

1/21/05- 02466  
CH2M HILL

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**CH2MHILL**

January 21, 2005

Ms. Colleen McNamara  
RAB Community Co-Chair  
PO Box 536  
Vieques, Puerto Rico 00765

cc: Dr. Juan R. Fernández  
Mr. Oscar Díaz  
Ms. Stacie Notine  
Ms. Lirio Márquez D'Acunti  
Mr. Sixto A. Pérez Espina, P.E.  
Ms. Nilda Medina Díaz  
Mr. Miguel Pablo Connelly Pagán  
Ms. Yarissa Martínez  
Mr. Michael Díaz

Mr. Daniel Rodríguez  
Mr. Félix López Arroyo  
Mr. Rafael Cruz Pérez  
Mr. Jorge Fernández Porto  
Ms. Adalina Cruz Colón  
Ms. Myrna Pagán  
Mr. Emilio García Cordero  
Ms. Gladys Costa  
Mr. Víctor Emeric Catarineau

Mr. Gilberto Montero  
Mr. Edgardo Rodríguez Rodríguez  
Ms. María Parrilla Herrera  
Ms. Roberta Britton  
Ms. Susana Struve  
Mr. Héctor Olivieri Cano  
Mr. Ricardo Jordán  
Ms. Madeline Rivera Ruiz

Dear Colleen,

On behalf of Jeff Harlow, Naval Facilities Engineering Command-Atlantic, I am enclosing the draft minutes and action items from the Restoration Advisory Board Meeting (RAB) held on November 17, 2004. These minutes will be reviewed and approved at the next RAB meeting. Attachments to the minutes are:

1. List of meeting attendees
2. Spanish version of the November minutes
3. Closed Action Items from previous meetings
4. RAB members contact information
5. Final Rule Technical Assistance for Public Participation

The next RAB meeting is scheduled for February 16, 2005, from 5:00 to 9:00 p.m. at El Faro. These are the proposed agenda items:

- Review of Action Items/Minutes from August 2004 meeting
- Review and Approval of the RAB Charter
- Other RAB administrative issues
- Follow up to the RAB Site Visit in December 2004
- Review of upcoming field activities/document review schedule
- Follow up to the December 2004 public session for the Munitions Response Program
- Introduction to the new public website
- Questions and Comments from the Public

If you or other RAB members would like to suggest other agenda items, please let me know.

Finally, I am also enclosing for your information a CD containing the Draft Final *Environmental Baseline Survey (EBS) for Vieques Naval Training Range* (April 2003). The EBS was prepared as a preliminary assessment of conditions in preparation for the transfer of

Ms. Colleen McNamara

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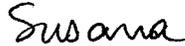
January 21, 2005

May 1, 2003. Another CD is being sent under separate cover to Jorge Fernández-Porto, in response to his request at the public information session last month.

I would ask that you both make these CDs available to other RAB members, if they are interested in the EBS. We have also posted the EBS on the new public website. After printing a hardcopy, we plan to put it in the Vieques library. At this time, there are no plans to finalize this document, since new investigations are underway.

We look forward to seeing you at the next RAB meeting.

Sincerely,



CH2M HILL

Susana Struve

Community Relations Task Manager

cf: Mayor Dámaso Serrano (Municipality of Vieques), Carlos W. López Freytes (Environmental Quality Board), Radamés Tirado (Subcommissioner for Vieques), Fernando Silva (Puerto Rico Conservation Trust)



## CH2MHILL

21 de enero, 2005

Sra. Colleen McNamara  
Co-Directora del la Comunidad del RAB  
PO Box 536  
Vieques, Puerto Rico 00765

cc: Dr. Juan R. Fernández  
Sr. Oscar Díaz  
Sra. Stacie Notine  
Sra. Lirio Márquez D'Acunti  
Sr. Sixto A. Pérez Espina , P.E.  
Sra. Nilda Medina Díaz  
Sr. Miguel Pablo Connelly Pagán  
Sra. Yarissa Martínez  
Sr. Michael Díaz

