

Open Burning/Open Detonation of Waste Explosives Under the Resource Conservation and Recovery Act: U.S. Environmental Protection Agency Issues Guidance



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The United States Environmental Protection Agency (“EPA”) issued a June 7th guidance document titled: *Open Burning and Open Detonation (OB/OD) of Waste Explosives Under the Resource Conservation and Recovery Act (RCRA) (“Guidance”)*

The *Guidance* is transmitted from Carolyn Hoskinson, Director, EPA Office of Resource Conservation and Recovery to EPA Land, Chemicals, and Redevelopment Division Directors, Regions 1-10.

The *Guidance* describes its purpose is to:

. . . communicate existing requirements and provide guidance to EPA Regions, states, and territories for permitting open burning/open detonation (OB/OD) units under the Resource Conservation and Recovery Act (RCRA) to protect human health and the environment.

EPA banned open burning (including open detonation) of hazardous waste in 1980 with one exception. The federal agency allowed OB/OD for waste explosives which could not be safely disposed of through other modes of treatment.

In 1987 permitting standards for a broad category of waste management units that included OB/OD units were finalized. See 52 Fed. Reg. 46946. Such standards were placed in 40 C.F.R. Part 64 Subpart X-Miscellaneous Units.

Miscellaneous units permitted under Subpart X are subject to general performance standards as opposed to technical performance standards. This is due to the fact a single set of technical standards may not be suitable for diverse types of miscellaneous units. The miscellaneous unit:

. . . must be located, designed, constructed, operated, maintained, enclosed in a manner that will ensure protection of the human health and environment.

The June 7th *Guidance* issued notes as an initial matter that:

- Regions, states, and territories must not permit OB/OD units that do not meet existing requirements
- Permitting authorities should consider the *Guidance* before permitting OB/OD units

Additional initial statements described as “Key Points” in the *Guidance* include:

- In 1980, EPA prohibited OB/OD of hazardous waste due to the potential risks to human health and the environment. EPA allowed one exception for OB/OD to treat waste explosives with no safe mode of treatment.
- In 2019, EPA and the National Academies of Sciences, Engineering, and Medicine (NASEM) published separate reports that document safe alternatives are available for managing many waste explosives. This memorandum responds to questions on how to apply the existing requirements, in light of this information.
- Under the existing requirements, OB/OD facilities must evaluate—and re-evaluate—whether safe alternative technologies are available to treat their waste explosives. Where safe alternatives are available, facilities must use those alternatives in lieu of OB/OD.
- EPA acknowledges that OB/OD will still be needed to treat waste explosives that do not yet have other safe modes of treatment. Where OB/OD is needed, EPA is providing guidance regarding recommended permit conditions for OB/OD units to reduce impacts to human health and the environment.
- EPA acknowledges that implementation may be complex; EPA encourages communication among EPA, states, territories, tribes, local communities, and facility owners with respect to site-specific permitting decisions to ensure protection of human health and the environment.

The remainder of the *Guidance* contains the following components:

- OB/OD Impacts on Communities and Need for Community Engagement
- Background of Regulatory Requirements
- Overview of OB/OD and Development of Alternative Technologies
- Existing Requirements for Permitting OB/OD Units
- EPA Guidance for Permitting OB/OD Units
- Priorities and Overview
- Alternative Technology Evaluations and Waste Characterization
- Limiting Treatment by OB/OD
- Engineering Controls
- Monitoring and Recording
- Community Engagement

A copy of the *Guidance* can be downloaded [here](#).