OFFICE OF RESOURCE CONSERVATION AND RECOVERY

WASHINGTON, D.C. 20460

March 6, 2025

Dr. R. Thomas Leonard, Director
Office of Environmental Health and Safety
University of Virginia
One Morton Drive Suite 320
PO Box 400333
Charlottesville, Virginia 22904

Dear Dr. Leonard:

Thank you for your letter of November 25, 2024, requesting (1) an interpretation of the manifest exemption for geographically contiguous properties under the control of the same person (finalized as part of EPA's 1997 Military Munitions Rule (MMR); see 62 FR 6622, February 12, 1997), and (2) whether EPA agrees that the two hypothetical geographically contiguous properties depicted in the graphic in the attachment of your letter are "on-site."

You raised the concern that EPA's decision to establish the manifest exemption for transport of hazardous waste (40 CFR 262.20(f)) instead of finalizing the ''on-site'' redefinition proposed in the Military Munitions proposed rule (see 60 FR 56468; November 8, 1995) has created potential confusion in the regulations. You also cited preamble discussion from the MMR final rule on pages 6645-6646 and 6651, and an EPA interpretative letter from Elizabeth Cotsworth, Acting Director of the Office of Solid Waste to Cynthia Hilton, Executive Director, Association of Waste Hazardous Materials Transporters, which you believe suggest that EPA finalized 40 CFR 262.20(f) to convey that contiguous properties under the control of the same person are equivalent to on-site (RCRA Online #14151). Thus, your letter suggests, two geographically contiguous properties controlled by the same person, as illustrated in the graphic in the attachment of your letter, are on-site with one another.

The Manifest Exemption

When the MMR was proposed in 1995 (see 60 FR 56468; November 8, 1995), EPA proposed to change the definition of "on-site;" however, EPA decided not to finalize the proposed change. EPA received extensive negative comment on this proposed change. In the MMR final rule, EPA agreed with commenters and explained that Resource Conservation and Recovery Act (RCRA) and agency programs other than the manifest program could be impacted if the proposed definition was finalized:

> ". . . a change to the definition of ''on-site'' could cause a great deal of confusion in many areas of RCRA and CERCLA that are based on the concept of ''site'' and ''facility.'' In addition to causing confusion, such a change might also inadvertently make substantive changes to a number of parts of the RCRA program other than manifesting and transportation." (See62 FR 6647, February 12, 1997).

For these reasons, in the MMR final rule EPA finalized a manifest exemption in 40 CFR 262.20(f) instead of modifying the definition of ''on-site.'' The preamble to the final rule states:

> "EPA did not intend to affect requirements other than the requirement that a manifest accompany hazardous waste shipments…The Agency reiterates that this revision is a change only to the applicability of manifesting and 40 CFR 263 requirements and does not make any changes to the existing concepts of "on-site," "site," "facility" or related terms." (See 62 FR 6647, February 12, 1997).

Therefore, regarding your understanding about the intent of the manifest exemption requirement at 40 CFR 262.20(f), the requirement, as finalized, was not intended to convey that contiguous properties under the control of the same person are equivalent to on-site. The definition of "on-site" at 40 CFR 260.10 considers contiguous properties divided by a right-of-way as "on-site" if the entrance and exit between the properties are "at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way."

Prior to the manifest exemption, a manifest was required to transport hazardous waste off-site between contiguous properties. This meant that hazardous waste transportation between contiguous properties of large facilities like military bases and universities necessitated manifests.

Under the manifest exemption in 40 CFR 262.20(f), a manifest is not required for the "transport of hazardous waste on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way." The intent of the 1997 manifest exemption is to reduce the difficulty of managing manifests for hazardous waste generators whose property is divided by rights-of-way without loss in protection of public health. The manifest exemption allows for the internal transfer of hazardous waste between contiguous sites, as is common on military bases, universities, and other large facilities cut by public rights-of-way, without the difficulty of managing manifests for every internal transfer, making the transfer process more practical, less costly, and less time-consuming.