Sr. Daniel Rodríguez  
Sr. Félix López Arroyo  
Sr. Rafael Cruz Pérez  
Sr. Jorge Fernández Porto  
Sra. Adalina Cruz Colón  
Sra. Myrna Pagán  
Sr. Emilio García Cordero  
Sra. Gladys Costa  
Sr. Víctor Emeric Catarineau

Sr. Gilberto Montero  
Sr. Edgardo Rodríguez Rodríguez  
Srta. María Parrilla Herrera  
Sra. Roberta Britton  
Sra. Susana Struve  
Sr. Héctor Olivieri Cano  
Sr. Ricardo Jordán  
Sra. Madeline Rivera Ruiz

Estimada Colleen,

A nombre de Jeff Harlow, Comando de Ingeniería de las Instalaciones Navales del Atlántico, le estoy enviando el borrador de las actas y asuntos que requieren seguimiento de la reunión de la Junta de Consejo para la Restauración (RAB por sus siglas en inglés), que se llevó a cabo del 17 de noviembre del 2004. Estas actas serán revisadas y aprobadas en la próxima reunión del RAB. Los anexos a las actas incluyen:

1. Lista de los asistentes a la reunión
2. Versión en español de las actas de noviembre
3. Asuntos Completados de reuniones anteriores
4. Información de contacto de los miembros del RAB
5. Regulaciones Finales sobre la Asistencia Técnica para la Participación Pública

La siguiente reunión del RAB meeting se llevará a cabo del 16 de febrero del 2005, de 5:00 a 9:00 PM en el Faro. Los temas propuestos para la agenda son:

- Revisión de los Asuntos que requieren seguimiento y actas de la reunión de agosto del 2004.
- Revisión y Aprobación del "Charter" del RAB
- Otros asuntos administrativos del RAB
- Seguimiento a la Visita de los Sitios por los miembros del RAB en diciembre del 2004
- Revisión del calendario de las actividades de campo y revisión de documentos
- Seguimiento a la sesión pública de diciembre 2004 sobre el Programa de Respuesta a Municiones
- Presentación de la nueva página de Internet accesible al público
- Preguntas y comentarios del público

Ms. Colleen McNamara  
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January 21, 2005

Si usted u otros miembros del RAB quisieran sugerir otros temas para la agenda, favor dejármelo saber.

Finalmente, también estoy enviando para su información un CD con el Borrador Final del, *Environmental Baseline Survey (EBS por sus siglas en Inglés) for Vieques Naval Training Range* (Abril 2003). Este EBS fue preparado como una evaluación preliminar de las condiciones en preparación para la transferencia del 1ro de mayo del 2003. Otro CD ha sido enviado a Jorge Fernández-Porto, respondiendo a su solicitud en la sesión de información pública el mes pasado.

Quisiera pedirles que si otros miembros del RAB están interesados en el EBS, ustedes mantengan el documento disponible para ellos. Adicionalmente, el EBS está disponible en la nueva página de Internet de acceso público. Estamos planeando poner una copia impresa en la biblioteca de Vieques. Ahora mismo, no hay planes para finalizar este documento ya que las investigaciones están en camino.

Espero verles en la próxima reunión del RAB.

Atentamente,



CH2M HILL  
Susana Struve  
Gerente del Componente de Relaciones Comunitarias

cc: Alcalde Dámaso Serrano (Municipio de Vieques), Carlos W. López Freytes (Junta de Calidad Ambiental), Radamés Tirado (Sub-comisionado para Vieques), Fernando Silva (Fidecomiso de Conservación de Puerto Rico)

**DRAFT**

**MEETING MINUTES AND ACTION ITEMS**

**Restoration Advisory Board (RAB)  
For the Environmental Restoration of Western Vieques**

**Meeting Number 2 - November 17, 2004**

**I CALL TO ORDER AND WELCOMING REMARKS**

The meeting began at 5:30 PM at the Lighthouse (El Faro) in Isabel Segunda. Susana Struve (CH2M HILL) welcomed everyone and thanked Pablo Connelly of the Municipality of Vieques (MOV) for arranging for the meeting room.

Navy contractors present at this meeting were introduced: CSA Group and Shaw Environmental. CSA Group will be supporting CH2M HILL with fieldwork and logistics. Shaw Environmental will work on installing septic tanks and future remedial action construction. See Attachment 1 for attendees list. A Spanish translation of these minutes can be found as Attachment 2.

