

Community Advice at the Lake Ontario Ordnance Works, New York

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New York's former Lake Ontario Ordnance Works (LOOW) and the associated Niagara Falls Storage Site (NFSS) are not the largest or most complex of the cleanup sites owned by the Departments of Defense and Energy, but the U.S. Army Corps of Engineers' (USACE) community relations program there has recently become one of the most controversial. Despite the current stalemate between the Corps and the local community, it appears that differences could be solved relatively easily by looking at the Defense Department's RAB [Restoration Advisory Boards] Rule and the process that led to its development.

In 1941, the U.S. War Department purchased 7,500 acres in Niagara County, western New York, near the point where the Niagara River enters Lake Ontario. Through 1943, the Army's Lake Ontario Ordnance Works manufactured TNT on the eastern portion of the facility. In 1945 the Army turned over the 5,000 acres it had not used to the General Services Administration for property disposal

Later that decade, the Army transferred about 1,500 acres to what later became the Atomic Energy Commission (AEC). This area, known as the Niagara Falls Storage Site, produced high-energy fuel and stored radioactive materials and wastes as part of the U.S. nuclear weapons program. The U.S. Department of Energy still owns 191 acres containing radioactive wastes.



The Buffalo District of the Army Corps of Engineers conducts environmental investigations, remediation, and site management at the NFSS as part of the Formerly Used Sites Remedial Action Program (FUSRAP), an outgrowth of the nation's atomic bomb program. It is responsible for environmental activities at most of the rest of the original LOOW property under the Defense Department's Formerly Used Defense Sites (FUDS) program. The Army is responsible for the New York National Guard's 860-acre Weekend Training Site, and the Air Force manages the 98-acre Former Youngstown Test Annex Site, both of which lie in the eastern portion of the original LOOW site. To its credit, the Army Corps seems to have found a way to merge at least some of its FUDS and FUSRAP activities. For example, it maintains a joint web site at <http://www.lrb.usace.army.mil/derpfuds/loow-nfss/>.

The former LOOW site now hosts many types of land use, including agriculture, recreation, housing, and Chemical Waste Management's hazardous waste landfill, the only such dump site in the northeastern U.S. It also is home to three schools of the Lewiston-Porter School District, the source of much of local residents' concerns.



In 1999, the Army Corps formed a Restoration Advisory Board to oversee its site activities. Community members felt that the board did not provide an adequate two-way forum for discussions, so in 2002 the Corps brought in an independent facilitator to develop a new Restoration Advisory Board that differed from the model RAB structure, most notably in that it did not have a military co-chair. The Corps was supportive. According to the summary of a December 5, 2002 meeting:

USACE Lieutenant Colonel Jeff Hall, the new military commander to the Buffalo Office, expressed his support for a shared vision among stakeholders and a more inclusive and meaningful public involvement process. He pledged the Office's resources to its achievement and maintenance. He encouraged a shift in control of the RAB from the USACE to the RAB members and a broadening of its mission, involvement and partnerships

A description of this process remained on the Army Corps' official web site at least as late as January 29, 2008. It stated, "The U.S. Army Corps of Engineers will continue to offer administrative support and its project managers will contribute technical expertise to the new community-led committee."

The Corps continued to participate in the RAB at least until 2006. It even hosted a web page on its behalf. In July 2005 the Corps explained, in a document describing site activities:

The public is a vital partner in the Corps remediation efforts. The Corps has an active public participation program established, with a Restoration Advisory Board for the LOOW site. The RAB provides a forum for the exchange of information with the public and provides an open and independent dialog concerning the environmental restoration activities at the sites.

However, in 2006, apparently after the Defense Department promulgated its Final RAB Rule, new leadership at the Corps withdrew its recognition of the RAB and began calling it a

community-based volunteer group. In January 2008 District Commander Lt. Colonel John Hurley wrote, "The corps appreciates the dedicated efforts of your group, respects your concerns and your spirit of volunteerism. However, your citizen-based volunteer group is not a Department of Defense (DoD) RAB." That month Hurley initiated a reassessment of community interest to decide whether to form a "DoD RAB."

