

Chapter I: Environmental and Regulatory Concerns at the Shooting Range

1.0 Background

Outdoor shooting ranges provide recreational facilities for millions of shooting sports enthusiasts in the United States. Recently, there has been a growing public concern about the potential negative environmental and health effects of range operations. In particular, the public is concerned about potential risks associated with the historical and continued use of lead shot and bullets at outdoor ranges.

This concern is not unfounded. An estimated 9,000 non-military outdoor ranges exist in the United States, collectively shooting millions of pounds of lead annually. Some ranges have operated for as long as several generations. Historical operations at ranges involved leaving expended lead bullets and shot uncollected on ranges. Many of these ranges continue to operate in the same manner as in the past.

It is estimated that approximately four percent (4%) (80,000 tons/year) of all the lead produced in the United States in the late 1990's (about 2 million tons/year), is made into bullets and shot. Taking into account rounds used off-range, and rounds used at indoor ranges, it is clear that much of this 160,000,000 pounds of lead shot/bullets finds its way into the environment at ranges.

Since the mid-1980's, citizen groups have brought several lawsuits against range owners and have urged federal and state agencies to take action against owners and operators of outdoor shooting ranges. The citizen groups argued that range owners improperly managed discharged lead bullets and shot. Federal courts have supported parts of these suits, requiring range owners/operators to clean up lead-contaminated areas. Concurrent with the increased citizen suit activity, the federal EPA, and the Centers for Disease Control and

Prevention (CDCP), and a large number of states have identified human exposure to all forms of lead as a major health concern in the United States.

Lead management practices at ranges across the United States remain inconsistent. Some range owners/operators have examined the impact of range operations on human health and the environment and have implemented procedures to manage and/or remove accumulated lead from ranges. Other range owners/operators are just beginning to characterize and investigate their ranges in order to design an environmental risk prevention and/or remediation program(s) specific to their sites. A third group of ranges has adopted a "wait and see" policy – taking no action until specifically required to do so by law or clear guidance is in place. Finally, a fourth, small, but important group of range owners/operators remain unaware of lead's potential to harm human health and the environment, and of existing federal and state laws.

To manage lead, many owners and operators have successfully implemented Best Management Practices (BMPs) at their ranges. These range owners and operators have realized many benefits from sound lead management including:

- stewardship of the environment, natural resources and wildlife,
- improved community relations,
- improved aesthetics of the range/good business practices,
- increased profitability through recovery/recycling lead, a valuable and finite resource, and
- reduced public scrutiny.

Shooting sport organizations [e.g., National Rifle Association (NRA) and the National Shooting Sports Foundation (NSSF)] promote lead management throughout the United States. These organizations have researched different methods to effectively address potential and actual lead mobility and exposure without detracting from the enjoyment of the sport. The NRA and NSSF strongly encourage range

owners/operators to develop a BMP program that contains elements discussed later in this manual. Contact the NRA and NSSF for additional guidance materials available on lead management practices.

By implementing appropriate lead management at outdoor shooting ranges, range owners and operators can reduce the environmental and health risks associated with lead deposition, meet legal requirements and realize quantifiable benefits.

1.1 Lead Contamination's Impact on Human Health and Environment

Exposure Routes

Historically, the three major sources for human exposure to lead are lead-based paint, lead in dust and soil and lead in drinking water. Typically, human exposure occurs through ingestion, which is the consumption of lead or lead-contaminated materials, or by inhalation. The main human exposure to lead associated with shooting ranges is through lead-contaminated soil. However, other pathways are discussed below, along with lead's detrimental effects on humans and animals.

Lead can be introduced into the environment at shooting ranges in one or more of the following ways. Each of these pathways is site-specific and may or may not occur at each individual range:

- Lead oxidizes when exposed to air and dissolves when exposed to acidic water or soil.
- Lead bullets, bullet particles, or dissolved lead can be moved by storm water runoff.
- Dissolved lead can migrate through soils to groundwater.

