

EXPLOSIVES OR MUNITIONS EMERGENCY RESPONSE MEMORANDUM OF UNDERSTANDING

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Waste Management

1. Parties: The parties to this Memorandum of Understanding (**MOU**) are the United States Department of the Army, 52nd Ordnance Group, Explosive Ordnance Disposal, 75th Ordnance Company (**75th EOD**), and the Michigan Department of Environmental Quality, Waste Management Division (**WMD**).

2. Background: The 75th EOD personnel are explosives or munitions emergency response specialists. Other federal agencies and civilian authorities occasionally call upon the 75th EOD for help with managing explosives and military munitions. These situations may call for emergency response actions to abate the safety threat of the explosives and military munitions.

3. Authority: Under certain circumstances, the management of explosives and military munitions may be subject to regulation under Part 111, Hazardous Waste Management, of Michigan's Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451), and its administrative rules, MAC R 299.9101 *et seq*. The WMD administers Part 111 of Act 451 in Michigan.

4. Purpose: This MOU establishes the criteria that shall be used to determine the extent that the emergency response actions by the 75th EOD for explosives and military munitions are subject to regulation under Part 111 of Act 451. These criteria are established to minimize delays and interference in the emergency response activities of the 75th EOD. This MOU also establishes notification, management, and licensing requirements for certain emergency response actions.

5. Scope:
- a. This MOU pertains to the 75th EOD's emergency response actions in the public sector.
 - b. This MOU pertains only to emergency response actions for explosives (commercial explosives and improvised explosive devices) and military munitions; it does not pertain to any nuclear or biological munitions.

6. Definitions:
- a. Conditionally-exempt small quantity of hazardous waste means the explosives or military munitions are located at a business that generates less than 100 kilograms (kg) of hazardous waste per month, including the weight of the explosives or military munitions, and manages it in compliance with R 299.9205.

EXPLOSIVES OR MUNITIONS EMERGENCY RESPONSE MEMORANDUM OF UNDERSTANDING

- b. Explosives or munitions emergency means a situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.
- c. Explosives or munitions emergency response means all immediate response activities by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives or munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste management facilities.
- d. Explosives or munitions emergency response specialist means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include U.S. Department of Defense (DOD) emergency explosive ordnance disposal, technical escort unit, and DOD-certified civilian or contractor personnel; and other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.
- e. Hazardous waste means hazardous waste as defined in R 299 9203.
- f. Military munitions means all ammunition products and components produced or used by or for the DOD or the U.S. Armed Services for national defense and security, including military munitions under the control of the DOD, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military

EXPLOSIVES OR MUNITIONS EMERGENCY RESPONSE MEMORANDUM OF UNDERSTANDING

munitions includes: confined gaseous, liquid, and solid propellants, explosives; pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under the DOE's nuclear weapons program after all required sanitation operations under the Atomic Energy Act of 1954, as amended, have been completed.

- g. Regulated quantity of hazardous waste means that one or more of the following conditions is true:
- i. The cumulative weight of explosives and of the casing and hazardous filler of all military munitions* at the incident location exceeds 50 kg.
 - ii. The cumulative weight of explosives and hazardous filler of all military munitions* at the incident location exceeds 5 kg.
 - iii. The number of military munitions* with hazardous filler exceeds five.
 - iv. The explosives or military munitions are located at a business that generates 100 kg or more of hazardous waste per month and that is, therefore, regulated as a small quantity or large quantity hazardous waste generator under Part 111 of Act 451. (Generators of less than 100 kg of hazardous waste per month are still subject to certain requirements under R 299.9205)

Notwithstanding the quantity limits specified above, explosives or military munitions that are located at a private residence and that are either part of a lawful private collection or for other lawful civilian use are not regulated quantities of hazardous waste

* Does not include undamaged military munitions that will be returned to the military for the original intended use.