Hypothetical Geographically Contiguous Properties

Please note that individual states that receive EPA authorization have the primary responsibility of implementing their EPA authorized RCRA hazardous waste program in lieu of the federal program. In addition, states may also impose requirements that are "broader in scope" or "more stringent" than the federal RCRA hazardous waste program. The state authorization process ensures national consistency and minimum standards while providing flexibility to states in implementing the RCRA program, and states are generally in the best position to answer site-specific questions. EPA has granted Virginia authorization to implement the RCRA program, including the MMR. Therefore, any specific questions regarding the two contiguous properties controlled by the same person, as

illustrated in the graphic in the attachment of your letter, should be directed to Brent Williams of the VA DEQ at brent.williams@deq.virginia.gov. As needed, my office can be a resource to VA DEQ in addressing your questions.

If you have any questions about this letter, please contact Bryan Groce at groce.bryan@epa.gov.

Sincerely,

ANDREW BACA

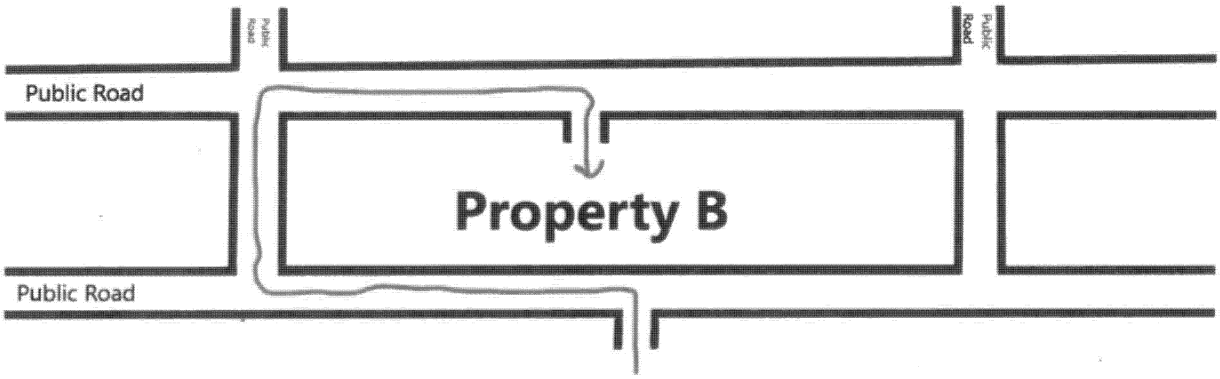
Digitally signed by ANDREW BACA
Date: 2025.03.06 18:02:46 -05'00'

Carolyn Hoskinson
Director

Attachment: Diagram from incoming letter from Dr. Leonard, dated November 25, 2024

Attachment

Two hypothetical geographically contiguous properties, A and B, both under control of the same person.



Property A

UNIVERSITY of VIRGINIA

Office of the Vice President for Research
Environmental Health and Safety

November 25, 2024

Ms. Carolyn Hoskinson, Director
Environmental Protection Agency
Office of Resource Conservation and Recovery
1200 Pennsylvania Ave., NW (5101T)
Washington DC 20460

Dear Director Hoskinson,

I am writing on behalf of the University of Virginia (UVA) to ask for an interpretation of the Military Munitions Rule of 1997 (MMR) (62 FR 6622), and how it affects the regulatory status of geographically contiguous properties.

Enclosed please find a graphic depicting two hypothetical geographically contiguous properties, A and B, both under control of the same person. In this case Property A is a large quantity hazardous waste generator that is not a designated facility. As you can see, the access points of the two properties are not at the same crossroads intersection, but there is a route between the two property's entrances that travels on public roads (rights-of-way) along the border of one or both the properties the entire way (denoted in blue on enclosed graphic).

The following passage from the preamble to the MMR clearly shows that it was EPA's intent to make geographically contiguous sites under control of the same person, such as the ones depicted in this hypothetical scenario, on-site with one another.

From page 6645:
In the November 8, 1995 proposal, EPA proposed to reduce the burden on generators and TSDFs situated on contiguous properties that are split by public or private right-of-ways (e.g., roads) by proposing that the definition of "on-site" found at 40 CFR 260.10 be modified.

Under the current RCRA Subtitle C regulations, if a waste movement remains "on-site," the waste is not required to be accompanied by a manifest during transportation, and the 40 CFR part 263 transporter requirements do not apply to the waste. See 40 CFR 262.20(a), and 263.10 (a) and (b). However, under the current regulations, waste generated at one location and transported along a publicly accessible road for temporary consolidated storage or treatment on a contiguous property also owned by the same person is not considered "on-site" transport and would require a Uniform Hazardous Waste Manifest (form 8700– 22A) and must be transported by a transporter with an EPA Identification number. These requirements for manifesting and transporting hazardous waste do not apply if the wastes are transported directly across, rather than along, the public road. The proposed modifications would have expanded the definition of "on-site" to include contiguous properties divided by public or

One Morton Drive Suite 320 | PO Box 400333 | Charlottesville, VA 22904-4333
P 434.982.4911 | F 434.243-1735 | ehs.virginia.edu

private right-of-ways even if access to the properties is by traveling along (as opposed to across) the right-of-way to gain entry.

