THE DEPARTMENT OF DEFENSE
AND
THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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SUBJECT: Unexploded Ordnance (UXO) Management Principles

The Department of Defense (DoD) and the Environmental Protection Agency (EPA) have completed work on a set of management principles to address UXO at Closed, Transferring, and Transferred Ranges. The consensus document, *Interim Final Management Principles for Implementing Response Actions at Closed, Transferring, and Transferred Ranges*, was developed jointly by DoD and EPA. The principles provide interim guidance for ongoing response actions and will be in effect until the final version of the Range Rule is promulgated. DoD and EPA will conduct discussions with the States and Tribes on the UXO management principles.

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Attachment

DoD and EPA
Management Principles for Implementing Response Actions at Closed, Transferring, and Transferred (CTT) Ranges

Preamble

Many closed, transferring, and transferred (CTT) military ranges are now or soon will be in the public domain. DoD and EPA agree that human health, environmental and explosive safety concerns at these ranges need to be evaluated and addressed. On occasion, DoD, EPA and other stakeholders, however, have had differing views concerning what process should be followed in order to effectively address human health, environmental, and explosive safety concerns at CTT ranges. Active and inactive ranges are beyond the scope of these principles.

To address concerns regarding response actions at CTT ranges, DoD and EPA engaged in discussions between July 1999 and March 2000 to address specific policy and technical issues related to characterization and response actions at CTT ranges. The discussions resulted in the development of this Management Principles document, which sets forth areas of agreement between DoD and EPA on conducting response actions at CTT ranges.

These principles are intended to assist DoD personnel, regulators, tribes, and other stakeholders to achieve a common approach to investigate and respond appropriately at CTT ranges.

General Principles

DoD is committed to promulgating the Range Rule as a framework for response actions at CTT military ranges. EPA is committed to assist in the development of this Rule. To address specific concerns with respect to response actions at CTT ranges prior to implementation of the Range Rule, DoD and EPA agree to the following management principles:

- DoD will conduct response actions on CTT ranges when necessary to address explosives safety, human health and the environment. DoD and the regulators must consider explosives safety in determining the appropriate response actions.
- DoD is committed to communicating information regarding explosives safety to the public and regulators to the maximum extent practicable.

- DoD and EPA agree to attempt to resolve issues at the lowest level. When necessary, issues may be raised to the appropriate Headquarters level. This agreement should not impede an emergency response.

- The legal authorities that support site-specific response actions at CTT ranges include, but are not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as delegated by Executive Order (E.O.) 12580 and the National Oil and Hazardous Substances Contingency Plan (NCP); the Defense Environmental Restoration Program (DERP); and the DoD Explosives Safety Board (DDESB).

- A process consistent with CERCLA and these management principles will be the preferred response mechanism used to address UXO at a CTT range. EPA and DoD further expect that where this process is followed, it would also meet any applicable RCRA corrective action requirements.

- These principles do not affect federal, state, and tribal regulatory or enforcement powers or authority concerning hazardous waste, hazardous substances, pollutants or contaminants, including imminent and substantial endangerment authorities; nor do they expand or constrict the waiver of sovereign immunity by the United States contained in any environmental law.

1. State and Tribal Participation

DoD and EPA are fully committed to the substantive involvement of States and Indian Tribes throughout the response process at CTT ranges. In many cases, a State or Indian Tribe will be the lead regulator at a CTT range. In working with the State or Indian Tribe, DoD will provide them opportunities to:

- Participate in the response process, to the extent practicable, with the DoD Component.

- Participate in the development of project documents associated with the response process.

- Review and comment on draft project documents generated as part of investigations and response actions.

- Review records and reports.

2. Response Activities under CERCLA

DoD Components may conduct CERCLA response actions to address explosives safety hazards, to include UXO, on CTT military ranges per the NCP. Response activities may include removal actions, remedial actions, or a combination of the two.

- DoD may conduct response actions to address human health, environmental, and explosives safety concerns on CTT ranges. Under certain circumstances, other federal and state agencies may also conduct response actions on CTT ranges.

- Removal action alternatives will be evaluated under the criteria set forth in the National Contingency Plan (NCP), particularly NCP §300.410 and §300.415.

- DoD Components will notify regulators and other stakeholders, as soon as possible and to the extent practicable, prior to beginning a removal action.

