

**Munitions Response Committee
Charter
(DoD-USEPA-FLMs-American Indians and Alaska Natives-States)**

Operating within the framework of Federal, Tribal, and State authorities, the Committee will coordinate, identify, and synchronize efforts among the Department of Defense (DoD), the U.S. Environmental Protection Agency (USEPA), American Indians and Alaska Natives, the Federal Land Managers, and the States to ensure munitions responses for locations on other than operational ranges are conducted in a manner that protects public health and the environment while allowing the DoD to fulfill its mission.

The Committee will strive to achieve consensus on processes and positions through the development of white papers that will in-turn assist in the development of policy and guidance that promotes munitions response program accomplishment (e.g., acreage made available for its current or an appropriate end-use). To this end, the Committee has already developed a collaborative (mutual agreement) decision-making process for use at critical munitions response decision points (see Attachment B).

Participation: (see attachment A)

- American Indians and Alaska Natives
- State Governments
- US Environmental Protection Agency
- Department of Defense & the Military Services (collectively 'DoD')
- US Department of the Interior and the US Department of Agriculture (collectively, the Federal Land Managers or FLMs)

Desired Outcomes:

- Collaborative decision-making processes that are acceptable to all participants. When agreed to, these collaborative processes will:
 - Afford, subject to the processes developed for dispute resolution, reservation of rights and the legal authorities of the DoD, USEPA, Federal Land Managers, American Indians and Alaska Natives, and States the opportunity to achieve mutual agreement on the adequacy of munitions response actions.
 - Be endorsed for universal adoption by the organizations represented on this Committee.
- Ensure protectiveness of munitions response actions
 - Protect response personnel, the public, and the environment from explosives hazards and other risks during munitions response actions
 - Ensure safe cleanup levels for public health and environment
 - Develop methods that address —
 - DoD's continuing commitment -- A commitment to protect public health and the environment, and DoD personnel, from the hazards

- associated with munitions and explosives of concern, and munitions constituents, at a munitions response site
- Land use controls -- Physical, legal or administrative mechanisms that restrict the use of, or limit access to, real property
 - Consideration of future land use in the development and implementation of a munitions response action
- Promote consistency in munitions response actions across the organizations represented on this Committee regarding:
 - Procedures and methods for defense site investigation and subsequent munitions response actions
 - Methods for prioritizing munitions response actions
 - Address complexity and scope of cleanup challenges
 - Encourage the development of policy and technical guidance to benchmark and continuously improve munitions response actions
 - Foster development, validation and use of improved technologies
 - Seek adequate funding to ensure the protectiveness of munitions response actions
 - Provide munitions response lessons learned to appropriate forums for consideration

Measuring Committee Accomplishment and Conclusion

- The Committee will measure its collective accomplishments using the procedures outlined in Attachment C.
- The parties will decide at a mutually agreed time on whether to conclude or refocus the Committee as a forum for continued dialogue

Attachment A

Munitions Response Committee Participation¹

American Indians and Alaska Natives:

- Affected and Interested Tribes (3)
 - Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
 - Pueblo of Laguna, New Mexico
 - Wampanoag Tribe, Massachusetts

- National Congress of American Indians (NCAI) (1 as a consultant to help facilitate information flow)²
- Bureau of Indian Affairs (BIA) (TBD)³ (responsible for dissemination of information to American Indians and Alaska Natives in general)

State Government:

Association of State and Territorial Solid Waste Management Officials (ASTSWMO) (5)⁴ ⁵ (State managers responsible for policy development and implementation. The ASTSWMO Federal Facility Research Sub-committee members and a limited number of support States will draft policy and process for review and comment of all state members.)

- Chair, ASTSWMO Federal Facilities Research Subcommittee
- Chair, ASTSWMO Current Issues Focus Group
- Chair, ASTSWMO Base Closure Focus Group
- Member, ASTSWMO Current Issues Focus Group
- ASTSWMO Staff Coordinator

¹ This Charter is consistent with 2 USC §1534 which requires development of “an effective process to permit elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates). This is part of the Unfunded Mandates Reform Act of 1995. ASTSWMO and NAAG representatives are aware of the requirement.

