

**Range Sustainability Environmental Program Assessment
(RSEPA)
Range Condition Assessment (RCA) Phase II**

**Pre-Site Visit
Information Collection Synopsis**

**Fallon Ranges (Bravo 16, 17, 19, and 20)
NAS Fallon, Nevada**

June 2004

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**Range Sustainability Environmental Program Assessment (RSEPA)
Range Condition Assessment (RCA) Phase II
Pre-site Visit Information Collection Synopsis
Fallon Ranges (Bravo 16, 17, 19, and 20), NAS Fallon, Nevada**

INTRODUCTION

The purpose of RSEPA RCA Phase II, Pre-Site Visit Information Collection, is to gather and review as much pertinent information as possible prior to conducting on-site visits. The RSEPA Technical Team, with the assistance of the RSEPA Management Team, gathered documents that addressed the historical and current operational uses of the range, range maintenance procedures, NEPA documentation, Fallon environmental management programs, and natural and cultural resources at the Fallon ranges. All documents received are consolidated in a centralized location, the Fallon range Data Folder.

In addition to records gathering, RSEPA RCA Phase II requires that the Technical Team initially determine applicability of environmental regulations to the Fallon ranges, as team members review range documents. This initial range environmental regulatory applicability assessment is found in the RSEPA RCA Phase II, "Pre-Site Visit Information Collection" Report. Initial assessment prior to the on-site visit serves to identify data gaps, increase the efficiency of the on-site visit, and minimize disruptions to installation personnel and operations during the on-site visit. The regulatory information gathered during this phase will help determine what additional data may need to be collected either prior to or during the on-site visit.

To facilitate Technical Team member's regulatory impact analyses for the Fallon ranges, team members were provided guidance, in the form of the document in Appendix A, in generating their individual analysis for their assigned environmental media. Team member's individual analyses were then consolidated into this "Fallon Final Draft Pre-Site Visit Information Collection Report", which is based upon information gained from documents received as of the date of this report.

In the analysis section of this report, "Environmental Regulatory Applicability", is a summary of the Technical Team's determination as to what Federal, state and local environmental regulations and DOD/Navy requirements apply to Fallon ranges and is broken out into the following environmental compliance and explosives safety management areas:

- A. Air Quality
- B. Water Quality
- C. Hazardous Materials
- D. Hazardous Waste
- E. Emergency Planning and Community Right to Know Act (EPCRA)
- F. Pollution Prevention
- G. Storage Tank Management
- H. Petroleum, Oils and Lubricants (POL)
- I. Natural Resources
- J. Cultural Resources
- K. National Environmental Policy Act (NEPA)
- L. Pesticides Management Lead Paint Management
- M. Asbestos Management
- N. PCB Management

- O. Safe Drinking Water Management
- P. Environmental and Explosives Safety Management

The areas listed above were chosen based upon those environmental compliance and explosives safety management areas found in the Navy's Environmental Compliance Evaluation Program, The US Army Corps of Engineers Environmental Assessment and Management (TEAM) Guide (Revised March 2003) and OPNAVINST 5090.1B.

ENVIRONMENTAL REGULATORY APPLICABILITY

A. Air Quality

Regulations that have the potential to apply to air quality at Fallon ranges:

- Clean Air Act Amendments 1990 (CAAA90), 40 CFR Parts 50-91 & 93.
- Nevada Administrative Code and Nevada Revised Statutes, Chapter 445B: Air Controls
- OPNAVINST 5090.1B, Navy Environmental And Natural Resources Program Manual, Chapter 5, Clean Air Ashore

Applicability of regulations listed above to Fallon ranges:

Federal CAAA90 and Nevada Statutes and air quality regulations apply to the Fallon ranges because it has stationary and mobile air emission sources on the range. The range may or may not be subject to requirements depending on whether established emission thresholds are exceeded such as, CAAA90 Title I (National Ambient Air Quality Standards), Title III (Hazardous Air Pollutants), Title V (Federal Permit), and Federal General Conformity Rule. Based upon air quality analyses in a number of Fallon Environmental Impact Statements (EISs), Fallon ranges lie within an air basin that is in attainment for Federal and state ambient air quality standards. This means that Fallon ranges will be subject to fewer regulations than if it was located in a non-attainment air basin.

Federal Asbestos NESHAP (National Emissions Standards for Hazardous Air Pollutants) applies if asbestos is located in buildings on range. From the age of buildings at NAS Fallon, it is likely that there may be some structures that contain asbestos-containing material.

There are some Nevada (Bureau of Air Pollution Control) regulations that encompass and exceed Federal regulation requirements. Fallon ranges that have air emission sources would be subject to those State regulations. Fugitive dust (particulate matter) appears to be the greatest problem pollutant.