- Regulators and other stakeholders will be provided an opportunity for timely consultation, review, and comment on all phases of a removal response, except in the case of an emergency response taken because of an imminent and substantial endangerment to human health and the environment and consultation would be impracticable (see 10 USC 2705).

- Explosives Safety Submissions (ESS), prepared, submitted, and approved per DDESB requirements, are required for Time Critical Removal Actions, Non-Time Critical Removal Actions, and Remedial Actions involving explosives safety hazards, particularly UXO.

- The DoD Component will make available to the regulators, National Response Team, or Regional Response Team, upon request, a complete report, consistent with NCP §300.165, on the removal operation and the actions taken.

- Removal actions shall, to the extent practicable, contribute to the efficient performance of any anticipated long-term remedial action. If the DoD Component determines, in consultation with the regulators and based on these Management Principles and human health, environmental, and explosives safety concerns, that the removal action will not fully address the threat posed and remedial action may be required, the DoD Component will ensure an orderly transition from removal to remedial response activities.

3. Characterization and Response Selection

Adequate site characterization at each CTT military range is necessary to understand the conditions, make informed risk management decisions, and conduct effective response actions.

- Discussions with local land use planning authorities, local officials and the public, as appropriate, should be conducted as early as possible in the response process to determine the reasonably anticipated future land use(s). These discussions should be used to scope efforts to characterize the site, conduct risk assessments, and select the appropriate response(s).

- Characterization plans seek to gather sufficient site-specific information to: identify the location, extent, and type of any explosives safety hazards (particularly UXO), hazardous substances, pollutants or contaminants, and "Other Constituents"; identify the reasonably anticipated future land uses; and develop and evaluate effective response alternatives.

- Site characterization may be accomplished through a variety of methods, used individually or in concert with one another, including, but not limited to: records searches, site visits, or actual data acquisition, such as sampling. Statistical or other mathematical analyses (e.g., models) should recognize the assumptions imbedded within those analyses. Those assumptions, along with the intended use(s) of the analyses, should be communicated at the front end to the regulator(s) and the communities so the results may be better understood. Statistical or other mathematical analyses should be updated to include actual site data as it becomes available.

- Site-specific data quality objectives (DQOs) and QA/QC approaches, developed through a process of close and meaningful cooperation among the various governmental departments and agencies involved at a given CTT military range, are necessary to define the nature, quality, and quantity of information required to characterize each CTT military range and to select appropriate response actions.

- A permanent record of the data gathered to characterize a site and a clear audit trail of pertinent data analysis and resulting decisions and actions are required. To the maximum extent practicable, the permanent record shall include sensor data that is digitally-recorded and geo-referenced. Exceptions to the collection of sensor data that is digitally-recorded and geo-referenced should be limited primarily to emergency response actions or cases where impracticable. The permanent record shall be included in the Administrative Record. Appropriate notification regarding the availability of this information shall be made.

- The most appropriate and effective detection technologies should be selected for each site. The performance of a technology should be assessed using the metrics and criteria for evaluating UXO detection technology described in Section 4.

- The criteria and process of selection of the most appropriate and effective technologies to characterize each CTT military range should be discussed with appropriate EPA, other Federal State, or Tribal agencies, local officials, and the public prior to the selection of a technology.

- In some cases, explosives safety, cost, and/or technical limitations, may limit the ability to conduct a response and thereby limit the reasonably anticipated future land uses. Where these factors come into play, they should be discussed with appropriate EPA, other federal, State or Tribal agencies, local officials, and members of the public and an adequate opportunity for timely review and comment should be provided. Where these factors affect a proposed response action, they should be adequately addressed in any response decision document. In these cases, the scope of characterization should be appropriate for the site conditions. Characterization planning should ensure that the cost of characterization does not become prohibitive or disproportionate to the potential benefits of more extensive characterization or further reductions in the uncertainty of the characterization.

- DoD will incorporate any Technical Impracticability (TI) determination and waiver decisions in appropriate decision documents and review those decisions periodically in coordination with regulators.

- Selection of site-specific response actions should consider risk plus other factors and meet appropriate internal and external requirements.

4. UXO Technology

Advances in technology can provide a significant improvement to characterization at CTT ranges. This information will be shared with EPA and other stakeholders.

