

**Minutes of Meeting
Restoration Advisory Board Meeting #12
February 26, 1997**

**Naval Reserve Ordnance Plant
Fridley, Minnesota**

Restoration Advisory Board (RAB) meeting #12 was held at the Naval Industrial Reserve Ordnance Plant (NIROP), Fridley, Minnesota, on Thursday, February 26, 1997, at 10:00 AM. A copy of the agenda distributed at the meeting and the attendance sheet are attached (Attachments 1 and 2, respectively). Each of the attendees affiliation is identified on the attendance sheet.

1. Introduction

RAB Co-Chairs Mr. Kerry Morrow and Mr. John Flora opened the meeting at 10:00 AM. All meeting participants introduced themselves.

2. Minutes of RAB Meeting #11

No corrections to the Meeting #11 minutes were indicated.

3. Actions Since Last Meeting

NAVY

- a. Operable Unit #1 - Groundwater: Scott Glass, Navy RPM, said that construction of Phase I of the ground water treatment plant (GWTP) is completed. Construction of Phase II is set to start. Start-up of Phase II is currently scheduled for early November, with a fully operational plant anticipated soon after. Mr. Flora asked what specifically was meant by an operational plant, and Glass replied that this meant a plant which was processing water and removing contamination. Mr. Flora said that there would be some manganese, iron, and TCE remaining in the discharged water, and Glass agreed. Mr. Flora asked if this was the appropriate time to open the discussion on the discharge point. Glass said that the discharge point is identified in the operating permit.

Mr. Flora asked about the status of the letter to Congress which he had previously requested that Navy draft to explain the eventual increase in cost of the construction. Glass said that in checking records, there had not been any previous letter to Congress to notify about capital investment, except for information about additional cost for treatment trains to produce potable water, etc. The letter did say that cost increases would result from adding additional treatment trains to provide potable water regardless of the baseline. Therefore, it did not seem appropriate to send an 'update' letter. Mr. Flora said that the original plan was to spend \$582K versus the \$3.2MM that a granular activated carbon (GAC) plant would have cost. Now there is an 800 % overrun on what is effectively a lesser plant, since there is no building structure. Glass said that different baselines are being compared - for example, the original design didn't have any manganese treatment and the finished plant does. Mr. Flora said that it would have cost \$30K to remove the metals, but \$7MM just to sequester. Kerry Morrow said that there wasn't any precedent for sending a preemptive letter to congress but that if there are any future inquiries that Navy would be sure to respond. Also, anyone asking these questions needs to consider the three-year time differential.

Mr. Flora concluded that if MPCA or EPA won't take any action by looking into this, maybe we need to take it to Congress ourselves since we can't settle it here.

Tom Bloom, EPA RPM, asked Mr. Flora if the issue here was Mr. Flora's previous suggestion to provide bottled water to Fridley. Bloom said that under a supplementary environmental project,

Navy had agreed to treat the groundwater to potable standards if the City of Fridley said they'd do the long-term O&M. Bloom recalled that Mr. Flora had responded at that time that Fridley wouldn't be supplying any Class 4 operator; he had assumed the Navy meant only to 'paint the door, clean the floor.' Bloom said that Navy has gone very far considering that they haven't contaminated any Fridley drinking water aquifer. Mr. Flora said that it is contaminated, and Bloom answered only if well 13 is used, which will suck contamination down into the aquifer.

Mr. Flora concluded by saying that he'd already sent a letter to Congress and hopefully they will look into it and query the Navy.

Dave Douglas, MPCA RPM, said that regarding the NPDES permit, there is a requirement to notify the state if treatment additives are used. Navy has done this since they will be using a polymer. Morrow said that the MWW has been doing a study on the polymer to make sure that there are no interferences with their treatment. Morrow said that the MWW is regularly invited to these meetings to hear these discussions. Mr. Larry Cole, with the MWW said that Roger Van Tassel, with the Minneapolis City Environmental Department does desire to meet with the Navy on the polymer issue. Douglas said that the polymer to be used is approved by the FDA for food preparation. Therefore, there are no safety issues, only issues about possible treatment interference with the MWW treatment. Douglas said that the MPCA is responsible for approving polymers for this application, and has granted approval at this site. Doug Hildre, with UDLP, said that their experience had been that there are issues with some polymers that contain phosphates, and Glass concurred but said that this polymer doesn't contain phosphates.

Mark Sladic, with Tetra Tech, said that as Navy's contractor at the site, they had hosted a meeting to review the progress of the site groundwater model. Sladic said that MPCA, EPA and Navy were all represented at the meeting, and that the primary outcome was to agree on areas where more information is needed before the model can be used for remedial decisions. The USGS has been contracted by the Navy to collect this data, and anticipates starting in March or April. Upon collection of the data, the groundwater model will be updated. Sladic said that updates to the model have always been anticipated. Mr. Flora asked if the model considers the area to the northeast of NIROP, and Sladic said that a large, regional model prepared by the USGS provides boundary conditions for the local NIROP model. Pat Mosites, with NAVSEA, asked if there would be some type of computer presentation of the groundwater model in the future, and Sladic said that this is planned.

Scott Glass said that in December, another Navy contractor, Morrison Knudsen did some investigation of groundwater quality in Anoka Park which is beyond the current containment system. Eighty-seven individual sampling locations were investigated, and measured the amount of TCE in shallow groundwater. A site map showing the contamination detected was provided and discussed. See Attachment 3. Mr. Flora asked if there was any explanation yet for the smaller hot spot southeast of the bigger spot, and Glass said no.

- b. Operable Unit #3 - Soils Under NIROP Plan: Glass said that monitoring well sampling is now in progress, and that this is nearly the last activity in the current mobilization. Both Glass and Sladic thanked Tim Ruda and Doug Hildre with UDLP for their help in allowing the sampling teams to get access to all areas they needed to see.
- c. NAVSEA Ownership Transfer Plans for NIROP Fridley: Kerry Morrow said that the window for UDLP to exclusively negotiate for the property will remain open until June. There have already been several meetings, and another is scheduled for this afternoon.

Scott Glass said that an Environmental Baseline Survey (EBS) and Finding of Suitability for Transfer (FOST) have been completed. Morrow said that early transfers are also being investigated. Morrow explained that an early transfer would be one which was prior to the

completion of all remedial activities. The early transfer legislation was created due to problems DOD encountered by not being able to move property affected by BRAC. One complicating factor is that the transfer typically absolves the new owner of any liability for existing contamination, and the issue is how this could be done with UDLP, with whom the Navy is still negotiating division of liability for existing contamination.

Glass identified the current step is the preparation of the Covenant Deferral Request (CDR). The CDR protects human health, and ensures that the new owner won't impact remedial activities. It also ensures that appropriate schedule and budget assurances are in place for remedial activity. Glass said that Navy has drafted the document, and now MPCA and EPA comments will be solicited before it is sent up the Navy chain of command. There is a July time frame for this document to collect all necessary approvals. Bloom explains that typically when a site is sold, the new owner also buys the liability for environmental issues. But using this process ensures that the federal entity retains the environmental liability. Glass said the driving force is that Base Realignment and Closure (BRAC) requires that cleanup occur prior to sale, and this process can allow sale prior to completion of cleanup. Morrow added that it also assures a new owner that he's indemnified. Additionally, the Navy, EPA, and MPCA still have a Federal Facilities Agreement (FFA) in place. Douglas added that the Superfund law is not designed to prevent sale. The regulatory goal is to make these laws work together.

MINNESOTA POLLUTION CONTROL AGENCY

Upgradient Map Presentation: Paul Estuesta, with MPCA, provided a discussion on potential impacts from the site's neighbors. Burlington Northern Railroad (BN), to the east of the site, is suspected to have had releases on their site. A large network of wells is already in place on the BN site.

Estuesta said that there has not been any monitoring north of BN monitoring well 13, but that the well 13 location has been clean. There are no documented releases upgradient of the well. Some areas of the site have shown diesel fuel contamination. These areas are well south of NIROP, and center around the diesel repair shop. See Attachment 4.

Pat Mosites said that he thought he had heard there were no releases, but he knew that just recently up to 600 gallons of no. 6 diesel were discharged from the site to the river through a storm sewer. Estuesta said he was still in the process of receiving spill records. Hildre said that there had been a BN diesel tank just south of UDLP. There was one and a half feet of free product on the water table when they started their treatment system, although after thousands of gallons were recovered this has dissipated. Estuesta added that in some locations, there had actually been up to eight feet of free product on the water table.

Paul Estuesta also showed a map depicting the TCAP plume, and explained that new wells are being installed to monitor this plume. Douglas said the municipal well field is also under investigation for TCE.

Tom Bloom said that Kurt Manufacturing is also putting in new wells, and Estuesta said this is because they recently found PCE in their production wells. Glass said that what initiated this was that PCE was detected in monitoring well PC-5, which is normally sampled with the NIROP set as an upgradient background well. Glass said that it is a concern to see what other contamination may be flowing onto the site.

UNITED DEFENSE

Maintenance and Monitoring Activities: Tim Ruda provided an update of the operation and maintenance of the containment pumping system. Recent re-development of AT-2 well did not meet with much success. Ruda said that only a couple feet of the well screen is in sand while most of the rest of the screen is set in clay. This slowly clogs up the well.

See Attachment 5 for an O&M summary.

4. Actions Scheduled/Due Dates

a. The RAB was appraised of upcoming activities:

| | |
|------------------------------------|--------------------|
| 1997 Annual Monitoring Report | March 31, 1998 |
| Final CDR | July 4, 1998 |
| Draft OU-3 Report | July 7, 1998 |
| RAMP revision | September 30, 1998 |
| Substantial completion of the GWTF | November 10, 1998 |
| 1999 SMP | December 31, 1998 |

5. Other Issues/Comments

- a. Partnering: The RAB was notified that the team had just completed their eleventh Tier I partnering meeting. The team had prepared seven success stories. See Attachment 6. The team was actually able to document tangible savings of approximately \$750K.
- b. Kerry Morrow distributed the first draft of elements of a new member 'RAB package'. The goal is to most quickly get a new member up to speed. Additional material will be added to the package, for example a summary of the FFA. The RAB package is included as Attachment 7. Also, Morrow provided notification that there is federal funding for RAB participation. See Attachment 8.
- c. Scott Glass said the Navy is investigating providing an internet web page, on which any member could access RAB meeting minutes, the Charter, etc. Also NAVSEA is placing the administrative record on CD-ROM.
- d. The next RAB meeting is scheduled for : RAB #13 June 18 at NIROP, 10:00 AM.

NAVAL INDUSTRIAL RESERVE ORDNANCE PLANT FRIDLEY
RESTORATION ADVISORY BOARD MEETING #12
26 FEBRUARY 1998, 10:00 AM
AGENDA

- 1. Introduction
- 2. Corrections to Minutes of RAB #11
- 3. Actions Since Last Meeting

NAVY

- a. Operable Unit #1 - Groundwater
 - Status on Construction of New Treatment Facility
 - Update on Groundwater Modeling Efforts
 - Anoka County Park investigation
- b. Operable Unit #3 - Soils Under NIROP Plant
 - Status on ongoing RI fieldwork
- c. NAVSEA Ownership Transfer Plans for NIROP Fridley
 - Status of EBS/FOST
 - Status on Covenant Deferral Request

MINNESOTA POLLUTION CONTROL AGENCY

- Upgradient Map Presentation

UNITED DEFENSE

Maintenance and Monitoring Activities

- 4. Actions Scheduled/Due Dates
 - a. 1997 Annual Monitoring Report 31 March 1998
 - b. Draft OU#3 RI Report 1 July 1998
 - c. Final CDR 4 July 1998
 - d. RAMP Revision 30 September 1998
 - e. Complete GWTP Construction 10 November 1998
 - f. 1999 SMP 31 December 1998
- 5. Other Issues/Comments
 - a. Partnering Efforts
 - b. RAB "New Member" Package Development
 - c. Web page
 - d. TAPP- Technical Assistance for Public Participation

Feb. 26 (1998)

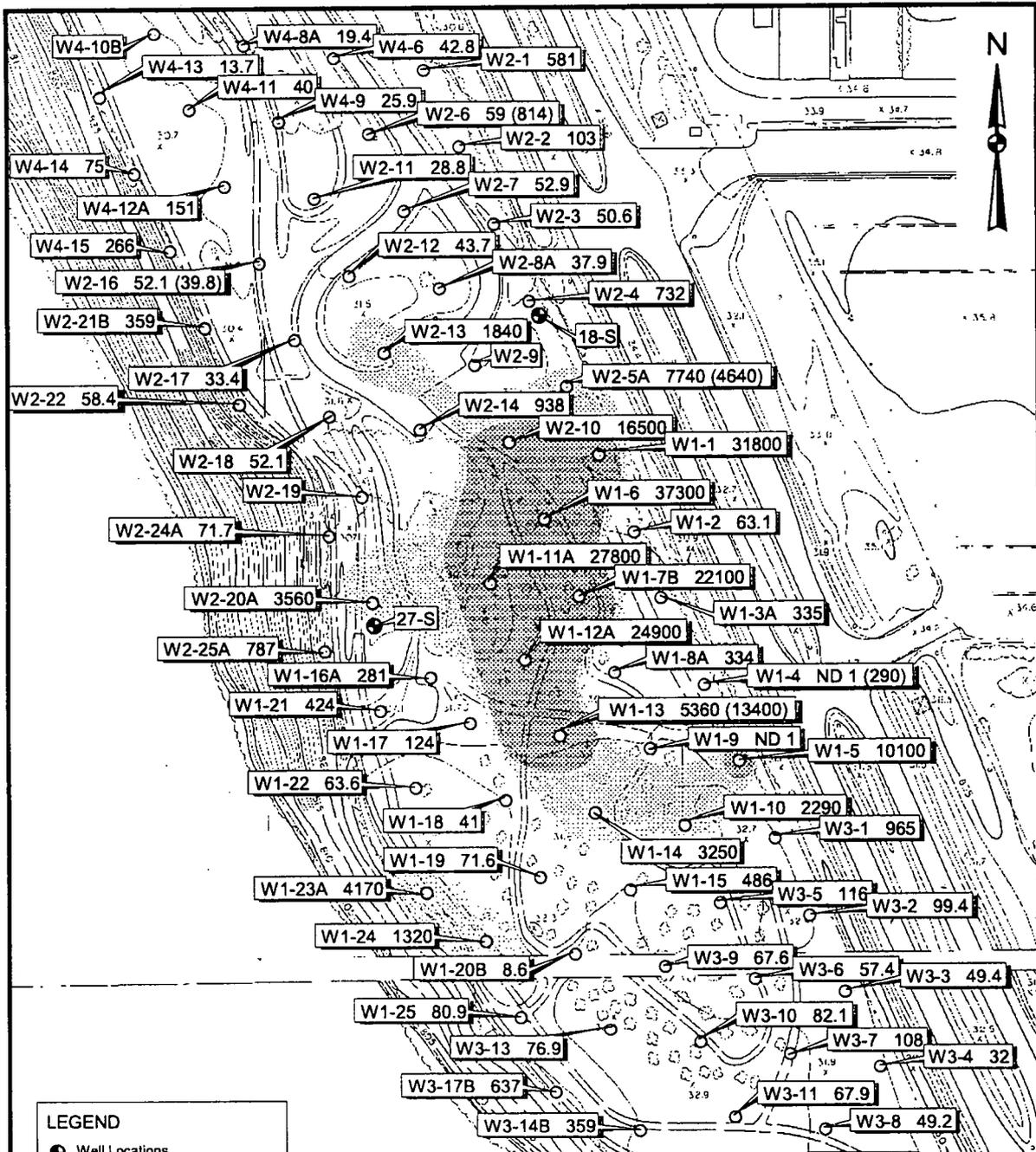
ATTACHMENT
2

Nirop - RAB Meeting

| name | Organization | tel |
|------------------------|----------------------------|---|
| LARA GRNES | ANOKA COUNTY ENV. SERVICES | (612) 422-7253 |
| John G. FLOREN | CITY OF MINNAPOLIS | 612 572 3550 |
| Jim Ferris | SOUTHNAVFACE NCCOM | (803) 820-7483 |
| PAT MOSITES | REICC MNPLS | 612 572-6438 |
| Danna Kopecki | GALILEO QI | 603-882-4616 |
| Scott Glass | SOUTHNAVFACE NCCOM | 803 820-5587 |
| MARIL SZADIC | TERRA TECH | 412 921-8216 (312) 886-1967 (612) 296- 296 |
| Thomas Bloom | USEPA | (612) 296- 296 |
| Dave Douglas | MPCA | 612-296-7818 |
| Paul Estueta | MPCA | 612-296-2997 |
| Tim Runk | UDLP | (612) 572-6906 |
| Angela Haire | UDLP | 612.572.6938 |
| Norwood "Woody" NELSON | AREA CHAMBER | 612/574-5116 |
| Harry Cole | Mpls Water | 612-661-4923 |
| TED A. GIFFORD | MORRISON KNUDSEN CORP | 612-572-3368 |
| Kenny Morrow | NAUSEA | 572.6360 |

