



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

November 27, 2013

REPLY TO THE ATTENTION OF:

Ms. Laura Olah  
Executive Director  
Citizens for Safe Water Around Badger (CSWAB)  
E12629 Weigand's Bay South  
Merrimac, Wisconsin 53561

LU-9J

Dear Ms. Olah:

I did not receive your email and attached letter dated November 12, 2013. However, on November 20, 2013, U.S. Representative Mark Pocan's office forwarded the email and letter to EPA. In your letter you ask EPA to respond to five bullet points. Below are the bullet points followed by EPA's response.

1. Please explain the current authority for cleanup and public participation at Badger. What federal laws and directives, such as RCRA and Executive Orders pertaining to environmental justice, are applicable?

The Wisconsin Department of Natural Resources (WDNR) is the lead agency responsible for cleanup at the Badger Army Ammunition Plant (BAAP). EPA and WDNR have a Memorandum of Agreement (MOA) (attached) which recognizes WDNR as having laws and regulations at least as stringent as those of EPA under the Resource Conservation and Recovery Act (RCRA). Wisconsin state laws should result in cleanups that meet federal regulatory requirements and the MOA authorizes the state of Wisconsin to implement corrective action in lieu of EPA.

Corrective action at BAAP is being implemented under state authority of the "spills law" (Statute 292) and the cleanup rules under Wisconsin Administrative Code NR 700, et. seq., and not under a RCRA permit. EPA regulations do not require public participation for corrective action activities that are not imposed under a RCRA permit. However, EPA's policy is that the same level of public participation requirements imposed under a permit should generally apply under other mechanisms. EPA recommends that when corrective action is conducted under alternate authorities in lieu of a RCRA permit, public participation occurs when EPA first becomes involved at a site, during remedy selection, and prior to making the decision that corrective action is complete. WDNR has requirements under Wisconsin Administrative Code NR 714 similar to EPA's recommendations.

Specifically, Wisconsin Administrative Code NR 714, "The department shall maintain a list of persons interested in a specific site or facility and provide them with copies of any department approvals or rejections for all of the following documents:

- (a) Site investigation workplans.
- (b) Site investigation reports.
- (c) Remedial action options reports.
- (d) Requests for case closure."

WDNR has been meeting or exceeding the public participation activities under Wisconsin Administrative Code NR 714. Also, please see the response to bullet 5.

With respect to Environmental Justice (EJ) concerns at BAAP, the BAAP area does not meet the criteria that EPA uses to identify locations where EJ may be an issue. Also, even if the BAAP area met EJ criteria, EPA's recommendations for increased public participation would likely be met by WDNR's current public participation activities.

2. Why have previous permit modifications been publicly noticed with opportunities for public comment while this most recent modification did not?

Corrective action at BAAP is not being conducted under a permit and there are no permit modifications associated with BAAP corrective action. The groundwater monitoring plan modification approved by WDNR on September 5, 2013, was not a permit modification. As an authorized state, WDNR manages public participation at BAAP and has been providing public participation opportunities in accordance with Wisconsin Administrative Code NR 714. In addition, WDNR has provided several public participation opportunities this year for corrective action activities (see response to bullet 5 below). It is not the general practice of WDNR or EPA to provide public participation for revisions to approved monitoring plans.

Also, in 2012, a 45 day public comment period (extended to 55 days in response to a request from a RAB member) was held from February 15 to April 12 for the Army's Alternative Feasibility Report for Groundwater. The flexibility to modify the groundwater monitoring program was described during the public outreach process for this document. Comments were received, considered and responded to prior to the State's issuance of the June 28, 2012 "Final Determination of Feasibility for an Alternative Groundwater Remedial Strategy at and near the Badger Army Ammunition Plant." Comments received about residential well testing were addressed by WDNR in the Final Determination.

3. How can the EPA assist in facilitating and securing an opportunity for public participation and formal comment on all permit modifications (including this most recent) and other decision-making that impacts the environmental health of our community?

Corrective action at BAAP is not being conducted under a permit and there are no permit modifications associated with BAAP corrective action. WDNR has been providing public participation opportunities in accordance with Wisconsin Administrative Code NR 714, and has provided public participation opportunities beyond the Code requirements. In addition, WDNR has provided several public participation opportunities this year (see response to bullet 5 below). Also, the Army will be holding a public meeting in December, 2013 to provide an update on corrective action activities (including groundwater monitoring) at BAAP. WDNR staff will be in attendance and public comments will be accepted at this meeting.

Also, the groundwater monitoring plan modification approval contained a Notification of Appeal Rights. This notification provided for requests for a contested case hearing pursuant to section 227.42, Wisconsin Statutes for the modification approval. However, the time frame for requesting a contested case has passed at this point.

4. Do you know why the RAB members were not informed and did not have an opportunity to comment?

The modification to the groundwater monitoring program was not covered by the public participation requirements of Wisconsin Administrative Code NR 714. However the RAB members were informed about the WDNR approval of the modification request in an email from Debra K. Fawcett on September 16, 2013.

5. For 20 years, we had regular RAB meetings with agendas, presentations, and opportunities for open discussion but this has ended. For a while we received written updates from the Army but even this has been discontinued. Will the EPA support the restoration of board meetings?

In a letter dated February 7, 2013, to RAB members, the Army stated that due to the limited number of remediation decisions remaining in the BAAP environmental restoration program, and the goal of opening up input into the decision-making process to a more representative cross-section of the impacted community, the Army, in conjunction with WDNR and the EPA, has determined that in the future public meetings will be held on an as needed-basis to accommodate any remaining remediation decisions. The letter states, "At these future meetings, information regarding restoration activities will be presented to existing RAB members together with the public at large, and both RAB members and the public will have an equal opportunity to ask questions and offer comments in an open-house style environment. In addition, meetings may also be held by Army, by WDNR, or jointly to discuss other activities that have an impact on the surrounding community or to update the public on remedies already in place which require monitoring."

EPA notes that the following public participation activities associated with BAAP have taken place in 2013:

- February 7 - March 11, 2013 – Public comment period on the Alternative Feasibility Report for the Settling Ponds.
- February 20, 2013 – Public information meeting on the Alternative Feasibility Report for the Settling Ponds.
- June 18, 2013 – Public notice of Final Creek settling ponds and spoils disposal area remedy selection.
- June 26, 2013 - Public information meeting on Final Creek settling ponds and spoils disposal area remedy selection.
- July 15 - August 30, 2013 – BAAP Master Plan comment period.
- July 31, 2013 – Public information meeting on BAAP Master Plan.
- November 8, 2013 – Response to public comments on BAAP Master Plan posted.

EPA believes that WDNR is providing adequate public participation that is consistent with what EPA would provide for an EPA lead site. In addition, the Army will be holding a public meeting on December 11, 2013 to provide an update on corrective action activities (including groundwater) at BAAP. WDNR staff will be in attendance, and public comments will be accepted at this meeting.

Feel free to contact me at (312) 886-0455 or [rudloff.gregory@epa.gov](mailto:rudloff.gregory@epa.gov) if you need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory A. Rudloff', written over a horizontal line.

Gregory A. Rudloff,  
Corrective Action Section 1