



Congressman seeks answers to claims of environmental crimes at former nuclear weapons plant

Tuesday, March 23, 2004

By Robert Weller, Associated Press

DENVER — A Colorado congressman has asked the Environmental Protection Agency to respond to claims that environmental crimes at the former Rocky Flats nuclear weapons plant were covered up by the Justice Department.

The claims are raised in a new book co-written by the foreman of a grand jury that investigated activities at the site in the late 1980s and early 1990s.

The book alleges the Justice Department cut a deal with Rockwell Corp., then the site's operator, to pay an \$18.5 million fine to avoid indictments of company and Energy Department officials for covering up illegal waste dumping, falsification of records, illegal burning, and other crimes.

Under the agreement, the grand jury was sent home and its report sealed. Two weeks ago, a federal judge rejected a petition by grand jury members to release the report.

Last week, Rep. Mark Udall, D-Colo., sent a letter to EPA and state health officials asking them to look into the claims in the book by Wes McKinley. Udall released a copy of the letter Monday.

"I am writing to ask if your agencies have examined these allegations, and if so, what has been done to address the cleanup of materials and areas that relate to these allegations," said Udall, whose district includes the Rocky Flats site.

Frank Montarelli, an EPA spokesman, said the agency was responding to the letter but had no other comment.

Matthew Goring, a vice president for Rockwell Automation, said he had not seen the book — *The Ambushed Grand Jury: How the Justice Department Covered Up Government Crimes and How We Caught Them Red-Handed* — so he could not comment in detail.

But he said that "these are old accusations and have been addressed and thoroughly vetted with the EPA and other regulatory parties."

Rocky Flats manufactured plutonium triggers for nuclear weapons from the 1950s to 1989. The last weapons-grade plutonium was removed in August, and the site will eventually become a national wildlife refuge.

Boston Globe

**Book accuses Justice Dept. of nuclear plant coverup
Health officials say claims under review** By Robert Weller, Associated Press, 3/27/2004

DENVER -- Secret midnight burning of radioactive waste. An FBI spy flight with infrared cameras. An employee who contends she was contaminated by fellow workers for reporting safety violations.

It sounds like something out of a paperback thriller. But the allegations are contained in a new book that says the Justice Department covered up environmental misconduct at the former Rocky Flats nuclear weapons plant near Denver more than a decade ago.

Federal and state health officials say they are looking into the claims raised by the book, "The Ambushed Grand Jury: How the Justice Department Covered Up Government Nuclear Crimes and How We Caught Them Red Handed."

The book was written by Wes McKinley, the foreman of a grand jury that investigated activity at Rocky Flats, and attorney Caron Balkany. They said the book is worth the risk of jail for violating grand jury secrecy rules.

"I am doing my patriotic duty," McKinley said. "These people are criminals."

In addition to interviews with former plant workers and investigators, the authors relied on a journal McKinley kept during the grand jury sessions. They said they were able to independently confirm all of the evidence discussed in the book.

A former federal prosecutor denied the allegations, and the plant's former operator, Rockwell International, said all the claims have been investigated and found to be groundless.

Rocky Flats, situated on the edge of the foothills outside Denver, made plutonium triggers from the 1950s until 1989. The Energy Department complex is being cleaned up and officials hope to turn it into a wildlife refuge by 2006.

Tipped about potential safety violations, the FBI in 1988 used infrared cameras during flights over Rocky Flats and detected what agents said was a burning incinerator in Building 771, the plutonium-reprocessing facility. At that time, the building was supposed to be shut down after an employee was exposed to radiation. FBI and Environmental Protection Agency officials raided the plant in 1989 as part of an investigation called Operation Desert Glow.

Investigators subsequently looked at whether Rockwell knowingly discharged chemicals into creeks that flowed into municipal water supplies, burned toxic waste, and failed to adequately monitor groundwater.

From 1989 to 1992, a federal grand jury heard testimony and reviewed evidence against Rockwell. The panel wanted to indict eight people and two corporations involved with Rocky Flats, and recommended closing the plant.

But then-US Attorney Michael Norton refused to sign the indictments and worked out a plea bargain.

Rockwell pleaded guilty to 10 hazardous waste and clean water violations in 1992 and was fined \$18.5 million. The company admitted it stored hazardous waste without a permit, in containers that leaked, and that its actions caused hazardous waste to wind up in reservoirs that supplied drinking water to nearby cities.

A Justice Department review of the plea bargain supported the prosecutors. The review said a charge of illegal burning had to be withdrawn because Allen Divers, a former military analyst who was working for Lockheed and who reviewed the infrared photos, had changed his mind and could not be sure. However, the book's authors contacted Divers, who said he had never changed his opinion. Divers confirmed this in a telephone interview with the Associated Press.

The grand jury's report remains sealed, and as recently as this month, US District Judge Richard Matsch refused to allow grand jurors to break their oath and speak publicly about the case.

Matsch did not respond to a request seeking comment.

Jeff Dorschner, spokesman for the US attorney's office in Denver, would not comment on whether McKinley would be prosecuted for violating grand jury secrecy.

