Department of Energy
Washington, DC 20585
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EPA RCRA Docket #NZF-95-MMP-FFFFF
Mail Code 5305W
401 M Street, S.W.
Washington, D.C. 20460

RE: NZF-95-MMP-FFFFF

Docket:

The Department of Energy (DOE) would like to submit the enclosed comments in response to the Military Munitions Proposed Rule issued on November 8, 1995 (60 FR 56468). This letter formally withdrwas the two sets of comments that were previously submitted by the Department of Energy and transmits the official DOE consolidated comment package to be placed in the Resource Conservation and Recovery Act (RCRA) Docket (Re: NZF-95-MMP-FFFFF) on behalf of the Department.

The Department supports the efforts of EPA to propose regulations in response to a statutory mandate under Section 107 of the Federal Facility Compliance Act of 1992 that identifies when conventional and chemical military munitions become solid wastes under RCRA, and that provide for the safe storage and transportation of such wastes. The enclosed comments represent the combined viewpoints of both DOE Program Offices and Field Organizations.

The Department looks forward to continue working with EPA to address the concerns and/or issues discussed in this comment package.

Raymond F. Pelletier
Director
Office of Environmental Policy and Assistance

Attachment

cc: Ken Shuster
Permits and State Programs Division (5303W)
Office of Solid Waste

ATTACHMENT

UNITED STATES DEPARTMENT OF ENERGY
COMMENTS ON THE MILITARY MUNITIONS RULE

PROPOSED RULE (60 FR 56468)

GENERAL COMMENTS

The United States Department of Energy (DOE) supports the efforts of the Environmental Protection Agency (EPA) in developing this proposed rule under the Federal Facility Compliance Act of 1992 (FFCA). This rule demonstrates EPA's commitment to streamlining environmental regulatory programs without compromising protection of human health and the environment. In addition, DOE appreciates EPA's consideration of the special problems associated with the compliant management of military munitions wastes.

1. EPA has determined that munitions are not "discarded material" until they are removed from storage for the purpose of disposal, or treatment prior to disposal.

DOE agrees with EPA that in cases where a product has expired, this condition alone should not cause the product to be considered, "discarded material" or a solid waste. Expired munitions can be used during training exercises or can be reprocessed for other purposes. Also, military munitions may have to be stored for long periods of time before decisions as to their final disposition can be made and these decisions implemented. Therefore, DOE would oppose any significant deviation to this regulatory approach in the final rule, and would request an opportunity to provide further comment if another approach is considered.

2. In the preamble discussion, EPA has explained that in determining when military munitions become a solid waste, the same general principles will be used that apply to commercial chemical products. DOE believes that there are fundamental differences between military munitions and commercial chemical products.

In both cases, EPA considered when there is an "intent to discard" such materials and used the following situations as providing evidence of an intent to discard: 1) when the products are removed from storage for disposal, or treatment prior to disposal; 2) when the owner declares the products to be hazardous waste; and 3) when the products are deteriorated or damaged (e.g., leaking) to the point that they cannot be used, or reprocessed for beneficial use.

Although DOE generally agrees with EPA's approach as to determining when military munitions become solid waste, there are some significant differences between commercial chemical products and munitions and their associated management practices and procedures. For example, DOE's military munitions are already subject to strict Department of Defense Explosives Safety Board (DDESB) handling, accounting, and management procedures due to their inherent danger and strategic importance, unlike commercial chemical products. Therefore, DOE believes that the differences should be explicitly recognized and that they justify a somewhat different regulatory approach.

3. The definition of military munitions does not make provisions for those cases where non-military munitions are used on military ranges.

Military ranges are often utilized by a variety of non-military personnel and agencies, using "non-military" munitions. Non-military organizations include federal, state, local law enforcement agencies, and public/private organizations (including agencies identified in 60 FR 56482).

