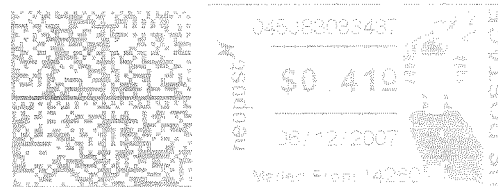


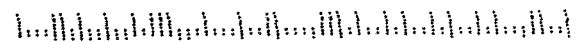


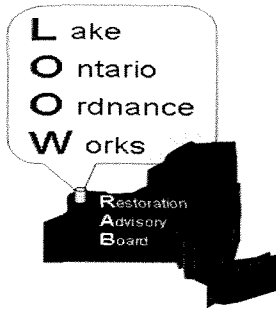
Department of Chemistry
J.A. Gardella, Jr.
Natural Sciences Complex
Buffalo, NY 14260-3000



Mr. John S. Hurley
Lieutenant Colonel, Corps of Engineers
District Commander
Department of the Army
Buffalo District, Corps of Engineers
1776 Niagara Street
Buffalo, NY 14207-3199

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See FYI

**P.O. Box 181
Youngstown, New York 14174
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May 29, 2007

Mr. John S. Hurley
Lieutenant Colonel, Corps of Engineers
District Commander
Department of the Army
Buffalo District, Corps of Engineers
1776 Niagara Street
Buffalo, New York 14207-3199

Dear Commander:

We appreciate the time and effort that went into your letter of October 31, 2006. We also greatly appreciate that your letter opened the way for the LOOW-RAB to receive some of the pre-published annual monitoring technical data for the NFSS (after being cleared through your quality control).

We have worked over the past six months to allow the USACE to operationally illustrate exactly what the letter would mean to the LOOW-RAB and the citizens of Niagara County. The participation of the USACE in continued outreach to the local public, through the LOOW-RAB, is still expected. We look forward to the USACE assistance in the upcoming October 20, 2007 LOOW Public Conference. The topics discussed to be included are the details of the RI and the UURI. The expectation is the revealing to the public on what has been verified to be present and the "Risk" interpretation of those findings.

However, the Steering Committee of the LOOW-RAB has found that nothing has changed relative to the three issues that I raised in my initial letter. The response letter only confirmed the restrictions and our interactions the past six months have verified our concerns. In brief, this is a summary: 1) The LOOW RAB and the Community at large, through legal definitions, are prohibited from being any part of the review and development of USACE plans and decisions – except for very narrow provisions of law. (We anticipate that even our allowed "public" comments in the CERCLA process will be considered to be without meaning or significance if they do not reveal further "legal" limitations on the USACE decided directions.) 2) The LOOW-RAB is denied access to significant information, communications and plans possessed by the USACE – except for specific data cleared through quality control and on limited topics. 3) The LOOW-RAB, and thus the Community we represent, continues to be without representation or allowance to participate in USACE technical decisions, documents, and plans that would impact the potential well being of the residents and future use of the lands involved. Relative to this, we are disappointed that the USACE does not recognize the LOOW-RAB as a formal RAB as defined in the Code of Federal Regulations.

The final public opinion that has developed is that the USACE has taken on the role of the CERCLA process "Responsible Party" and thus is using legal measures to isolate the public from interfering with what the USACE considers is the appropriate issue resolution.

Relating to the Fact Sheets, we have picked out some of the comments that support our position:

- 1) Enclosure – 2: "Requests for USACE project information will be evaluated and processed in accordance with federal laws and guidelines including the FOIA." This formally defines that the laws will be used to control access and participation of the community. Given this, the public will need equally skilled legal assistance to find their rights under the law.
- 2) Enclosure – 2: "USACE will release project documents after USACE has finished our agency deliberations and the document reflects the final facts and decisions of the USACE." Note that this comment specifically excludes the inherent concerns of the local residents and directs that the citizens will not have any representation until after the USACE publishes their final positions.
- 3) Enclosure – 2: "...Protected by the Attorney-Work Product Privilege..." This inclusion directly indicates that what the public learns will be screened and filtered by expert USACE legal agents. This further isolates the general public.
- 4) Enclosure – 2: "...protect against public confusion..." This illustrates a condescending position that further illustrates the USACE intention of isolating the public.
- 5) Enclosure – 3: "USACE maintains an on site presence to maintain" We see little evidence of a daily presence. This is a concern to know that if someone wanted to create havoc, there is little to stop a truck from placing itself on the specific site and creating a dirty bomb effect into the community.
- 6) Enclosure – 3: "This data will be publicly released to all interested parties at one time." This illustrates that the USACE does not recognize the LOOW-RAB.
- 7) Enclosure 4 limits the USACE to DERP-FUDS/FUSRAP. We now believe that the USACE will not explore or notify the public about any other environmental health and safety issues if the materials found were not within the definitions of those programs. There is no evidence that the USACE is committed to seeking and addressing public concerns above legal minimums. We believe this narrow limitation will further confuse the community and minimize the broader environmental protections that are needed.
- 8) Enclosure 5 specifies that the USACE will "Manage expectations" of the public. That enclosure only reiterates that the USACE will proceed within the useful legal limitations.

Thus, we perceive the tenor of the October letter to indicate more on how the USACE will utilize the law to control the public from interference as compared to sharing with the public on how we can participate in any way to protect our interests.

We ask that you reconsider designation of our status as an official RAB.

Sincerely,



Walter D. Garrow, CHMM, CIH, CSP
President of the LOOW-RAB Steering Committee



Joseph A. Gardella, Jr., Ph.D.
Co-Vice Chair, Steering Committee

Senator Hillary Rodham Clinton
Senator Charles E. Schumer
Congresswoman Louise Slaughter
State Senator George Maziarz
State Assemblywoman Francine DelMonte
State Deputy Secretary of the Environment Judith Enck
Niagara County Legislature, Chairman Clyde Burmaster
Niagara County Legislature, Vice-Chairman William Ross
Town of Lewiston Supervisor Fred Newlin
Town of Porter Supervisor Merton Wierpert

Lewiston Porter Public Schools Superintendent of Schools Don Rappold
Niagara Gazette, Aaron Besecker