The book includes material from interviews with FBI agent Jon Lipsky, who led a raid on the plant in 1989, and Jacque Brever, a Rockwell employee who worked in a building where processed plutonium was stored.

"My superiors have ordered me to lie about a criminal investigation I headed in 1989. We were investigating the Department of Energy, but the US Justice Department covered up the truth," Lipsky said in the book. He confirmed his statement in a brief telephone interview with the AP.

Brever's account is more chilling. She said she is suffering from thyroid cancer she believes is the result of her fellow union workers deliberately damaging her protective gear because they feared her testimony would force the shutdown of the plant and cost them their jobs.

Officials at the Energy Department did not return calls or an e-mail seeking comment.

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Room to Glow

At the Alliance for Nuclear Accountability conference in Washington, D.C., late last month, Wes McKinley, the foreman of the Rocky Flats grand jury and co-author of the book *The Ambushed Grand Jury*, received a Whistleblower Award "for ongoing work to educate the public on the environmental threat of nuclear weapons production." Jacque Brever, a former Rocky Flats worker and FBI informant who'd testified before the grand jury, also received a Whistleblower Award from the nonprofit, "for risking her life and career by blowing the whistle on environmental crimes at Rocky Flats and continued efforts to protect the public from its contamination."

But for both Brever and McKinley, as well as his co-author, attorney Caron Balkany, the real prize had come a week earlier, when Congressman Mark Udall -- whose district includes the former nuclear-weapons plant -- sent a letter to the Environmental Protection Agency and the Colorado Department of Public Health and Environment, asking them to look into the book's claims that environmental crimes at Rocky Flats had been covered up by the Justice Department. Considering that Udall's predecessor, David Skaggs, had stymied an attempt by the grand jurors to testify before Congress at the last second, this looked like a major bureaucratic breakthrough.

"I am writing to ask if your agencies have examined these allegations and if so, what has been done to address the cleanup of materials and areas that relate to these allegations," Udall wrote in a letter dated March 16, shortly after the book's release stirred up renewed questions over the Justice Department's twelve-year-old settlement with Rockwell International ("[Toxic Shocker!](#)" March 11).

Citing the confidential nature of grand jury proceedings in his response to Udall, EPA regional administrator Robert Roberts declined to deal with some of the book's charges, including the alleged midnight burning of toxic waste, noting that "a report summarizing the buffer zone sampling results will be available in late 2004. Although this investigation was not done because of the alleged illegal incineration activities discussed in this book, this type of sampling and analysis, and subsequent cleanup if needed, will assure that the site will be safe for a refuge worker and all those that visit the refuge. The incinerator itself has been removed and disposed of as radioactive waste."

CDPHE executive director Doug Benevento took on two of the book's allegations. "With respect to the claims concerning the use of the incinerator, the department is confident that the comprehensive soil sampling that has occurred and continues to be conducted at the site would identify any dispersed environmental contamination from an incinerator in this building," he wrote. Brever, who believes she was involved in that illegal incineration, has also charged that toxic wastes were sprayed on

portions of the site; according to Benevento, "a corrective action decision/record of decision for the west spray fields was issued in September 1995, and No Further Action was warranted."

The U.S. Department of Fish & Wildlife will soon take over the Rocky Flats site from the Department of Energy and turn it into a wildlife refuge; the department is taking comments on the proposal until April 26 at <http://rockyflats.fws.gov>. But Roberts has already offered this assurance to Udall: "We are confident that once all remediation activities are complete and the remedy is operating properly and successfully, that the site will be safe for the refuge worker and all that visit the site."

In drafting the legislation that made the refuge possible, Udall and Senator Wayne Allard pushed for some public access, and aide Lawrence Pacheco says Udall is confident that the cleanup in the buffer zone will be at "the highest level." As for other allegations in the book, "Our office has encouraged the sources for those accusations to go to the EPA and the health department, so that they can continue to vigorously go about the cleanup process."

And with that, the whistleblowers' hopes that Udall would help unseal the secrets of Rocky Flats fell flat. "Perhaps you are unaware that the U.S. Fish & Wildlife Service refused to consider our comments," McKinley and Balkany wrote Udall last week. "Despite receiving copies of *The Ambushed Grand Jury*, no one from any health agency, EPA or CDPHE has asked us to provide the information about the location of some of the contamination we discuss in the book. In light of your request, however, Jacque Brever, who worked in plutonium operations at Rocky Flats for ten years, will be glad to accompany you and any health officials you choose to Rocky Flats, in the presence of the media, to show the places where she is aware that contaminated wastes were dumped in areas proposed to be open to recreation.

"Appropriate personal protection gear would be required."

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JUSTICE DEPARTMENT OPENS ROCKY FLATS GRAND JURY DOCUMENTS TO CLEANUP AGENCIES

May 3, 2004

(Westminster, CO) – The U.S. Attorney in Colorado says he is willing to have state and federal agencies review documents related to a Rocky Flats grand jury investigation to determine if there is any contamination that is not known to those agencies responsible for the cleanup of the former nuclear weapons production facility.