B. Water Quality

Regulations that have the potential to apply to water quality at Fallon ranges:

Federal Statutes & Regulations

- Federal Water Pollution Control Act ("Clean Water Act") of 1977
- Rivers and Harbors Act of 1899
- Marine Protection, Research and Sanctuaries Act ("Ocean Dumping Act")

- Oil Pollution Act of 1990
- Safe Drinking Water Act

State Statutes & Regulations

Nevada Administrative Code and Nevada Revised Statutes, Chapter 445A: Water Controls

Navy Requirements

OPNAVINST 5090.1B, Navy Environmental And Natural Resources Program Manual, Chapter 7, Clean Water Ashore

The following Federal and state regulations and Navy requirements apply to Fallon ranges:

Federal Statutes & Regulations

- Federal Water Pollution Control Act ("Clean Water Act") of 1977 – applies to the NAS Fallon wastewater treatment plant, which discharges to a drainage ditch that leads to the Stillwater National Wildlife Refuge. It also applies to Fallon range septic tanks, oil water separators and stormwater runoff.
- Rivers and Harbors Act of 1899 – prohibits the unpermitted obstruction or alteration of navigable waters of the United States. Could apply to Fallon ranges, if any water on the range that met the definition of "navigable waters of the United States" was planned on being altered. There are ponds and lakes within Fallon ranges, but these are not considered to be waters of the United States. The temporary ponds, if not classified as wetlands, are not "waters of the United States" as defined by 40 CFR 122.2.
- Federal Oil Pollution Act of 1990 - The CWA prohibits spills, leaks or other discharges of oil or hazardous substances into waters of the United States in quantities that may be harmful. The Oil Pollution Act of 1990 (OPA 90) amended the CWA to expand oil spill prevention activities, improve preparedness and response capabilities, and ensure that companies are responsible for damages from spills. This act applies to the fuel farm on NAS Fallon, which could impact operational readiness if closed due to environmental compliance deficiencies,,and to the above ground storage tanks containing diesel fuel for back-up generators.
- Safe Drinking Water Act (SDWA) – applies to NAS Fallon's Navy-owned well field with three wells located off station between the NAS and the city of Fallon.

State Statutes & Regulations

Nevada Water Pollution Control Laws: A single potable water well is located at the Electronic Warfare Range that fits the definition of a "public water supply" under state regulations, but not the Federal SDWA.

Navy Requirements

OPNAVINST 5090.1B, Navy Environmental and Natural Resources Program Manual, Chapter 7, Clean Water Ashore – applies to all Navy facilities.

C. Hazardous Materials

Hazardous materials regulations that have the potential to apply to Fallon ranges:

Federal Statutes & Regulations

- Occupational Safety and Health Act (OSHA)

- Hazardous Materials Transportation Act of 1975
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- Superfund Authorization and Reauthorization Act (SARA), Title III, "Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)"
- Pollution Prevention Act of 1990 (PPA)
- The Oil Pollution Act of 1990
- Executive Order (EO) 12088, Federal Compliance with Pollution Standards
- EO 13148, Greening the Government through Leadership in Environmental Management
- The National Fire Code, Flammable and Combustible Liquids Code, NFPA 30
- Federal UST Law
- 1990 CAA Amendments, Title III, Section 112r

State Statutes & Regulations

Nevada Administrative Code and Nevada Revised Statutes, Chapter 459: Hazardous Materials

Navy Requirements

OPNAVINST 5090.1B, Navy Environmental And Natural Resources Program Manual, Chapter 3, Pollution Prevention and Chapter 10, Oil and Hazardous Substances Contingency Plan

Applicability of regulations listed above to Fallon ranges:

The federal and state regulations would be applicable to both the operational range areas and any range support operations/facilities at Fallon ranges that handle hazardous materials. According to the "Environmental Compliance Evaluation for Naval Air Station Fallon, Nevada" (prepared from 17-21 June 1996 by the Environmental Programs Department of Engineering Field Activity West), NAS Fallon has a Hazardous Material Control and Management (HMC&M) Plan, Authorized Use List (AUL), and a written Hazardous Communication (HAZCOM) Program. NAS Fallon also has a hazardous material recycling program and keeps a database to track hazardous materials.

D. Solid and hazardous waste

Hazardous waste regulations that have the potential to apply to Fallon ranges:

Federal Statutes & Regulations

- The Resource Conservation and Recovery Act (RCRA)
- The Federal Facility Compliance Act (FFCA) of 1992
- EO 12088, Federal Compliance with Pollution Standards
- Military Munitions Rule
- Occupational Safety and Health Act (OSHA)

State Statutes & Regulations

- Nevada Administrative Code and Nevada Revised Statutes, Chapter 444: Sanitation (Solid Waste Disposal)
- Nevada Administrative Code, Sections 444.842 to 444.980: Facilities for the Management of Hazardous Waste

- Nevada Administrative Code and Nevada Revised Statutes, Chapter 459: Hazardous Materials

Navy Requirements

OPNAVINST 5090.1B, Navy Environmental And Natural Resources Program Manual, Chapter 12, Hazardous Waste Management Ashore

Applicability of regulations listed above to Fallon ranges:

For the operational range areas at Fallon ranges, the Military Munitions Rule would apply in identifying when conventional and chemical munitions become hazardous waste under RCRA, and to provide for protective storage and transportation of that waste.

RCRA, which amended the Solid Waste Disposal Act, is applicable to operational range areas and any range support operations/facilities at NAS Fallon that generate, transport, treat, store, or dispose of nonhazardous (Subtitle D) and hazardous waste (Subtitle C). The "Internal Assessment Plan for Naval Air Station Fallon, NV" (as updated by NAS Fallon Environmental Department, December 2002) documents that a <90 day accumulation yard is located at NAS Fallon and satellite accumulation areas are located on an operational range (Bravo 17) and at various other locations throughout NAS Fallon.

Training under OSHA is required for personnel working with hazardous wastes in operational range areas and in any range support operations/facilities at NAS Fallon. Training includes DOT, HAZCOM, and HAZWOPER training.

