



US Army Corps
of Engineers ®

EMCX Center of Expertise Information – Review Paper

Fact Sheet 17-01

Explosive Ordnance Disposal (EOD) Compliance with RCRA

Purpose of this Review Paper:

The purpose of this fact sheet is to provide information to USACE staff and installation DPW staff pertaining to the provisions of RCRA after completion of an EOD emergency (incident) response.

Review of Key Provisions from 40 CFR 266 Subpart M and 270.1 of RCRA:

The Military Munitions Rule (40 CFR 266 Subpart M, 62 FR 6622) finalized many aspects of military munitions management for active and inactive ranges and clarified when a military munition becomes a solid waste. For the purpose of this fact sheet, the critical elements in the preamble address EOD incident response both on and off an installation as an emergency and therefore fall outside the permit realm of RCRA for those *emergency* actions. The preamble specifically cross references 40 CFR 270.1(c)(3) and states in the instances of immediate responses no emergency RCRA permit is necessary. However, after the emergency is over, additional waste management may be subject to RCRA (62 FR 6642). EPA goes on to further state that a facility may seek an emergency permit for treatment, storage or disposal of waste that presents an imminent and substantial endangerment to human health and the environment. The permit may be issued orally if followed up by written request in five (5) days and may not exceed 90 days (40 CFR 270.61).

The provisions of 40 CFR 270.1(c)(3)(iii) require that a munitions response specialist's organizational unit conducting emergency activities (permit waiver) maintain records for 3 years (under EPA). In cases involving EOD, this is done with the use of DA Form 3265 as required by ATP 4-32. DA Form 3265 incorporates the record retention requires of (c)(3)(iii):

- Dates of response
- Responsible persons responding
- The type and description of material addressed, and
- Final disposition

as well as other DA specific information.

Site owners/operators, including USACE staff as well as Garrison DPW environmental staff, should be aware of this requirement and communicate with EOD to ensure that the proper records are maintained after the emergency operation. Records may be

maintained in the environmental office or kept at the EOD Unit and need not be duplicated by environmental staff.

Military Construction Impacted by Potential MEC Discovery: There have been several instances in the past few years where USACE military construction (MILCON) contracting activities have been impacted by EOD incident responses. Once EOD has responded to the incident and taken any necessary actions to remove any imminent threat, the DA Form 3265(s) are completed by EOD and should be filed with installation staff in order to fulfill the RCRA recordkeeping requirements. This is especially true if the responding EOD unit is stationed on a separate installation.

Restoration Related EOD Incidents: There may be some situations where a remediation project is on-going and MEC was not anticipated but was in fact discovered. EOD would respond to the support request under emergency permit exclusion authority, treat any identified item as appropriate (demolition, transport etc.) and then the project would again be transferred to the appropriate installation office. DA Form 3265(s) must be maintained.

Planned On-Range Maintenance Clearance/Demolition: This activity is not an emergency and is not subject solid waste requirements, therefore neither 40 CFR 270.1 or 266 Subpart M apply. This activity is not subject to RCRA.

Off Range On Installation (Cantonment Area) Recovery: USACE would typically not be involved in this type of incident. Again, EOD files a DA 3265-R for every incident. There is an EOD RCRA record keeping requirement in this case.

Conclusion

Department of the Army Form 3265 is the standard incident report for all EOD emergency activities and acts as the RCRA record-keeping and compliance solution under 40 CFR 270.1(c)(3)(iii).

Once EOD has responded to the incident in question and the emergency is over, RCRA regulations may apply at an active installation. The management of any wastes generated or managed as a result of any follow up operations will need to be evaluated.

As far as the EOD response itself, subsequent CERCLA or RCCA cleanup may be warranted based on the specific site situation.

References

EXPLOSIVE ORDNANCE DISPOSAL (EOD) OPERATIONS, ATP 4-32
September 2013

EXPLOSIVES SAFETY AND HEALTH REQUIREMENTS MANUAL
EM 385-197, 15 September 2008

40 CFR 270.1(c) abstract:

(3) *Further exclusions.* (i) A person is not required to 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 for those activities.

(iii) In the case of emergency responses 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.

Technical Assistance

For questions regarding this Fact Sheet, contact the USACE Environmental and Munitions Center of Expertise at (402) 697-2634/2560.