Also from page 6645:
Therefore, the Agency is not finalizing the proposed modification of the definition of "on-site." Instead, the Agency is adding new §262.20(f) to 40 CFR Part 262, subpart B to exempt from the manifest requirements shipments of hazardous waste on right-of-ways on or between contiguous properties and along the perimeter of contiguous properties controlled by the same person.

The EPA intended §262.20(f) to convey the equivalent of on-site status to contiguous properties under the control of the same person. But it didn't explicitly declare them as on-site.

§262.20 General Requirements
(f) The requirements of this subpart and § 262.32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way.

And the EPA left the regulatory definition of "on-site" unchanged.

§270.2 Definition:
***On-site** means on the same or geographically contiguous property which may be divided by public or private right(s)-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right(s)-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property.*

This created a potentially confusing contradiction in the regulations.

However, in 1997 when the MMR was published, it was illegal for a generator of hazardous waste that was not a designated facility to receive hazardous waste from off-site. Consequently, it is our interpretation that the MMR effectively made sites such as A and B in this scenario on-site with one another regardless of the unchanged technicalities of the regulatory definition of "on-site." Otherwise, it would have been illegal to conduct the actions spelled out in the MMR.

Therefore, we believe the owner of the properties in our hypothetical scenario could legally build a hazardous waste facility on Property B that would be the central collection area for hazardous waste generated on Property A. Does the EPA agree with our interpretation?

References supporting this interpretation are enclosed:

- Graphic depicting two hypothetical geographically contiguous properties, A and B
- Preamble to the Military Munitions Rule of 1997 (MMR) - Federal Register / Vol. 62, No 29 / Wednesday, February 12, 1997 / Rules and Regulations, pages 6645 – 6646, 6651
- Interpretation Letter from the United States Environmental Protection Agency (EPA)

Thank you in advance for your assistance.