E. Emergency Planning and Community Right to Know Act (EPCRA)

Regulations that have the potential to apply to Fallon ranges:

Federal Statutes & Regulations

Superfund Authorization and Reauthorization Act (SARA), Title III, Emergency Planning and Community Right to Know Act (EPCRA)

Navy Requirements

OPNAVINST 5090.1B, Navy Environmental And Natural Resources Program Manual, Chapter 4, Procedures for Implementing the Emergency Planning and Community Right to Know Act (EPCRA)

Applicability of regulations listed above to Fallon ranges:

EPCRA's primary purpose is to inform communities and citizens of chemical hazards in their areas. Sections 311 and 312 of EPCRA require businesses to report the locations and quantities of chemicals stored on-site to state and local governments in order to help communities prepare to respond to chemical spills and similar emergencies. Section 313 of EPCRA requires EPA and the States to annually collect data on releases and transfers of certain toxic chemicals from industrial facilities, and make the data available to the public in the Toxics Release Inventory (TRI). Hazardous materials under EPCRA would also be subject to state regulations.

Sections 311 and 312 of EPCRA would be applicable to both the operational range areas and any range support operations/facilities at NAS Fallon that handle chemicals.

Section 313 of EPCRA applies to Fallon ranges as long as the range exceeds the employee threshold number (10 Full-time employees or equivalent hours) and munitions were used on the range in the past year. If Fallon ranges meet these requirements, then a toxic chemical release threshold determination would need to be done to determine if any chemicals exceeded thresholds, if so a Form R would need to be submitted to state agency or EPA. Section 313 does apply to NAS Fallon who is required to do a threshold determination and submit a Form R, if required.

F. Pollution Prevention

Pollution Prevention regulations that have the potential to apply to Fallon ranges:

Federal Statutes & Regulations

- E.O. 12856, Pollution Prevention Act of 1990
- Emergency Planning and Community Right-to-Know Act (EPCRA)

Navy Requirements

OPNAVINST 5090.1B, Navy Environmental And Natural Resources Program Manual, Chapter 3, Pollution Prevention

Note that pollution prevention, source reduction, and waste minimization are being increasingly integrated into other areas of Federal and state environmental regulation efforts. One can find pollution prevention efforts as a requirement for reduction in pollution in a variety of environmental regulations, including but not limited to the CAA and CWA.

Applicability of regulations listed above to Fallon ranges:

E.O. 12856 (3 August 1993) directs Federal facility compliance with the Pollution Prevention Act of 1990 and the Emergency Planning and Community Right-to-Know Act (EPCRA), which aim to reduce pollution at its source through source reduction and waste minimization.

G. Storage Tank Management

Storage Tank Management regulations that have the potential to apply to Fallon ranges:

Federal Statutes & Regulations

- Federal Underground Storage Tank (UST) Law
- The Clean Air Act (CAA) Amendments of 1990
- The Oil Pollution Act of 1990
- The Federal Facilities Compliance Act (FFCA) of 1992
- The Occupational Safety and Health Act (OSHA)
- Executive Order (EO) 12088. Federal Compliance with Pollution Standards

State Statutes & Regulations

- Nevada Administrative Code and Nevada Revised Statutes, Chapter 459: Hazardous Materials
- Nevada Administrative Code and Nevada Revised Statutes, Chapter 590: Petroleum Products & Antifreeze

Navy Requirements

OPNAVINST 5090.1B, Navy Environmental And Natural Resources Program Manual, Chapter 16, Storage Tanks

Applicability of regulations listed above to Fallon ranges:

The federal and state regulations would be applicable to both the operational range areas and any range support operations/facilities at NAS Fallon that have storage tanks. The May 2000 "Fleet Training Area/Range Directory" states that Bravo 17 has a petroleum oil and lubricants site, and, since it is a tactical target that does not function, the regulations do not apply to this operational range area. According to the "Environmental Compliance Evaluation for Naval Air Station Fallon, Nevada" (prepared from 17-21 June 1996 by the Environmental Programs Department of Engineering Field Activity West), NAS Fallon has a UST Management Plan. The "Internal Assessment Plan for Naval Air Station Fallon, NV" (as updated by NAS Fallon Environmental Department, December 2002) documents that NAS Fallon conducts periodic assessments for UST and AST leak detection and UST- and AST-related malfunctioning equipment (alarms and sumps). NAS Fallon also has a Spill Prevention Control and Countermeasures Plan and an Oil and Hazardous Substances Contingency Plan. These plans are required under the Oil Pollution Act.

H. Petroleum, Oils and Lubricants (POL)

POL Management regulations that have the potential to apply to Fallon ranges:

Federal Statutes & Regulations

- The Oil Pollution Act of 1990
- Federal UST Law
- Executive Order (EO) 12088, Federal Compliance with Pollution Standards

State Statutes & Regulations

- Nevada Administrative Code and Nevada Revised Statutes, Chapter 459: Hazardous Materials
- Nevada Administrative Code and Nevada Revised Statutes, Chapter 590: Petroleum Products & Antifreeze

Navy Requirements

OPNAVINST 5090.1B, Navy Environmental And Natural Resources Program Manual, Chapter 9, Oil Management Ashore

Applicability of regulations listed above to Fallon ranges:

The federal and state regulations would be applicable to both the operational range areas and any range support operations/facilities at NAS Fallon that have storage tanks or any other equipment that contains petroleum, oil, or lubricant. The May 2000 "Fleet Training Area/Range Directory" states that Bravo 17 has a POL site, and, since it is a tactical target that does not function, the regulations do not apply to this operational range area. NAS Fallon also has a fuel farm and the regulations would be applicable to this range support area. According to the "Environmental Compliance Evaluation for Naval Air Station Fallon, Nevada" (prepared from 17-21 June 1996 by the Environmental

Programs Department of Engineering Field Activity West), NAS Fallon has a Spill Prevention Control and Countermeasures Plan and an Oil and Hazardous Substances Contingency Plan. These plans are required under the Oil Pollution Act.