**II APPROVAL OF MINUTES FROM PREVIOUS MEETING**

The minutes from the previous RAB meeting (August 2004) were accepted without changes.

**III ONGOING BUSINESS**

**III.a ACTION ITEMS REVIEW**

Refer to the table below for a list of the "open" action items carried forward from previous meeting(s) plus the action items added during this meeting. Action items closed after the November RAB meeting are included. Closed action items from previous meetings have been moved to Attachment 3.

Description	Responsible Party	Status
Meet with Alquimia to (new TAPP consultant) go over their questions and define the community priorities.	RAB members	New Open - Ongoing
Submit monthly reports describing the ongoing field and proposed activities	Navy-CH2MHILL	New Open – Ongoing on a monthly basis
Provide simultaneous translation equipment for RAB meetings	Jeff Harlow-Navy	Open- It is expected that the equipment will be available for the February 2005 meeting
Provide explanation of the rationale used for the selection of media sampling for the different sites. Some sites include the sampling of groundwater and others do not.	Jeff Harlow-Navy	Open – To be discussed at a technical workshop
Explain the rationale used to perform risk assessment and the role this assessment will	Jeff Harlow-Navy	Open – To be discussed at a technical workshop

Description	Responsible Party	Status
have on selecting the final remedial action.		
Look for additional public information repositories in Vieques	Jeff Harlow-Navy	Open
Provide comments in writing about the error with well location and sampling at AOC E.	Navy	Closed- Location was discussed and agreed upon during the December 2004 site visit
Distribute a list of all RAB members with telephone numbers.	Susana Struve - CH2MHILL	Closed - RAB list is included to these minutes as Attachment 4
Send a copy of the TAPP regulations to RAB members	Susana Struve - CH2M HILL	Closed - TAPP regulations are included with these minutes as Attachment 5
Present Navy's public website to the community, including access to draft final and final documents for public review.	Jeff Harlow-Navy	Closed - website link was provided at the December 2004 public information session and the website will be presented at the February 2005 RAB meeting

**III.b INTRODUCTION OF THE TAPP CONSULTANT: ALQUIMIA ENVIRONMENTAL - MR. ARNALDO MARTINEZ**

- Members asked Arnaldo Martinez to explain his professional experience with military sites/explosives. He answered that he doesn't have previous experience with military sites but has ample experience with toxic/hazardous waste sites.
- A community member expressed some concern about the way the TAPP contract was awarded to Alquimia. Arnaldo Martinez explained the process that he followed to bid for this project. He asked the community for an opportunity to get to know him and evaluate his work within the three months specified in the contract. Jeff Harlow added that Alquimia met the qualifications listed in the scope of work reviewed by RAB members.
- A RAB member (Jorge Fernandez) expressed his support of the TAPP contractor. He professionally knows Arnaldo and believes that Alquimia is capable of performing the job.
- Nilda Medina asked Mr. Martinez if he understood that he works for the community and not the Navy. Mr. Martinez said that he is fully aware of that.
- Jeff Harlow explained that TAPP funds are to be used for the TAPP contractor to review technical documents based on the community needs/wants. Funds cannot be used to attend meetings outside Vieques.

**III.c ELECTION OF COMMUNITY CO-CHAIR**

- The Community Co-Chair was elected by a vote among the community members present. Ms. Colleen McNamara is now the official RAB Community Co-Chair, for a term of two years.
- Colleen McNamara expressed that even though she is the Community Co-Chair, she expects the Navy to maintain communication with the rest of the community.