SADIC

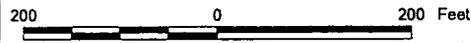
(412) 921-4040



LEGEND

- Well Locations
- Cone Penetrometer Location
- TCE Isoconcentration Lines
- ▨ TCE > 10,000 ppb
- ▩ TCE > 1,000 ppb

NOTE:
TAGS SHOW SAMPLE ID AND RESULT
LOCATIONS WERE RENAMED FROM SURVEY INFORMATION AS FOLLOWS:
W1-22 WAS LABELED IN THE SURVEY AS (A DUPLICATE) W2-22
W2-6 WAS (INCORRECTLY) LABELED IN THE SURVEY AS W2-5
W3-4 WAS LABELED IN THE SURVEY AS (A DUPLICATE) W3-5

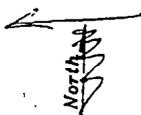
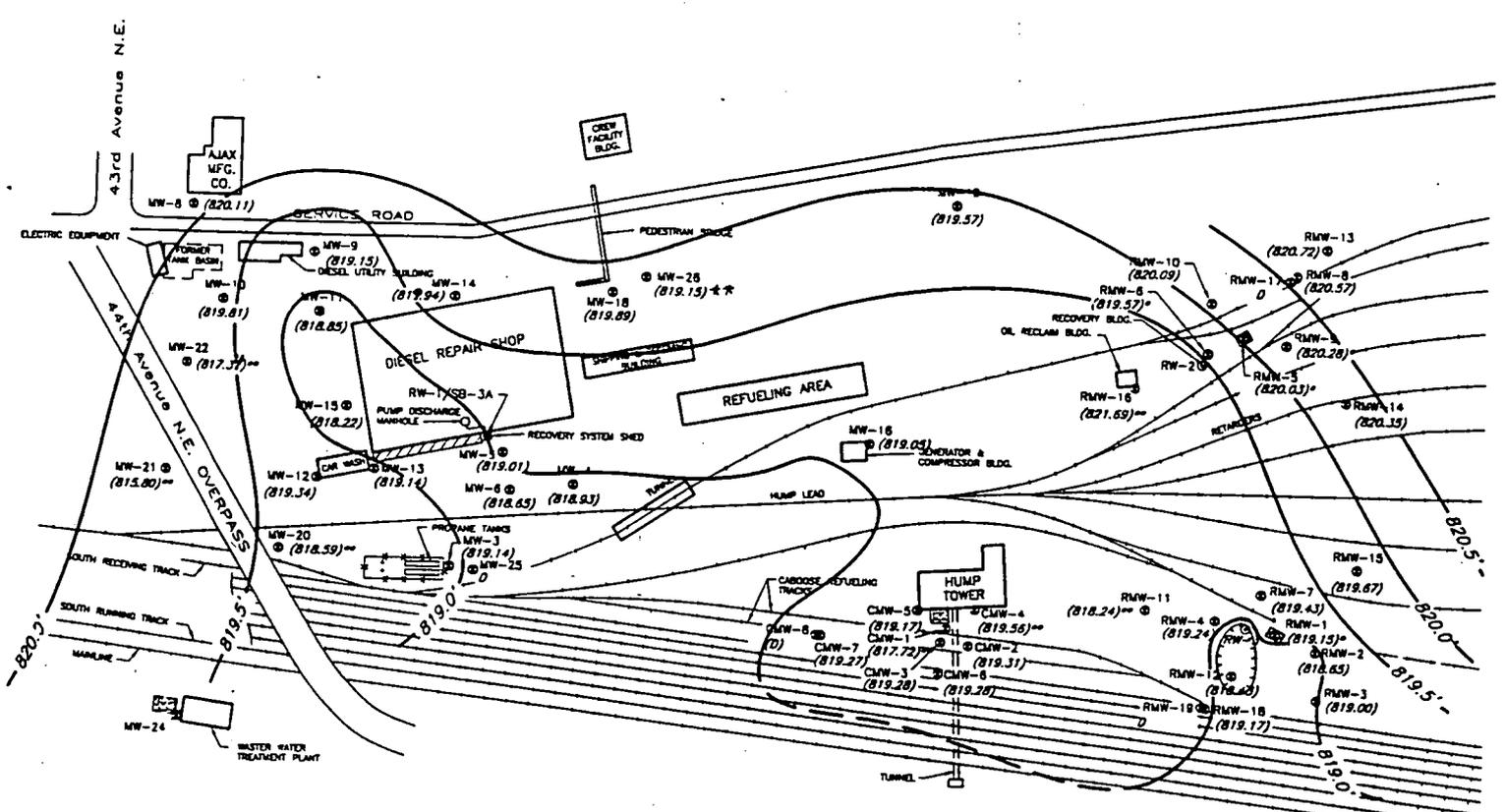


| | |
|----------------------|-------------------|
| DRAWN BY D. PERRY | DATE 19-FEB-98 |
| CHECKED BY | DATE |
| COST/SCHEDULE-AREA | |
| SCALE AS NOTED | |



TCE RESULTS (PPB)
CONE PENETROMETER DATA
ANOKA RIVERFRONT PARK
FRIDLEY, MINNESOTA

| | |
|-----------------|----------|
| CONTRACT NUMBER | |
| APPROVED BY | DATE |
| APPROVED BY | DATE |
| DRAWING NO. | REV 0 |



LEGEND:

- FORMER REFUELING AREA
- FORMER OR CURRENT UST BASIN
- RAILROAD TRACKS
- RECOVERY WELL
- MONITORING WELL
- ABANDONED MONITORING WELL
- (816.60)
- DEEP MONITORING WELL
- DENOTES WELLS CONTAINING FREE PRODUCT (CORRECTED ELEVATION PRESENTED)
- 816.5' GROUND WATER CONTOUR LINE
CONTOUR INTERVAL = 0.5 FT.
- NOTE: MW-20, MW-21, MW-22, MW-26, RMW-11, RMW-16, CMW-1 AND CMW-4 NOT USED TO CONSTRUCT MAP.

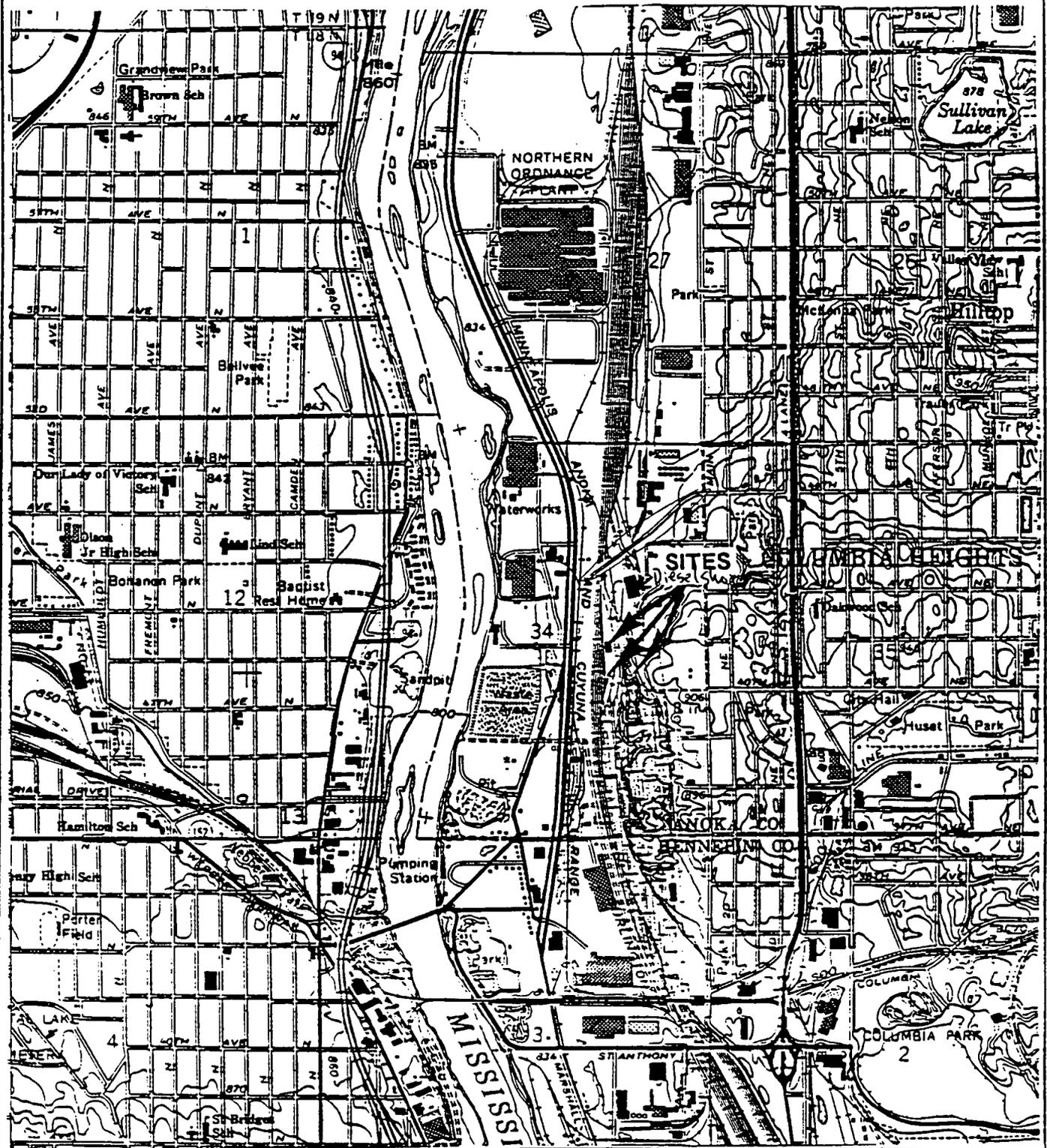
FIGURE 3
GROUND WATER ELEVATIONS - OCTOBER 1997
WATER TABLE WELLS
BNSF - NORTHTOWN YARD
FRIDLEY, MINNESOTA



| | | |
|-------------------------|-----------------------|-----------------------|
| PROJECT NO. A092-251 | PREPARED BY ASG/DD | DRAWN BY SJR |
| DATE 1/15/98 | REVIEWED BY | FILE NAME 92251-95 |



Attachment 4
1/3



MINNEAPOLIS NORTH QUADRANGLE
MINNESOTA
7.5 MINUTE SERIES (TOPOGRAPHIC)

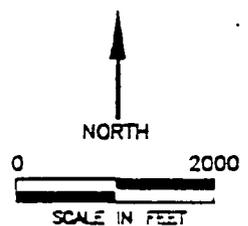
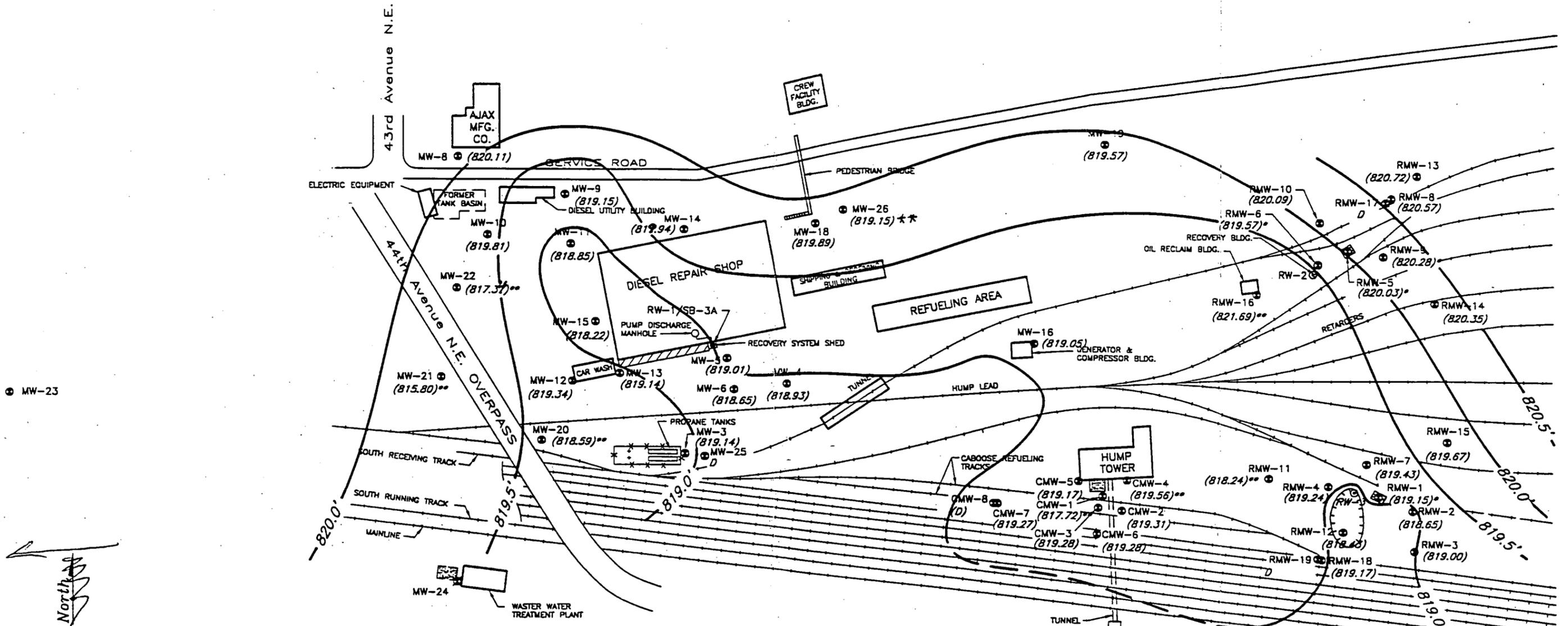


FIGURE 1
SITE LOCATION MAP
RETARDER TRACKS/CABOOSE FACILITY INVESTIGATIONS
BNRR - NORTHTOWN YARD
FRIDLEY, MINNESOTA

| | | |
|--------------------------|-----------------------|--|
| PROJECT NO. 10-92-251 | PREPARED BY PJC/DD |  Delta Environmental Consultants, Inc. |
| DATE 6/4/93 | REVIEWED BY | |



LEGEND:

- FORMER REFUELING AREA
- FORMER OR CURRENT UST BASIN
- RAILROAD TRACKS
- RECOVERY WELL
- MONITORING WELL
- ABANDONED MONITORING WELL
- (816.60)

 GROUND WATER ELEVATION (IN FEET)
- DEEP MONITORING WELL
- DENOTES WELLS CONTAINING FREE PRODUCT (CORRECTED ELEVATION PRESENTED)
- 816.5' GROUND WATER CONTOUR LINE
CONTOUR INTERVAL = 0.5 FT.
- ** NOTE: MW-20, MW-21, MW-22, MW-26, RMW-11, RMW-16, CMW-1 AND CMW-4 NOT USED TO CONSTRUCT MAP.