Lead oxidizes when exposed to air and dissolves when exposed to acidic water or soil

When lead is exposed to acidic water and/or

soil, it breaks down by weathering into lead oxides, carbonates, and other soluble compounds. With each rainfall, these compounds may be dissolved, and the lead may move in solution in the storm runoff waters. Decreases in water acidity (i.e., increases in its pH) will cause dissolved lead to precipitate out of solution. Lead concentrations in solution are reduced by this precipitation. At pHs above 7.5, very little lead remains in solution. Increased time of contact between lead and acidic water generally results in an increase in the amount of dissolved lead in the storm runoff water. The five factors which most influence the dissolving of lead in water are summarized below:

Annual Precipitation Rate - The higher the annual precipitation rate, the faster the lead weathers. Also, during prolonged rains, the contact time between water and lead is increased. In general, the higher the precipitation rate, the higher the potential risk of lead migration off-site in solution.

pH of Rain and Surface Water - The acidity of the rainwater decreases as basic (alkaline) minerals in the soil are dissolved. If sufficient minerals such as calcium, magnesium, and iron are present in local soils, then the lead may quickly precipitate out of solution entirely as these other minerals are dissolved. The pH of shallow surface water is an indicator of the presence or absence of basic minerals in the local soil and in gravel within the stream beds through which the water has moved. The water in deeper streams and lakes is more likely to be composed of acidic rainwater that is not neutralized.

Contact Time - The contact time between acidic surface water and lead is a factor in the amount of lead that is dissolved. For example, lead shot deposited directly into a lake has a longer contact time than lead shot deposited in upland areas.

Soil Cover - Organic material will absorb lead and remove it from a water solution. The thicker the organic leaf and peat cover on the soil, the lower the lead content in solution in water leaving the shot area. Organic material has a strong

ability to extract lead out of solution in water.

pH of Groundwater - During periods of no rainfall, the water flowing within most streams comes from groundwater discharging into the stream channel. Therefore, the acidity of the groundwater affects the acidity of the surface water, and hence, affects the solubility of any lead particles carried into the stream during storm runoff.

Lead bullets, bullet particles or dissolved lead can be moved by storm water runoff

The ability of water to transport lead is influenced by two factors: velocity of the water and weight or size of the lead fragment. Water's capacity to carry small particles is proportional to the square of the water's velocity. Clear water moving at a velocity of 100 feet per minute can carry a lead particle 10,000 times heavier than water moving at a velocity of 10 feet per minute. Muddy water can carry even larger particles. The five factors that most influence velocity of runoff are described below:

Rainfall Intensity - The greater the volume of rainfall during a short period of time, the faster the velocity created to carry the rainfall off-site. The higher the annual rainfall, the greater the number of periods of heavy rainfall.

Topographic Slope - Generally, the steeper the topographic slope, the faster the velocity of stormwater runoff.

Soil Type - More rainfall will soak into sandy soils then into clay soils. Hence, for a given rainfall intensity, the volume of runoff will be greater from areas underlain by clays or other low permeable soils than from permeable sandy soil.

Velocity - Velocity tends to decrease as stream width increases. Merging streams, eddy currents, and curves in streams are other factors that may reduce the velocity. Generally, the shorter the distance from the lead deposit to the property line, the more likely it is that the lead fragments in suspension will be transported off-site.

Vegetative Cover and Man-made Structures -

Structures such as dams and dikes reduce the water's velocity and greatly reduce the size and weight of the lead particles the water can carry. Since lead particles are heavy compared to the other suspended particles of similar size, they are more likely to be deposited under the influence of anything that reduces velocity of the storm runoff. Grass and other vegetation reduce runoff velocity and act as a filter to remove suspended solids from the water.

Dissolved lead can migrate through soils to groundwater

Acidic rainwater may dissolve weathered lead compounds. A portion of the lead may be transported in solution in groundwater beneath land surfaces. Groundwater may transport lead in solution from the higher topographic areas to the lower areas such as valleys, where it is discharged and becomes part of the surface water flow. If the water flowing underground passes through rocks containing calcium, magnesium, iron, or other minerals more soluble than lead, or through minerals that raise the pH of the water, then the lead in solution may be replaced (removed) from the solution by these other metals. However, if the soil is a clean silica sand and gravel, fractured granite, or similar type material, then the lead may move long distances in solution. The factors most likely to affect the amount of lead carried by the groundwater in solution are discussed below:

Annual Precipitation - Generally, high precipitation rates result in heavy dew, more frequent rainfall, numerous streams, shallow depth to groundwater, shorter distance of travel, and more rapid rates of groundwater flow. Also, the greater volumes of rainfall over geologic time probably have reduced the amount of calcium and other soluble basic minerals that could raise the water pH and cause lead to precipitate (settle) out of solution from the groundwater.

Soil Types - Clays have a high ionic lead bonding capacity and more surface area to which the lead can bond. Also, groundwater movement in clay is very slow, which increases the contact time for lead to bond to the clay.

