

PPC 9502.1986(09)

CORRECTIVE ACTION/PERMIT ISSUES - U.S. ARMY  
ABERDEEN PROVING GROUNDS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MAY 8 1986

MEMORANDUM

SUBJECT: Permit Issues Related to U.S. Army -  
Aberdeen Proving Grounds

FROM: Bruce Weddle, Director  
Permits and State Programs Division

TO: Robert Allen, Chief  
Waste Management Branch

In your memorandum of January 24, you requested our response to several issues surrounding the issuance of the corrective action portion of the permit for Aberdeen Proving Grounds. Our response to each issue is discussed separately below. This information has also been discussed with Jack Potosnak of your staff.

1. Definition of "facility" as it applies to Federal facilities.

Notice was published March 5 (51 Federal Register 7722) which resolves three issues outlined in the Final Codification Rule, regarding the definition of facility for purposes of corrective action at federal facilities:

1. Will establish that §3004(u) is applicable to Federal facilities;
2. Reconfirms the definition of "facility" as the entire site under control of the owner/operator;
3. Establishes that the owner of Federal lands is the individual Federal department or agency, rather than the U.S. Government.

A second notice was also published which announces our intent to develop regulations to address additional issues raised by Federal agencies including national priorities for corrective action.

## 2. Unexploded Ordinances

You inquired as to whether range/impact areas containing unexploded ordinances at Aberdeen qualify as solid waste management units. We believe such areas do not qualify because there is a strong argument that unexploded ordinances fired during target practice are not discarded materials within the regulatory definition of "solid waste". Ordinances that do not explode would be expected to land on the ground. Hence, the "ordinary use" of ordinances includes placement on land. Moreover, it is possible that the permittee has not abandoned or discarded the ordinance, but rather intends to reuse or recycle them at some point in the future.

Also, the U.S. District Court for the District of Puerto Rico held that the military target practice activities do not generate "solid waste" because the statutory definition does not include materials resulting from military operations. *Barcelo v Brown*, 478 F. Supp. 646, 668-669 (D. Puerto Rico 1979) (copy of relevant portions attached). The Court qualified this position, however, by suggesting that when the military engages in activities that resemble industrial, commercial or mining operations, or community activities, materials resulting from such operations are wastes and are subject to regulation under RCRA. Hence, we think the Court's opinion suggests that materials resulting from uniquely military activities engaged in by no other parties fall outside the definition of solid wastes.

## 3. White Phosphorus Burial Zone

As relayed in your memorandum, white phosphorus munitions were dumped in a shallow water area and covered with fill. The area is part of the Chesapeake Bay, but it is within the boundary of Aberdeen Proving Ground. You asked whether the act of being underwater restricts applicability of RCRA/HSWA authorities, and whether a multi-year monitoring program can be prescribed at the location.

As described in the January 30, 1985, draft guidance on corrective action for continuing release under §3004(u), the term "solid waste management unit" applies to active and inactive units containing hazardous wastes or solid wastes at the facility. Further, the term facility is defined as including all contiguous property under the control of the owner or operator at which the units subject to permitting are located. In the case of the white phosphorous burial zone, since white phosphorus is a hazardous waste and the unit is located within the facility boundary, the fact of being underwater should have no effect on its designation as a solid waste management unit. Further, since the unit would be subject to §3004(u), a water quality monitoring program would appear to be an appropriate response to determine evidence of any releases from the unit.

#### 4. Radioactive Material

You inquired as to whether several items listed in your memorandum fell under the "source special nuclear, by-product material" exemption under 261.(a)(4). The items would not be exempt to the extent they are mixed with or contain hazardous waste. However, no RCRA regulations have been developed to cover such mixed radioactive wastes.

#### 5. Drum Cleanup

Your last issue centered on the appropriateness of a permit condition requiring a facility-wide effort to locate and recover abandoned 55 gallon drums found on the site. Drums with contents would be tested and removed to the container storage area if found to be hazardous.

We do not believe existing authorities would allow recovery of these drums unless there was evidence of a release. Under the authority of Section 3004(u), if EPA's preliminary assessment showed that there was a reasonable likelihood of releases of hazardous constituents from any of these drums, EPA or the facility could test the material in the drums to determine if the remaining waste is hazardous and to determine if any releases have occurred. If releases had occurred, the appropriate corrective action measures could be required.

If you have any questions, please contact George Faison at 382-4422.

Attachment

cc: RCRA Branch Chiefs (w/o Attachment)