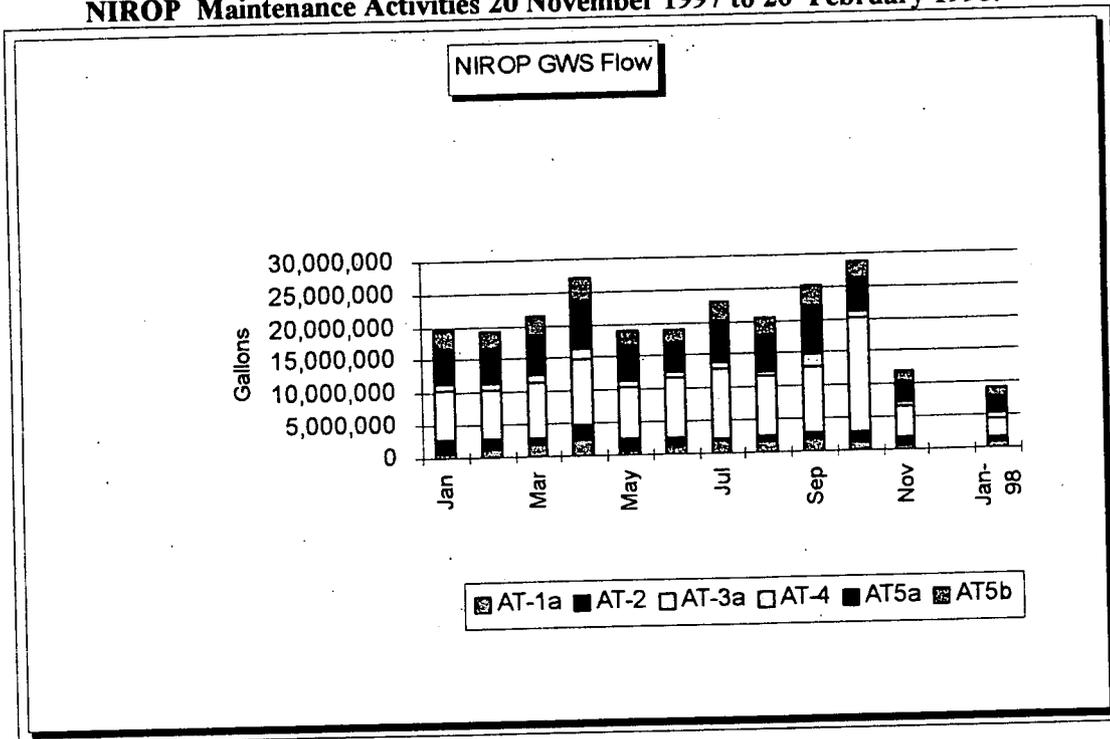
FIGURE 3
GROUND WATER ELEVATIONS - OCTOBER 1997
WATER TABLE WELLS
BNSF - NORTHTOWN YARD
FRIDLEY, MINNESOTA

| | | |
|-------------------------|-----------------------|-----------------------|
| PROJECT NO. A092-251 | PREPARED BY ASG/DD | DRAWN BY SJR |
| DATE 1/15/98 | REVIEWED BY | FILE NAME 92251-95 |



NIROP Maintenance Activities 20 November 1997 to 26 February 1998.

ATTACHMENTS



- Water level measurements taken 9 January.
- Re-development of extraction well AT2 completed 20 January. Well flow limited to 45 gpm.
- Treatment system Phase I construction completed 20 January. System restarted 20 January with all extraction wells.

Extraction Well flowrates in gpm 1997 average vs current.

| <u>AT1a</u> | <u>AT2</u> | <u>AT3A</u> | <u>AT4</u> | <u>AT5A</u> | <u>AT5B</u> |
|-------------|------------|-------------|------------|-------------|-------------|
| 36 vs 45 | 36 vs 46 | 203 vs 244 | 26 vs 51 | 132 vs 158 | 62 vs 82 |

Total flowrate 1997 was 500gpm, current is 632 gpm.

Planned Activities

- Monthly sampling of combined discharge.
- Water level measurements to be 1st week of March.
- Monitoring and extraction well sampling April 1998.

NAVAL INDUSTRIAL RESERVE ORDNANCE PLANT
Fridley, Minnesota
DEVELOPMENT OF SOIL LEACHING BASED
CLEANUP NUMBER FOR
OPERABLE UNIT 2

Original Conditions

The MPCA and Navy needed to agree on concentrations of contaminants that, when left in soil, would not pose a threat to underlying ground water. Agreement on these numbers was essential prior to establishing the remedy for these soils.

Original Approach

The MPCA staff assumed the sole responsibility of developing these cleanup numbers through the application of soil transport models. Results of these modeling efforts were then communicated to the Navy.

Results of Original Approach

After presenting cleanup numbers to the Navy, there were numerous disputes and unproductive correspondence between the Navy, the Navy's consultant, and the MPCA staff concerning the modeling approach and accuracy of the numbers. No agreement could be reached on adequate cleanup numbers for the site.

How Partnering Was Applied

Partnering allowed all parties to work concurrently on this complex problem. The

NIROP Partnering Team first agreed to a date by which numbers should be finalized. To achieve this, the MPCA staff and the Navy's consultant worked together to resolve outstanding differences in the overall modeling approach and the specific inputs to the models. Only after the workgroup agreed to results were the results presented to the NIROP Partnering Team for consensus.

Savings

Agreement was reached on these cleanup numbers within the two-month period established by the NIROP Partnering Team. Although it is difficult to establish savings in dollars, the original ongoing disputes may have lasted many more months or even years.

Overall Results

The NIROP Partnering Team established soil cleanup numbers in a short time. These numbers are reasonable to all members. This has avoided significant frustration and allowed the members to move ahead with other important issues.

ATT 6
2/7

NAVAL INDUSTRIAL RESERVE ORDNANCE PLANT
Fridley, Minnesota
DESIGN OF PHASE II OF THE ON-SITE TREATMENT
SYSTEM FOR OPERABLE UNIT 1

Original Conditions

The Navy relied on the old contracting process and procedures for producing plans and specifications for the design.

Overall Results

The Navy is approximately half way through the construction of Phase II.

Original Approach

The Navy followed the typical fixed price federal procurement process and procedures.

Results of Original Approach

The Navy continued to experience delays in getting the design done and delays in getting the construction of Phase II started.

How Partnering Was Applied

Partnering allowed the NIROP Partnering Team to think outside of the box. The regulators expedited their reviews of the plans and specifications. The Navy was able to use the partnering process to expedite the contracting oversight of Navy staff involved in the review of the contracting process.

Savings

The Navy will stop paying approximately \$750,000 in annual sewer fees to the POTW when Phase II begins operation.

AFT 6
3/7

NAVAL INDUSTRIAL RESERVE ORDNANCE PLANT
Fridley, Minnesota
HYDRAULIC CONTAINMENT ESTABLISHED FOR
OPERABLE UNIT 1

Original Conditions

The Navy and the regulators (the Minnesota Pollution Control Agency (MPCA) and the U.S. Environmental Protection Agency (EPA) could not reach agreement on whether or not containment of the trichloroethylene (TCE) ground water plume had been achieved.

Overall Results

Construction of Phase II of the remedy for Operable Unit I is under way.

Original Approach

The original approach was to send letters and reports back and forth between the Navy and the regulators and to argue about interpretations of data at meetings.

Results of Original Approach

The Navy and the regulators could not come to agreement on this issue.

How Partnering Was Applied

The members of the NIROP Partnering Team identified common goals; backed away from entrenched prospectives; and reached consensus to move forward with the design of Phase II of the remedy for Operable Unit 1.

Savings

The Navy will stop paying approximately \$750,000 in annual sewer fees to the POTW when Phase II begins operation.

APPG
4/7

NAVAL INDUSTRIAL RESERVE ORDNANCE PLANT

Fridley, Minnesota

ESTABLISHMENT OF A NIROP

SITE MANAGEMENT PLAN

Original Conditions

The Navy and the regulators interacted with one another under a vague understanding of the schedule requirements of the Federal Facility Agreement.

Original Approach

The Navy and the regulators had varied interpretations of the schedule requirements of the Federal Facility Agreement.

Results of Original Approach

The EPA took enforcement action against the Navy, issuing the Navy a demand for stipulated penalties for noncompliance with the FFA schedule.

How Partnering Was Applied

The NIROP Partnering Team collectively defined deliverables with an associated schedule for the upcoming and following years with the ability to revise the SMP as needed.

Savings

The Navy has experienced no more stipulated penalties; reduced schedule delays and operational expenses.

Overall Results

The NIROP Partnering Team has improved the timeliness of its work.

ATF 6
5/7

NAVAL INDUSTRIAL RESERVE ORDNANCE PLANT

Fridley, Minnesota

GROUND WATER INVESTIGATION IN ANOKA

COUNTY RIVERSIDE PARK

Original Conditions

The Navy and the regulators believed that the residual ground water contamination in Anoka County Riverside Park would naturally degrade. No field work was viewed as necessary to track the assumed degradation.

Original Approach

The Navy and the regulators would wait to see if the level of contamination would decline with time.

Results of Original Approach

Impacts of the residual ground water contamination to the Mississippi River and to the consumers of drinking water from the Minneapolis Water Works were not fully understood.

How Partnering Was Applied

This was the first project to which the partnering process was applied from the beginning of the project at the NIROP Site. Citizen involvement due to the partnering process cause the NIROP Partnering Team to re-evaluate what was known about the ground water contamination in the park. The Team quickly developed a plan of action; re-

assessed the impact of the contamination on the Mississippi River; and conducted a field investigation without resorting to the formal Superfund process as envisioned in the FFA.

Savings

The savings at the present time are estimated to be approximately \$1 million and approximately two years of formal Remedial Investigation work.

Overall Results

The savings in time will allow for an accelerated remedy selection process to cleanup the ground water and the monetary savings will allow the Navy to spend its limited DERA funds more wisely.

ATT 6
6/7

NAVAL INDUSTRIAL RESERVE ORDNANCE PLANT

Fridley, Minnesota

REMEDIAL INVESTIGATION FOR OPERABLE UNIT 3

Original Conditions

The Navy would draft work products and send them “over the wall” to the regulators who would review the work products and send review responses back over the wall.

The new approach has resulted in accelerated work product drafting and review as well as a better sense of consensus and ownership of the final work products.

Original Approach

The “over the wall” approach was typical of the way the Navy and the regulators conducted the drafting and reviewing of all major work products.

Results of Original Approach

The approach resulted in continued delays in beginning field work with associated inflationary increases in the cost of field work.

How Partnering Was Applied

The NIROP Partnering Team began reaching consensus on the scope of work products during, not after, work product development.

Savings

It is too early to tell exactly what the savings are in time and money.

Overall Results

ATT 6
7/7

NAVAL INDUSTRIAL RESERVE ORDNANCE PLANT
Fridley, Minnesota
SITE GROUND WATER MODEL
AND
GEOGRAPHIC INFORMATION SYSTEM

Original Conditions

The MPCA rejected the ground water model. The "over-the-wall" approach led to confusion about the ground water model and resulted in delays by the Navy about how to proceed.

It is not known how much time and money will be saved at this point in time; however, the team believes that spending the money now will result in long-term savings in the future.

Original Approach

Again the original approach was the "over-the-wall" approach.

Overall Results

The result will be a ground water model that allows the team to better evaluate existing ground water remedies and will allow the team to better evaluate any future remedies. The model will be more strongly owned by all team members.

Results of Original Approach

The original approach resulted in a ground water model that neither the Navy nor the regulators had confidence in.

How Partnering Was Applied

Again the NIROP Partnering Team identified a common goal; recognized the need for a new ground water model and the usefulness of tracking data via a GIS; and the team members began the design phase at the beginning of the project.

Savings



WELCOME



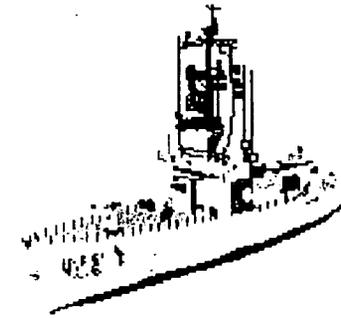
TO

THE NIROP FRIDLEY

RESTORATION ADVISORY BOARD

Attachment 7

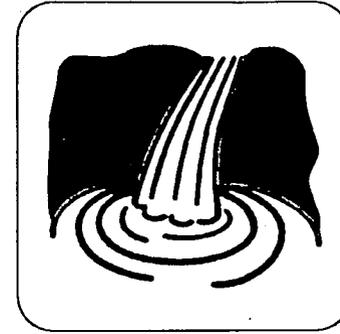
NIROP Fridley



- Jointly owned by U.S. Navy and UDLP
 - ✓ U.S. Navy owns the northern portion
 - ✓ UDLP owns the southern portion but operates entire facility

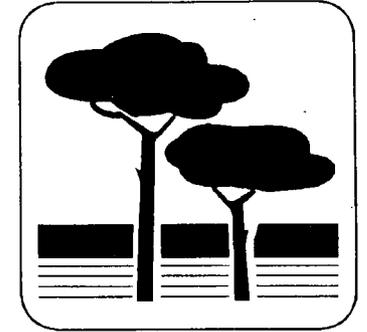
- Divided into 3 Operable Units (OU's)
 - ✓ OU1 is site groundwater
 - ✓ OU2 is site soil outside the building
 - ✓ OU3 is site soil beneath the building

OU1 – Groundwater



- Contaminated with Trichloroethylene (TCE)
- Extraction system in place as remedy since 1992
- Extraction system upgraded in 1995
- Estimated 20,000 pounds TCE removed