Low permeability reduces the amount of historical leaching and increases the probability of the presence of basic (+pH increasing) minerals that can precipitate out of solution in groundwater or cause the lead to bond to the clay. All of the basic calcium and related minerals generally will have been removed from the clean silica sand and gravel soils, so the lead in solution in groundwater in these type soils can move long distances (miles) through the ground relatively unchanged.

Soil Chemistry - The more basic minerals like calcium and magnesium that are present in soils along the pathways through which the groundwater moves, the greater the lead precipitation (removal) rate. Lead should move in solution only a short distance (a few feet) through a sand composed of calcium shell fragments, but could move in solution long distances (miles) through clean quartz sand.

Depth to Groundwater - In areas of groundwater discharge such as river flood plains and most flat areas, the groundwater surface is often a few feet below the surface. Remember, the shorter the distance traveled, the greater the risk that the lead will migrate into the environment. Shallow depth to groundwater is indicative of higher risk for lead to reach the water.

pH of Groundwater - Although other factors influence solubility of lead in water, a good rule of thumb is that lead will precipitate out of solution when the pH or alkalinity of water is greater than about 7.5. But, lead dissolved in acid groundwater may travel many miles without change.

Health Effects of Lead Exposure on Ranges

Lead poisoning is a serious health risk. At higher concentrations, it is dangerous to people of all ages, leading to convulsions, coma and even death. At even very low concentrations, it is dangerous to infants and young children, damaging the developing brain and resulting in both learning and behavioral problems. Figure 1-1 describes the effects of exposure to lead on children and adults.

Federal, state and local actions, including bans on lead in gasoline, paint, solder and many other lead-containing products, have resulted in significant reductions in average blood-lead levels. Despite these advances, the number of lead-poisoned children remains alarmingly high. Children living in older homes may be exposed to lead in peeling paint or paint dust. Children can also come in contact with lead in soil and with lead dust carried home on the clothing of parents.

On ranges, inhalation is one pathway for lead exposure since shooters are exposed to lead dust during the firing of their guns. Because wind is unlikely to move heavy lead particles very far, airborne dust is generally considered a potential threat only when there are significant structures that block air flow on the firing line. Under such conditions, the hygiene and other practices proposed by the NRA for indoor shooting ranges in their "Source Book" are applicable to outdoor ranges.

Range workers may also be exposed to lead dust while performing routine maintenance operations, such as raking or cleaning out bullet traps. Owners/operators may want to protect these workers by requiring them to wear the proper protective equipment or dampening the soil prior to work.

Another exposure route for lead at outdoor ranges is ingestion by direct contact with lead or lead particles. For example, lead particles generated by the discharge of a firearm can collect on the hands of a shooter. These particles can be ingested if a shooter eats or smokes prior to washing his/her hands after shooting. **The relative risk of lead exposure to people in a well managed facility is low.**

Detrimental effects due to elevated lead levels can also be found in animals. Excessive exposure to lead, primarily from ingestion, can cause increased mortality rates in cattle, sheep and waterfowl. For example, waterfowl and other birds can ingest the shot, mistaking it for food or grit. Waterfowl, in particular, are highly susceptible to lead ingestion. This is a concern at ranges where shooting occurs into or over

Effects on the Human Body from Excessive Exposure to Lead

If not detected early, **children** with relatively low levels of lead (as low as 10 microgram/deciliter for children) in their bodies can suffer from:

- damage to the brain and nervous system,
- behavior and learning problems (such as hyperactivity and aggressiveness),
- slowed growth,
- hearing problems,
- headaches, and
- impairment of vision and motor skills.

Adults can suffer from:

- difficulties during pregnancy,
- reproductive problems in both men and women (such as low birth weight, birth defects and decreased fertility),
- high blood pressure,
- digestive problems,
- neurological disorders,
- memory and concentration problems,
- muscle and joint pain, and
- kidney dysfunction.

