

MEMORANDUM OF UNDERSTANDING
BETWEEN
3rd ORDNANCE BATTALION (EOD)
AND
THE STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

1. Parties

The parties to this Memorandum of Understanding (MOU) are 3rd Ordnance Battalion (EOD), 53rd Ordnance Company (EOD) and the 62nd Ordnance Company (EOD) (Department of Defense (DoD) military organizations located at Fort Lewis, Washington, Yakima, Washington and Tooele Army Depot, Utah respectively) and the State of Idaho Department of Environmental Quality (DEQ).

2. Background

a. The 53rd Ordnance Company (Explosive Ordnance Disposal) and the 62nd Ordnance Company (Explosive Ordnance Disposal)(53rd and 62nd EOD), a DoD Component military organization, has personnel specially trained to handle all types of explosives, including improvised explosive devices (IEDs). The 53rd and 62nd EOD provide a critical public service to the citizens of Idaho by conducting immediate responses to requests for assistance from law enforcement agencies and other entities to respond to emergencies involving explosive substances, such as explosive devices, military ordnance, and explosive chemicals. These situations call for immediate action to abate the safety threat by rendering the item(s) safe in place or removal to a safe location for item(s) to be disposed of. Any emergency response must be carried out in a manner that minimizes threats to public safety and maximizes the safety of the responder. To this end, DEQ recognizes the necessity for minimization of the overall duration of such operations.

b. U.S. EPA's Military Munitions Rule (MMR) (62 FR 6622, Feb. 12, 1997) makes it clear that EOD personnel engaged in an explosives or munitions emergency response are exempt from the generator, transporter, treatment, storage, and disposal unit requirements of the Solid Waste Disposal Act (42 USC Sec 6901, et seq.). The standards the MMR established govern this MOU, whether the Federal or state government is administering the MMR or the Solid Waste Act, in whole or part.

c. Except for providing temporary storage or treatment of explosives to provide emergency life saving assistance to civilian authorities or to assist law enforcement agencies per established agreements between DoD and the Federal agency concerned, the DoD is prohibited by law (10 USC 2692) from using DoD installations for the storage or treatment of non-DoD owned hazardous materials.

3. Purpose: This MOU, which addresses the roles and responsibilities of all parties regarding notification responsibilities during emergency response operations, is intended to:

- a. Minimize the risk to public safety from 53rd and 62nd EOD operations.

b. Maximize the efficiency, safety, and speed of any explosive treatment or retrieval operation.

c. Establish a framework for mutual assistance and consultation among the parties with respect to 53rd and 62nd EOD explosives or munitions emergency response operations.

4. Scope: This MOU applies to 53rd and 62nd EOD explosive or munitions response operations within the State of Idaho.

5. Definitions:

a. Explosives or Munitions Emergency. A situation, which involves the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, IEDs, post rendered-safe hazardous components, other potentially explosive material or devices, or other potentially harmful military munitions or devices, that creates an actual or potential imminent threat to human health, to include public safety, or the environment, to include property, as determined by an EOD specialist. The EOD specialist may determine that such situations require immediate and expeditious action to control, mitigate, or eliminate the threat.

b. Explosives or Munitions Emergency Response. All immediate response activities by an EOD response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosive or munitions emergency. An explosives or munitions emergency response may include in-place render safe procedures, treatment or destruction of the explosives or munitions or the transport of the items to another location to be destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance does not terminate the explosives or munitions emergency response. Explosives or munitions emergency response can occur on either private or public lands and are not limited to responses to RCRA facilities.

The State of Idaho Incident Response levels are assigned through State-Com IAW the Idaho Hazardous Materials Incident Command and Response Support Plan and are different from the Military Munitions Rule Incident Response levels as listed below:

(1) **State of Idaho Incident Level 1 Response.** An incident involving any, public or private sector, response to hazardous materials that can be contained, extinguished, and/or abated using resources immediately available to the responders having jurisdiction. A weapons of mass destruction threat or suspicion that requires local response to determine whether or not it is life threatening. A Level 1 incident presents little risk to the environment and/or public health with containment and clean up.