OU2 – Soils outside building

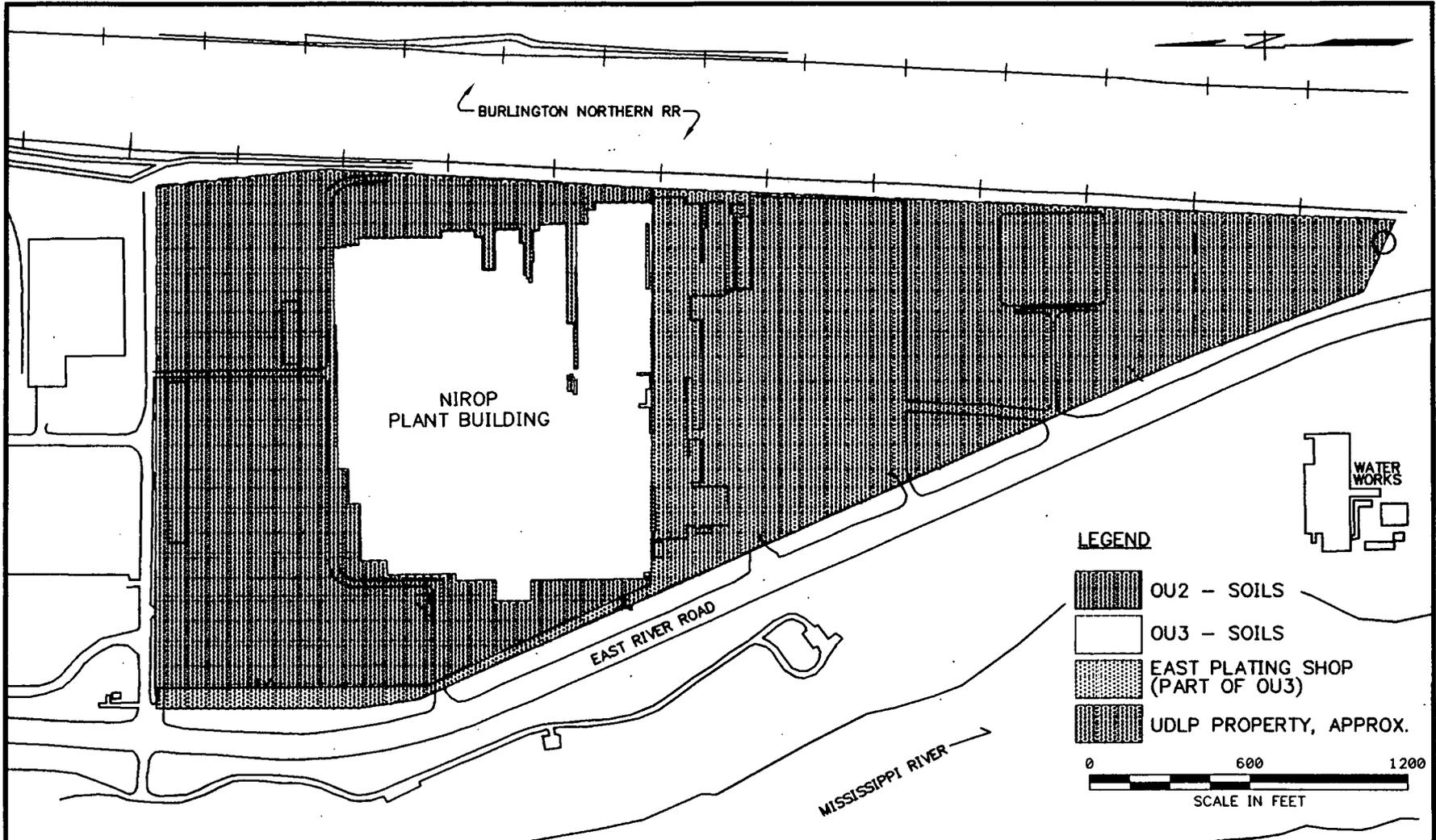


- Contaminated with TCE
- Drums removed from North 40
 - ✓ 43 drums removed in 1983-1984
 - ✓ 31 drums removed in 1992
 - ✓ 23 drums & 12 other containers removed in 1996
- Will be combined and remediated with OU3

OU3 – Soils beneath building



- Suspected TCE contamination
- East Plating Shop investigation performed in 1995 during refurbishing
 - ✓ TCE and PCE contamination found
- Ongoing investigation to be complete in 1998
- Will be combined and remediated with OU2



| | | | | |
|-------------------|--------------|---|----------------------|---------------|
| DRAWN BY TAD | DATE 2/98 |  Brown & Root Environmental DIVISION OF OPERABLE UNITS NIROP FRIDLEY FRIDLEY, MN | CONTRACT NO. 6966 | OWNER NO. |
| CHECKED BY | DATE | | APPROVED BY | DATE |
| COST/SCHED-AREA | | | APPROVED BY | DATE |
| SCALE AS NOTED | | | DRAWING NO. | REV. 0 |

Naval Industrial Reserve Ordnance Plant Fridley (NIROP) environmental concerns have been organized into three operable units (OU's). The OUs are loosely defined as follows:

- OU1 is site groundwater
- OU2 is site soils other than those beneath the NIROP building
- OU3 is site soils beneath the NIROP building

OU1 events and status

Groundwater monitoring began in 1986. Groundwater samples were collected and analyzed in 1986, 1988, and 1990 to enable design of a remedy. In 1992, a groundwater extraction system was installed as a remedial action. The system was designed to capture and remove contaminated groundwater, and to prevent off-site migration. Groundwater monitoring has been performed at least twice annually since 1992. The system was upgraded in 1995 to increase effectiveness.

The groundwater extraction system is currently operating. It is estimated that over 20000 pounds of trichloroethene (TCE) have been removed since the system was installed. The groundwater extraction system effectiveness is currently being evaluated. Monitoring wells in Anoka County Park have shown TCE concentrations in excess of allowable limits prescribed by EPA and MPCA. Therefore, contaminated groundwater may have escaped off-site despite the presence of the extraction system. Modifications to increase the capture of contaminated groundwater may need to be designed.

OU2 events and status

Investigations of OU2 have been conducted periodically since 1983. The first investigation showed that drummed wastes had previously been buried in the northern portion of the site (sometimes called the North 40 area). Three separate remedial actions to remove drums have been completed. Over one-hundred drums and other containers have been removed. Contaminated soils have also been removed.

Further remedial action for OU2 is on hold, awaiting completion of the OU3 investigation. It is possible that a common remedy will be applied to OU2 and OU3. Appropriate remedial action will be proposed following completion of OU3 activities.

OU3 events and status

Soil samples were collected from beneath the East Plating Shop while the area was being renovated in 1995. The sampling showed TCE contamination in the soil.

A sampling effort was initiated to collect soil and groundwater samples throughout OU3 in 1997. This sampling effort is ongoing. Results from this sampling effort will also impact future remedial decisions and monitoring activities performed for OU1. Sampling results are expected to be reported in the summer of 1998.

Chronological List of Events – NIROP Fridley Fridley, MN

- 1983 Envirodyne Engineers Inc.
Initial Assessment Study (IAS)
- 1987 RMT, Inc.
Interim Report for Remedial Investigation/Feasibility Study
- 1987 RMT, Inc.
Remedial Investigation Report for Remedial Investigation/Feasibility Study
- 1988 RMT, Inc.
Addendum to the Remedial Investigation Report for Remedial Investigation/Feasibility Study
- 1988 RMT, Inc.
Feasibility Study for the Remedial Investigation/Feasibility Study
- 1988 RMT, Inc.
Quality Control Summary Report: Pumping Test for the Remedial Investigation/Feasibility Study
- 1988 RMT, Inc.
Feasibility Study report for the Remedial Investigation/Feasibility Study
- 1990 USEPA
Record of Decision for Ground Water Remediation
- 1990 RMT, Inc.
Draft A-E Quality Control Plan and Sampling Plan for Monitoring Well sampling rounds
- 1991 RMT, Inc.
A-E Quality Control Summary Report for Well Installation and Ground Water and Soil Sampling
- 1991 RMT, Inc.
Technical Memorandum No. 1, Soil Investigation and Monitoring Well Sampling Round 1
- 1991 Minnesota Pollution Control Agency
Federal Facility Agreement Between U.S. EPA, U.S. Navy, and MPCA
- 1991 RMT, Inc.
A-E Quality Summary Report for Ground Water Sampling
- 1991 RMT, Inc.
Draft Technical Memorandum No. 2, Monitoring Well Sampling Round No. 2

- 1992 RMT, Inc.
Remedial Action Work Plan for Ground Water Remediation
- 1993 RMT, Inc.
Remedial Investigation Report for Soils Operable Unit
- 1995 Brown & Root Environmental
Draft Field Investigation Summary, East Plating Shop
- 1995 Brown & Root Environmental
OU3 Site Evaluation
- 1997 Brown & Root Environmental
Revised OU2 Feasibility Study
- 1997 Brown & Root Environmental
Environmental Baseline Study
- 1997 Brown & Root Environmental
1996 Annual Monitoring Report
- 1998 Brown & Root Environmental
1997 Annual Monitoring Report



ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

20 1998

ATTACHMENT 8

MPCA, GWSM
Site Response Section

Initials

MEMORANDUM FOR DOD ENVIRONMENTAL RESTORATION STAKEHOLDERS

SUBJECT: Federal Register Publication of Final Rule--Technical Assistance for Public Participation in Defense Environmental Restoration Activities

The Department of Defense is pleased to announce the publication of the Final Rule on Technical Assistance for Public Participation (TAPP) in Defense Environmental Restoration Activities in the Federal Register on February 2, 1998. The National Defense Authorization Act for Fiscal Year 1996 allowed the Department of Defense to develop a program to facilitate public participation in its environmental restoration program by providing independent technical assistance to community members of Restoration Advisory Boards (RABs) and Technical Review Committees (TRCs). This final rule was developed by a working group comprised of representatives of the military components and the Environmental Protection Agency. It is based on input received in response to a notice of request for comments in the Federal Register on May 24, 1995 (60 FR 27460-27463) and comments on the proposed rule published in the Federal Register on December 27, 1997 (61 FR 68184-68196). Enclosed are the Federal Register Notice, a Fact Sheet, and a brochure on the TAPP program.

Eligible members of RABs and TRCs may apply for TAPP services after demonstrating that other sources of assistance are unavailable or unlikely to contribute to community acceptance of environmental restoration activities at the installation. Eligible projects include review of restoration documents or proposed remedial technologies, interpreting health and environmental effects, participating in relative risk evaluations, and certain types of training. Projects must be approved by the installation commander who will then have a contracting office obtain a private sector provider.

The Department of Defense and the military Components have trained a cadre of individuals who are prepared to present this program to community members of TRCs/RABs. If your TRC/RAB is interested in receiving this training please contact your RAB DoD Co-Chair, the installation, or the Service Point of Contact listed in the brochure. We look forward to an even stronger environmental restoration program and a more informed public as a result of this program. Questions or comments should be directed to Ms. Patricia Ferree by telephone (703) 697-5372.

Patricia A. Rivers
Assistant Deputy Under Secretary of Defense
(Environmental Cleanup)

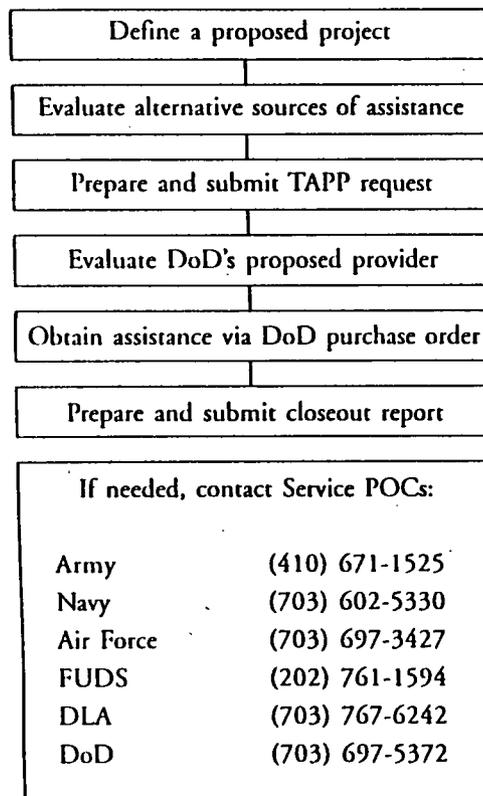
Enclosures



RAB/TRC Community Member Responsibilities Under the TAPP Program



Below is a simple overview of the process by which the community members of the RAB or TRC may obtain technical assistance. The DoD RAB and TRC members are available to assist community members in applying for TAPP.



Assistant Deputy Under Secretary of Defense (Environmental Cleanup)
3400 Defense Pentagon
Washington, DC 20304-3400

Technical Assistance for Public Participation

DoD Environmental Restoration Program



A Department of Defense Program to provide technical support to community members of Restoration Advisory Boards and Technical Review Committees.

The Basics of the Technical Assistance for Public Participation Program



The Department of Defense (DoD) established the Technical Assistance for Public Participation (TAPP) program to assist community members of Restoration Advisory Boards (RABs) and Technical Review Committees (TRCs) in participating more fully in the cleanup process affecting DoD installations and formerly used defense sites (FUDS). TAPP allows community members to obtain objective, independent scientific and engineering support concerning the restoration process through the issuance of government purchase orders to small businesses.

RABs and TRCs are forums for representatives of the installation, regulatory agencies, and community to discuss and exchange information.

Who qualifies for technical assistance?

Community members of RABs and TRCs are eligible to apply for technical assistance under the TAPP program. A minimum of three community members must sit on the RAB or TRC to qualify. A majority of members in good standing must agree on the type of assistance that would most enhance their ability to participate effectively in the restoration program.

What kinds of projects qualify for technical assistance?

TAPP procurements are intended to increase the ability of RAB or TRC community members to participate more effectively in the restoration program by enhancing their understanding of technical details. Typical projects might encompass:

- Review of restoration documents
- Review of proposed remedial technologies
- Interpreting health and environmental effects
- Participating in relative risk evaluations
- Certain types of technical training

Are there projects that are not eligible for funding?

Certain projects do not qualify for funding under the TAPP program. Examples include:

- The generation of new primary data
- Litigation or underwriting legal actions
- Reopening final DoD decisions
- Political activity or lobbying
- Epidemiological or health studies
- Community Outreach efforts

How much funding is available for TAPP?

Communities may obtain up to \$25,000 per year or one percent of the total cost of completing environmental restoration at the installation, whichever is less. There is a limit of \$100,000 per installation.

How does the TAPP process begin?

The process begins with the community members of the RAB or TRC reaching an agreement on a TAPP project. The DoD RAB Co-Chair will be available to assist the community members should the need arise. The steps for requesting TAPP are:

1. Complete the application. Specify the type of assistance required, identify potential provider(s) and certify that alternative sources do not exist.
2. Submit the application to the DoD Co-Chair who will forward it to the Installation Commander for review and approval. The application will then be sent to the contract office to initiate a purchase order.
3. Respond to contracting office inquiries should they identify an assistance provider different from the one suggested by the community.

For more information and an application form, contact your installation RAB Co-Chair.

Fact Sheet: Technical Assistance for Public Participation

Technical Assistance for Public Participation is a new Department of Defense (DoD) program that provides a mechanism for community members of Restoration Advisory Boards (RABs) and Technical Review Committees (TRCs) to obtain technical assistance to help them understand and provide input into DoD's environmental restoration program.

The Department of Defense provides Technical Assistance to help TRCs and RABs better understand the scientific and engineering issues underlying an installation's environmental restoration activities.

Status

A final rule was published on February 2, 1998. During 1997, in preparation for the rule's publication, DoD trained over 100 of its employees from around the country in the TAPP process. RABs may now request this TAPP training through their DoD Co-Chair.

How Does TAPP Work?

The community members of RABs or TRCs decide on a task that will help them participate more effectively in the environmental restoration program at an installation and apply for assistance through the DoD Co-Chair. DoD takes care of the administrative end -- preparing a Statement of Work and procuring a technical assistance provider.