Sincerely,

R. Thomas Leonard, Ph.D.
Director, Office of Environmental Health and Safety
University of Virginia

Cc: Mr. Adam Peters, UVA Hazardous Materials Program Manager

Enclosures

Additional References

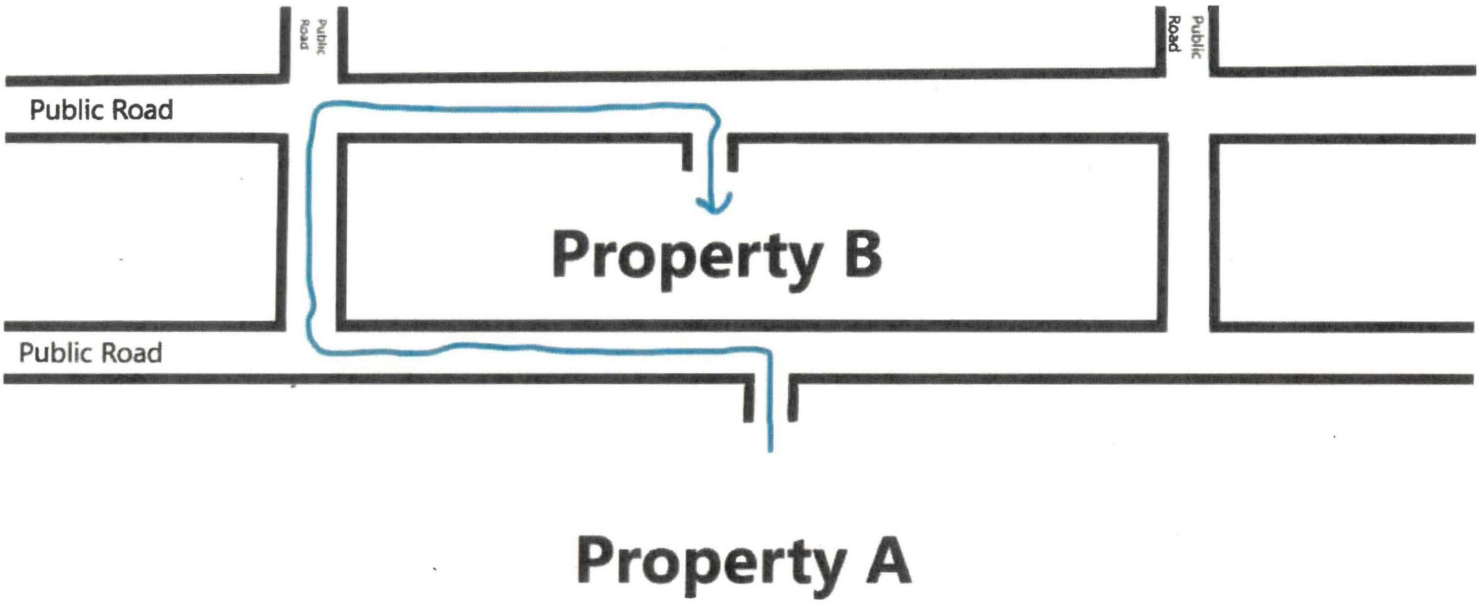
Additional References

From the preamble to the MMR, page 6646:
EPA believes that the current requirement that a manifest be completed and that a hazardous waste transporter be used to transport shipments between contiguous properties may be discouraging consolidation within a generator's or TSDF's site, resulting in more locations where potential exposure to hazardous waste exists and more expense by the generator or TSDF. Removing barriers to consolidation of waste in one central area should reduce the possibility that the public and the environment could come into contact with hazardous waste because one area is easier to control and can be better located than numerous smaller areas.

EPA also believes that facilitating central consolidation will allow generators and TSDFs to locate such consolidation sites in more remotely located areas or in areas allowing faster emergency response than they would if confined to the boundaries within right-of-ways, thereby increasing public safety should an accident occur. The new exemption at 40 CFR 262.20(f) gives generators and TSDFs such as military bases ***and universities*** *more flexibility to determine where consolidation areas are situated. In addition, EPA believes, along with numerous commenters, that this exemption will have the added benefit of facilitating the building of safer accumulation areas because generators and TSDFs may be more likely with limited resources to exceed regulatory requirements for consolidation areas if they are responsible for fewer consolidation sites overall.*

From the enclosed interpretation letter from the United States Environmental Protection Agency (EPA):
"This exemption was included in the February 12, 1997 Military Munitions Rule (62 FR 6622), and was intended to facilitate consolidation of wastes generated within the contiguous properties, under circumstances where the generator may need to move the wastes briefly across or along a public right-of-way to consolidate them."

Two hypothetical geographically contiguous properties, A and B, both under control of the same person.



treatment is legitimately part of the emergency response.

Because of this need for safe treatment sites, some EOD ranges may be regularly used to destroy explosives during emergency responses. The issue has been raised (and previous EPA guidance suggests) that some level of "routine" use of a particular range should trigger RCRA permit requirements. In EPA's view, however, the question of whether a permit is necessary hinges on the nature of each individual response (i.e., whether or not it involves an emergency), rather than on the number of times a given area is used for emergency responses. As long as the response to each individual incident was an emergency response, a RCRA permit would not be required.

Q. Manifest Exemption for Transport of Hazardous Waste in Lieu of "On-Site" Redefinition

In the November 8, 1995 proposal, EPA proposed to reduce the burden on generators and TSDFs situated on contiguous properties that are split by public or private right-of-ways (e.g., roads) by proposing that the definition of "on-site" found at 40 CFR 260.10 be modified.[6] Based on the comments received and the complex issues raised related to the definition of "on-site," the Agency has determined that an alternative approach is warranted to reduce the burden associated with shipments of hazardous waste to contiguous properties under the same ownership.

Under the current RCRA Subtitle C regulations, if a waste movement remains "on-site," the waste is not required to be accompanied by a manifest during transportation, and the 40 CFR part 263 transporter requirements do not apply to the waste. See 40 CFR 262.20(a), and 263.10 (a) and (b). However, under the current regulations, waste generated at one location and transported along a publicly accessible road for temporary consolidated storage or treatment on a contiguous property also owned by the same person is not considered "on-site" transport and would require a Uniform Hazardous Waste Manifest (form 8700–22A) and must be transported by a transporter with an EPA Identification number. These requirements for manifesting and transporting hazardous waste do not apply if the wastes are transported directly across, rather than along, the public road. The proposed modifications would have expanded the definition of "on-site" to include contiguous properties divided by public or private right-of-ways even if access to the properties is by traveling along (as opposed to across) the right-of-way to gain entry.

