in a recent report by the Union of Concerned Scientists^{ix} - are before Congress. Likewise, an audit of the Colorado Department of Public Health and Environment by the State of Colorado Legislature may be warranted for its actions regarding the site, including the accuracy and adequacy of provisions within the covenant agreement and termination of the radioactive materials license based on what may have been incomplete information. We call on Boulder’s elected officials to set the record straight, right the

wrongs that have clearly occurred, and make decisions fully in the interests of the citizens of this region and those who most value the cultural heritage and historic significance of Valmont Butte.

In summary, the Rocky Mountain Peace & Justice Center urges Boulder's City Council to take the necessary steps at this time to initiate a comprehensive, permanent remediation for Valmont Butte. To do so requires acquisition of all of the documents of record from various agencies on the site, clear delineation of potential liabilities, plus public input as to what should be done, based upon the complete record. Once a remedy with broad-based public support is completed – hopefully with contributions from parties that contributed to the contamination - we would advocate that Valmont Butte be considered for historic designation and protected against any further degrading or desecrating activities. Because the Valmont Butte is considered sacred by Native Americans and of historic value to Valmont's pioneers, as well as of geologic significance to this entire region, it should be returned to a position as a true high point, both for the City of Boulder and in Boulder County. In the end, such an investment could help to heal not only the land, but also a history of scarred relationships between Native Americans and those who followed, for the betterment of the Boulder County residents and economic vitality of the region below for generations to come.

We ask that this letter be considered prior to the upcoming May 15th Study Session on Valmont Butte, and to be incorporated as public comment on the matter in the Study Session materials. The RMPJC has also requested to be a participant in the Study Session's discussions, given the extensive nature of our research in the public interest on this matter, for a healthier environment.

Sincerely,



Adrienne Anderson

*Coordinator,
Nuclear Nexus: Working to End Local Hazards and the Global Threat, and
Safe Water Colorado*

*And on behalf of
LeRoy Moore, Ph.D., Judith Mohling and Betty Ball*

Cc: Stephanie Grainger, Interim City Manager

ⁱ *Example: Letter from Tom Hendricks to EPA contractor John Hadley, Ecology and Environment, Inc., October 9, 1984.*

ⁱⁱ *Letter from Al Hazle, Radiological Health Specialist, Colorado Health Department, to Glenn L. Allen, Superintendent, General Chemical Plant, March 31, 1967; and Letter from Al Hazle, CDH to Barry Puttuck, Allied Chemical Corporation, November 10, 1970.*

ⁱⁱⁱ *Letter from Walter R. Junge, Engineering Geologist, Colorado Geological Survey, to Dick Gamewell, Radiation Control Division, Colorado Department of Health, March 18, 1985.*

^{iv} “MR Meter Survey of Hendricks Milling Site – Formerly Allied Chemicals Settling Pond,” Boulder County Health Department memo of September 14, 1982 mapping readings taken on that day by two EPA and three Colorado Health Department personnel.

^v Letter from John Widirstky, Executive Vice President, Strategic Metals International Inc., to Rick Hay, Boulder County Health Department, February 11, 1983.

^{vi} Letter from Al Hazle, Radiation Control Division, Colorado Department of Health to Tom Hendricks, Hendricks Milling, February 15, 1983.

^{vii} Letter from Al Hazle, Radiation Control Division, Colorado Department of Health to Tom Hendricks, Hendricks Milling, April 19, 1983.

^{viii} E-mail communication from Karen Keller, EPA Region VIII Enforcement Attorney assigned to Valmont Butte case, to Adrienne Anderson, RMPJC, December 4, 2007.

^{ix} “Interference at the EPA: Science and Politics at the U.S. Environmental Protection Agency,” Union of Concerned Scientists, April 2008 (accessible on-line at www.rmpjc.org/epa_ucs)