#### **IV. NEW BUSINESS**

##### **IV.a RESTORATION ADVISORY BOARD (RAB) CONCERNS**

- Nilda Medina officially submitted written concerns from a sector of the community about the RAB meetings (Attachment 6). These concerns were briefly discussed at the meeting.
- A community concern about the frequency of the RAB meetings was brought to the table. The community would like to have meetings every two months. The Navy proposed meetings every three months, starting with February 16, 2005 for the next RAB meeting. Jeff Harlow proposed establishing conference calls to discuss any issues between the meetings. He said that he is available and has flexibility in his schedule to participate in conference calls. If additional meetings are needed to discuss complex issues, he is willing to discuss the need.
- EPA and EQB clarified that the reason this meeting was delayed was because they were not available to meet earlier.
- Nilda Medina presented comments about the draft RAB charter. It is expected that these new charter issues will be discussed among RAB members in preparation for the meeting, so the charter can be finalized and signed at the February 2005 meeting.
- The community asked to resume the distribution of the Monthly Status Reports.
  1. A community member (Roberta Britton) volunteered to receive them electronically and e-mail them to members with an email address. For those without e-mail access she can print hard copies and distribute them.
  2. The following is what the community would like to see on the monthly reports:
    - Information on what happened in the field on that previous month
    - Summary of ongoing site investigations
    - Summary of meetings/conference calls with other groups (CTC, EPA, etc.)
    - List of documents distributed for review or under revision, and to whom the documents were submitted.
    - Schedule of on-going and future activities
- The Navy announced a Public Information Session on December 16, 2004, to update the community on the Military Munitions Response program at the former Vieques Navy Training Range (VNTR), East Vieques.
- A community member expressed that the RAB community members have a responsibility to educate the community, but the RAB doesn't have the funds or resources to do so. The Navy explained that general guidance does not allow providing funds directly to the community except through the TAPP contract.
- Site Visit - An official site visit with RAB members is scheduled for December 15, 2004. Pablo Connelly (MOV) and USFWS will provide transportation for community members.

## **IV.b DOCUMENTS**

The community asked for copies of all documents. Navy stated that five copies of the draft final and final documents are submitted to RAB community members; additional copies are available at the Information Repository. It was suggested by a RAB member that more places be used as Information Repositories because the library and the offices of FWS and EPA in Vieques are not open at night.

## **IV.c NATIONAL PRIORITIES LIST (NPL)**

Daniel Rodríguez (EPA) explained the status of the proposed NPL listing for Vieques. EPA received over 2400 letters with comments. Over 2000 of these letters were mass mailing type with the same comments. Fifty-four letters have unique comments. All comments can be found in the EPA docket for the Vieques NPL listing, under the ID number SFUND-2004-0011, on the EPA Superfund website at <http://www.epa.gov/edocket>. EPA expects to have answered all comments by the end of 2004.

- EQB explained that Culebra is not part of the proposed NPL listing, because EPA is trying to reach an agreement with the Army Corps of Engineers on how to address Culebra. If EPA and the Army Corps of Engineers have not signed a Memorandum of Agreement (MOA) by February 2005, then Culebra will be part of the NPL listing.
- The Navy presented a preliminary schedule for document review and field activities. The schedule is subject to change due to availability of EPA and EQB reviewers. EPA needs to approve the work plans before the Navy mobilizes its contractor. EPA and EQB believe that they will not be able to complete the document revision by the dates the Navy is proposing. Some sites discussed were:
  - a. AOC R - the draft RI/FS Work Plan is available for review as a draft, not a final. For AOC R, the Defense Explosive Safety Board must approve the work plan for the removal of munitions and explosives of concern (MEC) found on site prior to continuing the environmental investigation.
  - b. SWMU 7 – The Navy proposed to remove the visible solid waste/scrap metal if the cost analysis indicates that the removal is more cost effective than long term monitoring.

## **V. CLOSING**

### **V.a SUGGESTED TOPICS FOR THE NEXT MEETING**

The next meeting is scheduled for February 16, 2005. More information will be distributed closer to that date.

Suggested topics:

- Discuss the suggestion of additional Co-Chairs representing the landowners (MOV, FWS)

### **V.b COMMENTS AND QUESTIONS FROM THE PUBLIC**

For future meetings, if the public has questions or suggestions, these will be captured under this heading.

## **VI ADJOURNMENT**

The meeting was adjourned at 9:45 p.m.



**BORRADOR**

**ACTAS DE LA REUNION**

**Junta de Consejo para la Restauración (RAB por sus siglas en inglés)  
para la Restauración Medioambiental del Oeste de Vieques**

**Reunión Número 2 - 17 de Noviembre del 2004**

**I ORDEN DEL DIA Y MENSAJE DE BIENVENIDA**

La reunión empezó a las 5:30 PM en El Faro (Lighthouse) en Isabel Segunda. Susana Struve (CH2M HILL) dio la bienvenida a todos y agradeció a Pablo Connelly - Municipio de Vieques (MOV) por reservar el lugar de reunión.