The proposed rule could have the unintended effect of restricting access of these groups to military ranges, because their munitions do not fall under the proposed definition of military munitions. Military range owners/operators would not want to compromise their compliance with these new RCRA provisions by allowing "non-military munitions" on the range. This potential situation would primarily impact small arms ranges, but could also affect non-military agency personnel access to military ranges for small explosives and bomb squad training (when using "non-military munitions)."

EPA should clarify how this proposed rule (and supporting assumptions and discussions in the preamble) apply to "non-military munitions" when used on military ranges and on non-military ranges, specifically other governmental entity ranges, such as those either locally, state, or federally owned or operated.

SPECIFIC COMMENTS

IV.A. Definition of Military Munitions

> EPA has defined military munitions to include all types of ammunition products and their components, including conventional and chemical munitions, produced by or for the military for national defense and security. The definition excludes improvised explosive devices and nuclear weapons devices, and components thereof managed under the Department of Energy's nuclear weapons program (60 FR 56470 and 56491-56492).

The following is suggested language to be included in Section IV.A. of the preamble:

EPA considered including in this rule the non-nuclear components of nuclear weapons which are managed by DOE under its responsibilities for the nation's nuclear weapons program as provided in the Atomic Energy Act (AEA) of 1954 (U.S.C. §2011 et seq.). Subsequent consideration of the legislative history associated with §107 resulted in the conclusion that the FFCA does not contemplate the inclusion of nuclear weapons or their components within the scope of this rule. The statutory language and legislative history of §107 clearly demonstrates the intent of Congress that EPA develop regulations that address conventional and chemical munitions with no mention being made of nuclear weapons or their components. Furthermore, EPA recognizes that DOE's practices and procedures for the management of nuclear weapons under the AEA, as well as the potential impacts on DOE operations, are significantly different from those of DOD pertaining to conventional and chemical munitions that are addressed in this rule. As a consequence, EPA concluded that non-nuclear components of nuclear weapons are excluded from this rule until such time when all necessary AEA-required sanitization has been completed after which these components will be considered military munitions within the scope of this rule.

In addition, in order to define the new term sanitization, the following is the suggested definition to be added into the preamble of the rule:

Sanitization means the irreversible modification or destruction of a component or part of a component of a nuclear weapon, device, trainer or test assembly as necessary to prevent revealing classified or otherwise controlled information (e.g., unclassified information that is restricted from the standpoint of export control because of its significance for nuclear explosive's research, development, fabrication or proliferation purposes) as required by the Atomic Energy Act of 1954, as amended.

IV.B. Definition of "Solid Waste" as It Applies to Military Munitions

RCRA section 3004(y) requires EPA to identify when military munitions become hazardous waste. In the proposed rule, EPA focuses on when munitions become a solid waste and has not proposed to amend the definition of hazardous waste as it applies to munitions. EPA proposes to add a new subsection to 40 CFR 261.2 specifying how the regulatory term "discarded material" applies to unused military munitions (60 FR 56470-56471).

DOE agrees with EPA that the controversy regarding when military munitions become regulated under Subtitle C of RCRA focuses on when they become "solid waste" under §261.2, rather than on whether they are hazardous waste under §261.3.

IV.B.1.c. Proposed §261.2(g)(1)(ii)—Munitions removed from the stockpile for the purposes of disposal/destruction.

> Under §261.2(g)(1)(ii), EPA proposes that military munitions become a solid waste when they are removed from storage for the purposes of destruction, disposal, or treatment prior to disposal. Unused munitions stored in military stockpiles would not be considered solid waste, even if they are unusable or in demilitarization accounts. Under proposed §261.2(g)(5), munitions do not become solid waste when they are being repaired, reused, recycled, reclaimed, disassembled, reconfigured, or otherwise subjected to materials recovery activities. Under this provision, the disassembly of a munition and recovery of explosives or propellants would not constitute a waste management activity. (60 FR 56471- 56473, 56492).

DOE supports the position that the following categories of munitions should not be considered solid waste unless a decision to determine or declare these munitions to be solid waste has clearly been made as provided in §261.2(g)(iv):

- Stockpiled military munitions,
- Munitions in demilitarization accounts,
- Munitions that cannot be used for their intended purpose, and
- Munitions that are being repaired, reused, recycled, reclaimed, disassembled, reconfigured, etc.

