



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
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BOSTON, MASSACHUSETTS 02114-2023

June 20, 2000

Mr. William Sirull
MADEP Bureau of Waste Prevention
Business Compliance Division
One Winter Street
Boston, MA 02108

re: Request for Regulatory Interpretation on Expended or Unexploded Munitions

Dear Bill:

This letter is in response to your e-mail dated May 10, 2000 regarding your request for a regulatory interpretation from the Hazardous Waste Program Unit of EPA New England regarding the status of expended lead shot under RCRA when it is disposed of. In particular you asked: "if a person excavates the expended or unexploded munitions, is that material a solid waste and assuming it fails TCLP for lead, is it a hazardous waste if disposed of (as opposed to recycling it as scrap metal)?"

Your question results from your review of two letters from EPA which state that the discharge of ball and sport ammunition at shooting ranges does not constitute hazardous waste disposal since the munitions are being used for their intended purpose (September 6, 1988 letter from Sylvia Lowrance, OSW to Jane Magee, INDEM and an undated letter from Julie Belaga, EPA Region 1 to Charles Fox of Candia, NH). EPA has restated this position in an Amicus brief prepared by EPA, HQ for the District Court of the Southern District of New York, submitted on September 29, 1995. In particular, on page 21 of that brief EPA writes: "The discharge of lead shot and target fragments in the normal use of those products at a shooting range does not fall within the regulatory definition of "solid waste" because it does not constitute the "abandonment" of those materials "by being disposed of" pursuant to 40 C.F.R. 261.2(a) & (b)." EPA had stated similar views in a prior August 28, 1992 Amicus Curiae

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brief for the US Court of Appeals for the Second Circuit. The 1995 brief, however, does go on to say that the broader statutory definition of solid waste is applicable "for purposes of the imminent and substantial endangerment authorities. 40 C.F.R. 261.1(b)(1)" (Page 28). This is appropriate since these munitions eventually become discarded materials "if left in place indefinitely" (Page 30). Therefore, at some point in the life of a munition it can become a discarded material potentially subject to RCRA. As you are aware, EPA is of the view that there are some situations where the broader statutory definition of solid waste applies even when the regulatory definition may not.

The preamble to the February 12, 1997 Military Munitions rule (62 FR 6621-6657) discusses the point at which used and unused military munitions become solid wastes and, potentially, hazardous wastes for purposes of Subtitle C of RCRA. Although the focus of the rule is on military munitions the thought process for determining when the munitions are a product used for their intended purpose is the same as above. In particular, the rule makes reference to the September 6, 1988 letter from Sylvia Lowrance. Therefore, the rule can be used as a basis for determining when a used or unused non-military munition would become subject to RCRA Subtitle C. It is for this reason that we have referenced this rule in making our assessment regarding the status of expended or unexploded munitions under RCRA. The rule states, in part, that an "unused munition becomes a solid waste when it is abandoned by being disposed of.." (62 FR 6626). Similarly, it states that "used or fired munitions are solid wastes when they are removed from their landing spot and then managed off-range—i.e. transported off-range and stored, reclaimed, treated or disposed of..." (62 FR 6632). Given these two scenarios, we offer the following as our assessment to the situation you have defined above.

As you know, in accordance with 40 CFR §261. 2, one of the criteria for determining if a material, used or unused, is a solid waste is if it has been discarded. Furthermore, a solid waste is a hazardous waste if it either meets the criteria for a characteristic waste or is a listed waste. To answer the first part of your question, if the munitions are being excavated for purposes of separating them from the soil for collection then this activity would be considered a form of range maintenance (62 FR 6631) not subject to RCRA regulatory requirements. However, if the separated material is ultimately sent for disposal, then the activity is a solid waste management activity subject to the full RCRA regulatory requirements. In addition, RCRA section 7003 is applicable wherever lead shot causes an imminent and substantial endangerment to human health and the environment. Thus, although full RCRA regulatory requirements do not apply to the expended shot prior to being sent off-site, safe handling of the shot could be required under RCRA section 7003 or comparable state laws.

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We appreciate the opportunity to provide you with our input. Should you have any questions regarding our response please do not hesitate to contact Sharon Leitch at (617)918-1647.

Sincerely,



Edward K. McSweeney, Associate Director
Waste Policy

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