I. Natural Resources

Natural Resources regulations that have the potential to apply to Fallon ranges:

Federal Legislation

- Anadromous Fish Conservation Act
- Bald Eagle Protection Act
- Clean Air Act (CAA)
- Clean Water Act of 1987 (CWA)
- Coastal Barrier Resources Act of 1982
- Coastal Zone Management Act of 1972 (CZMA)
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- Conservation and Rehabilitation Program on Military and Public Lands
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat
- Defense Appropriations Act of 1991 Legacy Program
- Endangered Species Act of 1973 (ESA)
- Fallon Paiute-Shoshone Indian Tribes Water Rights Settlement Act of 1990
- Farmland Protection Policy Act of 1981
- Federal Insecticide, Fungicide, and Rodenticide Act
- Federal Land Policy and Management Act (FLPMA)
- Federal Noxious Weed Act of 1970
- Federal Water Pollution Control Act Amendments of 1972
- Fish and Wildlife Conservation Act of 1980
- Fish and Wildlife Coordination Act of 1946
- Forrest Resources Conservation and Shortage Relief Act
- Hunting, Fishing, and Trapping on Military Lands
- Magnuson-Stevens Fishery Conservation Management Act
- Marine Mammal Protection Act of 1972
- Marine Protection, Research, and Sanctuaries Act of 1972
- Migratory Bird Treaty Act of 1918
- Military Construction Authorization Act
- Military Lands Withdrawal Act of 1986
- National Defense Authority Act of 1989
- National Environmental Policy Act (NEPA)
- National Invasive Species Act of 1996
- National Recreational Trails Act
- National Trails System Act of 1968
- North American Wetland Conservation Act
- Oil Pollution Act of 1990
- Outdoor Recreation – Federal/State Programs Act
- Outleasing for Grazing and Agriculture on Military Lands
- Conservation Programs on Military Reservations (Sikes Act)
- Sikes Act Improvement Act (SAIA)
- Soil Conservation Act
- Timber Sales on Military Lands
- Water Resources Planning Act

- Wild and Scenic Rivers Act
- Wilderness Act
- Wild Horses and Burros Act
- Withdrawal of Public Lands for Military Purposes

Executive Orders

- EO 11514. Protection and Enhancement of Environmental Quality
- EO 11988. Floodplain Management
- EO 11989 (amending EO 11644). Use of Off-Road Vehicles (ORVs) on The Public Lands
- EO 11990. The Protection of Wetlands
- EO 12088. Federal Compliance with Pollution Standards
- EO 12962. Recreational Fisheries
- EO 13089. Corral Reef Protection
- EO 13112. Invasive Species
- EO 13123. Greening the Government Through Efficient Energy Management
- EO 13148. Greening the Government through Leadership in Environmental Management
- EO 13158. Marine Protected Areas
- EO 13186. Responsibilities of Federal Agencies To Protect Migratory Birds
- EO 13195. Trails for America in the 21st Century

Federal Regulations

- 32 CFR 188. Environmental Effects in the United States of DOD Actions
- 32 CFR 190. Natural Resources Management Program
- 32 CFR 775. Procedures for Implementing the National Environmental Policy Act
- 33 CFR 330. Dredge & Fill Nationwide Permit Program
- 40 CFR 6. EPA Regulations on Implementation of NEPA Procedures
- 40 CFR 122. EPA National Pollutant Discharge Elimination System Permit Regulations
- 40 CFR 125. EPA Regulations on Criteria and Standards for the National Pollutant Discharge Elimination System
- 40 CFR 130. EPA Requirements for Water Quality Planning and Management
- 40 CFR 141-143. EPA National Drinking Water Regulations
- 40 CFR 150-186. EPA Regulations for Pesticide Programs
- 40 CFR 230. EPA Interim Regulations on Discharge of Dredged or Fill Material into Navigable Waters
- 40 CFR 1500. Council on Environmental Quality Regulations
- 50 CFR 10. Regulations Concerning Marine Mammals
- 50 CFR 10.13. List of Migratory Birds
- 50 CFR 17.11 and 17.12. Fish and Wildlife Service List of Endangered and Threatened Wildlife
- 50 CFR 402. Interagency Cooperation - Endangered Species Act of 1973.