IV.B.1.d. Proposed §261.2(g)(1)(iii)—Leaking or deteriorated munitions

> Under §261.2(g)(1)(iii), EPA proposes that munitions are solid waste if deteriorated or damaged to the point that they cannot be put in serviceable condition, recycled, or used for any other purpose (60 FR 56473 and 56492).

DOE agrees that munitions that have deteriorated or are damaged to the point that they cannot be put in serviceable condition, recycled, or used for any other purpose, are solid waste.

IV.B.3.c. Proposed §261.2(g)(3)(iii)—Range clearance operations as a result of training or weapons testing.

> Under §261.2(g)(3)(iii), EPA clarifies that range clearance activities lie outside the scope of RCRA and it also states that EPA considers "destruction" of unexploded ordnance as "a necessary part of the safe use of munitions for their intended purpose." The phrase "use for intended purpose" includes recovery, collection, and destruction of unexploded ordnance and contaminants..."
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> Also, in the preamble to the proposed rule, EPA states that it "is not proposing in today's rule to regulate military firing range activities under RCRA" and that the most appropriate approach to regulating day-to-day range activities is through existing DOD and military services standards, rather than under RCRA (60 FR 56475 & 56492).

In regard to the destruction of unexploded ordnance, it has been DOE's experience that occasionally diversionary devices do not explode during training exercises (i.e., force on force). A common method of destruction that is used at some DOE sites when this occurs involves rendering the unexploded ordnance safe per manufacturer guidelines.[1] We assume that the method of destruction is not as important as rendering the unexploded ordnance safe and that the method of destruction is performed in a manner protective of human health and the environment. However, DOE urges EPA to clearly define "destruction" and to explicitly include in the definition of "destruction" any on-range methods for destroying or rendering the ordnance safe.

Finally, given the potential broad scope of proposed 40 CFR 261.2(g)(3) (the inclusion of "contaminants" could be interpreted to cover many activities not directly associated with unexploded ordnance), and in context of the above preamble language, EPA is requested to clarify that range clearance activities may involve a variety of range management activities relating to munitions contamination and cleanup (not limited to unexploded

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[1]The manufacturer's guidelines to render these "duds" safe is to place the devices in a bucket of water. Over a period of time (approx. 72 hours) the cardboard unravels which allows the water to saturate the powder. Per discussion with the manufacturer, the water chemically alters the powder making it no longer explosive. The fuse is then unscrewed from the metal canister, discarded, and the metal canister is reused. The discarded fuse does not meet the definition of a hazardous waste because it does not exhibit the characteristic of reactivity or ignitability.

ordnance and debris). These range management activities involve small arms munitions and ranges, e.g., lead decontamination and collection activities at small arms ranges, including backflush/blowdown of ventilation systems at indoor ranges, should be covered under range clearance activities.

IV.B.4. Discharged Military Munitions at Firing Ranges

> Under proposed §261.2(g)(4), munitions left in place at the firing range at the time the range is closed or when the range is transferred from military control are "discarded material." However, if DOD issues regulations governing the cleanup of munitions on closed or transferred ranges, these requirements would supersede RCRA regulations (60 FR 56475-56477, 56492).

DOE supports EPA's proposal that munitions left in the environment at "closed" ranges, or ranges transferred out of military control, are discarded material (and therefore solid waste) for purposes of Section 1004(27) and 3004(u) of RCRA.

In fact, DOE has dealt with this issue at some of its facilities that are subject to RCRA permits requiring corrective action for solid waste management units (SWMUs) issued by EPA. To date, DOE has recognized that the lead debris in the environment at outdoor ranges might create a release scenario which could pose a threat to human health and the environment. Some DOE facilities have entered into regulatory agreements (Interagency Agreements (IAG), Federal Facility Agreements) with either or both their respective State and/or Regional EPA office to govern site cleanup. These agreements often require coordinating the compliance between the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), RCRA, and other laws. At such facilities, closed firing ranges are identified as an area for evaluation under the CERCLA response action process. The DOE Environmental Restoration Program is responsible for implementation of most IAGs and the cleanup of contaminated sites which are a result of legacy operations and waste management.