EXPLOSIVES OR MUNITIONS EMERGENCY RESPONSE MEMORANDUM OF UNDERSTANDING

because they are exempt from regulation in accordance with the household waste exclusion under R 299.9204(2)(a)

- 7 Regulatory Criteria: When called upon by other federal agencies or civilian authorities to assist with managing explosives or military munitions, the 75th EOD shall do the following, as summarized in the attached table:

- a. Determine if a regulated quantity of hazardous waste is present.

If a regulated quantity of hazardous waste is not present, then the 75th EOD shall manage the material in accordance with all other DOD procedures.

If a conditionally-exempt small quantity of hazardous waste is present, then the 75th EOD shall manage the material in compliance with R 299.9205(2). Under R 299.9205(2), the material is not subject to regulation as a hazardous waste. Therefore, none of the notification or licensing requirements specified in this MOU apply, provided that the explosives or munitions emergency response is in compliance with other environmental protection programs (groundwater protection, air pollution control, and solid waste management).

- b. If a regulated quantity of hazardous waste is present, then determine if an explosives or munitions emergency exists

If an explosives or munitions emergency does not exist, then the 75th EOD shall not conduct any response activity. The federal agency, civilian authority, or generator must dispose of the material at a licensed hazardous waste management facility

- c. If an explosives or munitions emergency does exist, then an explosives or munitions emergency response specialist shall determine if an immediate or time-critical response is needed.

If an immediate or time-critical response is not needed, then the 75th EOD will ensure that the supported agency obtains an emergency operating license. The 75th EOD shall not conduct any emergency response activity until an emergency operating license is obtained from the WMD, in accordance with R 299.9501(3). If the WMD issues an emergency operating license, then the 75th EOD shall conduct the hazardous waste management activity in accordance with the license

**EXPLOSIVES OR MUNITIONS EMERGENCY RESPONSE
MEMORANDUM OF UNDERSTANDING**

- d. If an immediate or time-critical response is needed, then proceed with the explosives or munitions emergency response in compliance with DOD procedures and then notify the WMD

Activities beyond the emergency response may be subject to the permit and license requirements under Part 111 of Act 451 in accordance with R 299.9503(2)

- 8. Notification: The 75th EOD will notify the WMD as soon as practicable when an explosives or munitions emergency exists. This notification requirement is not intended to delay or interfere with any immediate or time-critical response. The notification during regular business hours shall be to the WMD at telephone 517-373-0530. Notification during all other times, including evenings, weekends, and holidays, shall be to the Pollution Emergency Alerting System at telephone 800-292-4706. The notification shall include a brief description of the explosives or munitions emergency and explosives or munitions emergency response.
- 9. Termination and Amendment: This MOU shall remain in effect until rescinded in writing by either party. This MOU may be amended by written concurrence of both parties.
- 10. Third Parties and Negation of Agency Relationship:
 - a. This MOU is intended to benefit only the United States Department of the Army and the Michigan Department of Environmental Quality. Nothing in this MOU shall be construed to affect the legal rights or obligations of any other party.
 - b. Nothing in this MOU shall be construed to create, either expressly or by implication, the relationship of agency between the parties.

For the WMD:

For the 75th EOD:


Jim Sygo, Chief *Acting*


Mary G. Goodwin
COL, OD
Commanding

Date

8/24/99

Date

29 OCT 99

**EXPLOSIVES OR MUNITIONS EMERGENCY RESPONSE
MEMORANDUM OF UNDERSTANDING**

SUMMARY TABLE FOR REGULATORY CRITERIA

	REGULATED QUANTITY	CRITERIA	AUTHORIZATION	ACTIVITY
1	Imminent Threat R 299.9503(2)	Determined by 75 th EOD	Rule exemption from permit and license	Determined by 75 th EOD
2	Emergency R 299.9501(3)	Set by rule	Emergency operating license	Notify and meet condition of WMD
3	Non-Emergency	Not (1) or (2) Transport to closest point of treatment	Permit and license	Set by rule

Note: Table does not apply for non-regulated quantities of hazardous waste