

FACT SHEET

Differences between FY 04 and FY 05 RCRA/CERCLA and CAA Provisions

RCRA/CERCLA

The intent of the RCRA and CERCLA proposals is unchanged from last year – to clarify and confirm the longstanding, uniform understanding of state and federal regulators that military test and training on operational ranges is not a RCRA waste management activity or a CERCLA release. The proposals respond to contrary assertions by private litigants. Most of the changes grew out of intensive discussions with state officials and are designed to address their concerns.

What the Proposals Say: Like last year’s proposals, the RCRA and CERCLA proposals:

- Preclude the use of RCRA and CERCLA to shut down munitions testing and training on operational ranges.
- Do NOT apply to ranges that are no longer operational ranges (e.g., closed, transferred (FUDS), or transferring (BRAC)).
- Do 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.
- Do NOT apply to munitions or munitions constituents that migrate off range.
- Do NOT apply to any DoD activities, on or off-range, except munitions test and training.
- Do NOT apply to DoD contractor facilities.
- Do 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.
- Do NOT affect State and citizen suit authority to address an imminent and substantial endangerment OFF the operational range.

Major Differences between FY04 and FY05 Language:

- SIMPLIFIES language substantially to eliminate potential confusion – in new version, one section states exclusion; another section provides examples of when exclusion does not apply.
- ELIMINATES CERCLA PREFERENCE – FY03 and FY04 proposals provided that munitions or constituents that migrate off range were not RCRA wastes if addressed under CERCLA. In discussions with state officials, they requested deletion of this CERCLA preference on the grounds that the state interest under RCRA in off-range migration was at least as great as the federal interest under CERCLA. DoD accepted this argument, and has deleted the preference.
- In Sectional Analysis, explicitly acknowledges that developers’ cost recovery rights at closed bases would not be affected by the legislation. Addresses concern about development of former Lowry Bombing Range.
- References definitions of “military munitions,” “operational range,” and “unexploded ordnance,” terms now included in Title 10.
- Section-by-section Analysis updated to reflect the foregoing.

CLEAN AIR ACT

The proposal is unchanged from last year other than the correction of a typographical error in subsection (c).