



DEPARTMENT OF THE ARMY
HUNTSVILLE DIVISION, CORPS OF ENGINEERS
P. O. BOX 1600
HUNTSVILLE, ALABAMA 35807.4301

REPLY TO
ATTENTION OF

April 23, 1991

Ordnance and Technical Programs Division

SUBJECT: Onsite Disposal of Explosives, Dolly Sods
Wilderness Area, Davis, West Virginia

Mr. A. S. Talebi
Department of Commerce,
Labor and Environmental Resources
Waste Management Section
Hazardous Waste Management Program
1356 Hansford Street
Charleston, West Virginia 25301

Dear Mr. Talebi:

Reference your letter of April 18, 1991, concerning
the subject.

In response to the referenced letter, we submit the
following rationale, including quotes from applicable
law, whereby the U.S. Army Corps of Engineers is exempt
from obtaining an emergency permit for on-site ordnance
disposal.

The Comprehensive Environmental Response,
Compensation, and Liability Act (CERCLA), section 104
(42 USC 9604), states, in part, the following:
"Whenever (A) any hazardous substance is released or
there is a substantial threat of such a release into
the environment, or (B) there is a release or
substantial threat of release into the environment of
any pollutant or contaminant which may present an
imminent and substantial danger to the public health or
welfare, the President is authorized to act, consistent
with the national contingency plan, to remove or
arrange for the removal of, and provide for remedial
action relating to such hazardous substance, pollutant,
or contaminant at any time (including its removal from
any contaminated natural resource), or take any other
response measure consistent with the national
contingency plan which the President deems necessary to
protect the public health or welfare or the
environment."

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In accordance with subpart (B) above, the subject project would provide for the removal, by "on-site" disposal (detonation), of unexploded munitions which present an imminent and substantial danger to the public health or welfare.

The Final National Contingency Plan (NCP), February 1990, specifically exempts an on-site response action from the need to obtain either federal, state, or local permits. Section 300.400, paragraph (e) of the NCP states the following: "No federal, state, or local permits are required for on-site response actions conducted pursuant to CERCLA sections 104, 106, 120, 121 or 122. The term "on-site" means the areal extent of contamination and all suitable areas in close proximity to the contamination necessary for implementation of the response action."

The NCP further states in section 300.120, paragraph (c): "DOD will be the removal response authority with respect to incidents involving DOD military weapons and munitions or weapons and munitions under the jurisdiction, custody or control of DOD."

The action proposed at the subject site will be performed in accordance with CERCLA, section 104, and the NCP, section 300.400. Therefore, we are not required to obtain any permits.

It is our intention to include your office in the planning and execution of the subject project through review and comment in the development of the site work plans. Hopefully, the work plans will indicate to you that the work proposed will be performed in such a manner that the environment is sufficiently protected from damage. We would also be happy to meet with you at your convenience to discuss this further, if necessary.

If you have any questions or comments, please contact Mr. Walter Perro at 205-955-5142 or Mr. Rob Wilcox at 205-955-5802.

Sincerely,



Vincent J. Guarin
Director of Programs and
Project Management

Copies Furnished:

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✓ Commander, U.S. Army Engineer District, Huntington,
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