**Section 726.305 Standards Applicable to the Storage of Solid Waste Military Munitions**

a) Criteria for Hazardous Waste Regulation of Waste Non-Chemical Military Munitions in Storage

1) Waste military munitions in storage that exhibit a hazardous waste characteristic or are listed as hazardous waste under 35 Ill. Adm. Code 721 are listed or identified as a hazardous waste (and thus are subject to regulation under 35 Ill. Adm. Code 702, 703, 705, 720 through 728, 733, 738, and 739), unless all the following conditions are met:

A) The waste military munitions are not chemical agents or chemical munitions;

B) The waste military munitions must be subject to the jurisdiction of the Department of Defense Explosives Safety Board (DDESB);

C) The waste military munitions must be stored in accordance with the DDESB storage standards applicable to waste military munitions;

D) Within 90 days of when a storage unit is first used to store waste military munitions, the owner or operator must notify the Agency of the location of any waste storage unit used to store waste military munitions for which the conditional exemption in subsection (a)(1) is claimed;

E) The owner or operator must provide oral notice to the Agency within 24 hours from the time the owner or operator becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of subsection (a)(1) that may endanger health or the environment. In addition, a written submission describing the circumstances must be provided within five days from the time the owner or operator becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of subsection (a)(1);

F) The owner or operator must inventory the waste military munitions at least annually, must inspect the waste military munitions at least quarterly for compliance with the conditions of subsection (a)(1), and must maintain records of the findings of these inventories and inspections for at least three years; and

G) Access to the stored waste military munitions must be limited to appropriately trained and authorized personnel.

2) The conditional exemption in subsection (a)(1) from regulation as hazardous waste must apply only to the storage of non-chemical waste military munitions. It does not affect the regulatory status of waste military munitions as hazardous wastes with regard to transportation, treatment or disposal.

3) The conditional exemption in subsection (a)(1) applies only so long as all of the conditions in subsection (a)(1) are met.

b) Notice of Termination of Waste Storage. The owner or operator must notify the Agency when a storage unit identified in subsection (a)(1)(D) will no longer be used to store waste military munitions.

c) Reinstatement of Conditional Exemption

1) If any waste military munition loses its conditional exemption under subsection (a)(1), an application may be filed with the Agency for reinstatement of the conditional exemption from hazardous waste storage regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of subsection (a)(1).

2) If the Agency finds that reinstatement of the conditional exemption is appropriate, it must reinstate the conditional exemption of subsection (a)(1) in writing. The Agency's decision to reinstate or not to reinstate the conditional exemption must be based on two considerations: first, the nature of the risks to human health and the environment posed by the waste; and second, either the owner's or operator's provision of a satisfactory explanation of the circumstances of the violation or any demonstration that the violations are not likely to recur. If the Agency denies an application, it must transmit to the applicant specific, detailed statements in writing as to the reasons it denied the application. In reinstating the conditional exemption under subsection (a)(1), the Agency may specify additional conditions as are necessary to ensure and document proper storage to adequately protect human health and the environment.

3) The Agency may terminate a conditional exemption reinstated by default under subsection (c)(2) in writing if it finds that reinstatement is inappropriate based on its consideration of the factors set forth in subsection (c)(2). If the Agency terminates a reinstated exemption, it must transmit to the applicant specific, detailed statements in writing as to the reasons it terminated the reinstated exemption.

4) The applicant under this subsection (c) may appeal the Agency's determination to deny the reinstatement, to grant the reinstatement with conditions, or to terminate a reinstatement before the Board under Section 40 of the Act.

d) Waste Chemical Munitions

1) Waste military munitions are subject to the applicable regulatory requirements of RCRA subtitle C if the munitions satisfy two conditions: first, they are chemical agents or chemical munitions; and second, they exhibit a hazardous waste characteristic or are listed as hazardous waste under 35 Ill. Adm. Code 721.

2) Waste military munitions are not subject to the storage prohibition in RCRA section 3004(j), codified at 35 Ill. Adm. Code 728.150, if the munitions satisfy two conditions: first, they are chemical agents or chemical munitions; and second, they exhibit a hazardous waste characteristic or are listed as hazardous waste under 35 Ill. Adm. Code 721.

e) Amendments to DDESB Storage Standards. The DDESB storage standards applicable to waste military munitions, referenced in subsection (a)(1)(C), are DESR 6055.09D ("Defense Explosives Safety Regulation 6055.09, Edition 1"), in effect on January 13, 2019, incorporated by reference in 35 Ill. Adm. Code 720.111.

BOARD NOTE: Corresponding federal provision 40 CFR 266.205(e), as added at 62 Fed. Reg. 6656 (Feb. 12, 1997), further provides as follows: "Any amendments to the DDESB storage standards must become effective for purposes of paragraph (a)(1) of this section on the date the Department of Defense publishes notice in the Federal Register that the DDESB standards referenced in paragraph (a)(1) of this section have been amended." Section 5-75 of the Illinois Administrative Procedure Act [5 ILCS 100/5-75] prohibits the incorporation of later amendments and editions by reference. For this reason, interested members of the regulated community will need to notify the Board of any amendments of these references before those amendments can become effective under Illinois law.

(Source: Amended at 44 Ill. Reg. 15427, effective September 3, 2020)