Federal Directives and Instructions

- DOD Directive 4150.7 of 24 October 1983. DOD Pest Management Program
- DOD Directive 4165.57 of 8 November 1977. Air Installations Compatible Use Zones (AICUZ)
- DOD Directive 4165.61. Intergovernmental Coordination of DOD Federal Development Program and Activities.
- DOD Directive 4700.1 of 6 November 1978. Natural Resources Conservation and Management

- DOD Directive 4700.2 of 15 July 1988. Secretary of Defense Award for Natural Resources and Environmental Management
- DOD Directive 4700.4 of 24 January 1989. Natural Resources Management Program
- DOD Directive 6050.1 (1979). Environmental Effects in the U.S. of DOD Actions
- DOD Directive 6050.2 of 19 April 1979, as amended. Use of Off-Road Vehicles on DOD Lands
- DOD Directive 3200.15 of January 2003. Sustainment of Ranges and Operating Areas (OPAREAs)
- DOD Instruction 4120.14. Environmental Pollution Prevention, Control, and Abatement
- DOD Instruction 4715.1 of 24 February 1996. Environmental Security
- DOD Instruction 4715.3 of 3 May 1996. Environmental Conservation Program
- DOD Instruction 5000.13 of 13 December 1976. Natural Resources - the Secretary of Defense Natural Resource Conservation Award

Department of the Navy Manuals and Instructions

- NAVFAC MO-100.1. Natural Resources, Land Management
- NAVFAC MO-100.3. Fish and Wildlife Management
- NAVFAC MO-100.4. Outdoor Recreation and Cultural Values
- NAVFAC P-73. Real Estate Manual P-73. Vol. II: Real Estate Operations and Natural Resources Management Program
- NAVFACINST 6250.3H. Applied Biology Program Services and Training
- NAVFACINST MO-100.4. Guidance on Special Interest Areas
- OPNAVINST 5090.1B. Department of the Navy Environment and Natural Resources Procedural Manual, Chapter 22, Natural Resources Management
- OPNAVINST 6250.4A. Pest Management Programs
- OPNAVINST 11010.36. AICUZ
- SECNAVINST 6240.6E. Department of the Navy Environmental Protection and Natural Resources Management Program

State/Local

States develop lists for their local threatened or endangered species in addition to the Federal lists. States develop regulations and management practices (MPs) for the protection of surface waters, coastal zones, wetlands, and the prevention of nonpoint source pollution. States establish regulations governing hunting and fishing activities.

Applicability of regulations listed above to Fallon ranges:

The following key regulations apply to all Federal facilities, including Fallon's active ranges:

- Federal Endangered Species Act protects species that are federally designated as threatened or endangered by prohibiting Federal actions from jeopardizing the continued existence of such species. No federally listed threatened or endangered species are known to be residents or seasonal visitors to Fallon's training ranges (although there are other species of concern near and possible on the training ranges, including those listed by the Nevada Division of Wildlife, Northern Nevada Native Plant Society, and/or Nevada Natural Heritage Program).
- Migratory Bird Treaty Act prohibits the taking or harming of a migratory bird, its eggs, nest, or young unless specifically permitted. Some birds, such as the Bald Eagle and American Peregrine (who occasionally use Fallon lands for brief periods of time), receive some protection under this Act.

- SAIA of 1997 committed the DOD and Navy to develop Integrated Natural Resource Management Plans (INRMPs) by November 2001. In addition, “DoDINST 4715.3” implements policy, assigns responsibilities, and prescribes procedures for the integrated management of natural and cultural resources on property under DOD control, including the preparation of INRMPs. The Navy, therefore, is obligated to prepare, maintain, and implement an INRMP that covers Fallon’s active ranges.
- Clean Water Act. The training ranges at NAS Fallon contain jurisdictional or potential jurisdictional wetlands/waters of the U.S. that fall under Section 404 of the “CWA” and other related regulations regarding wetlands. The CWA, therefore, does not apply to these ranges.

Regulations associated with outleasing for grazing and farming, wild horses, outdoor recreation (including hunting), urban forestry, ORV use, national trails, water rights (i.e., Fallon Paiute-Shoshone Indian Tribes Water Rights Settlement Act of 1990), and landscaping apply to some areas of NAS Fallon, but are not applicable to the active training ranges.

Regulations associated with air quality, water quality, hazardous waste, land use, NEPA, and other related issues are discussed elsewhere in this report.

J. Cultural Resources

Cultural Resources regulations that have the potential to apply to Fallon ranges:

Federal Statutes

- Abandoned Shipwreck Act of 1987
- American Antiquities Act of 1906
- American Indian Religious Freedom Act (AIRFA)
- Archeological and Historic Preservation Act of 1974
- Archeological Resources Protection Act of 1979 (ARPA)
- Historic Sites, Buildings, Objects, and Antiquities Act of 1935
- National Environmental Policy Act (NEPA)
- National Heritage Policy Act of 1979
- National Historic Preservation Act of 1966, as amended (NHPA)
- Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)
- Public Buildings Cooperative Use Act

Executive Orders

- EO 11593. Protection and Enhancement of the Cultural Environment
- EO 12898. Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- EO 13006. Locating Federal Facilities on Historic Properties in Our Nation’s Central Cities
- EO 13007. Indian Sacred Sites
- EO 13084. Consultation and Coordination with Indian Tribal Governments
- EO 13175. Consultation and Coordination with Indian Tribal Governments

Federal Regulations, Directives, Instructions

- 32 CFR 229. Department of Defense, Protection of Archeological Resources: Uniform Regulations

- 36 CFR 800. Advisory Council on Historic Preservation, Protection of Historic and Cultural Properties (1986)
- 36 CFR 79. Curation of Federally-Owned and Administered Archeological Collections
- 43 CFR 10. NAGRPA Regulations
- DOD Directive 4710.1. Archeological and Historic Resources Management (June 1984)
- DOD Instruction 4715.3. Environmental Conservation Program (May 1996)
- OPNAVINST 5090.1B. Department of the Navy Environment and Natural Resources Procedural Manual, Chapter 23, Historic and Archaeological Resources Protection
- SECNAVINST 11010, Department of the Navy Policy for Consultation with Federally Recognized Indian Tribes
- Presidential Memorandum dated 29 April 1994, Government to Government Relations with Native American Governments
- Department of Defense American Indian and Alaska Policy of 21 October 1998

State/Local

States and local agencies may issue regulations designating historic sites.

