

REP FW G/2001



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GOVERNOR

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PETER MAGGIORE  
SECRETARY

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DEPUTY SECRETARY

June 19, 2001

Tom Turner  
Tooele Army Depot  
Attn: SIOTE-CS-EO  
Tooele, UT 84074-5000

**RE: DESTRUCTION OF ORDNANCE AND EXPLOSIVES (OE) AND UNEXPLODED  
ORDNANCE (UXO)  
FORT WINGATE DEPOT ACTIVITY (FWDA)  
NM 6213820974  
NM TASK NUMBER: FW-01-002**

Dear Mr. Turner:

During a phone conference on June 14, 2001, Julie Wanslow and I discussed with Mr. Larry Fisher of your staff, the regulatory options for managing ordnance/explosive (OE) and unexploded ordnance (UXO) that may be discovered during the remediation of the Western Landfill at Fort Wingate Depot Activity (FWDA). We also discussed potentially unstable OE/UXO being stored in the Igloo Block "C" that was generated during the remediation of the Group C and Central Landfills.

FWDA has two regulatory options for detonating the OE/UXO on site as an emergency response:

- as an "immediate response to an immediate threat" under 20.4.1.500, .600, and .900 NMAC, incorporating 40 CFR 264.1 (g)(8), 265.1(c)(11), and 270.1(c)(3); or
- under a temporary emergency permit if an "imminent and substantial endangerment" exists under 20.4.1.900 NMAC, incorporating 40 CFR Section 270.61.

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The burden of proof for demonstrating an "immediate response to an immediate threat" under 40 CFR 264.1 (g)(8), 265.1(c)(11), and 270.1(c)(3) is greater than demonstrating the existence of an "imminent and substantial endangerment" under 40 CFR Section 270.61. HWB has determined that it may be difficult for FWDA to justify conducting an "immediate response to an immediate threat" for situations where FWDA moves the OE/UXO to another location before detonation. HWB believes that if the OE/UXO is stable enough to be moved, then an immediate response may not be necessary to address the situation as an immediate threat. In addition, it may be difficult for FWDA to demonstrate the existence of an immediate threat at the Western Landfill where there is a potential for OE/UXO to be present and the remediation has been planned for months in advance.

In the preamble to the military munitions rule, EPA clarified when "immediate or time-critical responses" are necessary: "...Situations where an immediate response is needed would include instances where the public or property is potentially threatened by an explosion. " In the same rule, EPA clarified when an immediate response is not necessary: "...Situations where an immediate response is clearly not necessary would include instances where the public or property are not threatened by a potential explosion (e.g., in remote areas such as some former ranges or where immediate action is not necessary to prevent explosion or exposure). In these cases, there is time to consult with the EPA or the State regulatory agency on how to proceed... If an immediate response, however, is clearly not necessary to address the situation, and a response can be delayed without compromising safety or increasing the risks posed to life, property, health, or the environment, the responding personnel, if time permits, should consult with the regulatory agency regarding the appropriate course of action (e.g. whether or not to seek a RCRA emergency permit under Section 270.61, or a regular facility permit under 40 CFR, Part 270)." (Federal Register Vol.62, No. 29, February 12, 1997, p. 6643)

If FWDA can demonstrate to HWB that an immediate response is necessary to address "an immediate threat to human health, public safety, property, or the environment", then OE/UXO may be blown in place (BIP) without a permit pursuant to 20.4.1.500, .600, and .900 NMAC, incorporating 40 CFR 264.1 (g)(8), 265.1(c)(11), and 270.1(c)(3). To make this demonstration, FWDA must provide the information required by the regulations and the information identified in the attached SOP (see Attachment).

OE/UXO from the Western, Group C, and Central Landfills may be destroyed at an on-site location approved by HWB, if FWDA can provide sufficient information to justify the issuance of an emergency permit under 20.4.1.900 NMAC, incorporating 40 CFR Section 270.61. This emergency permit can only be issued if FWDA proves that "imminent and substantial endangerment to human health or the environment exists" and provides all the information required in the regulation. FWDA must provide information that details how and where the OE/UXO will be moved and treated (e.g., detonated) on site.

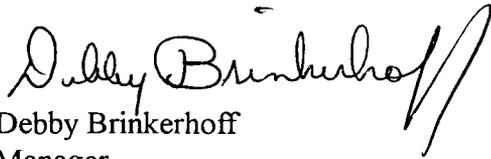
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The emergency permit may be issued for up to 90 days. However, the typical the emergency permit is issued for a single incident only and usually does not exceed one week.

If FWDA does not qualify for an emergency permit or cannot demonstrate that an "immediate response to an immediate threat" is necessary, FWDA must obtain an open detonation permit to destroy the OE/UXO on site or transport it to an offsite RCRA-permitted or interim status facility for treatment.