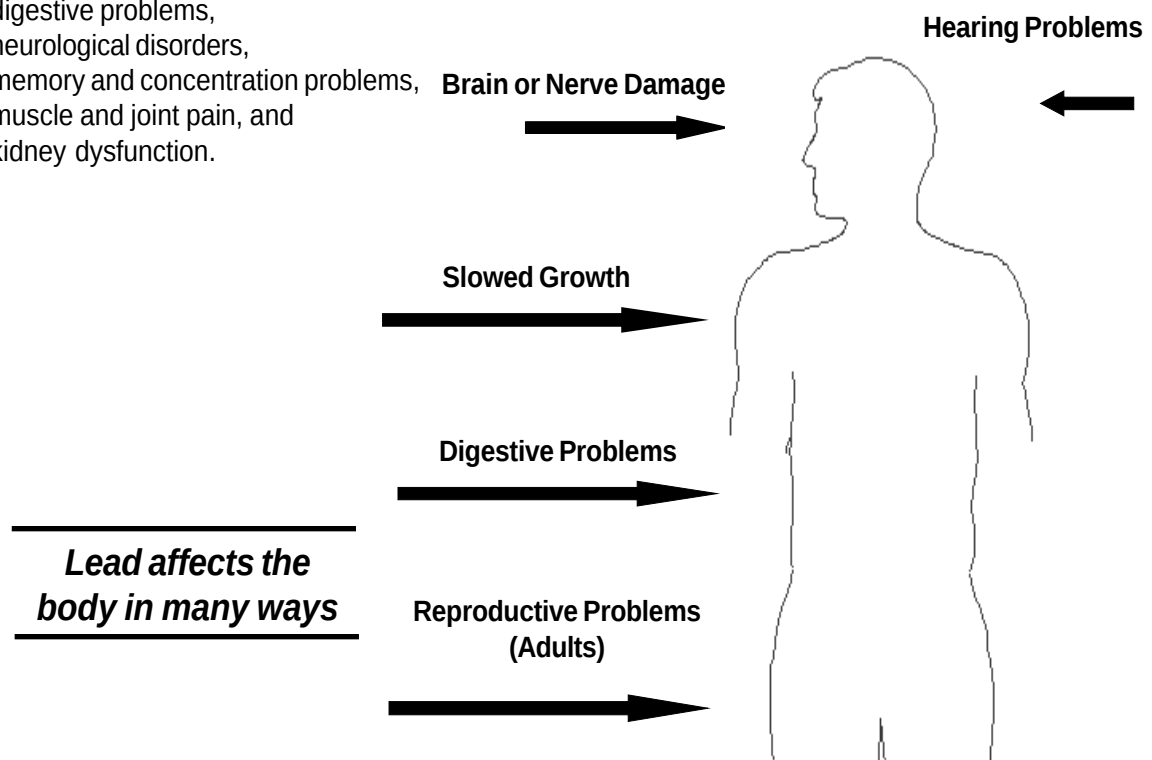


Figure 1-1: Effects on the Human Body from Excessive Exposure to Lead

water. Many of the legal and government actions that have been brought against ranges are based on elevated levels of lead, and increased mortality in waterfowl. For example, in one case, an upland area of a range became a temporary pond after a thunderstorm. Waterfowl used the pond to feed and shortly thereafter, there was a waterfowl die-off (increase in bird mortality), apparently from lead ingestion.

1.2 Legal Requirements & Court Rulings

To date, most litigation concerns are at shotgun ranges where the shotfall zone impacts water or wetland areas. The potential environmental and human health risks are greater at these ranges. However, all ranges, including those not located near water bodies, may be subject to legal and government action if proper range management programs are not implemented. Range owners/operators should expect greater scrutiny as ranges become more visible to regulators, environmental groups and the general public.

Citizen groups have been the driving force behind most legal actions taken against outdoor ranges. These groups have sued range owners/operators under federal environmental laws. Two of EPA's most comprehensive environmental laws, the Resource Conservation and Recovery Act (RCRA) and the Clean Water Act (CWA), specifically provide citizens with the right to sue in cases in which the environment and human health are threatened. These citizen suits have been highly effective in changing the way ranges operate, even when out-of-court settlements have been reached. The decisions of the United States Court of Appeals for the Second Circuit in *Remington Arms* and *New York Athletic Club* set a legal precedent in the application of RCRA and/or the CWA to outdoor ranges. Lead management programs at outdoor ranges must comply with both laws. Actions have also been taken under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) commonly known as Superfund. State and local statutes and regulations may also apply. To ensure environmental laws are being followed, range owners/operators must understand the legal issues and requirements.

1.2.1 Resource Conservation and Recovery Act (RCRA)

RCRA provides the framework for the nation's solid and hazardous waste management program. Under RCRA, EPA developed a "cradle-to-grave" system to ensure the protection of human health and the environment when generating, transporting, storing, treating and disposing of hazardous waste. RCRA potentially applies to many phases of range operation because lead bullets/shot, if abandoned, may be a solid and/or a hazardous waste and may present an actual or potential imminent and substantial endangerment.

Connecticut Coastal Fishermen's Association v. Remington Arms Company, et al.

