

**U. S. Department of Energy - Hanford Site Contractor Comments on
EPA’s Proposed Rule: Revisions to Standards for Open Burning/Open Detonation of Waste Explosives
Docket ID No. EPA–HQ–OLEM–2021–0397**

| # | Comment | OHC |
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| 1 | Please reconsider the proposed requirements at 40 CFR 264.715(b) and 40 CFR 265.715(b) to incorporate the following info in the permit application: <i>“A list of existing available alternative technologies that are known to treat the waste explosive identified in paragraph (b)(1)(i) of this section and which can either be brought to the location for use or to which the wastes can be transported; and, (v) Rationale to support a determination that no safe alternative technology is available for use within a reasonable time given the site-specific situation, or that the explosive material cannot be shipped off-site.”</i> The concern relates to the added level of administrative work. Adding the administrative work could interfere with resource allocation. Personnel would have to spend time on administrative actions. This added requirement could create a “competing priorities” situation. The time/resources spent identifying alternate technologies might compete with resources that could otherwise be directed at performing actions to expeditiously address the threat. The evaluation of available alternative technologies seems reasonable and appropriate for a traditional (non-emergency) RCRA permit, but less reasonable an emergency permit. | HMIS |
| 2 | Consider adding a <i>de minimis</i> quantity allowing relief from the proposed 40 CFR 264.715(b)(iv)&(v) and 40 CFR 265.715(b)(iv)&(v) emergency permit alternative technology requirements. | HMIS |
| 3 | Add definition(s) in 40 CFR 264.705 and 40 CFR 265.705 for: “response unit’s base or facility of origin” | HMIS |
| 4 | Add definition(s) in 40 CFR 260.10 or under 40 CFR 264.705 and 40 CFR 265.705 for: “waste explosives” Waste explosives are solid wastes that are hazardous and characteristic for reactivity (D003) as defined under § 261.23(a)(6) through (8): It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement. It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure. It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2, or 1.3 explosive as defined in 49 CFR 173.50 and 173.53. Example explosives include but are not limited to propellants from guns, airbag inflators and rockets (“propellants”), fireworks and flares (“pyrotechnics”), and military and non-military munitions (“munitions”) and become wastes when discarded as defined in §§ 261.2 and 266.202. Military munitions include bombs, warheads, grenades, mines, missiles, and ammunition (see § 260.10 for additional types of explosives defined as military munitions). Waste explosives also include explosives contaminated debris such as towels, liners, containers, gloves, socks, personal protective clothing, pipes, and soils that meet the § 261.23(a)(6) through (8) explosives definitions quoted above. | HMIS |
| 5 | Regarding the proposed rule additions at 40 CFR 264.715(a)(1) and 40 CFR 265.715(a)(1) to provide information to EPA regarding the emergency response within 5 days, please consider adding more time. The 5-day turnaround seems unnecessarily short. Consider extending the submittal time to 15 days, consistent with the timing for providing EPA with information following contingency plan implementation [40 CFR 264.56(i) and 40 CFR 265.56(i)]. | HMIS |

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| 6 | <p>What are the expectations for satisfying closure requirements for an OB/OD unit that operated under an emergency permit? In some cases (perhaps most) emergency permits will not include a closure plan. In the absence of an approved closure plan, the owner/operator would seemingly be unable to explicitly meet the 40 CFR 264.115 and 40 CFR 265.115 requirements which state:<i>Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for closure under <u>§ 265.143(h)</u>.</i></p> | HMIS |
| 7 | <p>Pages 19957-19958 of the Federal Register Notice state: <i>The Relationship to CERCLA During pre-proposal public engagement, some participants also raised concerns that cleanups conducted under the CERCLA may be impeded by any applicable requirements to evaluate and implement alternatives to OB/OD. These participants sought an explicit exemption for CERCLA cleanups. These proposed regulations under RCRA do not grant such an exemption. CERCLA section 121(d) requires that on-site remedial actions attain or waive Federal environmental ARARs, or more stringent State environmental ARARs, upon completion of the remedial action. Substantive RCRA provisions pertaining to waste explosives have been evaluated as CERCLA ARARs on a site-specific basis since their promulgation in 1980. At CERCLA response action sites where there is no expectation to encounter waste explosives, the CERCLA documentation would likely not include ARARs for treating waste explosives. However, if waste explosives were unexpectedly encountered, quick action might be needed. The need for quick action might be problematic if CERCLA documents need to be revised to update the ARARs. Under the “emergency response provisions at 40 CFR 264.715 and 40 CFR 265.715, it seems like there should be some type of relief from revising the ARARs. Suggest adding some type of relief under the 40 CFR 264.715 and 40 CFR 265.715 emergency provisions.</i></p> | HMIS |

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| 8 | <p>Although not part of the proposed rule changes, the 40 CFR 270.61(b)(5) public notice requirements should be clarified. Emergency permits are typically put into effect before the public involvement time-lines specified under 40 CFR 124.10(b) can be fulfilled. Is the permittee expected to satisfy the public involvement timelines specified under 40 CFR 124.10(b)?</p> <p><i>(1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under <u>paragraph (a)</u> of this section shall allow at least 30 days for public comment. For RCRA permits only, public notice shall allow at least 45 days for public comment. For EPA-issued permits, if the Regional Administrator determines under <u>40 CFR part 6, subpart F</u> that an Environmental Impact Statement (EIS) shall be prepared for an NPDES new source, public notice of the draft permit shall not be given until after a draft EIS is issued.</i></p> <p><i>(2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)</i></p> | HMIS |