Se presentaron a contratistas de la Marina: CSA y Shaw Environmental. CSA va a trabajar apoyando el trabajo de campo y logística de CH2M HILL. Shaw Environmental trabajará instalando tanques sépticos y elementos de construcción para acciones de remediación futuras. Vea el Anexo 1 para la lista de participantes. La traducción al español de las actas se encuentra como Anexo 2.

**II APROBACION DE LAS ACTAS DE LA REUNION ANTERIOR**

Las actas de la reunión del RAB anterior (agosto del 2004) fueron aceptadas sin ningún cambio.

**III ASUNTOS QUE REQUIEREN SEGUIMIENTO**

**III.a REVISION DE ASUNTOS QUE REQUIEREN SEGUIMIENTO**

Refiérase a la lista abajo de asuntos de las reuniones anteriores que requieren seguimiento ("abierto") y aquellos asuntos nuevos ("nuevo") que fueron añadidos durante esta reunión. Se incluyen los asuntos que se completaron ("completos") después de la reunión del RAB de noviembre. Los asuntos completados de reuniones anteriores se encuentran en el Anexo 3).

Descripción	Parte Responsable	Estado
Reunirse con Alquimia (nuevo consultor TAPP) para revisar preguntas y definir las prioridades de la comunidad	Miembros de la comunidad del RAB	Nuevo Abierto - Requiere seguimiento
Presentar informes mensuales describiendo las operaciones de campo y actividades propuestas	Marina-CH2M HILL	Nuevo Abierto - Requiere seguimiento mensual
Proveer equipo de traducción simultánea para las reuniones del RAB	Jeff Harlow-Marina	Abierto - Se espera que el equipo esté disponible para la reunión de febrero del 2005.

Descripción	Parte Responsable	Estado
Proveer explicación sobre el proceso utilizado para la selección del "médium" de muestreo en los diferentes sitios. Algunos sitios incluyen el muestreo de agua subterránea y otros no.	Jeff Harlow-Marina	Abierto – Para ser tratado en un taller técnico
Explicar el proceso realizado para la evaluación de riesgo y la función que esta evaluación tendrá al seleccionar la acción de remediación final.	Jeff Harlow-Marina	Abierto – Para ser tratado en un taller técnico
Buscar repositorios de información adicionales en Vieques	Marina	Nuevo-Abierto
Proveer comentarios por escrito sobre el supuesto error con la ubicación de un pozo en AOC E.	Jeff Harlow-Marina	Completado - La ubicación fue discutida y definida durante la visita del sitio.
Distribuir una lista de los números de teléfono de todos los miembros del RAB.	Susana Struve – CH2MHILL	Completado. La lista de los miembros RAB se incluyen en estas actas como Anexo 4
Send a copy of the TAPP regulations to RAB members	Susana Struve – CH2M HILL	Completado - Las regulaciones TAPP se encuentran en estas actas como Anexo 5
Presentar a la comunidad a la nueva página de Internet pública de la Marina, que incluye acceso a documentos borradores finales y finales para revisión del público.	Jeff Harlow-Marina	Completado – Un enlace "link" fue presentado en la sesión de información pública de Diciembre 2004 y la página de Internet será presentada durante la reunión del RAB de febrero del 2005.

### III.b PRESENTACION DEL CONSULTOR TAPP

#### ALQUIMIA ENVIRONMENTAL - MR. ARNALDO MARTINEZ

- Los miembros preguntaron a Arnaldo Martínez sobre su experiencia con sitios militares/explosivos. El respondió que no tiene experiencia previa con sitios militares pero que tiene experiencia amplia con sitios tóxicos o de desperdicios peligrosos.
- Un miembro de la comunidad expresó preocupación sobre la manera en la que el contrato fue otorgado a Alquimia. Arnaldo Martínez explicó que el proceso que se siguió para pedir propuestas para este proyecto. El pidió a la comunidad que le dieran la oportunidad de conocerle y evaluar su trabajo dentro de los tres meses que se especifican en el contrato. Jeff Harlow añadió que Alquimia tiene las calificaciones enumeradas en la descripción del trabajo que fue revisada por los miembros del RAB.
- Un miembro del RAB (Jorge Fernández) expresó su apoyo al consultor TAPP. El le conoce profesionalmente y cree que Alquimia es capaz de realizar el trabajo.
- Nilda Medina preguntó al Sr. Martínez si él entiende que el trabajo es para la comunidad y no para la Marina. El Sr. Martínez dijo que él está completamente al tanto de eso.