The proposed change to the definition of "on-site" arose in the context of military munitions because many military installations are on properties that are, under the DOD "open" base policy, split by "public" roads. Because many other facilities (e.g., universities or industrial complexes) are also located on large parcels of land divided by public or private right-of-ways, the proposed change was extended to hazardous waste generators and TSDFs in general.

EPA received extensive comment on the proposed modification to the definition of "on-site." These comments are discussed in more detail in the response to comments section below. While almost all commenters were supportive of the concept of allowing transportation without a manifest between contiguous properties controlled by the same person, a number of commenters raised questions related to the effect changing the definition of "on-site" would have on other issues such as the assigning of EPA Identification Numbers to generators, generator status, and other RCRA regulations and definitions. As stated in the proposal, the Agency did not intend to affect requirements other than those directly related to the manifest and transportation. See 60 FR 56483–56484 (November 8, 1995). In considering the original purpose of the proposed change to the definition of "on-site" and the complexity of the questions that were raised by commenters, the Agency has identified an alternative method of finalizing the requirements for transportation without a manifest between contiguous properties controlled by the same person, that avoids the concerns raised by commenters.

Therefore, the Agency is not finalizing the proposed modification of the definition of "on-site." Instead, the Agency is adding new § 262.20(f) to 40 CFR Part 262, subpart B to exempt from the manifest requirements shipments of hazardous waste on right-of-ways on or between contiguous properties and along the perimeter of contiguous properties controlled by the same person. This manifest exemption is applicable to all generators, both military and non-military. Section 262.20(f) also restates the exemption found in the current definition of "on-site," i.e., manifests are also not required for transport between non-contiguous property when the properties are owned and controlled by the same person, and connected by a right-of-way to which the public does not have access. The Agency is not changing regulations regarding transport on public roads between non-contiguous properties.

40 CFR Part 262, subpart B lays out the general manifesting requirements that apply to generators who transport, or offer for transportation, hazardous waste for off-site treatment, storage, or disposal. (Subpart B also contains an exemption for generators of 100–1000 kilograms of hazardous waste per month from all of the requirements of subpart B of Part 262 with respect to the Uniform Hazardous Waste Manifest, provided the waste is reclaimed under certain conditions. See 40 CFR 262.20(e).

New 40 CFR § 262.20(f) adds another exemption from the manifesting requirements, for the movement of hazardous waste on public roads within or along the border of contiguous property that is divided by a public or private right-of-way. Additionally, under 40 CFR 263.10(a), use of a transporter with a Hazardous Waste Identification number is not required for the movement of hazardous waste because of this manifest exemption. At the same time, the Agency recognizes that generators and TSDFs taking advantage of this exemption must be able to respond to an emergency should one occur during the movement of hazardous waste on public roads within, between, or bordering contiguous properties. As a result, under § 262.20(f), the Agency is specifying that the transporter requirements found at § 263.30 and § 263.31 concerning responding to discharges of hazardous waste on a public right-of-way will continue to apply to any discharge of hazardous waste on a public right-of-way.

Further, the Agency has established contingency and emergency response protocols that require facilities to be prepared for emergencies that occur on-site. 40 CFR 262.34(a)(4) requires large quantity generators to comply with the requirements for owners or operators found at 40 CFR part 265 subparts C (Preparedness and Prevention) and D (Contingency Plan and Emergency Procedures), with the requirements at § 265.16 for personnel training, and with the waste analysis plan requirements at 40 CFR 268.7(a)(4).

[6] The current definition is: "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property."

Similarly, small quantity generators are subject to reduced emergency preparedness, response, and reporting requirements that are laid out in § 262.34(d)(5) and are also subject to the preparedness and prevention requirements found at 40 CFR part 265, subpart C.