The community members of the RAB or TRC may be called upon to support the procurement process by reviewing and providing comment on potential providers should more than one meet the established criteria. Because the TAPP program takes advantage of an accelerated procurement procedure using purchase orders, support should be available within a very short time of establishing the need.

TAPP at a Glance

- ◆ Community members design project and aide in selection of provider.
- ◆ Government purchase orders procure technical assistance.
- ◆ Maximum of \$25,000/year, or 1% of the total restoration cost, whichever is less. There is a limit over the life of the restoration efforts of \$100,000.

What TAPP is...

A way for the government to obtain alternative support for those RABs and TRCs that desire technical assistance.

A means for RABs and TRCs to better understand the IRP.

A government program using purchase orders to obtain support for community members of RABs or TRCs

What TAPP is not...

A requirement for RABs or TRCs to abandon existing working relationships or methods of obtaining meaningful technical support.

A grant to RABs or TRCs, nor a blank check to use at their discretion.

A means for RABs or TRCs to perform sampling or other functions which should be carried out by the installation.

Eligible Projects

- ◆ Document Reviews
- ◆ Technology Assessments
- ◆ Risk Assessment Review
- ◆ Health Assessments
- ◆ Certain Types of Training

Ineligible Projects

- ◆ Political Activity/Lobbying
- ◆ Generation of new data
- ◆ Reopening DoD final decisions
- ◆ Epidemiological or Health studies, such as blood or urine tests
- ◆ Litigation or underwriting legal action
- ◆ Community Outreach Efforts

How Can You Get Involved in a RAB?

Most installations that have cleanup programs also have established RABs. This is especially true at closing installations. For more information about forming or participating in a RAB, please contact the Public Affairs Office at your local installation or consult the Directory of Restoration Advisory Boards, available on the World Wide Web at:

<http://www.dtic.mil/envirodod/rab/intro.html>

For further information, please contact the DoD Environmental Cleanup Office at (703) 697-5372

removing the entries for "Growmark, Inc.," "Mountaire Vitamins, Inc.," "Sandoz Agro, Inc.," and "Zenith Laboratories, Inc.," and in the table in paragraph (c)(2) by removing the entries for "000172", "011536", "020275", and "043734".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.390b [Amended]

4. Section 520.390b *Chloramphenicol capsules* is amended in paragraph (b)(1) by removing "000172".

§ 520.2345a [Amended]

5. Section 520.2345a *Tetracycline hydrochloride capsules* is amended by removing paragraph (b)(4).

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

6. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1742 [Amended]

7. Section 524.1742 *N-(Mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate) emulsifiable liquid* is amended in paragraph (b) by removing the phrase "and 011536".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

8. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.274 [Amended]

9. Section 558.274 *Hygromycin B* is amended by removing and reserving paragraph (a)(6) and in the table in paragraph (c)(1)(i), under the "sponsor" column, by removing "043734".

§ 558.485 [Amended]

10. Section 558.485 *Pyrantel tartrate* is amended by removing and reserving paragraphs (a)(21) and (a)(25).

§ 558.625 [Amended]

11. Section 558.625 *Tylosin* is amended by removing and reserving paragraph (b)(84).

Dated: January 8, 1998.

Stephen F. Sundlof,
Director, Center for Veterinary Medicine.
[FR Doc. 98-2410 Filed 1-30-98; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 203

RIN 0790-AG14

Technical Assistance for Public Participation (TAPP) in Defense Environmental Restoration Activities

AGENCY: Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)), DOD.

ACTION: Final rule.

SUMMARY: Pursuant to the National Defense Authorization Act (NDAA) of 1996, the Department of Defense (DoD) is finalizing a rule to provide technical assistance to local community members of Restoration Advisory Boards (RABs) and Technical Review Committee (TRCs). RABs and TRCs are established to review and comment on DoD environmental restoration activities at military installations and formerly used defense sites within the United States and its territories.

EFFECTIVE DATE: This rule is effective February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia Ferree or Marcia Read, Office of the Deputy Under Secretary of Defense for Environmental Security, 3400 Defense Pentagon, Washington, D.C., 20301-3400, telephone (703) 697-5372 or (703) 697-7475.

SUPPLEMENTARY INFORMATION: The official record for this rulemaking is kept in a paper format. Accordingly, DoD has transferred all electronic or digital comments received into paper form and placed them into the official record, with all of the comments received in writing.

The Department of Defense's responses to comments have been incorporated in a response to comments document, which has been placed into the official record for this rulemaking. The major comments and responses are discussed in the Response to Comments section of this preamble.

Any person wishing to review the official record, or be provided copies of documents in the official record, for this rulemaking should contact Patricia Ferree at Office of the Deputy Under Secretary of Defense for Environmental Security, 3400 Defense Pentagon, Washington, D.C. 20301-3400, in writing, or by telephone at (703) 697-5372.

Preamble Outline

- I. Legal Authority
- II. Background
- III. Summary of Significant Changes from Proposed Rule

IV. Description of the Final Rule and Responses to Major Comments

- A. TAPP Process
- B. Eligible Applicants
- C. Eligible Activities
- D. Technical Assistance for Public Participation Provider Qualifications
- E. Submission of Application
- F. Appeals Process
- V. Administrative Requirements/Compliance with Executive Order
 - A. Regulatory Impact Analysis Under Executive Order 12866
 - B. Regulatory Flexibility Analysis
 - C. Paperwork Reduction Act
 - D. Unfunded Mandates

I. Legal Authority

This rule is issued under the authority of Section 2705 of Title 10, United States Code. Subsections (c) and (d) of Section 2705 encourage the Department of Defense to establish either a Technical Review Committee (TRC) or Restoration Advisory Board (RAB) to review and comment on DoD actions at military installations undertaking environmental restoration activities. Section 2705(e) permits the Department of Defense to obtain, from private sector sources, technical assistance to help TRCs and RABs better understand the scientific and engineering issues underlying an installation's environmental restoration activities. TRCs and RABs may request this assistance only if:

(1) The TRC or RAB demonstrates that the Federal, State, and local agencies responsible for overseeing environmental restoration at the installation and DoD personnel do not have the technical expertise necessary for achieving the objective for which the technical assistance is to be obtained; or

(2) The technical assistance—

(a) Is likely to contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation; and

(b) Is likely to contribute to community acceptance of environmental restoration activities at the installation.

Funding for this technical assistance program will come from the Environmental Restoration Accounts established for Army, Navy, and Air Force for operating installations, and from the DoD Component's base closure account for transferring or closing installations. For Defense Agencies the Defense-Wide environmental restoration account will be the source of funds for assistance at operating installations. The Environmental Restoration Account for Formerly Used Defense sites will fund technical assistance at formerly used defense sites.

II. Background

Over the past several years, the Department of Defense has participated as a member of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC). This committee, comprised of a wide range of stakeholders, was chartered by the Environmental Protection Agency (EPA) to develop consensus policy recommendations for improving environmental restoration at Federal facilities. In February 1993, the FFERDC issued the "Interim Report of the FFERDC: Recommendations for Improving the Federal Facilities Environmental Restoration Decision-Making and Priority-Setting Processes." This report recommended that Federal agencies become more proactive in providing information about restoration activities to stakeholders and that citizen advisory boards be established to provide advice to government agencies that conduct restoration at Federal facilities. This report also suggested the initiation of technical assistance funding.

The Department of Defense has issued policy for establishing RABs at its installations and formerly used defense sites. On September 9, 1993, the Department of Defense issued policy for establishing RABs at installations designated for closure or realignment under the BRAC Acts of 1988 and 1990 where property will be available for transfer to the community. On April 14, 1994, the Department of Defense issued RAB policy for non-closing installations as part of Management Guidance for Execution of the FY94/95 and Development of the FY96 Defense Environmental Restoration Program (DERP). The policy called for the establishment of RABs at DoD installations where there is sufficient, sustained community interest. Criteria for determining sufficient interest are: (1) a government agency request that a RAB be formed; (2) fifty local residents sign a petition requesting that a RAB be formed; (3) an installation determines that a RAB is needed; or (4) the closure or realignment of an installation involves the transfer of property to the community. On September 27, 1994, the Department of Defense and EPA issued joint RAB guidelines on how to develop and implement a RAB. Finally, on August 6, 1996, the Department of Defense proposed regulations governing the characteristics, composition, and establishment of RABs pursuant to the National Defense Authorization Act (NDAA) for 1995 (61 FR 40764-40772).

The proposed of a RAB is to bring together people who reflect the diverse

interests within the local community, enabling an early and continual flow of information among the affected community, the Department of Defense, and environmental oversight agencies. Recognizing the importance of citizen participation in the environmental restoration process, Congress authorized the provision of technical assistance to aid public participation in Section 326 of NDAA-95. In response to this authority, the Department of Defense published a Notice of Request for Comments (May 24, 1995, 60 FR 27460-27463) on alternative methods for funding technical assistance. In 1996, Congress revised this authority in Section 324 of NDAA-96. This final rule establishes regulations for DOD Components to provide technical assistance to RABs and TRCs, and details the specific requirements for obtaining this assistance consistent with this new authority. Proposed regulations regarding the characteristics, composition, and establishment of RABs were previously published on August 6, 1996 (61 FR 40764-40772).

The Department of Defense published a proposed rule, Technical Assistance for Public Participation (TAPP) in Defense Environmental Restoration Activities, on December 27, 1996 (61 FR, 68174-68197). Public comments on this proposed rule were considered and, where appropriate, incorporated into this final rule.

III. Summary of Significant Changes From Proposed Rule

The substance of this final rule does not differ significantly from the proposed rule published on December 27, 1996. Principal among the changes is the addition of an appeals process, described more fully in Section IV of this preamble and located in Section 203.19 of the final rule. Because of devolvement of the Defense Environmental Restoration Account, the authority to grant waivers, in section 203.4, has been delegated to the DoD Component Secretary, or equivalent, for the installation in question. In addition, the Department of Defense has, in section 203.10, clarified the types of projects that will be eligible for TAPP funding.

IV. Description of the Final Rule and Responses to Major Comments

This rule finalizes the proposed rule "Technical Assistance for Public Participation (TAPP) in Defense Environmental Restoration Activities" (61 FR, 68174-68197). This section explains the DoD's final action, based on the rationale presented in the

proposed rule and the DoD's review of the public comments.

To facilitate the reader's review of this final rule and to streamline the overall structure, this section also contains the DoD's responses to the most significant comments after each of the topics discussed. If a particular section does not contain a response to comment section, then either no comments were received on that topic, or the Department of Defense has chosen to place its response in the background document entitled "Technical Assistance for Public Participation Response to Comments Background Document." This background document contains a complete discussion of the DoD's responses to comments and can be found in the docket for this rulemaking. This document provides a complete record of the public comments followed by the DoD's responses.

A. TAPP Process

An overview of the process by which community members of RABs and TRCs can obtain technical assistance is provided in Sections 203.4 and 203.5 of the final rule. The process begins with an evaluation by the community members of RABs and TRCs of their technical assistance needs and whether these needs can be met by existing avenues of support. These other available sources of assistance can include the installation's restoration contractors, installation or other DoD personnel, RAB or TRC members, volunteer sources from within the community, or state, local, or federal personnel responsible for the oversight of restoration activities at the installation. If these sources cannot provide the needed assistance, or if the selection of an alternate provider will contribute to environmental restoration activities and the community acceptance of such activities, the community members of RABs and TRCs may submit to the installation a request for technical assistance. This request should specify in as much detail as possible the type of assistance requested, the timeframe for which the assistance is required, and, if known, one or more potential providers.

Based upon the details provided in the request, the installation commander or other designated authority will determine whether the project meets the eligibility requirements outlined in this final rule. If the project is not approved, the RAB/TRC will receive a written explanation for that decision. If the project is approved, the installation commander will forward the application to the appropriate contracting authority. The contracting authority will issue

purchase orders to obtain the desired technical assistance subject to certain funding limitations. If multiple purchase orders are needed to assist community members of a particular RAB or TRC, the combined sum of these purchase orders cannot exceed \$100,000 or, during any one year, the lesser of \$25,000 or 1 percent of the installation's projected environmental restoration cost-to-complete. Note that these limitations refer to the maximum allowable technical assistance funding per RAB/TRC. Resources available within a given year may vary. In addition, the funds to support RABs and TRCs and now TAPP derive from the same budget that funds installation environmental investigations and cleanup.

The government is required to follow the rules and regulations for purchase orders as outlined in the Federal Acquisition Regulations (FAR) (48 CFR Part 13). As a result, the government cannot direct awards to a specified supplier unless the procurement is under \$2,500, and then only if the cost is comparable to other suppliers. For procurements over \$2,500 but under \$100,000, the acquisition is reserved for small businesses, unless there is a reasonable expectation that small businesses could not provide the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performance, and schedules. Furthermore, the award must be on a competitive basis. The Department of Defense will solicit bids from those providers meeting the criteria and will select a provider offering the best value to the government. Should the procurement process identify a qualified respondent other than the proposed provider(s) identified by the RAB/TRC, or fail to identify any qualified respondents, the RAB/TRC will be consulted prior to the award of a purchase order. If the Department of Defense determines that the TAPP request represents an eligible project for which no funds are available, it will ask the RAB or TRC to specify whether the project should be reconsidered upon the availability of additional funds.

Community members of RABs and/or TRCs must comply with the reporting requirements established in Section 203.14 of this rule.

Response to Comments

One commenter indicated that the language in the proposed rule seems to indicate that support is only to be provided for projects that will assist in improving public support of DoD cleanup projects. The commenter noted

that the public may have alternate viewpoints on such issues as: the need for cleanup, risk levels, technology to be used, etc.

The commenter believes that support should be provided to explore these issues as well, not just projects which validate DoD decisions.

In response, the Department of Defense intends that support be provided to allow the RAB/TRC members to better understand and provide input into DoD's decision process, and does not agree with the commenter that the rule implies that support will be provided only for projects that validate DoD's position.

Some commenters expressed concern that approval for TAPP projects goes through the installation commander.

In response, the installation commander has ultimate authority for the installation restoration program at his/her installation, and the Department of Defense feels it is the responsibility of that commander (or other service-designated authority) to make the decisions affecting the installation's cleanup budget and its ability to meet cleanup goals and requirements. Each installation commander or designated authority will receive guidance to help determine approval processes for potential TAPP projects. In the event the RAB does not agree with the decision of the installation commander, it can appeal the decision through the appeals process outlined in section 203.19 of this final rule.

Several commenters questioned the funding process to be used. For instance, one commenter inquired whether RABs would have access to a full year's allowance (presumably meaning the full annual funding amount of \$25,000 or 1% of the installation's total projected environmental restoration cost-to-complete), even if the first project is less than that amount. Other commenters wanted to clarify whether approval would be subject to available funding, or if there was instead a "guarantee" of support. Finally, several commenters stated that TAPP support should be readily available, or projects could suffer while waiting.

When RABs/TRCs identify a need for technical assistance, the Department of Defense will program funds for TAPP support. The sources of TAPP funding are the Environmental Restoration Accounts established for the DoD Components. Therefore, it competes with study, cleanup, and even RAB funding. The installations, with input from their RAB/TRCs, will have to determine how tradeoffs will be made between these important activities. It is

DoD's intention that once a project is identified and approved, the procurement of a provider will occur as quickly as possible to avoid potential impacts on installation schedules. However, procurement of the assistance provider is subject to availability of funds.