² Clarification required if the NCAI person is a member – or serves as consultant support – to be consistent with footnote 3.

³ BIA membership contingent on future discussions with BIA and affected tribes.

⁴ Commissioner level oversight, representatives will report actions, progress, and challenges back to ECOS-DoD Forum.

⁵ Provides interface with ITRC for a forum for developing technical guidance, training, and support

- National Association of Attorneys General (NAAG) (3) (responsible for legal representation and counsel to States.)
 - Legal Counsel (2)
 - Staff Coordinator (1)

United States Environmental Protection Agency (USEPA):

- Office of Solid Waste and Emergency Response - Federal Facilities Restoration and Reuse Office (1) ~ *USEPA Co-Chair*
- Office of Enforcement and Compliance Assurance - Federal Facilities Enforcement Office (1)
- Regional Office Representatives (2)

Department of Defense:

- Office of the Secretary of Defense (OSD) (3)
 - Office of the Assistant Deputy Under Secretary of Defense (Environment) OADUSD(E)/EM (2) ~ includes *DoD Co-Chair*
 - Department of Defense Explosives Safety Board (DDESB) representative (1)
 - Operational and Environmental Executive Steering Committee for Munitions (OEESCM) participation will be staffed through Service representation
 - Office of General Counsel (Environment and Installations) Legal Representative
 - Army (3) ~ Secretariat, Army Staff, US Army Corps of Engineers
 - Navy (3) ~ Secretariat, Navy Staff, Marine Corps Staff
 - Air Force (3) ~ Secretariat, Air Staff, Air Force Real Property Management Agency (AFRPA)

Federal Land Managers:

- United States Department of the Interior (4)
 - Office of the Solicitor
 - Bureau of Land Management
 - U.S. Fish and Wildlife Service
 - Bureau of Indian Affairs
- United States Department of Agriculture (2)
 - Hazardous Materials Management Group
 - General Counsel

Attachment B
Collaborative Decision Making
(Mutual Agreement Process)

The Federal Land Managers, and States, American Indians and Alaska Natives and various Federal agencies (including the Department of Defense (DoD), the U.S. Environmental Protection Agency (USEPA)) have the shared goal of reducing the risks at munitions response areas and munitions response sites. These organizations recognize that there are differing views of each organizations' respective authorities regarding munitions responses. Also, they recognize that resolving these differing views through litigation is costly, time-consuming and diverts resources. The organizations agree instead to develop and use a collaborative decision-making (CDM) process for munitions responses to obtain mutual agreement at critical decision points. The CDM process will:

- Outline an integrated, coordinated approach for planning and conducting munitions response actions
- Identify key decision points in the munitions response process
- Use a process based on mutual agreement
- Describe a tiered partnering (dispute resolution) process for resolving conflicts.

Memorialization of CDM Process

After the MRC has reached agreement on the CDM process, the MRC parties will memorialize the agreement in the following manner:

- DoD will issue implementing guidance (e.g., directive, instruction, joint Service instructions) that sets forth the CDM process.
- State MRC members will seek to have their respective state organizations (i.e., ECOS, NAAG, ASTSWMO) adopt resolutions endorsing the CDM process.
- DoD may publish a Federal Register Notice that sets forth the CDM process; DoD will seek to jointly publish the CDM process with USEPA and the Federal Land Managers.
- USEPA will include the CDM Process in its guidelines concerning munitions response.

Mutual Agreement

Mutual agreement at critical decision points throughout the munitions response process is essential. Examples of critical decision points include:

- Site determination,
- Removal/Remedial Action determination,
- Removal/Remedial Investigation work plan development,

- Remedy selection, and
- Completion of response action activities.

“Mutual Agreement” is defined as “a meeting of the minds on a specific subject, and a manifestation of intent of the parties to do or refrain from doing some specific act or acts.” Inherent in any mutual agreement or collaborative process are the acknowledgement of each member’s role in the process and their differing views of their authorities. The mutual agreement process will provide a means of resolving differences without denying the parties an opportunity to exercise their respective authorities should mutual agreement fail to be achieved.