These contingency and emergency response protocols include measures that are designed to ensure that emergencies that take place are handled efficiently and effectively. They include the designation of an emergency coordinator who is accessible and who is knowledgeable about the operations and activities at the location and who can coordinate emergency response measures. These provisions also require that all employees at a site are familiar with the proper waste handling and emergency response procedures relevant to their responsibilities during normal facility operations and emergencies. Large quantity generators are responsible for developing a contingency plan that, among other things, must contain a description of emergency arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services. This plan must be reviewed and immediately amended under certain circumstances as specified in 40 CFR 265.54, including when the applicable regulations are revised and when the facility changes in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or changes the response necessary in an emergency. Additionally, should an emergency occur, the emergency coordinator must be able to assess any hazards from the release, and help appropriate officials decide whether local areas should be evacuated.

Generators taking advantage of the manifest exemption being finalized today must, therefore, consider how the emergency coordinator is to be kept informed of waste movement activities under the new circumstances involving shipments on public roads without a manifest, and how an emergency on a public road within, between, or on the perimeter of contiguous properties is to be managed so that it minimizes exposure to local areas surrounding the property.

Whether waste no longer subject to the manifest and transportation requirements described above is subject to Department of Transportation (DOT) hazardous material shipping requirements will depend on whether that material is regulated under any DOT hazard class other than materials classified by DOT as "hazardous waste." As mentioned in the proposed rule, the Hazardous Materials Regulations (HMR, 49 CFR parts 171–180) define a hazardous waste as any material that is subject to the Uniform Hazardous Waste Manifest Requirements of the EPA specified in 40 CFR part 262 [49 CFR 171.8]. If a material is not subject to EPA's RCRA manifest requirements, it is not considered a "hazardous waste" by DOT. However, such material is still regulated as a "hazardous material" and is subject to the HMR if it meets the defining criteria for one or more of the DOT hazard classes. Therefore, for these shipments on public right-of-ways, generators and/or TSDFs must decide if the waste falls under any of the other DOT hazard classes in order to determine if compliance with the DOT requirements under CFR parts 171–180 is required.

EPA believes that this exemption from the Uniform Hazardous Waste Manifest will result, on balance, in an increase in protection of human health and the environment. EPA believes that the current requirement that a manifest be completed and that a hazardous waste transporter be used to transport shipments between contiguous properties may be discouraging consolidation within a generator's or TSDF's site, resulting in more locations where potential exposure to hazardous waste exists and more expense by the generator or TSDF. Removing barriers to consolidation of waste in one central area should reduce the possibility that the public and the environment could come into contact with hazardous waste because one area is easier to control and can be better located than numerous smaller areas.

EPA also believes that facilitating central consolidation will allow generators and TSDFs to locate such consolidation sites in more remotely located areas or in areas allowing faster emergency response than they would if confined to the boundaries within right-of-ways, thereby increasing public safety should an accident occur. The new exemption at 40 CFR 262.20(f) gives generators and TSDFs such as military bases and universities more flexibility to determine where consolidation areas are situated. In addition, EPA believes, along with numerous commenters, that this exemption will have the added benefit of facilitating the building of safer accumulation areas because generators and TSDFs may be more likely with limited resources to exceed regulatory requirements for consolidation areas if they are responsible for fewer consolidation sites overall.

Since 40 CFR part 263, under § 263.10(a), only applies to transporters subject to a manifest under part 262, the persons transporting wastes under today's § 262.20(f) are exempt from part 263 (most notably from the § 263.11 requirement for a transporter identification number), except as discussed above, § 262.20(f) requires compliance with §§ 263.30 and 263.31 for immediate action in response to a discharge.

Today's rule also exempts the generator from § 262.32(b) for certain container marking requirements, but not from the DOT packaging, labeling, marking, or placarding requirements of §§ 262.30, 262.31, 262.32, and 262.33 because these public roads are still considered by EPA to be "off-site"; nor from the § 262.34(a)(2) and (3), (c)(1)(ii) and (2), (d)(4), and (e) container and tank labeling requirements. Section 262.34 regarding accumulation time is not affected by today's rule because the definition of "on-site" is not being changed. Section 262.40 regarding requirements to keep copies of manifests is not included in the rule because it is not applicable since the manifest is not required. The biennial report requirements in § 262.41 are likewise unchanged by today's rule.

EPA believes the totality of these changes regarding the applicability of the "manifest system" (when considered with the existing emergency prevention and response, etc. requirements, the continued applicability of §§ 263.30 and 263.31, the facilitated storage consolidations, the marking requirements in § 262.34, the continued applicability of the DOT hazardous materials standards, in most cases, and the fact that this transportation is on or along contiguous property controlled by the same person, as discussed above), are consistent with the directives in RCRA sections 3002(a) and 3003(a) that EPA establish regulations "as may be necessary" to protect human health and the environment.