Each DoD Component will establish procedures for TAPP funding. They will not automatically set aside \$25,000 or 1% of the installation's total projected environmental restoration cost-to-complete for each RAB/TRC for TAPP each year, because some RABs/TRCs may not need TAPP support. There are no restrictions to having more than one TAPP project a year as long as the annual limit of \$25,000 or 1% of the installation's total projected environmental cost-to-complete is not exceeded.

Commenters questioned whether the criteria established for obtaining technical support can ever be met. For example, the first criteria states that TRCs and RABs may request assistance only if they demonstrate that the Federal, State, and local agencies responsible for overseeing environmental restoration at the installation do not have the technical expertise necessary for achieving the objective. The commenter believes this argument will be difficult to make. Additionally, the commenter wants to know what is required to show that support isn't available through these sources? The commenter continued in his argument that the criteria for obtaining assistance were unlikely to be met. He stated that the criteria regarding enhancing the timeliness of restoration activities at the installation is certainly not helped by the involvement of a new contractor. Finally, the commenter stated that the final criterion that the technical assistance will contribute to community acceptance of the installation's restoration activities, is likely not to be met by bringing in outside opinion.

In response, the criterion cited by the commenter was imposed by the NDAA of 1996 and are intended to conserve limited resources for TAPP funding and to encourage the use of all available resources. The Department of Defense anticipates that much of the technical expertise required by RABs will be available through existing installation environmental restoration contractors or through the regulatory and/or installation or other DoD personnel working on the program. The Department of Defense encourages the use of these resources to the maximum extent possible, and notes that commenters from some RABs were quite

vocal in their support for these avenues of support. Other sources of support, such as volunteer services from local universities or other experts or assistance from states and local health and environmental organizations, should also be considered to preserve limited TAPP resources. However, there may be circumstances, such as specific knowledge of local environmental conditions or knowledge of an alternative technology, which require expertise not available through Federal, State, or local oversight agencies. In these instances, the only requirement is that the RAB provide a statement in their request for technical assistance that states why their requirements cannot be met by those agencies. The Department of Defense also points out that the criterion noted above is one of two criteria for obtaining assistance, either one of which is sufficient. The full text of the second criterion cited by the commenter refers to enhancing the efficiency, effectiveness, or timeliness of environmental restoration activities. To that end, the Department of Defense believes that an informed RAB membership is better able to contribute to the restoration program than one unfamiliar with technical details.

Finally the Department of Defense believes that community acceptance may be enhanced through the contributions of outside sources of expertise, particularly when that source can verify to the community that the proposed restoration activities advocated by the Department of Defense are appropriate. Community acceptance is greatly influenced by community understanding. Technical assistance is intended to increase the RAB's understanding of the DoD environmental restoration program so that they may make meaningful contributions to the process. As RAB input is incorporated into the restoration program, environmental restoration becomes a cooperative effort involving all stakeholders. Carefully defining the type of assistance needed will limit the possibility that the introduction of a new contractor will hinder rather than enhance community understanding.

B. Eligible Applicants

Eligible applicants for TAPP are community members of RABs or TRCs established in accordance with 32 CFR part 202 (61 FR 40764-40772). Furthermore, the RABs or TRCs must have at least three community members to ensure community interests are broadly represented. The applicant must certify that the request represents the wishes of a simple majority of the

community members of the RAB or TRC. Certification includes, but is not limited to, the results of a roll call vote of community members of the RAB or TRC documented in the meeting minutes.

Response to Comments

Commenters requested clarification on the definition of community members of RABs or TRCs, specifically whether state and local government officials could be considered community members for purposes of this final rule.

The Department of Defense considers state and local government employees on the RAB or TRC to have full membership in that body. However, for purposes of determining TAPP projects, the Department of Defense intends that RAB/TRB community members be limited to residents of the community affected by or potentially affected by the installation. In situations where community residents are also members of the Federal, state or local government, their participation in the TAPP process would not be excluded, provided they were not expressing opinions clearly derived from their status as government employees. As with the proposed RAB rule, however, the Department of Defense intends that the actual operations of individual RABs and TRCs be determined largely by the participants, and encourages each organization to develop its own guidelines for determining both membership at large and the subset of community members eligible to assist in the development of TAPP projects.

C. Eligible Activities

TAPP procurements should be pursued by the RAB or TRC only to the extent that Federal, State, or local agencies responsible for overseeing environmental restoration at the facility do not have the necessary technical expertise for the proposed project, or the proposed technical assistance will contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation and is likely to contribute to community acceptance of those activities.

The list of eligible activities, section 203.10, of this final rule has been expanded to clarify eligible projects and provide examples. The final rule now provides that eligible projects include those projects designed to:

(1) Interpret technical documents, such as installation restoration program site investigation, engineering, and decision documents; risk assessments, including baseline and ecological risk

assessments conducted by the installation; and health assessments, such as those conducted by Agency for Toxic Substances and Disease Registry (ATSDR).

(2) Assess technologies.

(3) Participate in relative risk evaluations.

(4) Understand health implications.

(5) Provide technical training, where appropriate.

Response to Comments

Several commenters wanted the list of eligible projects expanded to include some form of community outreach and the ability to generate new or primary data. In response, DoD believes community outreach should not be a part of the TAPP program. Community outreach is a fundamental part of an installation's community relations program, and should be conducted within the context of that program. One mechanism used successfully by many installations is the development and publication of fact sheets or newsletters, providing important information to the general public about the installation's restoration program. This activity is funded by the installation's environmental restoration and Base Realignment and Closure (BRAC) funding, which covers administrative costs incurred by the RABs. The Department of Defense believes that the goal of the TAPP program is to enhance participation through increased understanding of the technical issues of the cleanup program, and maintains that the limited funding available for that purpose should be directed at that goal.

The generation of new data is the responsibility of the lead agency—in this case the Department of Defense. Furthermore, the Department of Defense works closely with the regulatory agencies to develop investigation strategies to ensure potential hazards are adequately characterized. This consultation and coordination is an important part of the partnership the Department of Defense maintains with regulatory agencies as cleanup proceeds. If the RAB identifies a circumstance where additional data collection may be necessary, these concerns should be communicated to the Department of Defense, where the final decisions on the restoration program reside, or to the appropriate regulatory agencies if the Department of Defense is not responsive.

D. Technical Assistance for Public Participation Provider Qualifications

The Department of Defense has determined that the technical assistance

providers must possess certain minimum credentials. These include:

(1) Demonstrated knowledge of hazardous or toxic waste issues and/or laws.

(2) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering).

(3) Ability to translate technical information into terms understandable by lay persons.

In addition, technical assistance providers should possess the following credentials to ensure they will be qualified to assist the community members of RABs and TRCs in understanding the environmental restoration program:

(1) Experience working on hazardous or toxic waste problems.

(2) Experience in making technical presentations.

(3) Demonstrated writing skills.

(4) Previous experience working with affected individuals or community groups or other groups of individuals.

The technical assistance provider's qualifications will vary according to the type of assistance to be provided. Community members of the RAB/TRC may suggest additional provider qualifications as part of the application for technical assistance. These additional qualifications may be used by the Department of Defense to target the most appropriate providers during the procurement process. Examples of such criteria could include prior work in the area, knowledge of local environmental conditions or laws, specific technical capabilities, or other relevant expertise.

Response to Comments

One commenter noted that non-profits and universities should be eligible TAPP contractors.

In response, it was not the Department of Defense's intent to exclude qualified TAPP providers from eligibility, in either the proposed TAPP rule or this final rule. However, the use of purchase orders to obtain support does require the Department of Defense to follow procurement policies outlined in the FAR (48 CFR Part 13). Purchase orders are generally reserved for small businesses unless one of several situations apply. In circumstances where small businesses cannot be identified that meet the criteria for procurement, a contract can be awarded to a qualified bidder that is not a small business. Examples of such circumstances include situations where conflict of interest precludes otherwise acceptable small businesses from participation, where knowledge of specific technical capabilities or of

specific proprietary technologies is required. The Department of Defense recognizes that in many instances, RAB requirements for support will specify criteria for the potential provider that may be met only by non-profits or universities, and envisions no difficulties in awarding procurements to these types of institutions. As part of the guidance under development for this program, the Department of Defense will provide information to assist RABs and the DoD contracting officers in determining appropriate circumstances for contracting with technical assistance providers that are not small businesses.

E. Submission of Application

The applicant must submit a TAPP application to begin the TAPP procurement process. The application form is included as Appendix A of this part and can be obtained from the DoD installation, the military department headquarters, or directly from the Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security, 3400 Defense Pentagon, Washington, D.C. 20301-3400, telephone (703) 697-5372 or (703) 697-7475.

The applications will not be considered complete until the following data elements have been entered into the form:

- (a) Installation.
- (b) Source of TAPP request (name of RAB or TRC).
- (c) Certification of majority request.
- (d) RAB/TRC contact point for TAPP project.
- (e) Project title.
- (f) Project type (e.g., data interpretation, training, etc.).
- (g) Project purpose and description (descriptions, time and locations of products or services desired).
- (h) Statement of eligibility of project.
- (i) Proposed provider, if known.
- (j) Specific qualifications or criteria for provider.

Response to Comments

A few commenters argued that the application process is too complex. They noted that support might be required just to prepare the project description and/or the application.

The principal requirement for the RABs in applying for technical assistance is to develop a project that meets their needs in understanding some aspect of the installation's restoration program. Once this need has been communicated to the Department of Defense, the government assumes the responsibilities for obtaining and monitoring the performance of the technical assistance provider. The

application form merely formalizes the process the RABs should go through to develop their project requirements. Additional details, such as information about a potential technical assistance provider, are optional and are only intended to help speed up the procurement process.

Other commenters stated that RABs and TRCs should have access to additional support, either through an additional purchase order or through access to third party expertise, such as could be provided by Technical Outreach Services to Communities (TOSC) providers, in order to determine the requirements for their TAPP project. (TOSC is a program of the Environmental Protection Agency's Hazardous Substance Research Centers to provide information, technical and educational training, workshops, and site assistance for communities and RABs dealing with hazardous substance issues.)

In response, the Department of Defense believes the RABs, in concert with other members of the public, if necessary, are best positioned to determine their needs for technical support. The Department of Defense, State, and local government members of the RAB will be available for support in developing and preparing a TAPP request, should the RAB community members desire their input. Furthermore, guidance to assist communities and DoD installations with this program is currently under development by the Department of Defense and will be available to RAB members.

One commenter stated that preparation of the TAPP request imposes too much burden on the RAB with no reimbursement for time and effort. The commenter believed that this effort should be an eligible expense.

The Department of Defense reiterates that the TAPP request merely puts in writing the desires of the community members of the RAB to procure technical assistance. As such, the principal required information is a description of the proposed project. The Department of Defense has minimized the burden to community members of RABs/TRCs by developing a short application form and performing the contract administration.

F. Appeals Process

Although not specifically raised as an issue by commenters, the Department of Defense recognizes that disputes can arise at several junctures in the TAPP process. Three situations in which disagreements could occur are:

(a) The RAB/TRC may dispute the findings of the installation commander that the proposed TAPP project is ineligible, either because of the failure of the RAB to adequately consider alternate sources of assistance or because the project does not meet the eligibility criteria established in the final rule.

(b) The RAB may dispute the findings of the contracting officer that (1) the preferred provider is inadequate, (2) the preferred provider is not cost effective, or (3) other providers identified in the acquisition process more clearly meet the requirements of the task.

(c) After the selection of a provider, a dispute can arise because the government contracting officer and the RAB/TRC do not agree that the provider has met the terms of the procurement. In this situation, the process outlined in the FAR (48 CFR Part 46) would apply.

There is a sincere desire by the Department of Defense to avoid disputes and to foster an atmosphere of cooperation between the RAB or TRC and the installation. Each DoD Component has a hierarchical organizational structure with clearly defined chains-of-command. In the event that disputes do occur, appeals will be considered within the chain-of-command, and, in general, will be resolved at the lowest possible level. The highest level of appeal will be at the DoD Component Deputy Assistant Secretary level with authority over the environmental restoration and BRAC environmental programs. In all cases, inherently governmental functions, such as records of decision, are not subject to appeal, and issues regarding contracting must be governed by the FAR (48 CFR Part 37).

V. Administrative Requirements/ Compliance With Executive Order

A. Regulatory Impact Analysis Under Executive Order 12866

Under Executive Order 12866 (October 4, 1993, 58 FR 51735), the Department of Defense must determine whether this regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under Section 3(f), the order defines a "significant regulation action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also

referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, the OMB has determined this rule is a "significant regulatory action" because it may raise novel legal or policy issues. As such, this action was submitted to the OMB for review, and any comments or changes made in response to the OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that agencies evaluate the effects of rules for three types of small entities:

- (1) Small Businesses (as defined in the Small Business Administration regulations);
- (2) Small organizations (independently owned, non-dominant in their field, non-profit); and
- (3) Small government jurisdictions (serving communities of less than 50,000 people).

The Department of Defense has considered the interests of small businesses and small organizations by means of the use of purchase orders to obtain technical assistance. As stated in the FAR (48 CFR Part 13), those purchase orders under \$100,000 are reserved for small businesses, unless it can be demonstrated that small businesses are unable to provide the necessary service or product. Only a limited number of small non-profit organizations are expected to be affected by this program as it is likely that only those non-profit organizations located near Department of Defense installations with ongoing environmental restoration programs will, in most cases, provide the requested technical assistance. The Department of Defense was careful not to impose additional reporting requirements on the public and to stay within the reporting requirements quota for procurements. In keeping with the Simplified Acquisition Procedures (SAP), the Department of Defense has sought to increase the dollar amount of small purchase orders to simplify the procurement process. The Department of Defense has deliberately written the regulations to encourage small entities

to apply. Given the limited funding available to this program and the process outlined of Section 203.4 of this final rule, it is not expected that this rulemaking will have a significant economic impact on a substantial number of small entities and, therefore, no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the reporting and record keeping provisions of this final rule were submitted to the OMB for review under Section 3507(d) of the Act.

The collection of information is necessary to identify products or services requested by community members of RABs/TRCs to aid in their participation in the Department of Defense's environmental restoration program, and to meet Congressional reporting requirements.

Respondents are community members of restoration advisory boards or technical review committees requesting technical assistance to interpret scientific and engineering issues regarding the nature of environmental hazards at an installation. This assistance will help communities in participating in the cleanup process. The information, directed by 10 U.S.C. 2705, will be used to determine the eligibility of the proposed project, begin the procurement process to obtain the requested products or services, and determine the satisfaction of community members of RABs/TRCs receiving the products and services.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of the regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, the Department of Defense generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When a written statement is needed, section 205 of the UMRA generally requires the Department of Defense to identify and consider a reasonable number of regulatory alternatives that achieve the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the Department of Defense to adopt an

alternative other than the least costly, most cost-effective, or least burdensome alternative if the Secretary publishes with the final rule an explanation why that alternative was not adopted. Before the Department of Defense establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input into the development of the Department of Defense's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The Department of Defense has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects in 32 CFR Part 203

Administrative practice and procedure, Technical assistance, Public assistance programs, Environmental protection, Federal buildings and facilities, Organization and functions (Government agencies).