In the late 1980s, the Connecticut Coastal Fishermen's Association filed a lawsuit against Remington Arms Company as the owner of the Lordship Gun Club. The Lordship Gun Club (a.k.a. Remington Gun Club) is a 30-acre site in Stratford, Connecticut, located on the Long Island Sound at the mouth of the Housatonic River. In the mid-1960s, the Lordship Gun Club was reconstructed to its final configuration of 12 combined trap and skeet fields and one additional trap field. Over the years, the Lordship Gun Club became known as one of the premier shooting facilities on the East Coast.

The Connecticut Coastal Fishermen's Association filed a lawsuit, alleging that lead shot and clay targets are hazardous waste under RCRA. The Complaint alleged that because the lead shot and clay targets were hazardous wastes, the gun club was a hazardous waste storage and disposal facility subject to RCRA requirements. The plaintiff also sought civil penalties and attorney's fees.

Remington moved for a summary judgment dismissing the complaint, and the Connecticut Coastal Fisherman's Association cross-moved for a partial summary judgment on the issue of liability. On September 11, 1991, the United States District Court for the District of Connecticut ruled on the case.

Regarding the plaintiff's claims under RCRA, the District Court ruled in favor of the Connecticut Coastal Fishermen's Association, holding that the lead shot and clay targets were "discarded materials" and were "solid waste;" therefore, the materials were subject to regulation under RCRA. The court further stated that the discharged lead shot was a "hazardous waste," but declined to rule on whether the clay target fragments were also hazardous waste. Remington petitioned the United States Court of Appeals for the Second Circuit Court to review the lower court's ruling.

On June 11, 1992, both parties presented oral arguments before the court. Subsequent to oral arguments, the appellate court requested that EPA file an amicus brief "addressing whether lead shot and clay target debris deposited on land and in the water in the normal course of trap and skeet shooting is 'discarded material'... so as to constitute 'solid waste' under RCRA."

On March 29, 1993, the United States Court of Appeals for the Second Circuit reached its decision. With respect to RCRA, the court both reversed and affirmed the lower court's opinion in part.

Briefly, the decision affects currently operating and future gun clubs, and the following key points are of primary concern:

1. With respect to RCRA, the court agreed with EPA's amicus brief, which had argued that the gun clubs are not subject to RCRA's regulatory (as opposed to statutory) requirements. In other words, gun clubs are not viewed as facilities that manage hazardous wastes subject to RCRA regulations and, as such, do not require RCRA permits.

2. Another argument in the EPA's amicus brief with which the court agreed was the view that the RCRA statute allows citizen suits to be brought if a gun club's shooting activities pose an "imminent and substantial endangerment to health or the environment." Although gun clubs are not subject to RCRA regulations, EPA or any state, municipality, or citizen group can take legal action under the statutory provisions of

RCRA against gun clubs for actual or potential environmental damage occurring during, or even after, the operation of the club. Under RCRA, the plaintiff would be eligible to recover its legal fees as well.

3. The court concluded that lead shot and clay targets meet the statutory definition of solid waste because these materials were "discarded (i.e. abandoned)" and "left to accumulate long after they have served their intended purpose." Further, the court concluded that based upon toxicity testing and evidence of lead contamination, the lead shot was a hazardous waste subject to RCRA.

The important point to consider here is that if lead shot and clay target debris are discarded (i.e. abandoned), these materials are considered a solid waste as defined in the statute and the facility may be subject to imminent hazard governmental or citizen suits.

If, on the other hand, the discharged lead shot is recovered or reclaimed on a regular basis, no statutory solid waste (or hazardous waste) would be present and imminent hazard suits would be avoided.

Thus, the Remington Arms case is an important legal precedent. Even though regulations have not been issued regarding gun club operation and environmental protection, gun clubs are still at risk of legal action.

Gun clubs where there is shooting into water, wetlands, rivers, creeks, and other sensitive environments have the highest degree of litigation risk. Conversely, gun clubs that have the lowest risk of environmental litigation or government action are those clubs that do not shoot into water or wetlands and which have an active program to recover lead.

The following describes how RCRA may apply to outdoor shooting ranges.

How is Lead Shot Regulated Under RCRA?

Lead shot is not considered a hazardous waste

subject to RCRA at the time it is discharged from a firearm because it is used for its intended purpose. As such, shooting lead shot (or bullets) is not regulated nor is a RCRA permit required to operate a shooting range. However, spent lead shot (or bullets), left in the environment, is subject to the broader definition of solid waste written by Congress and used in sections 7002 and 7003 of the RCRA statute.