Congressman Mark Udall (D-Eldorado Springs) wrote to U.S. Attorney John Suthers on April 13 asking him to unseal the grand jury documents in a response to a request from several people, including the foreman of a grand jury whose allegations of the government cover-up of environmental crimes are discussed in a new book, *The Ambushed Grand Jury*.

“I have always thought that if the Justice Department has any information that would be useful to the cleanup of Rocky Flats that is now underway, it should be made available to those agencies responsible for the cleanup. So I’m pleased the U.S. Attorney’s office has agreed to make the grand jury investigation documents available to the cleanup agencies and I urge those agencies to follow through,” said Udall.

Suthers, in a letter to Udall, says he does not think his office has any information that is not already known to the cleanup agencies, but he’s willing to make the documents available to them anyway.

“There has been an enormous amount of environmental testing at the Rocky Flats site ever since the prosecution of this concluded over a decade ago and no one in our office believes that there is any evidence of contamination at Rocky Flats contained in Justice Department files which is not otherwise known to the multiple agencies that have been responsible for the cleanup. Nevertheless, we would be willing to have agents of the Department of Energy, the EPA and the Colorado Department of Health and Environment review the 65 boxes of documents to determine if any information would be useful to them in the continuing cleanup process,” says Suthers.

Mr. Suthers also said that if there were any questions about whether the information was subject to the grand jury secrecy rule, he would ask the courts to allow its disclosure.

Colorado Daily.com

Tuesday

May 18, 2004

Udall letter wins some Rocky Flats document access

By RICHARD VALENTY Colorado Daily Staff Writer

Regulatory agencies overseeing the cleanup of the former Rocky Flats plutonium trigger manufacturing plant could now have access to previously sealed grand jury information, but the public is unlikely to see the documents.

John Suthers, United States Attorney from the District of Colorado, wrote a letter dated April 19, 2004 to Congressman Mark Udall, D-Boulder, stating that agents from the Colorado Department of Public Health and Environment (CDPHE), the EPA and the U.S. Department of Energy (DOE) could review "65 boxes of documents" from the Rocky Flats grand jury investigation of 1989-1992.

According to Jeff Dorschner, U.S. Attorney's Office spokesman, this doesn't mean that an unlucky EPA staffer will be stuck in a basement reading 65 boxes of testimony.

"The U.S. Attorney has said that if an authorized representative of (CDPHE, EPA or DOE) makes a formal request in writing to him, he will try to accommodate that request," said Dorschner.

"However, most of the documents are protected by a grand jury secrecy law, Rule 6 (e). Also, it is entirely possible that some of the documents in our possession are classified, and can only be reviewed

by someone with a top-secret security clearance."

FBI agents raided Rocky Flats in 1989 to investigate alleged environmental crimes involving, in part, illegal disposal and storage of radioactive waste on the site. In August 1989, a Special Grand Jury was convened to hear the allegations, but the U.S. Department of Justice ended the investigation in March 1992. Rockwell International, the former plant operator, was fined \$18.5 million.

Wes McKinley, Flats grand jury foreman, cannot speak about parts of the investigation due to Rule 6 (e), but still believes that some information about alleged Flats environmental crimes needs to become public knowledge.

In March 2004, McKinley and attorney Caron Balkany, Esq., released the book "The Ambushed Grand Jury," which in part described some of the alleged environmental crimes at the Flats site, including illegal incineration of plutonium-contaminated waste and improper waste dumping.

After "Ambushed" was released, Udall started seeking information from agencies involved with the Flats cleanup. On March 16, 2004, Udall wrote letters to CDPHE and EPA asking what the agencies were doing regarding allegations from the book. Both agencies responded and included statistical evidence of Flats environmental sampling and monitoring.

Udall received a letter dated April 5, 2004 from McKinley, Balkany and former Flats employee Jacque Brevier, asking Udall to request that the U.S. Justice Department release "all documentary evidence of contamination at Rocky Flats which now lies sealed in the basement of the Justice Department offices in Denver."

Udall responded by sending a letter to Suthers, dated April 13, 2004 stating that if the Justice Department had "any information that would be useful to this important work, I think it should be provided to those responsible for the cleanup."

Laurence Pacheco, Udall spokesperson, said Udall wants cleanup workers and regulators to have every possible piece of information at their disposal. The site could become open for human recreational activity as a National Wildlife Refuge within several years, and Pacheco said Udall is "pleased" that Suthers responded to his request to release documents.

Steve Gunderson, Rocky Flats project coordinator for CDPHE, said his department could already be familiar with some of the sealed material.

"We, of course, have read the grand jury book,' said Gunderson. "Certainly there are people in our department that were involved in Rocky Flats at the time of the investigation, and some of them were part of a deposition process. Certainly, some of the material in the 65 boxes comes from the health department to begin with."

Gunderson said there has been extensive testing of the Flats surface soil, but the sealed documents could provide useful information about possible improper dumping that would allow contamination to seep deeper into the ground.

"More of our focus will be to compare their allegations of where stuff was dumped and buried with what we know about where waste was dumped and buried," said Gunderson.

According to Gunderson, his agency could begin work on deciding what information to request within "about two weeks," after meeting with his attorney and EPA representatives.