- The critical metrics for the evaluation of the performance of a detection technology are the probabilities of detection and false alarms. A UXO detection technology is most completely defined by a plot of the probability of detection versus the probability or rate of false alarms. The performance will depend on the technology's capabilities in relation to factors such as type and size of munitions, the munitions depth distribution, the extent of clutter, and other environmental factors (e.g., soil, terrain, temperature, geology, diurnal cycle, moisture, vegetation). The performance of a technology cannot be properly defined by its probability of detection without identifying the corresponding probability of false alarms. Identifying solely one of these measures yields an ill-defined capability. Of the two, probability of detection is a paramount consideration in selecting a UXO detection technology.

- Explosives safety is a paramount consideration in the decision to deploy a technology at a specific site.

- General trends and reasonable estimates can often be made based on demonstrated performance at other sites. As more tests and demonstrations are completed, transfer of performance information to new sites will become more reliable.

- Full project cost must be considered when evaluating a detection technology. Project cost includes, but is not limited to, the cost of deploying the technology, the cost of excavation resulting from the false alarm rate, and the costs associated with recurring reviews and inadequate detection.

- Rapid employment of the better performing, demonstrated technologies needs to occur.

- Research, development, and demonstration investments are required to improve detection, discrimination, recovery, identification, and destruction technologies.

5. Land Use Controls

Land use controls must be clearly defined, established in coordination with affected parties (e.g., in the case of FUDS, the current owner; in the case of BRAC property, the prospective transferee), and enforceable.

- Because of technical impracticability, inordinately high costs, and other reasons, complete clearance of CTT military ranges may not be possible to the degree that allows certain uses, especially unrestricted use. In almost all cases, land use controls will be necessary to ensure protection of human health and public safety.

- DoD shall provide timely notice to the appropriate regulatory agencies and prospective federal land managers of the intent to use Land Use Controls. Regulatory comments received during the development of draft documents will be incorporated into the final land use controls, as appropriate. For Base Realignment and Closure properties, any unresolved regulatory comments will be included as attachments to the Finding of Suitability to Transfer (FOST).

- Roles and responsibilities for monitoring, reporting and enforcing the restrictions must be clear to all affected parties.

- The land use controls must be enforceable.

- Land use controls (e.g., institutional controls, site access, and engineering controls) may be identified and implemented early in the response process to provide protectiveness until a final remedy has been selected for a CTT range.

- Land use controls must be clearly defined and set forth in a decision document.

- Final land use controls for a given CTT range will be considered as part of the development and evaluation of response alternatives using the nine criteria established under CERCLA regulations (i.e., NCP), supported by a site characterization adequate to evaluate the feasibility of reasonably anticipated future land uses. This will ensure that land use controls are chosen based on a detailed analysis of response alternatives and are not presumptively selected.

- DoD will conduct periodic reviews consistent with the Decision Document to ensure long-term effectiveness of the response, including any land use controls, and allow for evaluation of new technology for addressing technical impracticability determinations.

- When complete UXO clearance is not possible at military CTT ranges, DoD will notify the current land owners and appropriate local authority of the potential presence of an explosives safety hazard. DoD will work with the appropriate authority to implement additional land use controls where necessary.

6. Public Involvement.

Public involvement in all phases of the CTT range response process is crucial to effective implementation of a response.

- In addition to being a requirement when taking response actions under CERCLA, public involvement in all phases of the range response process is crucial to effective implementation of a response.

- Agencies responsible for conducting and overseeing range response activities should take steps to proactively identify and address issues and concerns of all stakeholders in the process. These efforts should have the overall goal of ensuring that decisions made regarding response actions on CTTs reflect a broad spectrum of stakeholder input.

- Meaningful stakeholder involvement should be considered as a cost of doing business that has the potential of efficiently determining and achieving acceptable goals.

- Public involvement programs related to management of response actions on CTTs should be developed and implemented in accordance with DOD and EPA removal and remedial response community involvement policy and guidance.

7. Enforcement

Regulator oversight and involvement in all phases of CTT range investigations are crucial to an effective response, increase credibility of the response, and

promote acceptance by the public. Such oversight and involvement includes timely coordination between DoD components and EPA, state, or tribal regulators, and, where appropriate, the negotiation and execution of enforceable site-specific agreements.