With reference to reclaiming and recycling lead shot, the following points should serve as guidance in understanding RCRA and how it applies to your range. (A more detailed discussion of the underlying RCRA rules applicable to lead shot removal at ranges is included in Appendix D)

- **Removal contractors or reclaimers should apply standard best management practices, mentioned in this manual, to separate the lead from soil. The soil, if then placed back on the range, is exempt from RCRA. However, if the soil is to be removed off-site, then it would require testing to determine if it is a RCRA hazardous waste.**
- **Lead, if recycled or reused, is considered a scrap metal and is, therefore, excluded from RCRA.**
- Collected lead shot and bullets are excluded from RCRA regulation, and need not have a manifest, nor does a range need to obtain a RCRA generator number (i.e., the range is not a hazardous waste “generator”), provided that the lead is recycled or re-used. The reclaimer does not need to be a RCRA transporter. **However, it is recommended that ranges retain records of shipments of lead to the receiving facilities in order to demonstrate that the lead was recycled. Records should also be kept whenever the lead is reused (as in reloading). The range should be aware that it ultimately may be responsible for the lead sent for reclamation. Therefore, only reputable reclaimers should be utilized.**
- Sections 7002 and 7003 of the RCRA statute allow EPA, states or citizens to use civil lawsuits, to compel cleanup of or other action for “solid waste” (e.g., spent lead shot) posing actual or potential imminent and substantial endangerment. Such actions can be sought whether the range is in operation or closed, and is based solely on a determination that harm is being posed or may be posed by the range to public health and/or the environment. Since the risk of lead migrating increases with time, making ranges that have not removed lead more likely candidates for government action or citizen lawsuits under RCRA Section 7002 and 7003, ranges are advised to maintain a schedule of regular lead removal.
- With time, lead in soil can become less desirable to reclaimers and smelters, thereby potentially reducing or eliminating financial returns from lead removal. Moreover, such soil may be subject to more expensive treatment to separate the lead for recycling.
- Lead removal will allow the range to: avoid contamination of the site and potential impacts to human health and the environment; reduce liability with regard to potential government agency or citizen suit action; and, possibly, benefit economically from the recycling of lead. Additional guidance on reclaiming lead is provided in other parts of this manual.
- The above RCRA discussion applies to both operating and non-operating ranges. The application of BMPs contained in this manual during the life of the range is, of course, highly recommended. However, such application may not preclude the need for remediation as appropriate, and as required by individual states’ regulations when a range is permanently closed and or abandoned or the land use changes and may result in potential exposure to soil containing lead. General introductory guidance for remediation can be found at www.epa.gov/epaoswer/osw or www.epa.gov/superfund. Look under the sections “Cleanup” or “Resources,” or use the Search function.

1.2.2 - Clean Water Act

The goal of the Clean Water Act (CWA) is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” The most common allegation against ranges by the EPA and citizen groups, is that they violate the CWA if they do not have permits that allow spent ammunition to be discharged into water. The CWA prohibits “the discharge of any pollutant by any person” into the waters of the United States without a National Pollution Discharge and Elimination System (NPDES) permit. There have been two court cases that have applied the provisions of the CWA to civilian shooting ranges. To understand how the CWA can apply to shooting ranges, a summary of the cases follows. Also see Table 1-1.

To understand the application of the CWA to outdoor ranges, one must know the definitions of key terms and how they have been applied to shooting activities. See Table 1-1.

In the *Remington Arms* and the *New York Athletic Club* lawsuits, citizen groups argued that the defendants violated the CWA by discharging pollutants from point sources into the Long Island Sound without a NPDES permit. Application of the CWA requires the violations to be ongoing. Consequently, the court in *Remington Arms* dismissed the CWA charge against the range because it had ceased operating before the lawsuit was filed.

However, in the *New York Athletic Club* case, the club was still in operation during the time of litigation, but had switched to steel shot. EPA’s opinion on this case also addressed the CWA violation. EPA argued that certain trap/skeet ranges can convey pollutants, via point sources, to water in violation of the CWA if a NPDES permit is not obtained. Although some shooting organizations have disagreed with the EPA position, the United States District Court for the Southern District of New York specifically found that:

- The mechanized target throwers, the concrete shooting platforms, and the shooting range itself are considered point

sources as defined by the CWA;

- Expended shot and target debris, including non-toxic shot, such as steel shot, left in water are pollutants as defined by the CWA.

Although the New York district court’s decision in the *New York Athletic Club* case is not controlling in any other district, range owners and operators of outdoor ranges that shoot over or into wetlands or other navigable waters of the United States should be aware of it.

