

Virginia Department of Environmental Quality  
Waste Division, Office of Waste Permitting and Compliance  
Hazardous Waste Program

Memorandum

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Subject: Emergency Permits – Virginia Hazardous Waste Management Regulations and the RCRA Regulations - Guidance Summary

To: Leslie Romanchik, Hazardous Waste Program Manager  
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DATE: May 13, 2010

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The purpose of this memorandum is to provide a general summary guidance document regarding the regulatory requirements associated with **Emergency Permits** under the Virginia Hazardous Waste Management Regulations (VHWMR) under 9VAC-20-60, and as incorporated by reference, the RCRA Regulations.

This guidance is intended for use by any facility which may be subject to the regulatory requirements under the above Regulations and, in particular, to immediate responses to suspected presence of military munitions, other explosive material, or an explosive device, which pose an immediate threat to human health, public safety, property or the environment.

**These below cited RCRA Regulations essentially specify the following with regard to an emergency: During the immediate responses to emergencies involving military munitions, an explosive device, or other explosive material, as determined by an explosive or munitions emergency response specialist, and if conducted in accordance with the requirements of the RCRA Regulations, then the immediate response would not be subject to the RCRA (VHWMR) permitting, emergency permit, generator, and transportation (manifest, etc.) requirements. However, any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part (Part 270) for those activities.** Hazardous Waste Manifest and Hazardous waste transportation requirements may be applicable after immediate treatment associated with the immediate response, if the material continues to have a hazardous waste characteristic or is considered a listed hazardous waste under the RCRA Regulations.

**If an emergency response is not considered time critical emergency response in accordance with these below RCRA Regulations, then the Department of Environmental Quality needs to be contacted for an Emergency Permit for the storage, treatment, and/or transportation of the hazardous waste material.** (Also see below: 40 CFR Part 270, Subpart F, Special Forms of Permits, § 270.61, Emergency Permit Requirements.)

A summary of the applicable RCRA Regulations associated with emergency responses and emergency permits is provided below.

**The RCRA Regulations under 40 CFR Part 270, The Hazardous Waste Permit Program, § 270.1(c)(3), Further Exclusions, specifies:**

- (i) ***A person is not required obtain a RCRA permit for treatment or containment activities taken during immediate response to any of the following situations:***
  - (A) *A discharge of a hazardous waste;*
  - (B) *An imminent and substantial threat of a discharge of hazardous waste;*
  - (C) *A discharge of a material which, when discharged, becomes a hazardous waste.*
  - (D) ***An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR § 260.10.***
- (ii) ***Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part (Part 270) for those activities.***
- (iii) ***In the case of emergency responses involving military munitions, the responding military emergency response specialists organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.***

(For convenience, the RCRA Regulations **definitions under 40 CFR § 260.10 are provided at the end of this document in Appendix 1 for the following:** 1) explosive or munitions emergency response specialist, 2) explosives or munitions emergency, 3) explosives or munitions emergency response, and military munitions.)

The RCRA Regulations, under 40 CFR Part 266, Subpart M, Military Munitions, identifies when military munitions becomes a solid waste, when a military munition is not a solid waste, and if these wastes are also hazardous under Part 266, Subpart M or 40 CFR Part 261, the management standards that apply to the wastes. (It should be noted that under 40 CFR § 266.201, additional definitions are provided that apply to Part 266, Subpart M. These definitions are also included in Appendix 1 of this Guidance Document.)

**Under 40 CFR Part 266, Subpart M, Military Munitions, § 266.204, Standards Applicable to Emergency Responses, specifies:** *Explosives and munitions emergencies involving military munitions or explosives are subject to 40 CFR §§ 262.10(i), 263.10(e), 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3), or alternatively to 40 CFR 270.61, Emergency Permits.*

**Of these above citations under § 266.204, it should be noted that § 270.1(c)(3), Further Exclusions, (discussed above) identifies when a facility or person is not required to obtain an Emergency Permit for emergencies involving military munitions, explosive device, or explosive material.**

**As specified under § 266.204, the citation of § 264.1(g)(8) and § 265.1(c)(11), both indicate that the RCRA Treatment, Storage, Disposal (TSD) Facility Standards, under 40 CFR Part 264, and the Interim Status TSD Standards, respectively, do not apply to a person engaged in treatment or containment activities during immediate response to any of the situations identified and discussed under § 270.1(c)(3), Further Exclusions. (The Regulations under § 264.1(g)(8) and § 265.1(c)(11) are**

essentially the same as § 270.1(c)(3), with the exception of the below citation.)

