

PPC 9489.1992(01)

REGULATORY STATUS OF AN OPEN BURNING UNIT USED FOR
TREATING EXCESS PROPELLANT

United States Environmental Protection Agency

August 24, 1992

MEMORANDUM

SUBJECT: United States Military Academy at West Point,
New York -- Subpart X Determination

FROM: James Michael, Acting Chief
Assistance Branch (OS-343)

TO: Andrew Bellina, P.E., Chief
Hazardous Waste Facilities Branch (2AWM-HWF)

This is in regard to your memorandum of August 3, 1992 in which you asked our assistance in supporting your determination that the Open Burn Unit used for treating excess propellant generated from training activities at the United States Military Academy (USMA) is subject to the permitting requirements of RCRA. Also, you provided us with a copy of your letter to Colonel Richard M. Ely of the USMA which outlined the Region's regulatory interpretation of the Academy's waste treatment practices.

We agree with the interpretations the Region provided to Colonel Ely which reflect the Agency's current policies that define the difference between training and treatment activities. The five points laid out in the Region's letter are an excellent presentation of the Agency's current interpretation of the regulatory status of training. However, I would like to note that these interpretations may be changed or fine-tuned in the future as the Agency explores the regulatory status of training activities in more detail. The Subpart X Permit Writers' Workgroup is developing an issue paper on this subject which should be ready for review by mid-September. We will be looking forward to Region II's input as the Workgroup tackles these issues.

Your memorandum also requested our input on whether the transport or excess powder affects its regulatory status. The

concept of transport of excess powder (or other training waste) has played a role in establishing whether management of these materials is classified as treatment or as training. In general, if these materials are moved from the range to a "common area" for treatment, we consider the materials to be solid wastes, and their treatment to be RCRA-regulated. However, the transport criterion does not, in all cases, indicate that treatment is being conducted. Excess propellant could also be moved to another training area for training activities. One way to discern the difference is to examine the amount of material moved. The amount moved for training (the maximum amount necessary to conduct the training) would be relatively smaller than if moved for treatment.

For your information, I am attaching a Boston Globe article sent by Region I recently, on the excess propellant burns at Camp Edwards. If you would like to further discuss these issues and how they apply to your facilities, please feel free to give Chester Oszman a call at (202) 260-4499. We will keep you informed of any changes in the regulatory status of training units.

Sonya Sasseville, OSW; Chester Oszman, OSW

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

August 3, 1992

SUBJECT: United States Military Academy at West Point,
New York-Subpart X

FROM: Andrew Bellina, P.E.
Chief, Hazardous Waste Facilities Branch
(2AWM-HWF)

TO: James Michael, Acting Chief
Assistance Branch (OS-343)

The U.S. Environmental Protection Agency (EPA) Region II seeks your assistance in supporting our determination that the Open Burn Unit used for the open burning of excess propellant generated from the training of cadets at the United States Military Academy (USMA), at West Point, New York, is subject to the full permitting requirements of the Resource Conservation and Recovery Act (RCRA).

USMA submitted a RCRA Subpart X permit application in November 1988 for the open burning/open detonation activities being conducted at the facility which are associated with the education and training of undergraduate cadets. These activities involve, among other things, the firing of artillery shells. The 105-mm artillery shells contain five bags of propellant powder, of which only four are used in firing. The excess powder is transported and thermally treated at the Open Burn Unit.

Currently, USMA contends that the open burning of excess propellant is exempt from RCRA requirements because it is part of the overall training procedure given to its cadets.

Region II, as stated in the attached letter, disagrees with USMA and is requiring a RCRA Subpart X permit for the Open Burn Unit. The letter was developed by my staff in consultation with Chester Oszman, of your staff. We believe that the excess propellant is a solid waste because the material is being discarded and a hazardous waste because the material may exceed the Toxicity Characteristic

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levels for arsenic (D004), cadmium (D006), and lead (D008) and for exhibiting the characteristics of ignitability (D001) and reactivity (D003).

It would be appreciated if you could review this matter and submit to us a written response as to the regulatory status of the excess propellant, within two weeks of the above date. In particular, we would value your input on whether the transport of the excess powder affects its regulatory status.

If you or your staff have any questions or would like to discuss this matter further, please contact Mr. Anthony Kahaly, of my staff, at (212) 264-9401.

cc: Chester Oszman, OS-343 w/attach.

Attachment

June 4, 1992

Colonel Richard M. Ely
Directorate of Engineering and Housing
Department of the Army
United States Military Academy
West Point, New York 10996-1592

Re: EPA I.D. No.: NY8210020915; United States Military
Academy at West Point, New York; RCRA Subpart X
Application Review

Dear Colonel Ely:

This is in response to your letter to Ellen Parr-Doering dated April 10, 1992, requesting a determination whether the Open Burning/Open Detonation (OB/OD) activities conducted at the United States Military Academy (USMA) at West Point, New York would require a Subpart X permit under the Resource Conservation and Recovery Act (RCRA).