The concept of a "closed" range proposed by EPA creates a useful criterion which will allow DOE, as well as other federal facilities, to determine for purposes of evaluation under the RCRA corrective action program, at what point they must identify the range as a SWMU, if at all. Ranges at many of DOE's facilities are operated intermittently, which creates difficulties in determining an "active" versus "inactive" status. As EPA states (60 FR 56476), inactive ranges may be frequently reused even if shut down for long periods of time or, alternatively, are considered active even though the range is not expected to operate again. It has been DOE's experience that once the facility manager operating the range definitely declares the range no longer in use, other land uses (other than a firing range) may be considered by other programs. If the range is not reused, the site is

identified as a potential area to be addressed under the CERCLA process by the Environmental Restoration Program. In summary, the proposed 40 CFR 261.2(g)(4) would simplify the SWMU identification process, if needed, and promote consistent "closed" declarations across the DOE complex.

DOE and its Office of Defense Programs (Nuclear Weapons Management Program) would be impacted by the promulgation of DOD range cleanup standards. Therefore, in order to raise DOE-relevant concerns, the Department should be a participant in the development of this standard and process and provide supporting information to DOD.

IV.B.5. Waste Materials Derived From Munitions Manufacture

EPA is considering substantial amendments to its current rules to facilitate the recycling of secondary materials (60 FR 56477).

DOE urges EPA to amend its current rules to facilitate the recycling of secondary materials as soon as possible. During a series of discussions with EPA (i.e., Mixed Waste and Materials Management Interagency Workgroup as well as discussions between EPA and the Military Munitions Workgroup), DOE has articulated that these provisions, especially the speculative accumulation provision of 40 CFR 261.1(c)(8), impacts the ability of DOE to reuse, recycle, and reclaim secondary materials. Examples of certain DOE materials that are being stored for reuse/recycle, and the issues associated with their management are provided as follows:

1. DOE stockpiles scrap and excess lead used for radiation shielding. This lead can be used repeatedly, however, once used and stockpiled, it can be defined as waste because of the speculative accumulation provision. This necessitates its placement into RCRA permitted storage, thereby rendering it less accessible. It could be safely managed without necessarily placing it in a permitted facility.

2. A large spectrum of materials called scrap and residue are stored across the complex for long periods of time. These materials need to be accumulated in order to have sufficient quantities for reclamation. Currently the future disposition of many of these materials is uncertain and in some instances this may be considered speculative accumulation. During the time period of their accumulation, these materials are subject to DOE's strict materials accountability procedures and are well managed.

IV.C. Standards Applicable to Generators and Transporters

Under §262.10(h) and §263.10(c), EPA proposes to exempt persons responding to immediate threats from explosives and military munitions from the RCRA generator and transportation

requirements. This exemption applies to military and non-military explosives emergency responses and to all conventional and chemical military munitions emergency responses. Under §262.10(i), 263.10(d), 264.70(b)(2), and 265.70(b)(2), EPA proposes to exempt stockpiled hazardous waste munitions that are shipped to DOD-owned or controlled TSDFs from the RCRA manifest requirements (60 FR 56477-56479).

DOE agrees with EPA proposals to:

- exempt persons responding to immediate threats from explosives and military munitions from the RCRA generator and transportation requirements, and

- exempt stockpiled hazardous waste munitions from the RCRA manifest requirements if they are shipped to DOD-owned or controlled TSDFs under DOD tracking procedures.

