

FACT SHEET

Military Live Fire Training and RCRA/CERCLA*

The military needs certainty in the application of hazardous waste and cleanup laws relative to the use or presence of military munitions on operational military ranges. Clarification of the role of RCRA and CERCLA provides a clear demarcation for the application of these laws.

Background: All branches of the U.S. military require land, air, or sea space to conduct live-fire maneuvers and weapons training. Aerial gunnery and bombardment, artillery practice, naval gunfire, small arms fire, and mining/de-mining operations are but a few of the skills our forces need to hone for potential combat use. DoD's RCRA and CERCLA legislative provisions are intended to clarify that certain provisions of these laws cannot be used to shut down testing and training activities on our operational ranges. Military munitions, deposited on the operational range incident to their normal and expected use, are not solid wastes and are not "releases" subject to regulation under environmental laws. This effort to clarify the application of these laws does not diminish DoD's commitment to environmental stewardship on our operational ranges. Rather, these proposals evidence DoD's intent to achieve the kind of balance that will allow it to meet both of these important national priorities.

Discussion: The legislation would:

- ◆ Preclude the use of RCRA and CERCLA to shut down munitions testing and training on operational ranges.
- ◆ NOT apply to ranges that are no longer operational ranges (e.g., closed, transferred (Formerly Used Defense Sites or FUDS), or transferring (BRAC)).
- ◆ NOT apply to traditional waste management activities (e.g., disposal by Open Burn/Open Detonation), EVEN IF those activities involve munitions and occur on operational ranges.
- ◆ NOT apply to munitions or munitions constituents that migrate off range.
- ◆ NOT apply to any DoD activities, on or off-range, except munitions test and training.
- ◆ NOT apply to DoD contractor facilities.
- ◆ NOT amend the Safe Drinking Water Act, which empowers state and federal regulators to protect drinking water sources even on operational ranges.
- ◆ Strengthen EPA's authority to address an imminent and substantial endangerment from munitions use even ON the operational range.
- ◆ NOT affect State and citizen suit authority to address an imminent and substantial endangerment off the operational range.

Impacts and Facts in Support: Enactment of these provisions will not change the overlapping protections of the Safe Drinking Water Act, the Clean Water Act, the National Environmental Policy Act, and the Endangered Species Act against environmentally harmful activities at operational military ranges. EPA's CERCLA Section 106 authority to address imminent and substantial endangerment on operational military bases is explicitly noted. The legislation clarifies and confirms the applicability of both RCRA and CERCLA to migration of munitions constituents off-range. Finally, the legislation does not modify DoD's existing cleanup responsibilities at closed, closing, or transferring ranges, other areas that may have munitions, or current operational bases that may close in the future.

*RCRA – Resource Conservation and Recovery Act

CERCLA – Comprehensive Environmental Response, Compensation, and Liability Act