Based on the court’s decision in the *New York Athletic Club* case, any range whose shot, bullets or target debris enter the “waters of the United States” could be subject to permitting requirements as well as governmental or citizen suits. “Waters of the United States” or “navigable waters of the United States” are waters of the United States, including territorial seas that include any body of water that has any connection to, or impact on, interstate waters or commerce. The waters may include lakes, ponds, rivers, streams, wetlands, or even guts that are frequently dry, which may not be obvious to range owners/operators. These ranges may be required to remediate contaminated sediments and soils, which could be both difficult and expensive, and to cease operations over waters and wetlands. **It is strongly recommended that these ranges change the direction of shooting, to avoid shooting over or into wetlands or other navigable waters of the United States, and initiate lead removal and recycling activities.**

In addition, these ranges can cause a substantial impact on wildlife and wetlands, which range owners/operators may be required to restore under other federal laws (e.g., CERCLA, discussed below). Lead shot entering a water body substantially increases the potential risk of contaminating surface and groundwater which, in turn, threatens human health and the environment. Finally, as *New York Athletic Club*, *Remington Arms* and similar cases show, neighbors have the most leverage when range activity affects wetlands and waterways.

For ranges located away from coastal areas or

Table 1-1: Application of Key Terms to New York Athletic Club

Key Term	Statutory Definition	Application to <i>New York Athletic Club</i>
Discharge of a Pollutant	"any <i>addition</i> of any pollutant to navigable waters from any point source" (emphasis added) 33 U.S.C. § 1362 (12)	Shooting into water (including wetlands) constitutes a discharge. In the <i>New York Athletic Club</i> , the range did not dispute that its shooting operations resulted in the deposition of spent shot and other debris into the waters of the United States.
Point Source	"any discernible, confined, and discrete conveyance... from which pollutants are or may be discharged" into the Nation's waters. 33 U.S.C. § 1362 (14)	In <i>New York Athletic Club</i> , the court found that shooting ranges act to systematically channel pollutants into regulated waters and that mechanized target throwers convey pollutants directly into water. Specifically, it stated, "A trap shooting range... is an identifiable source from which spent shot and target fragments are conveyed into navigable waters of the United States." The court also determined that the concrete shooting platforms can be seen as separate "point sources" under the CWA or as one facet of the shooting range that systematically delivers pollutants (e.g. shot and wadding) into the water.
Pollutant	"dredged spoil, solid waste,... munitions... discharged into water" 33 U.S.C. § 1362 (6)	In <i>New York Athletic Club</i> , shot and target residue constitute a form of "solid waste" subject to regulation under the CWA as a "pollutant." Based on these determinations, the court supported EPA's contention that the ranges were discharging pollutants from a point source without a permit, in violation of the CWA.

whose operating areas are situated wholly over land, compliance with the CWA can be achieved by obtaining a NPDES permit for piped or channeled runoff from the range into water¹.

Shooting ranges impacting wetland areas may be subject to other regulations found in Section 404 of the CWA. This section is the principal federal regulatory program protecting the Nation's remaining wetland resources. Any plans for range owners/operators to dredge and/or fill wetlands will come under close scrutiny by the federal, state and local governments and citizen groups. Range owners/operators must comply with the CWA when range design, redesign, construction, reclamation or remediation occurs in wetland areas.

1.2.3 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), imposes liability on past and present owners or operators of properties where a release of a hazardous substance into the environment exists. CERCLA is typically used when a party, either the government or private party, has cleaned up someone else's contamination, and seeks reimbursement from past owners/operators or disposers (potentially responsible parties or PRPs). Under CERCLA, lead is considered a hazardous substance.

EPA has the authority to order a PRP to clean up a site or conduct the cleanup and recover its costs from the PRP under CERCLA. Responsible parties may be held liable for all cleanup costs, which can be substantial. Under CERCLA, shooting ranges may be liable for government costs incurred during the cleanup of ranges, natural resources damages, and health assessments and/or health effects studies. The following two examples illustrate how shooting ranges (including one operated by the federal government) can be affected by CERCLA.

Southern Lakes Trap and Skeet Club Site, Lake Geneva, Wisconsin, et al.

In 1992, the US Fish and Wildlife Service (USFWS) began an investigation to determine the cause of death of over 200 Canada geese. The geese died as a result of acute lead poisoning after ingesting lead shot, which research indicated came from the Southern Lakes Trap and Skeet Club. The USFWS, in its role as Natural Resource Trustee, took action to recover the cost of damage to the natural resources (i.e., migratory geese) under CERCLA. In addition, EPA pursued a separate action under the Agency's CERCLA response authority. The club had leased the property from the property owners to operate a shooting range. Shortly after EPA sent out the notice of potential liability to the current and former owners and operators of the club site, the club closed permanently.