With regard to the exemption of DOD-controlled munitions from RCRA manifest requirements, EPA states that language proposed in §262.10(i), 263.10(d), 264.70(b)(2), and 265.70(b)(2) would exempt from the RCRA manifest requirements stockpiled hazardous waste munitions that are shipped off-site to DOD-owned or controlled TSDF under DOD tracking procedures. However, proposed regulatory language for §264.70(b)(2) and 265.70(b)(2) have been omitted from the text of the proposed rule. In addition, DOE requests that this exemption be extended to military munitions that are transferred between DOE and DOD that are shipped under DOD or DOE tracking procedures.

IV.D. Storage of Military Munitions

EPA is proposing new 40 CFR Parts 264 and 265 Subpart EE standards for military magazines that store hazardous waste munitions. In addition to the Subpart EE standards, EPA is also requesting comments on three alternative approaches. In the first alternative, EPA would defer regulating the storage of waste military munitions under RCRA and subject them only to the explosives safety standards developed by the DDESB. In the second alternative, EPA would adopt language specifying that waste munitions transported and managed in accordance with DDESB standards would not be a RCRA hazardous waste, and would not be subject to Subtitle C standards. Failure to comply with DDESB standards would render the waste munitions hazardous and subject to RCRA. In the third alternative, EPA would specify in 40 CFR Parts 264 and 265 that storage of waste munitions must meet DDESB standards. However

> under this alternative, compliance with DDESB standards essentially means compliance with RCRA technical standards, thereby rending the waste munitions as hazardous waste (60 FR 56479-56481, 56493-56494).

DOE finds that there are positive aspects included in each of the three alternative approaches presented in the proposed rule. However, there is not one alternative approach with which DOE feels comfortable with in its entirety. Therefore, we would like to continue working with the Interagency Workgroup lead by DOD to further discuss the proposed alternative approaches to the storage of military munitions.

IV.E. Emergency Responses

> EPA codifies (with clarifications) the existing EPA policy that responses to explosive and chemical munitions emergencies are not subject to the RCRA permitting or interim status requirements. Finally, three new definitions are proposed in 40 CFR 260.10 for "explosives and munitions emergency," "explosive and munitions emergency response expert," and "explosives and munitions emergency response" (60 FR 56481-56483, 56491-56493).

DOE is pleased that EPA has amended existing regulations to clarify that explosive emergencies can be addressed without a RCRA permit (including an emergency permit). However, DOE has a few suggestions to improve the definition proposed in 40 CFR 260.10 for explosives or munitions emergency. First, if an emergency expert at the site determines it to be appropriate, the explosives material may be removed and transported for safe treatment without a RCRA manifest. Such transport could be to an open space or an Explosive Ordnance Disposal (EOD) range. The explosive material may be treated without a hazardous waste treatment permit. The list of "explosives and munitions emergency response experts" listed in section IV.E. at 60 FR 56482 is fairly extensive but does not explicitly include trained DOE personnel or DOE contractors. Though the wording of the definition in proposed 40 CFR 260.10 could be interpreted to include DOE personnel and DOE contractors, to avoid ambiguity EPA should acknowledge in the public record those DOE experts whose level of training equals or exceeds that of many of the currently listed experts. This clarification would benefit the DOE personnel responsible for handling this type of event on a DOE site.

In addition, DOE suggests that this definition be expanded to include potential threats to human health, safety, or the environment, including property. In many instances, especially in cases where DOD has an agreement with the local community to accept items of questionable explosive nature and destroy them under controlled conditions, there is a potential threat to human health, safety, or the environment. The threat is not necessarily

imminent because in many cases, the composition of the supposed explosive item is unknown.

IV. F. Definition of "On-Site"

1. Under §260.10, EPA proposes to amend the definition of "on-site" to allow transportation without a manifest between contiguous properties controlled by the same person when access is gained from one parcel to another by driving along a public or private right-of-way (60 FR 56483-56484).

DOE agrees with EPA's revised definition of on-site. DOE facilities are similar to DOD installations in that DOE facilities are located on large tracts of land with many buildings that generate hazardous waste. Usually there are one or more permitted or interim status hazardous waste storage areas. DOE's current mission focuses on environmental restoration and waste management, therefore the need for security at DOE facilities has decreased, and several facilities are now crossed by roads that are now open to the public. The proposed amended definition of on-site would greatly facilitate the movement of hazardous waste at DOE sites from generator accumulation areas to RCRA storage. However, there are still some areas of the definition that require further clarification.