- Jeff explicó que los fondos TAPP tienen que ser utilizados por el consultor TAPP para revisar aquellos documentos técnicos que la comunidad necesita/requiere. Los fondos no pueden ser utilizados para asistir a reuniones fuera de Vieques.

### **III.b SELECCION DEL CO-DIRECTOR(A) DE LA COMUNIDAD**

- La co-directora de la comunidad fue elegida por votación de los miembros de la comunidad presentes. La Sra. Colleen McNamara es ahora la co-directora oficial de la comunidad, por un período de dos años.
- Colleen McNamara expresó que aunque ella es la co-directora de la comunidad, ella espera que la Marina mantenga comunicación con el resto de la comunidad.

## **IV. ASUNTOS NUEVOS**

### **IV.a PREOCUPACIONES DE LA JUNTA DE CONSEJO PARA LA RESTAURACION (RAB)**

- Nilda Medina oficialmente entregó por escrito preocupaciones de un sector de la comunidad sobre las reuniones RAB (Anexo 6). Estas preocupaciones fueron brevemente discutidas en la reunión.
- La preocupación de los miembros de la comunidad sobre la frecuencia de las reuniones RAB fue puesta sobre la mesa. La comunidad quisiera que las reuniones sean cada dos meses. La Marina propuso tener reuniones cada tres meses, empezando con la próxima reunión del RAB el 16 de febrero del 2005. Jeff propuso establecer reuniones por teléfono para discutir otros tópicos entre reuniones. El dijo que siempre está disponible y su horario es flexible para participar en estas reuniones telefónicas. Si reuniones adicionales son necesarias para discutir asuntos complejos, él está dispuesto a hablar sobre esta necesidad.
- EPA y JCA mencionaron que la razón por la que esta reunión se retrasó fue porque ellos no estaban disponibles para reunirse antes.
- Nilda Medina presentó comentarios de un sector de la comunidad sobre el "Charter" del RAB. Se espera que estos nuevos cambios al "Charter" sean discutidos entre los miembros del RAB previamente para poder finalizarlo y firmarlo en la reunión de febrero del 2005.
- La comunidad pidió que se vuelvan a distribuir Informes Mensuales.
  1. Un miembro de la comunidad (Roberta Britton) se ofreció a recibir los informes electrónicamente para enviarles a los miembros del RAB con acceso a correo electrónico. Para aquellos que no tienen correo electrónico, una copia ella los imprimirá y los distribuirá.
  2. Los siguientes son los tópicos que la comunidad quisiera sean incluidos en los informes mensuales.
    - Información sobre las actividades en el campo del mes anterior
    - Resumen de las investigaciones del sitio actuales
    - Resumen de las reuniones/conversaciones telefónicas con otros grupos (CTC, EPA, etc.)

- Una lista de los documentos a ser distribuidos para revisión y los que están actualmente siendo revisados; y a quién fueron presentados
- Calendario de las actividades actuales y futuras
- La Marina anunció una Sesión de Información Pública para el 16 de diciembre del 2004, para presentar información actualizada a la comunidad sobre el Programa de Respuesta Municiones Militares en el antiguo Campo de Tiro de la marina en el este de Vieques (VNTR por sus siglas en inglés).
- Un miembro de la comunidad expresó que los miembros de la comunidad tienen la responsabilidad de educar a la comunidad, pero el RAB no tiene los fondos o recursos para hacerlo. La Marina explicó que las directrices generales no permiten que se provean fondos directamente a la comunidad, excepto a través del contrato TAPP.
- Visita de los Sitios – Una visita oficial de los sitios para los miembros del RAB está programada para el 15 de Diciembre del 2004. Pablo Connelly (MOV) y USFWS proveerán de transporte para los miembros de la comunidad.