Community members and their elected officials responded by asking that the Corps recognize the existing RAB. They indicated to me their willingness to revise the RAB's operating procedures to conform to the RAB Rule. In March 2008 New York Attorney General Andrew Cuomo, citing the RAB Rule's carefully drawn procedures for RAB dissolution, called the Corps' failure to recognize the RAB "illegal." He wrote, "Accordingly, I am writing to urge you to reconsider your decision to dissolve and to cease to recognize the LOOW RAB. Instead, the USACE should continue to work with, and not dismantle, the LOOW RAB."

In July 2008 Hurley responded. He refused to recognize the existing body as official and decided at the same time not to form a new advisory board because there was not sufficient interest. He considered the criteria for RAB formation from the RAB rule, and he concluded:

Criteria (2): The Corps received 18 letters from the local community representing 15 interested citizens, one property owner of the former LOOW, one educational institution, and one community group. Five individuals expressed interest in the establishment of an official DoD RAB, two individuals did not take a position, and the remaining letters advocated the Corps continue to engage the members of the existing "LOOW-RAB" community-based volunteer group. This group is led and staffed by local citizens and operates free of any Corps leadership, representation, funding, or regulatory requirements. Since only five letters supported the establishment of an official DoD RAB, this input does not constitute sufficient interest.

Criteria (3): Letters received from the Tuscarora Nation and the US Environmental Protection Agency indicate that they will support an official DoD RAB if the Corps determines it is necessary to establish one. The New York State (NYS) Attorney General's Office, the NYS Department of Environmental Conservation (DEC), the Niagara County Health Department, the Niagara County Legislature and the Town of Lewiston expressed that the Corps should continue to engage the independent community-based "LOOW-RAB" volunteer group. This input does not constitute sufficient interest for the establishment of an official DoD RAB.

I visited western New York earlier this month, and I learned that RAB members 1) represent the community well, 2) include people, such as university professors, with relevant technical expertise, and 3) are not using the RAB to address issues beyond environmental restoration, such as the operation of the Chemical Waste Management landfill. There is no history of conflict or disruption, something that has happened at a handful of RABs over the past decade. In fact, though there are technical disputes between RAB members and the Corps, there are no significant controversies beyond the argument over the RAB's status.



I am perplexed by the Corps' current unwillingness to support the existing advisory board and bring it into compliance with the nuts and bolts of the RAB rule. I am amazed by the conclusion that there is insufficient community interest in forming a "DoD RAB" because the community wants the existing body recognized.

When the Defense Department first formed RABs in the mid-1990s, it built upon existing bodies, such as Technical Review Committees. Working with TRC members it expanded membership and developed new operating procedures. The Buffalo Corps district could do essentially the same thing, satisfying its requirements while building on past efforts by both the community and the Corps.

It appears that the current District leadership was not engaged in the early 1990s, when activists, regulators, and federal responsible parties sitting on the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC) developed the site-specific advisory board concept as a way for communities to participate constructively in the oversight of federal cleanup programs. At most of the over 300 installations with RABs, both communities and governmental agencies have benefited. The RAB Rule exists to enable communities, regulators, and the armed services to work together, even where there are differences of opinion, to clean military properties faster, cheaper, better, and more safely. In the spirit of the FFERDC—of which I was a member—I call upon the Corps to make the RAB concept work at LOOW.

Bob Giannetti, a member of the LOOW RAB's steering committee, recently summarized the community's hopes in a letter to the Corps:

[T]he RAB has in the past and could continue in the future to be helpful to both the Corps and to the resident community in ensuring that the right technical questions are asked and that the most helpful public meeting agendas are devised. The Corps and the community deserve no less.