Title 32 of the Code of Federal Regulations, Chapter I, Subchapter M, is amended to add part 203 to read as follows:

PART 203—TECHNICAL ASSISTANCE FOR PUBLIC PARTICIPATION (TAPP) IN DEFENSE ENVIRONMENTAL RESTORATION ACTIVITIES

- Sec.
- 203.1 Authority.
 - 203.2 Purpose and availability of referenced material.
 - 203.3 Definitions.
 - 203.4 Major components of the TAPP process.
 - 203.5 TAPP process.
 - 203.6 Cost principles.
 - 203.7 Eligible applicants.
 - 203.8 Evaluation criteria.
 - 203.9 Submission of application.
 - 203.10 Eligible activities.
 - 203.11 Ineligible activities.
 - 203.12 Technical assistance for public participation provider qualifications.
 - 203.13 Procurement.
 - 203.14 RAB/TRC reporting requirements.
 - 203.15 Method of payment.
 - 203.16 Record retention and audits.
 - 203.17 Technical assistance provider reporting requirements.

203.18 Conflict of interest and disclosure requirements.

203.19 Appeals process.

Appendix A to Part 203—Technical Assistance for Public Participation Application Request Form

Authority: 10 U.S.C. 2705.

§ 203.1 Authority.

Part 203 is issued under the authority of section 2705 of Title 10, United States Code. In 1994, Congress authorized the Department of Defense (DoD) to develop a program to facilitate public participation by providing technical assistance to local community members of Restoration Advisory Boards (RABs) and Technical Review Committees (TRCs) (section 326 of the National Defense Authorization Act for Fiscal Year 1995, Pub.L. 103-337). In 1996, Congress revised this authority (section 324 of the National Defense Authorization Act for Fiscal Year 1996, Pub.L. 104-112). It is pursuant to this revised authority, which is codified as new subsection (3) of section 2705, that the Department of Defense issues this part.

§ 203.2 Purpose and availability of referenced material.

(a) This part establishes the Technical Assistance for Public Participation (TAPP) program for the Department of Defense. It sets forth policies and procedures for providing technical assistance to community members of TRCs and RABs established at DoD installations in the United States and its territories. This part sets forth the procedures for the Department of Defense to accept and evaluate TAPP applications, to procure the assistance desired by community members of RABs and TRCs, and to manage the TAPP program. These provisions are applicable to all applicants/recipients of technical assistance as discussed in § 203.4 of this part.

(b) Any reference to documents made in this part necessary to apply for TAPP (e.g., the Office of Management and Budget (OMB) Circulars or DoD forms) are available through the DoD installations, the military department headquarters, or from the Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)), 3400 Defense Pentagon, Washington, DC 20301-3400.

§ 203.3 Definitions.

As used in this part, the following terms shall have the meaning set forth:

Affected. Subject to an actual or potential health or environmental threat arising from a release or a threatened release at an installation where the Secretary of Defense is planning or

implementing environmental restoration activities including a response action under the Comprehensive Environmental Response Compensation and Liability Act as amended (CERCLA), corrective action under the Resource Conservation and Recovery Act (RCRA), or other such actions under applicable Federal or State environmental restoration laws. This would include actions at active, closing, realigning, and formerly used defense installations. Examples of affected parties include individuals living in areas adjacent to installations whose health is or may be endangered by the release of hazardous substances at the facility.

Applicant. Any group of individuals that files an application for TAPP, limited by this part to community members of the RAB or TRC.

Application. A completed formal written request for TAPP that is submitted to the installation commander or to the identified decision authority designated for the installation. A completed application will include a TAPP project description.

Assistance provider. An individual, group of individuals, or company contracted by the Department of Defense to provide technical assistance under the Technical Assistance for Public Participation program announced in this part.

Assistance provider's project manager. The person legally authorized to obligate the organization executing a TAPP purchase order to the terms and conditions of the DoD's regulations and the contract, and designated by the provider to serve as the principal contact with the Department of Defense.

Community Co-chair. The individual selected by the community members of the RAB/TRC to represent them.

Community member. A member of the RAB or TRC who is also a member of the affected community. For the purpose of this part, community members do not include local, State, or Federal government officials acting in any official capacity.

Community point of contact. The community member of the RAB or TRC designated in the TAPP application as the focal point for communications with the Department of Defense regarding the TAPP procurement process. The community point of contact is responsible for completing the reporting requirements specified in § 203.14 of this part.

Contact. A written agreement between the installation or other instrumentality of the Department of Defense and another party for services or supplies necessary to complete the TAPP project.

Contracts include written agreements and subagreements for professional services or supplies necessary to complete the TAPP projects, agreements with consultants, and purchase orders.

Contracting officer. The Federal official designated to manage the contract used to fulfill the TAPP request by the RAB or TRC.

Contractor. Any party (e.g., Technical Assistance Provider) to whom the installation or other instrumentality of the Department of Defense awards a contract. In the context of this part, it is synonymous with assistance provider.

Cost estimate. An estimate of the total funding required for the assistance provider to complete the TAPP project.

DoD Component. The military services including the Army, Navy, Marine Corps, and Air Force and those defense agencies with an environmental restoration program.

DoD Component Deputy Assistant Secretary. The individual in the office of the Secretary of the Army, Navy, Air Force responsible for making environmental decisions for their component or the director of the Defense Agencies.

DoD Installation. A facility that is controlled or operated or otherwise possessed by a department, or agency of the United States Department of Defense within the United States and its territories. In the context of this part, formerly used defense sites (FUDS) are included within the definition of a DoD Installation.

DoD RAB Co-chair. The individual selected by the installation commander, or equivalent, to serve as the installation co-chair of the RAB, represent DoD's interests, serve as liaison with community RAB members, and advocate RAB concerns within the installation staff.

EPA. The United States Environmental Protection Agency.

Firm fixed price contract. A contract wherein funding is fixed, prior to the initiation of a contract, for an agreed upon service or product.

Formerly Used Defense Site (FUDS). A site that has been owned by, leased to, possessed by, or otherwise under the jurisdiction of the Department of Defense. The FUDS program does not apply to those sites outside U.S. jurisdiction.

Purchase order. An offer by the Government to buy supplies or services from a commercial source, upon specified terms and conditions, the total cost of which cannot exceed the small purchase limit of \$100,000. Purchase orders are governed by Federal Acquisition Regulations (FAR) (48 CFR

part 13), and the Simplified Acquisition Procedures (SAP).

Restoration Advisory Board (RAB).

The RAB is a forum for representatives of the Department of Defense, local community, and EPA and/or State, local, and tribal officials to discuss and exchange information about the installation's environmental restoration program. The RAB provides stakeholders an opportunity make their views known, review progress and participate in dialogue with the decision makers.

Statement of Work. That portion of a contract which describes the actual work to be done by means of specifications or minimum requirements, quantities, performance dates, time and place of performance, and quality requirements. It is key to any procurement because it is the basis for the contractor's response and development of proposed costs.

TAPP approval. Signifies that the Department of Defense has approved the eligibility of the proposed TAPP project and will, subject to the availability of funds, undertake an acquisition to obtain the services specified in the TAPP application submitted by the RAB or TRC. The government will conduct the acquisition in accordance with all of the applicable rules and requirements of the FAR and the SAP. Approval does not constitute an agreement to direct an award to a specific source if such an action would be contrary to the FAR.

TAPP project description. A discussion of the assistance requested that includes the elements listed in Section 203.10 of this part. The project description should contain sufficient detail to enable the Department of Defense to determine the nature and eligibility of the project, identify potential providers and estimate costs, and prepare a statement of work to begin the procurement process.

Technical assistance. Those activities specified in § 203.10 of this part that will contribute to the public's ability to provide input to the decision-making process by improving the public's understanding of overall conditions and activities. Technical assistance may include interpreting technical documents; assessing technologies; participating in relative risk evaluations, understanding health implications; and, training.

Technical assistance does not include those activities prohibited under Section 203.11 of this part, such as litigation or underwriting legal actions; political activity; generation of new primary data such as well drilling and testing, including split sampling; reopening final DoD decisions or

conducting disputes with the Department of Defense; or epidemiological or health studies, such as blood or urine testing.

Technical Review Committee (TRC). A group comprised of the Department of Defense, EPA, State, and local authorities and a public representative of the community formed to meet the requirements of 10 U.S.C. 2705(c), the Department of Defense Environmental Restoration Program. Primarily functioning to review installation restoration documents, these committees are being expanded and modified at installations where interest or need necessitates the creation of a RAB.

§ 203.4 Major components of the TAPP process.

(a) The Department of Defense will issue purchase orders to technical assistance, facilitation, training, and other public participation assistance providers subject to the purchase limit per order as resources continue to be available. If multiple purchase orders are needed to assist community members of a particular RAB or TRC, the combined sum of these purchase orders cannot exceed \$100,000 or, during any one year, the lesser of \$25,000 or 1 percent of the installation's total projected environmental restoration cost-to-complete. Note that these limitations refer to the maximum allowable technical assistance funding per RAB/TRC. Resources available within a given year may vary. These limitations apply unless a waiver is granted by the DoD Component Secretary or equivalent for the installation in question. The \$100,000 total and \$25,000 annual limitations may be waived, as appropriate, to reflect the complexity of response action, the nature and extent of contamination at the installation, the level of activity at the installation, projected total needs as identified by the TAPP recipient, the size and diversity of the affected population, and the ability of the TAPP recipient to identify and raise funds from other sources.

(b) Community members of the RAB/TRC will provide a description of the services requested (TAPP Project Description) and, if desired, the names of one or more proposed technical assistance providers to the DoD RAB Co-Chair, who will ensure the application is submitted to the installation commander or other designated authority and to the appropriate DoD contracting office. Technical assistance providers proposed by the community members of a RAB or TRC at each DoD installation that meets the minimum set

of organizational qualifications guidelines provided by the Department of Defense in § 203.12 of this part will be added to the governments list of bidders for the proposed procurement.

§ 203.5 TAPP process.

This section provides an overview of the TAPP process. Specific details referred to in this section can be found in subsequent sections of this part.

(a) *TAPP funding.* Funding for this TAPP program will come from the Environmental Restoration Accounts established for Army, Navy, and Air Force for operational installations. The funding for Defense Agencies' operating installations will be from the Defense-Wide Environmental Restoration Account. Funding will be from the component's base closure account for transferring or closing installations. Funding for Formerly Used Defense Sites will come from the Environmental Restoration Account established for Formerly Used Defense Sites. After justification of the TAPP proposal, each DoD Component will make funds available from their individual installation's environmental restoration or BRAC accounts, considering a number of factors related to the restoration program at the installation and its impact upon the community. These factors include, but are not limited to:

- (1) Closure status.
- (2) Budget.
- (3) Installation restoration program status.
- (4) Presence (or absence) of alternate funding.
- (5) Relative risk posed by sites at the installation.
- (6) Type of task to be funded.
- (7) Community concern.
- (8) Available funding.

(b) *Identification of proposed TAPP project.* Eligible applicants of RABs and TRCs, established in § 203.7 of this part, should determine whether a TAPP project is required to assist the community members of the RAB or TRC to interpret information regarding the nature and extent of contamination or the proposed remedial actions. Eligibility requirements for TAPP projects are described in §§ 203.10 and 203.11 of this part. In keeping with the requirements of 10 U.S.C. 2705(e), the RAB or TRC must be able to demonstrate that the technical expertise necessary for the proposed TAPP project is not available through the Federal, State, or local agencies responsible for overseeing environmental restoration at the installation, or that the selection of an independent provider will contribute to environmental restoration activities

and the community acceptance of such activities. In addition, the Department of Defense encourages the RAB or TRC to seek other available sources of assistance prior to submitting a request for TAPP in order to preserve limited resources. These sources include DoD's installation restoration contractor, or other DoD contractors or personnel, EPA or state regulatory personnel, volunteer services from local universities or other experts, or assistance from state and local health and environmental organizations.

(c) *TAPP project request.* The RAB or TRC should notify the installation of its intent to pursue TAPP upon the determination that other sources of assistance are unavailable or unlikely to contribute to the community acceptance of environmental restoration activities at the installation and should prepare a formal request specifying the type of assistance required and, if desired, one or more sources for this assistance. Details concerning this request are stated in § 203.9 of this part. The RAB or TRC must certify to the Department of Defense that the TAPP request represents a request by a majority of the community members of the RAB or TRC. The RAB or TRC should ensure that the request meets the eligibility requirements specified in §§ 203.10 and 203.11 of this part. Furthermore, the RAB or TRC may outline additional criteria for the Department of Defense to consider in the selection of a provider (such as knowledge of local environmental conditions or specific technical issues, a prior work history within the study area which has relevant specific circumstances or unique challenges, or other relevant expertise or capabilities); keeping in mind that providers must meet the minimum technical qualifications outlined in § 203.12 of this part. The formal request should be submitted to the installation commander or designated decision authority, either directly, or through the DoD RAB Co-chair. The installation commander, or other designated decision authority, will review the proposed project to determine whether the proposed project conforms to the eligibility requirements. If the installation commander, or other designated authority, fails to approve the project request, the rationale for that decision will be provided to the RAB/TRC in writing.

(d) *Purchase orders.* Upon receipt of a completed TAPP request, the installation will begin the procurement process necessary to obtain the desired services by means of a purchase order or will forward the request to the contracting authority designated by the

DoD Component to act for that installation. The government is required to follow the rules and regulations for purchase orders as outlined in the FAR (48 CFR part 13). As a result, the government cannot direct awards to a specified supplier unless the procurement is under \$2,500, and then only if the cost is comparable to other suppliers. For procurements over \$2,500 but under \$100,000, the acquisition is reserved for small businesses, unless there is a reasonable expectation that small businesses could not provide the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performance, and schedules. Furthermore, the award must be on a competitive basis. In addition to proposing potential providers, the application for technical assistance may indicate specific criteria or qualifications that are deemed necessary by the RAB/TRC for the completion of the project to their satisfaction. This information will be used to assist the Department of Defense in preparing a bidders list. The Department of Defense will solicit bids from those providers meeting the criteria and will select a provider offering the best value to the government. Should the procurement process identify a qualified respondent other than the proposed provider(s) identified by the RAB/TRC or fail to identify any qualified respondents, the RAB/TRC will be consulted prior to the award of a purchase order. If the Department of Defense determines that the TAPP request represents an eligible project for which no funds are available, it will ask the RAB or TRC to specify whether the project should be reconsidered upon the availability of additional funds.

(e) *Reporting requirements.* The applicant must assure that copies of delivered reports are made available to the Department of Defense and must comply with the reporting requirements established in § 203.14 of this part.

§ 203.6 Cost principles.

(a) Non-profit contractors must comply with the cost principles in OMB Circular A-122. Copies of the circular may be obtained from EOP Publications, 725 17th NW, NEOB, Washington, DC 20503.

(b) For-profit contractors and subcontractors must comply with the cost principles in the FAR (48 CFR part 31).

§ 203.7 Eligible applicants.

Eligible applicants are community members of RABs or TRCs. Furthermore, the RABs or TRCs must be

comprised of at least three community members to ensure community interests are broadly represented. The applicant must certify that the request represents the wishes of a simple majority of the community members of the RAB or TRC. Certification includes, but is not limited to, the results of a roll call vote of community members of the RAB or TRC documented in the meeting minutes. Other requirements of the application are detailed in § 203.9 of this part.

§ 203.8 Evaluation criteria.

The Department of Defense will begin the TAPP procurement process only after it has determined that all eligibility and responsibility requirements listed in §§ 203.6, 203.7, and 203.9 of this part are met, and after review of the specific provider qualifications as submitted in the narrative section of the application. In addition, the proposed TAPP project must meet the eligibility criteria as specified in §§ 203.10 and 203.11 of this part. Projects that fail to meet those requirements relating to the relevance of the proposed project to the restoration activities at the installation will not be approved.