- DoD and EPA agree that, in some instances, negotiated agreements under CERCLA and other authorities play a critical role in both setting priorities for range investigations and response and for providing a means to balance respective interdependent roles and responsibilities. When negotiated and executed in good faith, enforceable agreements provide a good vehicle for setting priorities and establishing a productive framework to achieve common goals. Where range investigations and responses are occurring, DoD and the regulator(s) should come together and attempt to reach a consensus on whether an enforceable agreement is appropriate. Examples of situations where an enforceable agreement might be desirable include locations where there is a high level of public concern and/or where there is significant risk. DoD and EPA are optimistic that field level agreement can be reached at most installations on the desirability of an enforceable agreement.

- To avoid, and where necessary to resolve, disputes concerning the investigations, assessments, or response at CTT ranges, the responsible DoD Component, EPA, state, and tribe each should give substantial deference to the expertise of the other party.

- At NPL sites, disputes that cannot be mutually resolved at the field or project manager level should be elevated for disposition through the tiered process negotiated between DoD and EPA as part of the Agreement for the site, based upon the Model Federal Facility Agreement.

- At non-NPL sites where there are negotiated agreements, disputes that cannot be mutually resolved at the field or project manager level also should be elevated for disposition through a tiered process set forth in the site-specific agreement.

- To the extent feasible, conditions that might give rise to an explosives or munitions emergency (e.g., ordnance explosives) are to be set out in any workplan prepared in accordance with the requirements of any applicable agreement, and the appropriate responses to such conditions described, for example as has been done In the Matter of Former Nansemond Ordnance Depot Site, Suffolk, Virginia, Inter Agency Agreement to Perform a Time Critical Removal Action for Ordnance and Explosives Safety Hazards.

- Within any dispute resolution process, the parties will give great weight and deference to DoD's technical expertise on explosive safety issues.

8. Federal-to-Federal Transfers

DoD will involve current and prospective Federal land managers in addressing explosives safety hazards on CTT ranges, where appropriate.

- DoD may transfer land with potential explosives safety hazards to another federal authority for management purposes prior to completion of a response action, on condition that DoD provides notice of the potential presence of an explosives safety hazard and appropriate institutional controls will be in place upon transfer to ensure that human health and safety is protected.
- Generally, DoD should retain ownership or control of those areas at which DoD has not yet assessed or responded to potential explosives safety hazards.

9. Funding for Characterization and Response

DoD should seek adequate funding to characterize and respond to explosives safety hazards (particularly UXO) and other constituents at CTT ranges when necessary to address human health and the environment.

- Where currently identified CTT ranges are known to pose a threat to human health and the environment, DoD will apply appropriate resources to reduce risk.
- DoD is developing and will maintain an inventory of CTT ranges.
- DoD will maintain information on funding for UXO detection technology development, and current and planned response actions at CTT ranges.

10. Standards for Depths of Clearance

Per DoD 6055.9-STD, removal depths are determined by an evaluation of site-specific data and risk analysis based on the reasonably anticipated future land use.

- In the absence of site-specific data, a table of assessment depths is used for interim planning purposes until the required site-specific information is developed.
- Site specific data is necessary to determine the actual depth of clearance.

11. Other Constituent (OC) Hazards

CTT ranges will be investigated as appropriate to determine the nature and extent of Other Constituents contamination.

- Cleanup of other constituents at CTT ranges should meet applicable standards under appropriate environmental laws and explosives safety requirements.
- Responses to other constituents will be integrated with responses to military munitions, rather than requiring different responses under various other regulatory authorities.

References

A. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq.

B. National Oil and Hazardous Substances Pollution Contingency Plan (more commonly called the National Contingency Plan), 40 C.F.R. § 300 et seq.

C. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq.

D. Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exception for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties; Final Rule, 40 C.F.R. § 260, et al.

E. Defense Environmental Restoration Program, 10 U.S.C. § 2701-2708, 2810.

F. Department of Defense Explosives Safety Board, 10 U.S.C. § 172

G. Executive Order (E.O.) 12580, Superfund Implementation, January 13, 1987, and E.O. 13016, Amendment to Executive Order 12580, August 28, 1996.

H. DoD Ammunition and Explosives Safety Standards, DoD Directive 6055.9-STD, dated July 1999