Should you need any further assistance, contact me at (505) 428-2528.

Sincerely,



Debby Brinkerhoff  
Manager  
Compliance and Technical Assistance Program

Attachment

DAB:jlw

cc w/attachment:     John Kieling, Manager, Permits Management Program  
                          Glenn von Gonten, Permits Management Program  
                          Julie Wanslow, Permits Management Program  
                          Enforcement File  
                          **Permit File**

**STANDARD OPERATING PROCEDURE  
FOR IMMEDIATE RESPONSE ACTIONS  
TO EXPLOSIVE OR MUNITION EMERGENCIES**

Scope

A facility<sup>1</sup> engaged in taking an immediate response to an immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munition, other explosive material, or an explosive device, may treat or destroy the munition/material/device without a RCRA permit, if the response is conducted in accordance with 20.4.1.500, .600, and .900 NMAC (incorporating 40 CFR Parts 264, 265, and 270), Sections 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3).

This SOP identifies the information that must be submitted to the Hazardous Waste Bureau (HWB) to demonstrate that a situation qualifies as an "immediate response to an immediate threat" pursuant to Sections 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3).

Notification Requirements

1. The facility must provide oral and faxed notification to HWB within 24 hours of discovering a known or suspected munition/material/device.
2. The facility must provide oral and faxed notification to HWB at least 24 hours prior to treating or destroying the munition/material/device (if possible) and within 5 working days afterward.

Information Requirements

The notifications must include, but is not limited to, the following information:

1. demonstration that the presence of a suspected or detected munition/material/device constitutes an "explosives or munitions emergency" as defined in 40 CFR, Section 260.10, including but not limited to the following:
  - demonstration of an actual or potential imminent threat to human health, safety, environment, or property, as determined by an "explosives or munitions emergency response specialist" as defined in 40 CFR, Section 260.10;
  - identification and description of the specific known or suspected munition/material/device and the quantity;
  - identification and description of the location where the known or suspected munition/material/device was found;

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- identification of the explosive safety distance and the effective fragment radius of the known or suspected munition/material/device;
2. description of the "explosives or munitions emergency response" as defined in 40 CFR, Section 260.10, including, a description of 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, including, but not limited to the following:
- identification and description of the methods and materials used to treat or destroy the known or suspected munition/material/device;
  - description of the transportation of the known or suspected munition/material/device to another location to be treated or destroyed;
  - exact location where the known or suspected munition/material/device was treated or destroyed;
  - date and time when the known or suspected munition/material/device was treated or destroyed;
3. demonstration that environmentally safe chemicals or materials were used to treat or destroy the items/material (i.e., chemicals and materials that do not contain high explosives);
4. name(s) and qualification(s) of the explosive or munitions emergency response specialist(s) as defined in 40 CFR 260.10:
- who determined that the known or suspected munition/material/device created an actual or potential imminent threat to human health, safety, environment, or property; and
  - who conducted the immediate response activities to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency;
5. any other information requested by HWB.

Determination of an Immediate Response Action to Address an Immediate Threat

Facilities should use discretion when determining whether an immediate response to an immediate threat is necessary. It may be difficult to justify conducting an "immediate response to an immediate threat" for situations where the munition/material/device is moved to another location before treatment or destruction. HWB believes that if the munition/material/device is stable enough to be moved, then an

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immediate response may not be necessary to address the situation as an immediate threat. In addition, it may be difficult to demonstrate the existence of an immediate threat for remediation projects where there is a potential for munition/material/device to be present and the remediation has been planned for months in advance.

In the preamble to the military munitions rule, EPA clarified when "immediate or time-critical responses" are necessary: "...Situations where an immediate response is needed would include instances where the public or property is potentially threatened by an explosion. "

In the same rule, EPA clarified when an immediate response is not necessary: "...Situations where an immediate response is clearly not necessary would include instances where the public or property are not threatened by a potential explosion (e.g., in remote areas such as some former ranges or where immediate action is not necessary to prevent explosion or exposure). In these cases, there is time to consult with the EPA or the State regulatory agency on how to proceed...If an immediate response, however, is clearly not necessary to address the situation, and a response can be delayed without compromising safety or increasing the risks posed to life, property, health, or the environment, the responding personnel, if time permits, should consult with the regulatory agency regarding the appropriate course of action (e.g. whether or not to seek a RCRA emergency permit under Section 270.61, or a regular facility permit under 40 CFR, Part 270)." (Federal Register Vol.62, No. 29, February 12, 1997, p. 6643)

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I "Facility" is used as a matter of convenience because this SOP mainly affects RCRA regulated facilities. The language in Sections 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3) uses the term "person" which is an all encompassing term that includes RCRA facilities (20.4.1.100, NMAC, incorporating 40 CFR Parts 260, Section 260.10).

"Person" is defined as an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.