(2) **State of Idaho Incident Level 2 Response.** An incident involving hazardous materials that is beyond the capabilities of the first responders on the scene and may be beyond the capabilities of the public sector response agency having jurisdiction. Level 2 incidents may require the services of a State of Idaho Regional Response Team, or other state/federal assistance. A weapons of mass destruction threat or incident that involves explosives, release of toxic material, release of radioactive material or release of organisms that can be analyzed and stabilized using resources that exist within the State

of Idaho. This level may pose immediate and/or long-term risk to the environment and/or public health and could result in a local declaration of disaster.

(3) **State of Idaho Incident Level 3 Response.** An incident involving weapons of mass destruction/hazardous materials that will require multiple State of Idaho Regional Response Teams and other resources that do not exist within the State of Idaho. These incidents may require resources from state and federal agencies and/or private industry. Level 3 incidents generally pose extreme, immediate and/or long-term risk to the environment and/or public health.

(4) **Military Munitions Rule Level 1 Response.** Immediate response to situations where explosives or munitions are not properly secured or under military control if military munitions and thus threaten or potentially threaten human health and safety, the environment, or property. When extenuating circumstances exist, e.g., adverse weather, nightfall, or safety considerations, delay actions necessary to terminate an explosives or munitions emergency, the response will be delayed until the necessary action(s) can be accomplished. EOD personnel must ensure explosives or munitions are in a safe and secure environment.

(5) **Military Munitions Rule Level 2 Response.** Response actions to situations involving explosives or munitions which pose an imminent and substantial danger to human health and safety, the environment, or property, but for which response actions may be temporarily delayed without compromising safety or increasing risk. When EOD is not required during a Level 2 response, qualified personnel, such as weapons officers, ammunition handlers, and trained and certified DoD contractors may conduct Level 2 responses, or as directed. In such cases, time may allow for an emergency permit to be obtained. The parties acknowledge that explosives or munitions emergencies present unique facts and circumstances and must therefore be evaluated case-by-case. In the absence of full and complete information, which frequently occurs when notice of an explosive or munitions emergency is received and first responded to, emergency response specialists, based on their knowledge, training, and experience, must use their best judgment in assessing risk. It is therefore to be expected that as the response to an explosive or munitions emergency progresses, a Level 1 response may become a Level 2 response and vice versa.

Note: When extenuating circumstances exist, i.e., adverse weather, nightfall, or safety considerations, delay actions necessary to terminate an explosives or munitions emergency, the response will be delayed until the necessary action(s) can be accomplished.

c. **Explosive or Munitions Emergency Response Specialist.** An individual trained in the identification, handling, treatment, transportation, and destruction of explosives or chemical and conventional munitions. Explosive or munitions emergency response specialist include DoD EOD personnel who are trained to respond to emergency situations involving military munitions and explosives. 53rd or 62nd EOD personnel respond to off-installation incidents involving military munitions. 53rd or 62nd EOD personnel respond to incidents involving non-military explosives with 3rd Ordnance Battalion (EOD) commander approval or designee's approval.

d. Military Munitions. According to 40 CFR § 260.10, all ammunition products and components produced or used by or for DoD 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, and National Guard personnel. The term military munitions:

(1) 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 any components of such.

(2) Does not include: wholly inert items, improvised explosive devices, and nuclear weapons, devices, and components of such. (However, it 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.)

e. 53rd or 62nd EOD response in the public sector is a response to an event that occurs outside of a military installation.

6. Rules of Engagement:

a. The 53rd or 62nd EOD will respond to civilian requests for assistance for incidents occurring within the counties delineated on Attachment 1, 53rd and 62nd EOD Areas of Responsibility, provided sufficient manpower is available.

b. Incidents requiring assistance outside the primary areas of responsibility, in which the USA can not provide assistance, will be handled on a case-by-case basis.

7. Roles and Responsibilities:

a. The 3rd Ordnance Battalion (EOD) commander or designee is responsible for:

(1) Authorizing emergency response by military personnel to civil authorities.

(2) Ensuring consideration is given to military readiness before granting support to civil authorities by military personnel.