Many facilities generating hazardous waste are found on large properties intersected by public roads. For example, DOE's Oak Ridge Reservation (ORR) actually includes three distinct plant sites and several smaller individual generation sites, each assigned their own EPA identification (EPA ID) number. The facilities are connected by multiple public right-of-ways but are geographically contiguous since all the land in between the sites is DOE-owned. Wastes generated at one site are routinely transported via highways to another site for storage or treatment at a RCRA-permitted unit. It is our understanding that if the proposed definition of "on-site" becomes final, hazardous waste may be shipped unmanifested on the ORR from a facility "on-site" which has it's own EPA ID number to another facility "on-site" which also has it's own EPA ID number. Currently, the manifests are a valuable record in tracking the hazardous waste from "cradle to grave" (from one EPA ID number to the next). These activities would currently be reported for on-site shipments under the biennial reporting requirements found at 40 CFR 262.41 and corresponding state requirements for annual reporting. DOT shipping names, amounts shipped, generator, and transporter EPA ID numbers are a few examples of the types of information that must be reported and that is recorded on the manifest. EPA needs to clarify whether this type of information would still need to be reported if the proposed definition of "on-site" is promulgated (since these shipments would no longer be off-site). If the information does need to be reported, DOE facilities would need to ensure there is a mechanism in place to track the required information.

Furthermore, DOE recommends that EPA coordinate with the Department of Transportation (DOT) to ensure consistency between the two regulatory programs. Language in the preamble to the proposed rule indicated that a hazardous waste transported on-site may still be subject to DOT shipping requirements as a DOT hazardous material. DOE believes that if a hazardous waste can be transported safely on-site, then categorization of the same waste as a hazardous material should not impose additional measures - the actual waste is the same regardless of whether it is called a hazardous material or not. Thus, DOE requests that EPA and DOT jointly evaluate which, if any, hazardous wastes pose sufficient hazard when shipped on-site to warrant special transportation requirements, and to establish a consistent set of requirements pertaining to such wastes. This would be much more efficient and much less burdensome than requiring the regulated community to evaluate each on-site waste shipment against two separate and, potentially, strategically inconsistent regulations.

2. EPA says in modifying the definition of "on-site" that it does not intend to affect requirements other than the requirement that a manifest accompany hazardous waste shipments and whether part 263 transportation requirements apply. EPA request comments on whether other requirements of the RCRA program are affected by this new "on-site" definition (60 FR 56484).

For shipments of restricted waste that would no longer be required to be manifested under the proposed definition of "on-site," EPA has not made any explicit statements regarding the continued applicability of land disposal restrictions (LDR) requirements found at 40 CFR 268.7. Clarification is requested in regard to whether movement of unmanifested restricted waste is considered a "shipment." If so, for "on-site" shipments, 40 CFR 268.7 would still require that a notification or certification accompany the shipment and that the notification or certification include the "manifest number associated with the shipment of waste." EPA should provide clarification on their position regarding LDR paperwork requirements and provide examples of waste management scenarios under which the LDR paperwork requirements would apply. For example, it is assumed that unmanifested shipments from one accumulation area to another "on-site" would not trigger LDR paperwork requirements but that unmanifested shipments from an accumulation area to an "on-site" treatment facility would trigger LDR paperwork requirements since the treatment facility needs the information before it can treat the waste.

3. EPA seeks comment on whether DOT and CERCLA authorities are sufficient to provide adequate protection to public health in the event of a spill or release on a public right-of-way considered on-site or if 40 CFR 263.30 and 263.31 should continue to apply to any discharge of hazardous waste during transportation of hazardous waste on a public right-of-way regardless of whether it is on or off site (60 FR 56484)

DOE believes that the current DOT and CERCLA authorities are sufficient to provide adequate protection to public health and safety in the event of a spill on public rights-of-way. Further, we feel it is unnecessary to limit the on-site exemption in order to continue to apply 40 CFR 263.30 and 263.31 to any discharge of hazardous waste during transportation of hazardous waste.