#### **IV.b DOCUMENTOS**

La comunidad pidió copias de todos los documentos. La Marina dijo que cinco copias de los documentos borradores finales y documentos finales serán entregados a los miembros de la comunidad del RAB; copias adicionales están disponibles en los Repositorios de Información. Se sugirió que se aumente el número de repositorios ya que la biblioteca y las oficinas de USFWS y EPA en Vieques no están abiertas por la noche.

#### **IV.c NATIONAL PRIORITIES LIST (NPL)**

Daniel Rodríguez (EPA) explicó el estado actual de la propuesta NPL para Vieques. EPA recibió 2400 cartas con comentarios. Más de 2000 de estas cartas fueron recibidas en grupo con los mismos comentarios. Cincuenta y cuatro cartas tienen comentarios únicos. Todos los comentarios pueden ser revisados en el "docket" de la EPA para el listado NPL de Vieques bajo ID SFUND-2004-0011 en el Internet:

<http://www.epa.gov/edocket>. EPA espera contestar a todos los comentarios para fines del 2004.

- EQB explicó que Culebra no es parte de la lista NPL propuesta ya que La EPA está tratando de llegar a un acuerdo con el Cuerpo de Ingenieros del Ejército sobre la manera de tratar a Culebra. Si la EPA y el Cuerpo de Ingenieros no firman un Acuerdo (Memorandum of Agreement -MOA por sus siglas en Inglés) hasta febrero del 2005, Culebra será parte del NPL.
- La Marina presentó un calendario preliminar para la revisión de documentos y actividades en el campo. Este calendario está sujeto a cambios dependiendo de la disponibilidad de los revisores de EPA y EQB. EPA tiene que aprobar los planes de trabajo antes de que la Marina pueda movilizar a contratistas. EPA y EQB creen que ellos no podrán terminar la revisión de los documentos para las fechas que la Marina propone. Se discutieron algunos de los sitios:

- a. AOC R - El Plan de Trabajo del RI/FS que está disponible para revisión es un borrador, no es el documento final. En este sitio tenemos que esperar hasta que el Defense Explosive Safety Board apruebe el plan de trabajo para la remoción de municiones y explosivos de preocupación (MEC por sus siglas en inglés) que se encontraron en el sitio antes de continuar con la investigación medioambiental.
- b. SWMU 7 - La Marina propone remover los desperdicios sólidos/pedazos de metal visibles si el análisis de costos indican que la remoción es más efectiva que el establecimiento de un monitoreo a largo plazo.

## **V. CIERRE**

### **V.a TEMAS SUGERIDOS PARA LA PROXIMA REUNION**

La siguiente reunión está planificada para el 16 de febrero del 2005 Más información será distribuida cerca de esa fecha.

Temas sugeridos:

- Discutir la pregunta de co-directores adicionales representando los tenientes de tierra (MOV, FWS)

### **V.b COMENTARIOS Y PREGUNTAS DEL PÚBLICO**

En futuras reuniones, si el público tiene preguntas o sugerencias, éstas serán incluidas bajo este título.