You stated in your letter that the primary mission of USMA is the education and training of undergraduate cadets. Training activities that are a part of the USMA educational program include range activities which involve the firing of various artillery such as grenades, mortar, trip flares, star clusters, hand ammunition, and artillery shells.

The artillery shells used for training include 60-mm, 80-mm, 90-mm, and 105-mm shells. The unexploded 60-mm, 80-mm, and 90-mm shells are open detonated "in place" or transported to the open Detonation Unit on Range 6 for open detonation by the Explosive Ordnance Disposal (EOD) team. The 105-mm artillery shells contain five bags of propellant powder, of which only four are used in firing, due to the limited range at USMA. The excess powder is transported and thermally treated at an Open Burn Unit on Range 2. Such materials are hazardous wastes due to exceeding the Toxicity Characteristic levels for arsenic (D004), cadmium (D006), and lead (D008) and for exhibiting the characteristics of Ignitability (D001) and Reactivity (D003).

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Concerning the specific activities conducted at USMA, the following regulatory interpretation is provided:

1. Current Environmental Protection Agency (EPA) policy holds that ordnances used during training does not constitute treatment/disposal of solid or hazardous waste. This is because the artillery is not meant to be discarded, which is a necessary criterion to be met before a material can be considered a solid waste and subsequently a hazardous waste (40 C.F.R. §261.3(a)). Rather, the artillery is being used within the normal and expected use pattern of the product. This would also extend to the unexploded ordnances that fall to the ground during training exercises. The normal use may result in a discharge to the soils. This would constitute a discharge incident to normal product use and is not considered a hazardous or solid waste activity falling under the jurisdiction of RCRA.

Since not all ordnances detonate when dropped, any unexploded ordnances are within the normal use pattern of training; subsequent "in place" detonation is not subject to RCRA. On the other hand, if at any point unexploded ordnances are collected and brought to a place other than the training range or to another training range to be open burned or open detonated, then that open burning/open detonation activity is subject to the full permitting requirements of RCRA.

EPA's policy, of exempting from RCRA ordnances used in training, is contingent upon the view that ordnances are product when used during training. EPA's policy does not extend to wastes generated during training, which includes the excess propellant not used for firing ordnances. Therefore, the excess propellant burned at the Open Burn Unit is a solid waste and also a hazardous waste subject to RCRA permitting requirements.

2. Range waste, such as dud rounds, unexploded small arms ammunition, excess propellant, and trip flares, is commonly generated from military training. These types of wastes were previously open detonated or open burned at the Open Detonation Unit or the Open Burn Unit and it appears that this activity is continuing. It is USMA's

responsibility to document the amount of range waste generated from military training that is collected for Open-Detonation/Open Burning. If the amount of range waste exceeds 100 kilograms per month, then the management of range waste is subject to RCRA requirements.

3. Your letter states that the Open Detonation Unit will no longer be used to manage hazardous waste. Even if USMA did not need to obtain a RCRA Subpart X permit for this unit for the destruction of range waste, previous use for hazardous waste treatment/disposal requires closure according to RCRA regulations. Since the Open Detonation Unit is within the USMA military training impact zone, EPA agrees that it would be impractical to perform a "clean closure" or a "landfill closure. Therefore, EPA would require USMA to cease treating hazardous waste in the Open Detonation Unit and undergo a partial closure. The partial closure and the final closure plan for the Open Detonation Unit would be addressed in the RCRA Subpart X permit for the Open Burn Unit. If USMA intends to use the Open Detonation Unit to open detonate collected range waste, then a RCRA Subpart X permit is required.
4. With regard to an emergency permit, an Emergency Permit is only issued by the EPA after a facility has conducted an extensive search for alternative methods of disposal. Also, the unit used for responding to an emergency situation which occurs periodically or repeatedly, or in which containment or treatment extends beyond the immediate response period is subject to full RCRA permitting. Based upon available information provided by you and your staff, it appears that USMA would require a RCRA permit for periodic treatment/disposal.
5. If the RCRA Subpart X-permit is not issued by November 8, 1992, EPA will not terminate interim status for any units subject to permit requirements, provided that USMA is proceeding in good faith to submit a complete Subpart X permit application.

If you have any questions or comments relating to this matter, please contact Anthony Kahaly, of my staff, who can be reached at

(212) 264-9401.

Andrew Bellina, P.E.
Chief, Hazardous Waste Facilities Branch

John L. Middelkoop, P.E.
Director, Bureau of Hazardous Waste Compliance
New York State Department of
Environmental Conservation

cc: Joseph Shandling, USMA
John Middelkoop, NYSDEC