V.A.3. Munitions Scheduled for Destruction by International Treaty

> EPA rejected an approach that would define the point of generation to be when the munition has been slated for destruction by an Act of Congress or treaty (60 FR 56485).

DOE agrees with EPA's rejection of an approach that would define the point of generation to be when a munition has been slated for destruction by an Act of Congress or treaty. As discussed above, DOE finds EPA's reason, that additional RCRA oversight would not increase environmental protection, to be convincing.

V.A.4. Alternatives Based on Condition of Munition

> EPA rejected an approach that would define the point of generation to be when the munition can no longer be used for its intended purpose (60 FR 56486).

DOE agrees with EPA's rejection of an approach that would define the point of generation to be when the munition can no longer be used for its intended purpose.

V.B.1. Active Ranges

> EPA rejected considering military munitions training and testing to be RCRA-regulated activities (60 FR 56486-56487).

DOE agrees with EPA's rejection of an approach that would consider military munitions training and testing to be RCRA-regulated activities. RCRA does not give EPA the authority to promulgate regulations governing these activities because they do not involve waste management. The environmental damage that may be caused by military munitions training and testing activities are regulated under a number of environmental statutes including the Clean Air Act; Clean Water Act; CERCLA; and the Endangered Species Act. Consequently, EPA's decision not to regulate military firing range activities under RCRA is appropriate.

V.C. Alternative Organization (Separate CFR Part)

> EPA solicits comment on whether regulations for military munitions should be included in a separate part of the CFR (60 FR 56488).

DOE agrees with the recommendation that regulations for munitions be included in a separate part of the CFR for the following reasons:

- It would facilitate the adoption of these regulations by authorized State programs;
- It would facilitate the training of waste management personnel in the RCRA requirements applicable to military munitions; and
- It is already very difficult to follow the regulatory requirements in 40 CFR 261.2. Adding the proposed paragraphs specific to military munitions would make this part of the CFR even more difficult to follow.

If RCRA requirements applicable to munitions are placed in a separate part of the CFR, EPA prefers to place them in a subpart of 40 CFR 266, which addresses other special types of waste and waste management facilities. DOD prefers that these requirements be placed in their own part of the CFR, 40 CFR 269.

DOE agrees that placing requirements applicable to military munitions in a separate part of the CFR would make these requirements easier to draft, cross-reference, and implement.

VI. State Authority

> EPA believes that the proposed rule raises issues regarding State authority because Congress clearly expected EPA to develop national standards for military munitions. Therefore, EPA has proposed an alternative approach to state authorization "that would prohibit States from enforcing broader or more stringent requirements with respect to military munitions" so that there would be "national consistency in managing waste munitions." However, under the current approach to state authorization, States could adopt more stringent standards leading to the type of piecemeal approach that Congress was trying to avoid. EPA solicits comment on whether this alternative approach should be adopted for military munitions, or whether the standard RCRA approach should be maintained (60 FR 56488-56489).
>
> DOE commends EPA for recognizing that it was clearly the intent of Congress that EPA establish national standards for the management of waste munitions. EPA has stated in the preamble to this proposed rule that they realize the need for national consistency in managing waste munitions, given the national defense mission, nation-wide presence, and logistical and operational needs.
>
> Therefore, EPA has proposed an alternative approach to state authorization that would prohibit States from enforcing broader or more stringent requirements.

Although the alternative approach is a departure from EPA's typical stance on categorizing new requirements as more or less stringent only, it is an attempt by EPA to address the real need for national consistency and may afford similar opportunities for the unique waste streams (such as radioactive mixed wastes) managed by Federal agencies with nation-wide facilities.

