

Kreusch, Arleen K LRB

From: Walter Garrow [wgarrow@QISI.com]
Sent: Tuesday, April 08, 2008 4:52 PM
To: Hurley, John S LTC LRB
Cc: Kowalewski, William E LRB; Kreusch, Arleen K LRB; joe gardella; Besecker, Aaron; william.ross@niagaracounty.com
Subject: Response to your letter of April 2, 2008 on RAB
Attachments: Federal Register, August 6, 1996 - Restoration Advisory Boards.htm; RAB Final Rule 12May06.pdf; 12-5-02 RAB Organizational.pdf; RAB Rule Handbook_23 Jan 2007-v2.pdf; USACE interested citizen input ltr 02 Apr 08.pdf; HurleyLOOWLetter (2).pdf

I received a copy of your letter at my old house and it was forwarded to my new address (I provided the update to Bill K.). It was addressed "Dear Interested Citizen." Thus, this response contains my personal viewpoints. As you know Joe Gardella is now the new LOOW RAB Steering Committee Chairman. He will be able to provide a response for the direct positions of the LOOW RAB itself.

In summary, the citizens of Niagara County and the area around the LOOW have rights to interactions with the USACE, through a RAB, on the LOOW DERP-FUDS/FUSRAP projects. However, since the USACE has already created the existing RAB, and co-developed this RAB into its current format, and participated with this RAB organization during all the years prior to your new position, it would be redundant and counterproductive to create yet another RAB. Your staff's failure to deal with the community with the existing LOOW RAB is not justification to start over and selectively pick residents that may be of less technical challenge.

The current RAB was formed under the anticipation of the DOD proposed rule (1996), due to USACE Outreach problems with the community, the USACE co-modified that RAB in 2002. The DOD final rule was in 2006. This confirmed the intent that existed in the 1990's. The USACE continued to participate with this RAB without any notification that we were any other organization than the one that existed prior to 2002. The document trail illustrates this continued participation.

The regulation of 32 CFR Part 202, indicates that for this type of project, that a RAB is designed to strengthen community involvement efforts. It is to be a forum for public discussion (not a means for your outreach). In the Handbook, it clearly indicates that a RAB is to offer a focused and *interactive* opportunity to participate. Thus, our original requests to be recognized and to be interactive in the process remain. The Rule and the Handbook also allow the members of the RAB to be involved with the objective and independent review of technical data. The elements of interaction and technical independent review are missing from your proposal. Both documents include specifications for the required usage of a facilitator if there are problems with the interaction before a RAB could be dissolved.

The NY State Attorney General's office provides the details on the legal issues relating to your proposal. It is a concern that your request for this proposal comes 2 days after you received that communication.

It is obvious, that the intent, or at least the outcome, of your proposal vs. using the existing RAB, would be to diminish public participation. To move from the multiple committees,

technical expertise, number of meetings (going from up to 6 per month to possibly 3 per year), would logically censor public participation and limit the public from meaningful abilities to impact their future living situation with this neighborhood. You directly told me in our meetings that you forbid public interference or influence into your plans.

As a safety professional, I am aware of OSHA citing companies under the Hazard Communication Standard for violating that standard if the companies provided material safety data sheets (technical data) by placing them in the supervisor's office. The rational was that there would be an inhibition for the prescribed access. Your proposal provides an analogy to that scenario by isolating the public from interaction and technical data reviews by our own technical people.

In addition, your plan includes an organization chart where RAB reports directly to you. Thus and in that position, you would be able to control what is said, what is planed, and what is budgeted, for the remediation of your own site, without interaction, input, participation, and consent of the people impacted by that site and what is done with that site.

Walter D. Garrow
Interested Citizen