§ 203.9 Submission of application.

The applicant must submit a TAPP application to begin the TAPP procurement process. The application form is included as appendix A of this part and can be obtained from the DoD installation, the DoD Component headquarters, or directly from the Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security, 3400 Defense Pentagon, Washington, D.C. 20301-3400. The applications will not be considered complete until the following data elements have been entered into the form:

- (a) Installation.
- (b) Source of TAPP request (names of RAB or TRC).
- (c) Certification of majority request.
- (d) RAB/TRC contact point for TAPP project.
- (e) Project title.
- (f) Project type (e.g. data interpretation, training, etc.).
- (g) Project purpose and description (descriptions, time and locations of products or services desired).
- (h) Statement of eligibility of project.
- (i) Proposed provider, if known.
- (j) Specific qualifications or criteria for provider.

§ 203.10 Eligible activities.

(a) TAPP procurements should be pursued by the RAB or TRC only to the extent that Federal, State, or local

agencies responsible for overseeing environmental restoration at the facility do not have the necessary technical expertise for the proposed project, or the proposed technical assistance will contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation and is likely to contribute to community acceptance of those activities.

(b) TAPP procurements may be used to fund activities that will contribute to the public's ability to provide advice to decision-makers by improving the public's understanding of overall conditions and activities. Categories of eligible activities include the following:

(1) *Interpret technical documents.* The installation restoration program documents each stage of investigation and decision-making with technical reports that summarize data and support cleanup decisions. Technical assistance may be provided to review plans and interpret technical reports for community members of RABs and TRCs. These reports include, but are not limited to:

- (i) Installation restoration program site studies, engineering documents, such as site inspections, remedial investigations, feasibility studies, engineering evaluation and cost analyses, and decision documents (including records of decision);
- (ii) Risk assessments, including baseline and ecological risk assessments conducted by the installation; and
- (iii) Health assessments, such as those conducted by the Agency for Toxic Substances and Disease Registry (ATSDR).

(2) *Assess technologies.* Technical assistance may be provided to help RAB/TRC community members understand the function and implications of those technologies selected to investigate or clean up sites at the installation.

(3) *Participate in relative risk site evaluations.* Technical assistance may be provided to help RAB/TRC community members contribute to the relative risk evaluation process for specific sites.

(4) *Understand health implications.* Technical assistance may be provided to help RAB/TRC community members interpret the potential health implications of cleanup levels or remedial technologies, or to explain the health implications of site contaminants and exposure scenarios.

(5) *Training, where appropriate.* Technical trainers on specific restoration issues may be appropriate in circumstances where RAB/TRC members need supplemental

information on installation restoration projects.

§ 203.11 Ineligible activities.

The following activities are ineligible for assistance under the TAPP program:

(a) Litigation or underwriting legal actions, such as paying for attorney fees or paying for a technical assistance provider to assist an attorney in preparing legal action or preparing for and serving as an expert witness at any legal proceeding regarding or affecting the site.

(b) Political activity and lobbying as defined by OMB Circular A-122.

(c) Other activities inconsistent with the cost principles stated in OMB Circular A-122, "Cost Principles for Non-Profit Organizations."

(d) Generation of new primary data, such as well drilling and testing, including split sampling.

(e) Reopening final DoD decisions, such as the Records of Decision (see limitations on judicial review of remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 113(h)) or conducting disputes with the Department of Defense).

(f) Epidemiological or health studies, such as blood or urine testing.

(g) Community outreach efforts, such as renting a facility and conducting public meetings, or producing and distributing newsletters.

§ 203.12 Technical assistance for public participation provider qualifications.

(a) A technical assistance provider must possess the following credentials:

(1) Demonstrated knowledge of hazardous or toxic waste issues and/or laws.

(2) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering).

(3) Ability to translate technical information into terms understandable to lay persons.

(b) A technical assistance provider should possess the following credentials:

(1) Experience working on hazardous or toxic waste problems.

(2) Experience in making technical presentations.

(3) Demonstrated writing skills.

(4) Previous experience working with affected individuals or community groups or other groups of individuals.

(c) The technical assistance provider's qualifications will vary according to the type of assistance to be provided. Community members of the RAB/TRC may suggest additional provider

qualifications as part of the application for technical assistance. These additional qualifications may be used by the Department of Defense to target the most appropriate providers during the procurement process. Examples of such criteria could include prior work in the area, knowledge of local environmental conditions or laws, specific technical capabilities, or other relevant expertise.

§ 203.13 Procurement.

Procurements will be conducted as purchase orders in accordance with the FAR (48 CFR part 13). Under these procedures, procurements not exceeding \$100,000 are reserved exclusively for small businesses, and will be conducted as competitive procurements. Procurements below a value of \$2,500 are considered "micro-purchases." These procurements do not require the solicitation of bids and may be conducted at the discretion of the contracting officer.

§ 203.14 RAB/TRC reporting requirements.

The community point of contact of the RAB or TRC must submit a report, to be provided to the installation and to DUSD(ES), to enable the Department of Defense to meet DoD reporting requirements to Congress. This report should include a description of the TAPP project, a summary of services and products obtained, and a statement regarding the overall satisfaction of the community member of the RAB or TRC with the quality of service and/or products received.

§ 203.15 Method of payment.

The SAP set forth in FAR (48 CFR part 13) require purchase orders to be conducted on a firm-fixed-price basis, unless otherwise authorized by agency procedures. The Department of Defense anticipates all TAPP awards to be firm-fixed-price procurements.

§ 203.16 Record retention and audits.

The recipient technical assistance providers shall keep and preserve detailed records in connection with the contract reflecting acquisitions, work

progress, reports, expenditures and commitments, and indicate the relationship to established costs and schedules.

§ 203.17 Technical assistance provider reporting requirements.

Each technical assistance provider shall submit progress reports, financial status reports, materials prepared for the RAB/TRC, and a final report to the DoD installation for the TAPP project as specified by the specific purchase order agreement. The final report shall document TAPP project activities over the entire period of support and shall describe the achievements with respect to stated TAPP project purposes and objectives.

§ 203.18 Conflict of interest and disclosure requirements.

The Department of Defense shall require each prospective assistance provider on any contract to provide, with its bid or proposal:

(a) Information on its financial and business relationship with the installation, RAB/TRC members, or any/all potentially responsible parties (PRPs) at the site, and with their parent companies, subsidiaries, affiliates, subcontractors, contractors, and current clients or attorneys and agents. This disclosure requirement encompasses past and anticipated financial and business relationships, including services related to any proposed or pending litigation, with such parties.

(b) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists.

(c) A statement that it shall disclose immediately any such information discovered after submission of its bid or after award. The contracting officer shall evaluate such information and shall exclude any prospective contractor if the contracting officer determines the prospective contractor has a potential conflict of interest that is both significant and cannot be avoided or otherwise resolved. If, after award, the

contracting officer determines that a conflict of interest exists that is both significant and cannot be avoided or resolved, the contract will be terminated for cause.

(d) Contractors and subcontractors may not be technical assistance providers to community members of RABs/TRCs at an installation where they are performing cleanup activities for the Federal or State government or any other entity.

§ 203.19 Appeals process.

DoD Components will establish an appeals process to settle potential disputes between the Department of Defense and the public regarding certain decisions arising out of the TAPP process. The Department of Defense recognizes that the RAB/TRC may disagree with the findings of the installation commander that a proposed TAPP project is ineligible, either because of the availability of alternate sources of assistance or because the project does not meet the eligibility criteria established in this part. It is in the best interests of the Department of Defense and the community members of RABs and TRCs to anticipate and avoid disputes and to work cooperatively to resolve potential differences of opinion. However, in certain circumstances, the RAB/TRC community members may feel that their needs were not adequately served by the decisions of the Department of Defense. In this instance, the hierarchical structure and chain-of-command within each DoD Component will serve as the avenue for appeal. Appeals will be considered within the chain-of-command, and, in general, will be resolved at the lowest level possible. The highest level of appeal will be at the DoD Component Deputy Assistant Secretary level with authority over the DERP and BRAC environmental programs. Inherently governmental functions, such as the procurement process governed by the FAR, are not subject to appeal.

BILLING CODE 5000-04-M

APPENDIX A TO PART 203 - Technical Assistance for Public Participation Request Form

| | | | |
|---|--------------|---|----------------------------------|
| TECHNICAL ASSISTANCE FOR PUBLIC PARTICIPATION (TAPP) APPLICATION | | <i>Form Approved OMB No. 0704-0392 Expires Dec 31, 1999</i> | |
| The public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0392), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. | | | |
| PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO INSTALLATION LISTED IN SECTION I, BLOCK 1. | | | |
| SECTION I - TAPP REQUEST SOURCE IDENTIFICATION DATA | | | |
| 1. INSTALLATION | | | |
| 2. SOURCE OF TAPP REQUEST (<i>Name of Restoration Advisory Board (RAB) or Technical Review Committee (TRC)</i>) | | | |
| 3. CERTIFICATION OF MAJORITY REQUEST | | | 4. DATE OF REQUEST (YYYYMMDD) |
| 5. RAB POINT OF CONTACT | | | |
| a. NAME (<i>Last, First, Middle Initial</i>) | | b. ADDRESS (<i>Street, Apt. or Suite Number, City, State, ZIP Code</i>) | |
| c. TELEPHONE NUMBER (<i>Include Area Code</i>) | | | |
| SECTION II - TAPP PROJECT DESCRIPTION | | | |
| 6. PROJECT TITLE | | | |
| 7. PROJECT TYPE (<i>Data Interpretation, Training, etc.</i>) | | | |
| 8. PROJECT PURPOSE AND DESCRIPTION (<i>State anticipated goals of project and relate to increased understanding/participation in restoration process at the installation. Include descriptions, locations, and timetables of products or services requested.</i>) | | | |
| 9. STATEMENT OF ELIGIBILITY (<i>Refer to eligibility criteria in S203.10 and S203.11 of TAPP rule. Note other sources that were considered for this support and state reasons why these sources are inadequate.</i>) | | | |
| 10. ADDITIONAL QUALIFICATIONS OR CRITERIA TO BE CONSIDERED (<i>Additional qualifications (beyond those specified in S203.12) a provider should demonstrate to perform the project to the satisfaction of the RAB/TRC. Attach separate statement, if necessary.</i>) | | | |
| SECTION III - INSTALLATION COMMANDER/DESIGNATED DECISION AUTHORITY APPROVAL | | | |
| | APPROVED | 11. SIGNATURE | 12. TITLE |
| | NOT APPROVED | | 13. DATE (YYYYMMDD) |

APPENDIX A TO PART 203 - Technical Assistance for Public Participation Request Form

| | | | |
|---|---|------------------|----------------------------|
| SECTION IV - PROPOSED PROVIDER DATA | | | |
| 14. PROPOSED PROVIDER | | | |
| a. NAME | b. ADDRESS (Street, Apt. or Suite Number, City, State, ZIP Code) | | |
| c. TELEPHONE NUMBER (Include Area Code) | | | |
| 15. PROVIDER QUALIFICATIONS (Attach separate statement, if necessary. A statement of qualifications from the proposed technical assistance provider will be acceptable.) | | | |
| | | | |
| 16. ALTERNATE PROPOSED PROVIDER (If known. Attach additional pages as required.) | | | |
| a. NAME | b. ADDRESS (Street, Apt. or Suite Number, City, State, ZIP Code) | | |
| c. TELEPHONE NUMBER (Include Area Code) | | | |
| 17. ALTERNATE PROVIDER QUALIFICATIONS (Attach separate statement, if necessary. A statement of qualifications from the proposed technical assistance provider will be acceptable.) | | | |
| | | | |
| SECTION V - CONTRACTING OFFICE APPROVAL | | | |
| <input type="checkbox"/> APPROVED | 18. SIGNATURE | 19. TITLE | 20. DATE (YYYYMMDD) |
| <input type="checkbox"/> NOT APPROVED | | | |

DD FORM 2749 (BACK), DEC 1997

Dated: January 27, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 98-2394 Filed 1-30-98; 8:45 am]

BILLING CODE 5000-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 037-1037a; FRL-5955-4]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves revisions of the Iowa State Implementation Plan regarding two local air pollution control agencies. The scope of this action includes updated regulations for the Polk County Public Works Department (PCPWD) and Linn County Health Department (LCHD). These revisions include provisions such as definitions, permit exemptions, visible opacity and open burning.

DATES: This action is effective April 3, 1998, unless by March 4, 1998, adverse or critical comments are received. If the effective date is delayed timely notice will be published in the *Federal Register*.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551-7213.

SUPPLEMENTARY INFORMATION: The two local air pollution control agencies in Iowa were created in December 1972. Throughout the past 25 years, these agencies periodically update their regulations to reflect revisions adopted by the Iowa Department of Natural Resources (IDNR) in the Iowa Administrative Code (IAC). This provides consistency for sources throughout the state.

Both the PCPWD and LCHD provided drafts of rule revisions to the EPA beginning in 1994. Since that time, the EPA and IDNR have worked closely with the local agencies to ensure consistency with state and Federal regulations.

These actions led to a request to revise the SIP for both local programs under the signature of Larry Wilson, Director, IDNR, in a letter dated April 2, 1997. Following an assurance that the request met all administrative requirements contained in 40 CFR part 51, the EPA provided a letter of completeness on June 5, 1997.

In general terms, the regulations contained in the "Polk County Board of Health Rules and Regulations: Chapter V, Air Pollution" (effective December 18, 1996) and the "Linn County Air Pollution Control Code of Ordinances" (effective March 7, 1997) are consistent with applicable portions of federally approved rules contained in the IAC. In a technical support document entitled "Revision of Iowa Local's State Implementation Plans" dated September 26, 1997, the EPA has determined that the regulations adopted by both agencies are fully approvable. The rationale for approval is straightforward, and is not repeated here. The reader is encouraged to request and consult this document for specific descriptions of the changes made in the local regulations that are intended to provide consistency with the state's rules and various Federal regulations.

Certain portions of the local rules are not part of the SIP (e.g., new source performance standards). While these updated regulations are an important component of the local air pollution programs, they are excluded from this action because they are not intended to meet the SIP requirements of section 110 of the Act. Therefore, the EPA is not taking action on those portions.

This exclusion regards regulations (which are administered in Iowa by IDNR under various EPA approval and delegations) pertaining to Title V (regulated under part 70), New Source Performance Standards (delegated to the state under section 111), National Emissions Standards for Hazardous Air Pollutants (delegated to the state under section 112), Hazardous Air Pollutants (delegated to the state under section 112), and Sulfur Compounds (portions of which reflect the state's regulation of certain sulfuric acid mist emissions, and approved by the EPA under section 111). In addition, the EPA is not taking action on those portions regarding variances or odors. Finally, as explained in the TSD for this rule, the EPA is not acting on the Linn County definition of "federally enforceable" in section 10.2, since it is duplicative of another definition included in the portion of the local rules which specifically use the defined term.

I. Action

The EPA is taking final action to approve revisions that pertain to the SIP submitted on April 2, 1997, for the two local air pollution control agencies in the state of Iowa. These revisions reflect rules adopted by the PCPWD which became effective December 18, 1996, and those adopted by the LCHD which became effective March 7, 1997.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this *Federal Register* publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action is effective April 3, 1998, unless, by March 4, 1998, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action is effective April 3, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act (CAA) do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the