Under the standard RCRA approach to state authorization, when the Federal program changes, States are required to revise their programs so they remain consistent with the Federal program. In revising their programs, States may include provisions that are more stringent, more extensive, or broader than the Federal program provisions. However, more stringent, more extensive, or broader in scope provisions must nevertheless be consistent with the Federal program and other authorized State programs (40 CFR 271.1(i) and 271.4).

As indicated above, the issue of national consistency has been dealt with under the current standard RCRA approach to state authorization. Nevertheless, the issue of national consistency of standards still exists. Accordingly, DOE would prefer an approach to state authorization that would effectively resolve problems arising from the implementation of inconsistent standards. Therefore, we fully support EPA's alternative approach that ensures national standards by precluding States from enforcing more stringent requirements on waste military munitions.

Additional Comments on Regulatory Language

The following are specific comments on the codified language in the proposed rule [NOTE: The italics denotes the suggested changes to the language].

1. DOE requests that the definition for "Military munitions" in 40 CFR §260.10 be amended to read as follows:

"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, and National Guard personnel. Military munitions include: 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, artillery, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include nuclear weapons or nuclear devices, wholly inert items, or improvised explosive devices. Nor does it include components or subparts of components of nuclear weapons or devices managed

under the DOE's nuclear weapons program which still must have necessary sanitization operations thereon completed as per the requirements of the Atomic Energy Act of 1954; however, upon completion of the sanitization for such components or subparts, the remaining munitions materials contained therein would be considered military munitions that are thereafter covered by this rule.

2. In several instances throughout the proposed rule, reference is made to the terms, "stockpile," "stockpiled munitions," "stockpiled military munitions" and/or "military stockpile." While the context in which these terms are used is in association with chemical and conventional munitions, the term "stockpile" or its variations is not defined in the proposed rule. The use by DOE's Office of Defense Programs of "stockpile" (or its variations in the term) is in connection with nuclear weapons and related materials. While we realize that the definition of "military munitions" contained in the proposed rule does exclude nuclear weapons, devices and components from consideration, the failure to define "stockpile" or its variations (with particular reference to the exclusion of nuclear weapons or related materials) may be a cause of subsequent confusion.

   With this in mind, we suggest that the proposed rule be revised to include a definition of "stockpile" (and its variants) with the explicit exclusion to nuclear weapons and related materials as mentioned above.

3 The proposed language for the definition of "military range:"

- Does not consider military ranges in the context of military munitions. Therefore, the following definition is recommended (40 CFR 260.10): "Military range means areas set aside, managed, and used to test and evaluate military munitions and weapons systems, and to train military and non-military personnel in their use and handling." EPA should clarify that the provisions of 40 CFR 261.2(g)(3) apply to indoor and outdoor small arms ranges (small arms ammunition is included in the proposed definition of military munitions) and

- Should be broadened explicitly to apply to the DOE facilities where these explosives components and devices are tested (firing sites, test pads, detonation pads, firing tables, firing tanks, etc.).

The following "house keeping" types of changes are suggested in order to provide a consistent approach throughout the remaining parts of the rule: [NOTE: The italics denotes the suggested added language].

1. In the proposed §261.2(g), revise subparagraph (iv) to read as follows:

   (iv) The munition has been declared a solid waste by an authorized military (or equivalent DOE) official.

2. In the proposed §264.1200, revise the first sentence to read as follows:

   The requirements of this subpart apply to owners or operators who store military wastes and munitions classified as hazardous wastes in military or DOE magazines, except as §264.1 provides otherwise.

3. In the proposed §265.1200, revise the first sentence to read as follows:

   The requirements of this subpart apply to owners or operators who store military wastes and munitions classified as hazardous wastes in military or DOE magazines, except as §265.1 provides otherwise.

4. In the proposed §265.1201, revise the introductory text of paragraph (b) to read as follows:

   Military or DOE hazardous waste munitions stored under this subpart may be stored in one of the following:

5. In the proposed §265.1202, in paragraph (a), revise the phrase "military magazine" to read "military or DOE magazine;" and, revise the phrase "military magazines" to read "military or DOE magazines."