

### **3.2.8.3 Emergency Responses**

The final Military Munitions Rule, in 40 CFR §§262.10(i), 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3), states that immediate responses to actual or potential threats involving explosives and

munitions are exempt from RCRA generator and permitting requirements. Transportation during an emergency response to a safer location, such as an open space or EOD range for treatment or other means of rendering safe, is exempted, in 40 CFR §263.10(e), from RCRA transporter/manifesting requirements.

The final Military Munitions Rule includes three key definitions pertinent to explosives and munitions emergency responses that help clarify the scope of this exemption. “Explosives or munitions emergency” is defined as 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” is defined as all immediate response activities by an explosives or 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” is defined as 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 DOD emergency EOD, 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.

When a munition lands off-range, it must be promptly rendered safe and/or retrieved, or if remediation is infeasible, a record of the event must be maintained as long as any threat remains. RCRA corrective action or Section 7003 imminent and substantial endangerment authorities, or CERCLA authorities, may be used to address the problem, including use of in-place OB/OD.

As stated earlier, an explosive or other munition posing or potentially posing an imminent and substantial endangerment threat are exempt from RCRA permitting under 40 CFR §§264.1(g)(8) and 270.1(c)(3). Non-time-critical emergency responses, however, are subject to the emergency permit requirements of 40 CFR §270.61. Emergency permits may be oral or written. If oral, it must be followed in five days by a written emergency permit. Emergency permits must be accompanied by a public notice per 40 CFR §270.61. Some states require notification prior to and/or after the emergency permit action is completed. Conditions in the permit should describe the type of communication necessary. The following is a listing of conditions that may be included in an emergency permits.

- Temporary EPA ID Number
- Verification of a threat to human health or the environment
- Type of waste(s) and amount
- Method of treatment
- Location and restrictions, isolation distances
- Time Limit: up to 90 days
- Notification of initiation and completion

- General permit conditions applicable to any permit
- Special conditions related to the permitted activity
  - Compliance with DOT
  - Rate of treatment
  - Treatment unit design
  - Discharges or emission compliance with other laws (CWA, CAA)
  - Preparedness and prevention
  - Inspection and disposal of treatment residues
- Corrective action provisions can also be applied as a standard condition.

Some states require sampling in emergency permits. Data quality objectives (DQOs) need to be considered in requiring sampling. EPA guidance on this topic is available in a document titled "[Field Sampling and Selecting On-site Analytical Methods for Explosives in Soils](#)" (EPA/540-R-97/501), November 1996.

Conditions requiring removal and management of all visibly affected soil and any popout, may be sufficient in some emergency permits. This provision would reduce risk from materials left on-site, which is common in emergency situations. Removal would also reduce future land use risk at the location of treatment. For thermal treatment of metal bearing wastes, air sampling may be required if pollution controls are not installed on the unit. [An example of an emergency permit is provided from the State of Nebraska.](#)

Emergency permits issued to the same facility or the same owner/operator on a routine basis may show a need for an operating permit. Routine is not defined, but over 3-5 times a year may show repetition. Agencies need to consider administrative processing, permitting fees, etc. in determining how many emergency permits should be issued to the same owner/operator. Emergency permits are meant for threats. If threats are becoming a problem it may be necessary for the State and other RCRA authorities to assess the facility and operations.

*Additional information regarding emergency permits is outlined in the [Emergency Permits and RCRA Emergency Exemption presentations from the February 2002 EPA Region 4 RCRA Miscellaneous Units Permitting and Compliance Training.](#)*

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