In 1994, EPA issued an Administrative Order on Consent (AOC) against one current and one former owner of the property where the now closed Southern Lakes Trap and Skeet Club was located. The AOC required the owners to perform a site assessment, which included an evaluation of the costs to restore the wetlands. In 1998, EPA completed activities to clean up the site and restore some of the natural resources and wetlands. In a negotiated settlement, EPA recovered \$1 million of the cost of the cleanup.

Walter L. Kamb v. United States Coast Guard, et al.

In another CERCLA action, Mr. Kamb (court appointed property guardian) sued the U.S. Coast Guard, California Highway Patrol, City of Fort Bragg, and the County of Mendocino (the defendants) for recovery of cleanup costs under CERCLA. Mr. Kamb had been appointed by the Mendocino County Superior Court to sell the property on behalf of the property owners. The property was formerly used by defendants as a rifle, pistol and trap range. Soil analysis indicated the presence of lead in the form of leadshot, bullets, pellets, and dust. The court found the defendants were "responsible parties" (liable for cleanup costs) under CERCLA. No

¹ The term "land" in this instance refers specifically to terrain recognized as "non-wetland" areas.

apportionment of liability was made and the final determination of each parties' pro rata share of the response cost was deferred.

This case shows that range activity need not affect a water body to trigger CERCLA liability. CERCLA is a powerful statutory authority that can greatly impact current and former range owners/operators. The statute allows for recovery of damages to natural resources, the cost of any health assessment studies and all cleanup costs. Liability may extend to past owners and operators long after a range ceases operation.

1.2.4 Additional Laws and Regulations

Shooting ranges may also be subject to state and local laws and regulations. Many states have adopted their own environmental laws, which are based on federal laws. Specifically, these states have laws and regulations that mirror the CWA and RCRA program laws. EPA-approved state program laws must be as stringent as the federal laws and may be more stringent. Activities at shooting ranges may also be subject to local laws, ordinances and regulations addressing issues such as noise, zoning, traffic, wetlands and nuisance. Often, citizens or neighbors of outdoor shooting ranges can initiate noise nuisance claims against range owners/operators. Because many states have passed legislation protecting ranges from noise nuisance lawsuits, these may turn into claims of environmental violations under the laws discussed above due to the presence of lead and other products at ranges.

1.3 Benefits of Minimizing Lead's Environmental Impact

All ranges will benefit from proactively implementing successful BMP's. Even if range activities currently do not cause adverse public health and environmental impacts, by developing and promoting active lead management programs, ranges will benefit in the following ways:

- **Through a sound lead management**

program, shooting sports enthusiasts can reduce the potential of lead exposure and contamination to humans, animals and the environment.

- **A lead management program will result in improved public relations for the range and the shooting sports.** Ranges can promote and publicize their successful BMP programs to improve their public image. Since many of the legal and governmental actions begin with or are due to citizen groups, an active lead management program may improve the public image of the range with these citizen groups.
- **The removal of spent lead from the range presents a clean, well maintained facility, which will increase customer satisfaction.**
- Lead is a recyclable and finite resource and can be recovered from the active portion of ranges and sold to lead reclaimers. Frequently, reclaimers do not charge range owners/operators to recover lead from ranges, and owners and operators may receive a percentage of the profit from the sale of reclaimed lead. This factor drives recycling efforts at many ranges.
- **By reducing or eliminating a potential source of lead migration in soil, surface water and groundwater, range owners/operators may avoid costly and lengthy future remediation activities.**
- **Finally, implementing a BMP program for lead may eliminate or greatly reduce the risk of citizen lawsuits and the legal costs associated with these lawsuits.** Through management and removal practices, lead may no longer represent a threat upon which citizen lawsuits are based.

Range owners/operators may question whether the benefits of a regular and timely BMP program outweigh the efforts of implementing and maintaining a program. The questions may arise especially for ranges at which shooting activities involve waterways, since national attention has focused on ranges located adjacent to water (e.g., *Remington Arms* and the *New York Athletic*

Club). However, all outdoor ranges may be subject to legal actions under RCRA and CERCLA authority. All of the benefits for adopting best management practices are available and worthwhile for every range owner and operator.

The following sections provide information that will assist the range owner or operator in implementing a BMP program for recovery and recycling of lead shots and bullets.

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