(3) Providing, consistent with the 53rd or 62nd EOD training and military mission requirements, explosives or munitions emergency response or EOD technical support to other Federal agencies and civil authorities, as requested.

(4) Ensuring compliance with the provisions of 10 Usc 2692, which prohibits bringing non-DoD owned hazardous materials onto DoD installations, except under certain circumstances.

(5) Providing a telephone point of contact for explosives or munitions emergency response or EOD technical support to civil authorities.

(6) Providing information relating to the emergency response necessary for civil authorities to complete post-incident reports, conduct investigations, and other requirements.

(7) Ensuring incident information for civil authority incident reports supporting litigation, are released in compliance with national security, and Freedom of Information Act requirements.

(8) Ensuring explosive or munitions emergency response records are kept for at least three (3) years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

b. Agencies requesting assistance are responsible for:

(1) Contacting the Idaho State Communications Center (State-Com), upon identification of an emergency, regarding emergency notification requirements.

(2) Having State-Com contact the 53rd or 62nd EOD, (208) 828-5800, for emergency response to discovered military munitions.

(3) Requesting EOD emergency response support for explosive incidents other- than military munitions from the 53rd or 62nd EOD, (208) 828-5800 via State-Com.

(4) Providing support and security to the site as requested by 53rd or 62nd EOD

(5) Requesting DEQ authorization through State-Com, 1-800-632-8000, when a response involving non-military munitions or explosives is required.

(6) Ensuring site and residual contamination remediation at the emergency response site, if the object of the emergency response is a non-military explosive or munitions.

(Note: The 53rd or 62nd EOD responding to an explosives or munitions emergency or providing a donor explosive used to destroy the object is not, under any condition or circumstances, responsible for remediation actions. If the objective of the emergency response is a military munition, then DoD, the military service, or other Federal agency (e.g., DoE) retains responsibility for any remediation of residual contamination.)

(7) Requesting incident information from the 53rd or 62nd EOD, as necessary, to complete the required reports.

(8) Completing reports and notifications required by the State of Idaho.

c. Idaho Department of Environmental Quality is responsible for:

(1) Providing a telephone point of contact for emergency response calls through State-Com, 1-800-632-8000.

(2) Issuing verbal emergency authorizations that may be required.

(3) Expediting issuance of records of authorizations through State-Com.

8. Response Procedure: In conducting emergency responses pursuant to this MOU, the 53rd and 62nd EOD shall meet the following requirements:

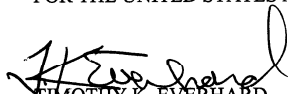
a. The 53rd and 62nd EOD, or the party requesting assistance during an incident, will activate Idaho's Emergency Communication System, State-Com, 1-800 632-8000.

b. A conference call including State-Com, the Incident Commander, 53rd or 62nd EOD, DEQ Communications Moderator, Bureau of Hazardous Materials and other appropriate parties will be immediately scheduled to determine the appropriate action. If deemed necessary, the DEQ Communications Moderator will provide immediate verbal approval to the 53rd or 62nd EOD to treat or detonate explosive devices and/or explosive chemicals. The verbal approval will be documented in writing by State-Com through its Incident Report no later than 5 days following the incident.

c. The DEQ Communications Moderator's verbal approval will be documented through specific notation in the State-Com Incident Report which will constitute written emergency authorization and will be issued to EOD via facsimile within 24 hours of the incident.

9. Duration/Amendment/Withdrawal. This MOU will remain in effect until amended or terminated by mutual agreement of the parties. Any party may withdraw from the MOU upon 60-days written notice to the other party. The signatories below represent the Agency involved; therefore, re-negotiation and signature upon change of a signatory is not required.

FOR THE UNITED STATES ARMY, 3rd Ordnance Battalion (EOD)


TIMOTHY K. EVERHARD

LTC, OD
Commanding

This 25th day of May 2004

DEPARTMENT OF ENVIRONMENTAL QUALITY



STEVE ALLRED
Department of Environmental Quality
Director



This 18th day of June 2004

Chief of Staff

53rd and 62nd Ordnance Company (EOD) Response area.

Attachment 1