Applicability of regulations listed above to Fallon ranges:

The following key regulations apply to all Federal facilities with cultural resources, including Fallon's active ranges:

- NHPA is the primary law governing cultural resources at all federal facilities. "Section 106 of NHPA" compliance is usually in response to a proposed action that has the potential to affect historic properties. Section 106 compliance includes: 1) identifying and evaluating the National Register eligibility of historic properties; 2) assessing the effects of a proposed action on any historic properties; 3) consulting with the State Historic Preservation Office (SHPO), interested parties, and, when appropriate, the Advisory Council on Historic Preservation (ACHP); and 4) mitigating impacts, as necessary. Range activities conducted at Fallon have the potential to affect historic properties and, therefore, Section 106 regulations apply. "Section 110 of the NHPA" requires that Federal agencies inventory, evaluate, and protect historical properties under their jurisdiction. Under this section, the heads of Federal agencies are responsible for the preservation of cultural properties owned or controlled by their agency, including those located on Fallon's active ranges.
- 36 CFR 800 provides an explicit set of procedures for Federal agencies to meet their obligations under Section 106 of NHPA. These procedures also apply to the Navy regarding historic properties located on Fallon's active ranges.
- EO 11593 directs Federal agencies to administer cultural properties under their control and to direct their programs and policies in such a way that the cultural resources under their control are preserved, restored and maintained. Compliance with this order can generally be accomplished through compliance with Sections 106 and 110 of the NHPA. These directives also apply to the Navy regarding historic properties located on Fallon's active ranges.
- ARPA requires that archeological resources on public and Indian lands be protected. Protection of archeological resources includes consideration of excavation and removal of resources and confidentiality of information concerning the nature and location of archeological resources. It also prohibits the unauthorized removal of, or damage to, archeological resources, and trafficking in archeological resources.

These requirements also apply to archeological resources located on Fallon's active ranges.

- 32 CFR 229 implements provisions of ARPA by providing uniform procedures to be followed by all Federal land managers to protect archeological resources located on public lands. Federal land managers carry out protection procedures by issuing permits authorizing the excavation and removal of archeological resources; by pursuing civil penalties for unauthorized excavation or removal; by preserving archeological collections and data; and by ensuring the confidentiality of information about archeological resources. The Navy, as the Federal land manager of Fallon's active ranges, is obligated to follow these procedures.
- NAGPRA protects the ownership and control of Native American human remains and related cultural items excavated or discovered on Federal lands. Each Federal agency which has possession or control over holdings or collections of Native American human remains and associated funerary objects must compile an inventory of such items and, to the extent possible, identify geographical and cultural affiliation of such items. Each Federal agency must also provide a written summary of all objects of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony. The Navy, as the Federal land manager of Fallon's active ranges, is obligated to follow these regulations.
- 36 CFR 79 establishes procedures to be followed by Federal agencies to preserve collections of prehistoric and historic material remains and associated records recovered under authority of the Antiquities Act, NHPA, and ARPA. Federal agencies are responsible for the long-term management and preservation of existing and new collections by arranging for their deposit in a repository with adequate long-term curation capabilities. The Navy is obligated to properly curate all prehistoric and historic collections originating from Fallon's active ranges.
- DoDINST 4715.3 implements policy, assigns responsibilities, and prescribes procedures for the integrated management of natural and cultural resources on property under DOD control. This includes the preparation, maintenance, and implementation of Integrated Cultural Resource Management Plans (ICRMPs). The Navy is obligated to prepare, maintain, and implement an ICRMP that covers Fallon's active ranges.

The Navy is also required to comply with regulations regarding Native American consultation and repatriation issues (e.g., AIRFA, NAGPRA, NHPA Section 106 consultation, EO 13007, EO 13175, Presidential Memorandum dated 29 April 1994, SECNAVINST 11010, DOD American Indian and Alaska Policy, DoDINST 4715.3). This would include consultation with federally-recognized Native American tribes on issues regarding human remains/associated grave goods recovered from Fallon's active ranges as well as the presence of Traditional Cultural Properties (TCP) and other potentially sensitive areas.

NEPA, which also applies to Fallon, is discussed elsewhere in this report.

K. National Environmental Policy Act (NEPA)

Environmental Planning regulations that have the potential to apply to Fallon ranges:

Federal Statutes & Regulations

- National Environmental Policy Act (NEPA)

- 40 CFR 1500-1508; E.O. 12114; E.O. 12898; 32 CFR 775 (Source: OPNAVINST 5090.1B Chapter 2, Procedures for Implementing the National Environmental Policy Act)

Navy Requirements

OPNAVINST 5090.1B, Navy Environmental And Natural Resources Program Manual, Chapter 2, Procedures for Implementing the National Environmental Policy Act

Applicability of regulations listed above to Fallon ranges:

All of the federal statutes listed above apply to the Navy's activities at the Fallon ranges. Fallon already has many NEPA documents, including Environmental Impact Statements (EISs) and Environmental Assessments (EAs) for changes in range operations and facilities.