## **VI CLAUSURA**

La reunión terminó a las 9:45 PM

**ATTACHMENT 3 – Closed Action Items from the TRC and August and 2004 meetings**

**Restoration Advisory Board (RAB)  
For the Environmental Restoration of Western Vieques**

Description	Responsible Party	Status as of December 2004
Copy of Draft RAB Charter in Spanish to be provided.	Susana Struve-CH2M HILL	Closed – Included in August 2004 minutes
Copy of UST <sup>+</sup> closure report/letters at former gas station on Vieques	Jeff Harlow-Navy	Closed - a copy was given to Pablo Connelly during the last meeting.
Move background well near building 401	Jeff-Harlow-Navy	Closed - recommendation accepted by Navy
Provide a Glossary of acronyms to RAB members	Susana Struve-CH2M HILL	Closed – Included in August 2004 minutes
Check on the mechanism to use RAB members input to assess and evaluate TAPP contract	Jeff-Harlow-Navy	Closed - TRC member reviewed the TAPP scope of work and submitted changes, all proposed changes were accepted by the Navy. TAPP consultant has a 3 month trial period.
Complete TAPP application	Colleen MacNamara – TRC member	Closed – TAPP applications have been submitted, TAPP contract is in place.
Check on an alternative "phone meeting" mechanism to expedite review of technical documents by the RAB members	Jeff Harlow-Navy and RAB community members	Closed – Jeff Harlow is available to discuss technical topics on the phone, if necessary including technical teams.
Provide a summary of the investigations completed to the new RAB membership, including the sites proposed for No Further Action, for review before the next RAB meeting	Jeff Harlow-Navy/ Susana Struve-CH2M HILL	Closed - Included in August 2004 minutes
Distribute a Spanish Translation of the Charter as soon as possible.	Susana Struve-CH2M HILL	Closed -- Included in August 2004 minutes
Provide a glossary of acronyms most commonly used.	Jeff Harlow-Navy/ Susana Struve-CH2M HILL	Closed – Included in August 2004 minutes
Elect the Community Co-Chair	RAB Community members	Closed – Colleen MacNamara was elected Co-chair at the November 2004 meeting
Send a letter to the Mayor ask him to appoint an official Municipality representative to the RAB	Jeff Harlow-Navy	Closed – Letter send in November 2004
Follow up with Cindy Turlington (Navy (CNO) representative to the 2004 RAB training) about the statement that in other RABs, the community sees the list of TAPP contract candidates	Jeff Harlow-Navy	Closed - Navy spoke with Cindy. TAPP candidates list will not be available for the Vieques RAB
Report back to the RAB about the outcome of their suggestion to move the background monitoring well (near Building 401)	Jeff Harlow-Navy	Closed - (suggestion implemented)



Final Rule Technical Assistance for Public Participation (TAPP) in Defense  
Environmental Restoration Activities[Federal Register: February 2, 1998 (Volume  
63, Number 21)]  
[Rules and Regulations]  
[Page 5255-5268]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
[DOCID:fr02fe98-17]

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 Ferrebee 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 Ferrebee 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.

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### 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

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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 outlines 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

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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

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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:

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(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

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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.

##### Sec. 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.

#### Sec. 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 Sec. 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.

#### Sec. 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 Sec. 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.

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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 Sec. 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.

#### Sec. 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

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

#### Sec. 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 Sec. 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 Secs. 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 Sec. 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 Secs. 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 Sec. 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 Sec. 203.14 of this part.

#### Sec. 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).

#### Sec. 203.7 Eligible applicants.

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

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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 Sec. 203.9 of this part.

#### Sec. 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 Secs. 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 Secs. 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.

#### Sec. 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.

#### Sec. 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.

#### Sec. 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.

#### Sec. 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

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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.

#### Sec. 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.

#### Sec. 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.

#### Sec. 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.

#### Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

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[GRAPHIC] [TIFF OMITTED] TR02FE98.006

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[GRAPHIC] [TIFF OMITTED] TR02FE98.007

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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]  
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**ATTACHMENT 6 – English version of the concerns from a community sector regarding RAB meetings**

November 17, 2004

Vieques, Puerto Rico

**RAB Meeting #2**

The purpose of having a RAB in a community affected by military contamination is so that true participation from every community sector in the review of the cleanup process occurs. Actual information exchange between the affected community, government agencies, and those responsible for the cleanup (military) should occur during this process. All RAB activities and regulations should contribute to this goal. For this reason, the following issues concern us:

- In the first meeting, we were told that this second meeting would take place two months after that first meeting. Today it has been three months which requires that we have a long meeting of nearly four hours.
- This meeting did not have the publicity necessary to stimulate significant community participation. Additionally, not all of the RAB community members received the official notification.
- Community members interested in the process, who signed the list to receive updates, notices, and information, have not had access to the minutes from the previous meeting, and were also not notified of this meeting.
- The English to Spanish translation of the draft RAB regulations was sent two months later which hindered an adequate review.

We urge that standards of communication and publicity used for other RABs be followed, particularly in the predominant language which is Spanish. This is the only way to enable true community participation in the cleanup process in Vieques.

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