Response to Comments

The Agency received numerous comments on the proposed redefinition of "on-site" in two main areas: (1) The proposed change to the basic definition of "on-site" and its impact on current hazardous waste management practices and (2) issues associated with Department of Transportation (DOT) and CERCLA protectiveness on public access roads separating a larger facility. EPA also requested comments on whether other requirements of the RCRA program would be affected by a redefinition of "on-site."

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 and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

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 Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), 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.

* * * * *

Military munitions means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military 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 DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.2 is amended by removing the period at the end of paragraph (a)(2)(iii) and adding a semicolon followed by "or"; and by adding new paragraph (a)(2)(iv) to read as follows:

§ 261.2 Definition of solid waste.

(a) * * *

(2) * * *

(iii) * * *; or

(iv) *A military munition* identified as a solid waste in 40 CFR 266.202.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 is revised to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. Section 262.10 is amended by adding, before the notes, new paragraph (i) to read as follows:

§ 262.10 Purpose, scope, and applicability.

* * * * *

(i) Persons responding to an explosives or munitions emergency in accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this part.

* * * * *

3. Section 262.20 is amended by adding new paragraph (f) to read as follows:

§ 262.20 General requirements.

* * * * *

(f) The requirements of this subpart and § 262.32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding 40 CFR 263.10(a), the generator or transporter must comply with the requirements for transporters set forth in 40 CFR 263.30 and 263.31 in the event of a discharge of hazardous waste on a public or private right-of-way.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

1. The authority citation for part 263 is revised to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937 and 6938.

2. Section 263.10 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 263.10 Scope.

* * * * *

(e) The regulations in this part do not apply to transportation during an explosives or munitions emergency response, conducted in accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii).

(f) Section 266.203 of this chapter identifies how the requirements of this part apply to military munitions classified as solid waste under 40 CFR 266.202.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.1 is amended by adding new paragraphs (g)(8)(i)(D), (g)(8)(iv), and (i) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(8) * * *

(i) * * *

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10.

* * * * *

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Cynthia Hilton, Executive Director
Association of Waste Hazardous Materials Transporters
2200 Mill Road
Alexandria, Virginia 22314

Dear Ms. Hilton:

Thank you for your letter of June 23, 1997 to Administrator Browner in which you point out an error that appeared in a recent EPA publication. The publication cited was the May, 1997 edition of "New Directions," which is a publication dedicated to reporting on the Environmental Protection Agency's (EPA's) Regulatory Reinvention Activities. On pp. 4-5 of the publication, there is an article which summarizes a number of reinvention efforts affecting EPA's hazardous waste requirements. One of the items discussed in the article is the new manifest exemption for shipments between sites on certain contiguous properties controlled by the same entity. This exemption was included in the February 12, 1997 Military Munitions Rule (62 FR 6622), and was intended to facilitate consolidation of wastes generated within the contiguous properties, under circumstances where the generator may need to move the wastes briefly across or along a public right-of-way to consolidate them. See 62 FR at 6645-46.

Unfortunately, the "New Directions" article interpreted the rule's new manifest exemption too broadly. As your letter indicates, the writer of the article suggests that this manifest exemption would relieve generators in these locations from "extensive tracking, packaging, labeling, marking, and placarding requirements." In fact, the rule does not extend to the DOT packaging, labeling, marking, or placarding requirements which are incorporated into EPA's regulations at 40 CFR §§ 262.30, 262.31, 262.32, and 262.33. This is clearly stated in the preamble (62 FR 6646). Thus, the DOT requirements for shipping papers, packaging, labeling, marking, and placarding remain applicable to hazardous waste shipments from these locations, except in those instances where DOT's hazardous materials coverage is dependent on the material being subject to the manifest. We believe that this exception is limited to hazardous waste shipments that consist solely of Class 9 hazardous materials in amounts less than their reportable quantities.

Please accept our thanks for pointing out this error to us. We regret any confusion or inconvenience spawned by the article, and we will advise the Regulatory Reinvention Team of the error, so that they can take appropriate action. If you have any other questions, please contact Michele Anders, Chief of the Generator and Recycling Branch, on (703) 308-8850.

Sincerely,

Elizabeth A. Cotsworth, Acting Director
Office of Solid Waste