L. Pesticides Management

Pesticide Management regulations that have the potential to apply to Fallon ranges:

Federal Statutes & Regulations

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S. Code (USC) 136-136y; Endangered Species Act (ESA) of 1973 (16 USC 1531-1547, et al, last amended in October 1988); Executive Order (EO) 12088, Federal Compliance with Pollution Standards (13 October 1978); Nevada Revised Statutes (NRS) Chapter 586.010 to 586.450 – Pesticides; and OPNAVINST 5090.1B CH-3, 17 October 2002, Section 13-5.1).

Navy Requirements

OPNAVINST 5090.1B, Navy Environmental And Natural Resources Program Manual, Chapter 13, Pesticide Compliance Ashore

Applicability of regulations listed above to Fallon ranges:

All of the regulations listed above apply to pesticides if they are stored, mixed, or applied on the range because exemptions or waivers from these regulations are not discussed in available documentation. Although available documentation does not discuss pesticide application on ranges, the Environmental Department at Naval Air Station (NAS) Fallon (Navy 2002) assessed other areas of the air station where pesticide regulations could apply. Their report (Navy 2002) indicates that, "that no pesticides will be stored or mixed on Navy property." Consequently, the components of the regulations listed above that relate to pesticide application might apply to range areas. (Source: Navy. 2002. Environmental Quality Assessment Report For FY02. Prepared by NAS Fallon Environmental Department, Fallon, Nevada. December.)

M. Lead-Based Paint Management

Lead-Based Paint Management regulations that have the potential to apply to Fallon ranges:

Federal Statutes & Regulations

- An amendment to the *Toxic Substances Control Act (TSCA)* (15 USC 2681 through 2692) requires the creation of regulations governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified. 15 USC 2688 expressly mandates Federal agency compliance with all Federal, state, interstate, and local requirements, both substantive and procedural pertaining to LBP, LBP activities, and LBP hazards. This section also expressly waives any immunity otherwise applicable to the United States, including immunity from penalties and fines levied by the U.S. Environmental Protection Agency (EPA) and state agencies. The following sections of 40 CFR 745 could apply to federal facilities: 745.100 through 745.119 - Disclosure of Lead-Based Paint (LBP) and/or LBP Hazards, 40 CFR 745.81 through 745.86 - Notification of LBP Hazards Prior to Renovation, 40 CFR 745.220 through 40 CFR 745.226 - LBP Training Requirements, and 40 CFR 745.227 - LBP Work Practice Standards.
- The *Residential Lead-Based Paint Hazard Reduction Act of 1992* (Public Law 102-550), often referred to as "Title X," requires EPA, U.S. Department of Housing and Urban Development (HUD), and the Occupational Safety and Health Administration (OSHA) to issue regulations for LBP. The TSCA provisions of Title X apply to federally owned housing and child-occupied facilities. On September 15, 1999, HUD issued a final rule on the requirements for notification, evaluation, and reduction of lead-based paint hazards in federally owned residential property (64 FR 50140). The purpose of this rule is to ensure federally owned housing that is to be sold does not pose lead-based paint hazards to young children. This rule implements sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The sections applicable to Navy-owned housing are found in 24 CFR 35 Subpart C, which, with respect to title transfers of housing built before 1960, requires abatement of any LBP hazards before occupancy. There is an option, however, to transfer the abatement responsibility with the property. Similar to the TSCA work practice standards, this rule includes Section 35.140, Prohibited Methods of Paint Removal, which is already in effect. Normally, costs associated with this LBP work are part of the project requirements to transfer the property; therefore, BRAC funds should be used for residential property transfer requirements at BRAC activities.

Navy Requirements

OPNAVINST 5100.23D -- Chapter 21: NAVOSH Program Manual - NAVFAC policy is to manage LBP in place if it poses a minor risk (see instruction for specific definitions for "minor risk").

Applicability of regulations listed above to Fallon ranges:

TSCA could apply during the renovation of the few buildings that are located on the range, such as the buildings that appear to be located on Bravo 17W in the Army Compound. The Environmental Department at Naval Air Station (NAS) Fallon (Navy 2002) assessed other areas of the air station where LBP regulations could apply, such as buildings located on the Fallon ranges that provide vital support functions to the sustainment of the ranges. Their report (Navy 2002) rated the status of the LBP program for NAS Fallon as "yellow." It stated that, "no program practice lists or checklists that

have been developed for" the lead-based paint program and that, "The Environmental Department will work with the PW [Public Works] Department to develop and maintain an up-to-date record of LBP operations on station." Not until their survey has been completed can applicability of TSCA or the other regulations listed above be determined for buildings located on the Fallon ranges. (Source: Navy. 2002. Environmental Quality Assessment Report For FY02. Prepared by NAS Fallon Environmental Department, Fallon, Nevada. December.)

