

# **Construction Support as An Element of a Formerly Used Defense Sites (FUDS) Response Action**

## **Introduction**

This factsheet provides project teams and the public with an overview of construction support and describes the circumstances under which DoD may include construction support as a component of a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) response action. Under the Defense Environmental Restoration Program (DERP), DoD can provide construction support as a mitigation measure to reduce the risk of encountering known or suspected Munitions and Explosives of Concern (MEC)<sup>1</sup> on a property. DoD determines the need for construction support based on site-specific data and response activities. DoD must follow the CERCLA process which requires documenting construction support as a component of a remedial alternative during the Feasibility Study (FS). When selected as a response action, the project team must appropriately identify construction support activities in the Record of Decision (ROD).

## **Background**

DoD conducts live-fire training and testing on operational ranges at military installations throughout the United States to ensure force readiness in support of our nation's defense. Over time and after range closure, DoD removed munitions using the best available technology at that time and transferred some of these lands for public or private use. Given the limits of technology, some of these lands may still contain MEC. More information about DoD's past use of these properties is available on DoD's Military Munitions Response Program's website at <https://www.denix.osd.mil/mmrp/>. Many of these lands were transferred prior to 1986 and are known as Formerly Used Defense Sites (FUDS). Additional information about FUDS is available at <https://www.usace.army.mil/missions/environmental/formerly-used-defense-sites/>.

## **CERCLA Process**

DoD conducts cleanup of munitions (e.g., investigation, removal, long-term management) within the CERCLA statutory and regulatory process. Under CERCLA, DoD coordinates with the U.S. Environmental Protection Agency and State regulators to protect human health and the environment from the unacceptable risk associated with munitions due to DoD's past use of the land.

DoD has made progress improving cleanup technologies and processes. DoD's cleanup process mitigates the explosive risk associated with former use of military munitions on a property in consideration of the property's current or reasonably anticipated land use. DoD is able to design and implement a cleanup that minimizes the risk, with a high level of certainty, to property owners and people who use the land. However, depending on site conditions, it may not be feasible to remove all MEC items left behind from DoD's munitions use. In cases where all MEC cannot be removed, DoD may implement other measures to mitigate the risk (e.g., land

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<sup>1</sup> MEC distinguishes specific categories of military munitions that may pose unique explosives safety risks, such as unexploded ordnance (UXO), discarded military munitions, and munitions constituents, present in high enough concentrations to pose an explosive hazard.

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use controls (LUCs)). DoD may add construction support to a CERCLA response action as an additional risk mitigation measure based on site-specific circumstances.

### **What is Construction Support?**

Construction support is assistance provided by qualified personnel<sup>2</sup> during intrusive activities on property in areas known or reasonably suspected to contain MEC. Construction support assists in protecting personnel or resources from explosive hazards through removal of encountered munitions from the footprint of the planned ground-disturbing activity.

### **Construction Support under CERCLA**

Construction support is a remedial component that DoD can perform under the DERP when consistent with CERCLA. For DoD to provide construction support, it must be included as part of a selected response action under the CERCLA process. DoD bases the need for construction support on the property's current or reasonably anticipated land use. As such, construction support activities may vary within a property, as site-specific conditions may alter which response actions would be most effective. The project team, with input from DoD subject matter experts and safety officials, will collaborate with regulators and affected stakeholders to assess construction support as a component of a remedial alternative during the Feasibility Study. DoD will also seek public input on the proposed remedy during the proposed plan public review comment period. DoD does not provide construction support outside of the cleanup program at FUDS properties.

The requirement and conditions for providing construction support must be included as part of the ROD based on the data and analysis provided in the Remedial Investigation/FS phase. The selected response action may include construction support in areas where currently documented or reasonably anticipated future land uses presenting an unacceptable risk will take place. Construction support as part of a selected response action will be conducted under an approved Explosive Safety Submission. The project team must plan construction support in advance and cannot provide it on an "as needed" or "on call" basis.

The CERCLA response action documented in the ROD will not always include construction support. However, if information becomes available or unknown site conditions arise presenting an unacceptable risk, DoD will re-evaluate the need for construction support with regulatory and stakeholder input. An example of this situation would be a maintenance worker encountering MEC in a new or unexpected location. The re-evaluation for construction support may occur during the 5-year review, if such reviews are required by statute or policy.

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<sup>2</sup> Personnel includes DoD explosive ordnance disposal or UXO-qualified personnel.

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### Construction Support as An Element of a Response Action

When the site remedy includes construction support, the ROD must outline the site-specific activities that would require construction support, and the process and schedule for implementing the support.

Construction support activities would include qualified personnel removing encountered munitions from the footprint of the planned ground-disturbing activity. Site-specific conditions inform the construction support activities to be provided, including whether there is:

- Flexibility in the ground-disturbing activity's location;
- Potential interaction with MEC through ground-disturbing activity; and
- An obstruction (e.g., power lines, water tanks, roadbeds) preventing access to an area known or suspected to contain MEC.

### Conclusion

The U.S. Army and the DoD are dedicated to protecting human health and the environment by investigating and as required, addressing potential MEC, including implementing measures to mitigate potential unacceptable risks that may remain on these properties from past DoD activities.

Follow the 3Rs of Explosives Safety if you suspect you may have come across a military munition.



Recognize – when you may have encountered a munition, and that munitions are dangerous.

Retreat – do not approach, touch, move, or disturb it, but carefully leave the area.

Report – call 911 and advise the police of what you saw and where you saw it.