Tiered Partnering (Dispute Resolution) and Reservation of Rights

The purpose of the tiered partnering (dispute resolution) process is to resolve disputes at the lowest possible level of authority as expeditiously as possible. In the absence of a site-specific agreement providing for dispute resolution, this is normally accomplished through an informal process.

When the on-site project managers are unable to reach agreement at a critical decision point, within 10 working days of such failure to agree, they will refer the matter in writing to the appropriate mid-level managers.

Should the appropriate mid-level managers be unable to reach agreement, within 10 working days of such failure to agree, they shall refer the matter to the appropriate Military Department Deputy Assistant Secretary and appropriate senior management (such as the state agency/department head) for resolution.

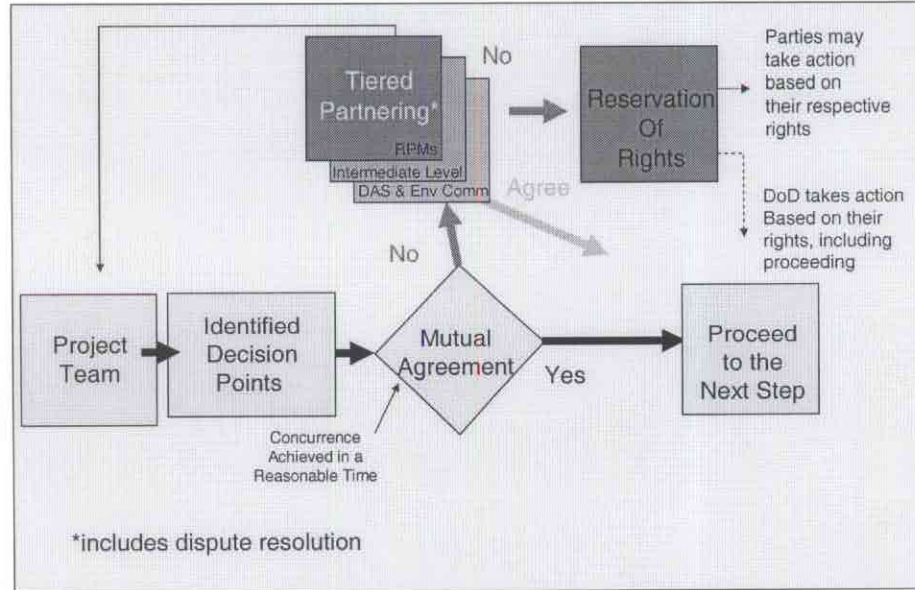
If the Military Department Deputy Assistant Secretary and the appropriate senior management (such as the state agency/department head) are unable to resolve the dispute, pursuant to the dispute resolution process, each party reserves its rights to assert any claims or defenses it may have, and to take any administrative or judicial action within its authority.

Agreements

The MRC:

- Understands that DoD has a strong preference for using the CDM process as a means to mitigate the desire for state-wide or site-specific agreements. It also recognizes that some states, tribes, Federal Land Managers, and USEPA may nonetheless desire such agreements due to legal constraints or policy preferences. In such cases, the Military Departments retain the discretion to enter into such agreements whenever they deem it appropriate to do so.
- Understands that where all parties agree that a state-wide or site-specific agreement entered into under each party's respective authorities is necessary, the agreement shall include concepts similar to those described in the CDM process regarding dispute resolution and reservation of rights.
- Understands that the mutual agreement process does not supercede these agreements.

Process-Flow Diagram



Attachment C
Measuring Accomplishment

The Committee will measure its collective accomplishments using the following procedures:

- a. The Roles and Responsibilities Matrix will be used as a general reference tool to highlight areas of discussion requiring resolution.
- b. Areas requiring resolution will be discussed and a consensus position developed through collaboration on specific “white papers.”
- c. Upon achieving a consensus position, the Roles and Responsibilities Matrix will be revised to reflect the new agreement.
- d. The Charter and the consensus positions attained in the “white papers” will be a benchmark for all parties to generate their implementing guidance, policies, and procedures.