**Under both § 264.1(g)(8)(iv) and § 265.1(c)(11)(iv), these regulations specify the following:** *In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.*

**As specified under § 266.204, under 40 CFR Part 263, Standards Applicable to Transporters of Hazardous Wastes, § 263.10(e) indicates that:** *The regulations in this part do not apply to transportation during an explosives or munitions emergency response, conducted in accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii).*

**Finally, as specified under § 266.204, under 40 CFR Part 262, Standards Applicable to Generators of Hazardous Waste, the 40 CFR 262.10(i), indicates that:** *Persons responding to an explosives or munitions emergency in accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this part.*

In addition to the above RCRA regulatory requirements, it is recommended that the facility where an emergency response occurs, which is excluded from the requirement to obtain a RCRA Emergency Permit, manifest, etc., that the facility maintains a complete record of the emergency response incident and the facility should be able to identify the location of the emergency response detonation in the facility's operating record. (Use of a GPS or other coordinate system to identify the location is suggested.)

#### **40 CFR Part 270, Subpart F, Special Forms of Permits, § 270.61, Emergency Permit Requirements**

If the emergency response is not excluded from the requirements of an Emergency Permit, as noted above, then the requirements of § 270.61, Emergency Permits, applies and which specifies the following:

- (a) Notwithstanding any other provision of this part or part 124, in the event the Director finds an imminent and substantial endangerment to human health or the environment the Director may issue a temporary emergency permit:
  - (1) To a non-permitted facility to allow treatment, storage, or disposal of hazardous waste or
  - (2) to a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit.
- (b) This emergency permit:
  - (1) May be oral or written. If oral, it shall be followed in five days by a written emergency permit;

- (2) Shall not exceed 90 days in duration;
- (3) Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal;
- (4) May be terminated by the Director at any time without process if he or she determines that termination is appropriate to protect human health and the environment;
- (5) Shall be accompanied by a public notice published under 124.10(b) including:
  - (i) Name and address of the office granting the emergency authorization;
  - (ii) Name and location of the permitted HWM facility;
  - (iii) A brief description of the wastes involved;
  - (iv) A brief description of the action authorized and reasons for authorizing it; and (v) Duration of the emergency permit; and
- (6) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this part and 40 CFR parts 264 and 266.

# Appendix 1

## 40 CFR § 260.10, Definitions

***Explosives or munitions emergency*** means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

***Explosives or munitions emergency response*** means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

***Explosives or munitions emergency response specialist*** means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other Federal, State, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

***Military munitions*** means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

# Appendix 1

## 40 CFR Part 266, Subpart M, § 266.10, Definitions

In addition to the definitions in 40 CFR 260.10, the following definitions apply to this subpart, Subpart M:

*Active range* means a military range that is currently in service and is being regularly used for range activities.

*Chemical agents and munitions* are defined as in 50 U.S.C. Section 1521(j)(1).

*Director* is as defined in 40 CFR 270.2

*Explosives or munitions emergency response specialist* is as defined in 40 CFR 260.10.

*Explosives or munitions emergency* is as defined in 40 CFR 260.10.

*Explosives or munitions emergency response* is as defined in 40 CFR 260.10.

*Inactive range* means a military range that is not currently being used, but that is still under military control and considered by the military to be a potential range area, and that has not been put to a new use that is incompatible with range activities.

*Military* means the Department of Defense (DOD), the Armed Services, Coast Guard, National Guard, Department of Energy (DOE), or other parties under contract or acting as an agent for the foregoing, who handle military munitions.

*Military munitions* is as defined in 40 CFR 260.10.

*Military range* means designated land and water areas set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas.

*Unexploded ordnance (UXO)* means military munitions that have been primed, fused, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material and remain unexploded either by malfunction, design, or any other cause.