N. Asbestos Management

Asbestos Management regulations that have the potential to apply to Fallon ranges:

Federal Statutes & Regulations

- Clean Air Act Amendments, 1990, Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAPS). NESHAP for asbestos requires a thorough inspection prior to any renovation or demolition to determine compliance requirements. The asbestos NESHAP requirements specify that no regulated asbestos containing material (ACM) shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by 40 CFR 61.145, Standard for Demolition and Renovation, unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of the regulation and the means of complying with them is present. Refresher training requirements are also specified. Note: EPA generally believes that AHERA (i.e., TSCA) training courses will satisfy the NESHAP training requirements. (Navy Environmental Requirements Guidebook (PR-04), 2001 update)
- The Clean Air Act, Title III – Hazardous Air Pollutants (HAPs), requires facilities to conduct an inventory of its potential HAP emissions to determine its status as a "major" source of HAPs. In addition, there are National Emission Standards for Hazardous Air Pollutants (NESHAP) for major sources and area sources that emit significant quantities of 189 listed HAPs, which includes asbestos.
- The Toxic Substances Control Act (TSCA) (15 U.S. Code [USC] 2643(L)(2), as last amended in 1986) requires the identification, inspection, and management (including abatement) of asbestos in any building used by the DOD as an overseas school for dependents of members of the Armed Forces.
- The Asbestos Hazard Emergency Response Act (AHERA) of 1986 (15 USC 2641-2656, et al., and 20 USC 4014, et al., last amended in November 1990) is the Federal legislation governing the control and abatement of asbestos hazard present in school buildings.
- The Hazardous Materials Transportation Act (HMTA) (49 CFR 172-177, amended in 1978 to regulate the transport of asbestos materials). In particular 49 CFR 177 requires that asbestos must be loaded, handled, and unloaded in a manner that will minimize occupational exposure to airborne asbestos. Asbestos wastes which are transported for disposal at a landfill or other disposal facility must meet all applicable requirements.
- Occupational Safety and Health Act (OSHA): This act, last amended in November 1990, 29 U.S. Code (USC) 651-678, is a Federal statute that governs the issues related to occupational safety and health. This act would apply to safe work practices related to the abatement, storage and handling of asbestos-containing materials.

- Resource Conservation and Recovery Act (RCRA), 42 USC 6901 to 6992k RCRA of 1976, which amended the Solid Waste Disposal Act, addresses nonhazardous (Subtitle D) and hazardous (Subtitle C) waste management activities. This act would apply to the safe disposal of asbestos-containing materials.

Navy Requirements

OPNAV 5100.23E, Appendix 17-B describes asbestos training and certification requirements listed by type of operation (e.g., Class III and IV operations, or housekeeping where asbestos containing material [ACM] is present).

Applicability of regulations listed above to Fallon ranges:

TSCA and AHERA regulations do not apply since there are no schools on the ranges of the Fallon Range Training Complex (FRTC). [Note that schools are located in the City of Fallon, which is located in the FRTC.] Some buildings in a simulated Army Compound provide tactical targets on Bravo 17W, but these buildings are wooden replicas that were constructed in 1987, so they do not contain asbestos. The Environmental Department at Naval Air Station (NAS) Fallon (Navy 2002) assessed other areas of the air station where asbestos regulations could apply, such as buildings located on the Fallon ranges that provide vital support functions to the sustainment of the ranges. Their report rated the status of the asbestos program for NAS Fallon as having “few deficiencies” (Source: Navy. 2002. Environmental Quality Assessment Report For FY02. Prepared by NAS Fallon Environmental Department, Fallon, Nevada. December.)

O. PCB Management

PCB Management regulations that have the potential to apply to Fallon ranges:

Federal Statutes & Regulations

- The Toxic Substances Control Act (TSCA) (40 Code of Federal Regulations [CFR] 761) currently regulates polychlorinated biphenyls (PCBs). TSCA generally bans the use, manufacture, processing, and distribution in commerce of PCBs. TSCA and the PCB regulations also strictly regulate the marking, storage, and disposal of PCBs. Regulations issued under TSCA require generator identification numbers and the manifesting of PCB wastes.
- The Resource Conservation and Recovery Act (RCRA) (40 Code of Federal Regulations [CFR] 260-270) applies to the disposal of PCBs in certain instances.

Navy Requirements

- Navy Occupational Safety and Health (NAVOSH) Program (see OPNAVINST 5100.23D)
- OPNAVINST 5090.1B, Chapter 11, PCB Management Ashore

Applicability of regulations listed above to Fallon ranges:

TSCA and RCRA regulations could apply to older electrical equipment located on ranges or in range support facilities that are located off-range that might contain PCBs, such as light ballasts and transformers. A team from the Environmental Department of Naval Air Station (NAS) Fallon (Navy 2002) assessed other areas of the air station where PCB regulations could apply. They rated the status of the PCB program for NAS Fallon as “yellow” (having few deficiencies) Their report (Navy 2002) indicates that, “the PW [Public Works] Department maintains a record of PCB-containing assets on station,” but the record was not included to determine if any assets are located on ranges or in range

support facilities located off-range. (Source: Navy. 2002. Environmental Quality Assessment Report For FY02. Prepared by NAS Fallon Environmental Department, Fallon, Nevada. December.)

P. Safe Drinking Water Management

Safe Drinking Water Management regulations that have the potential to apply to Fallon ranges:

Federal Statutes and Regulations

The Safe Drinking Water Act (SDWA). This act, Public Law (PL) 99-339, 42 U.S. Code (USC) 201, 300f--300j-25, 6939b, 6979a, 6979b, 7401--742, etc., is the Federal legislation which regulates the safety of drinking water in the country. Each department, agency, and instrument of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any potential source of contaminants identified by a state program must be subject to and observe all requirements of the state program applicable to such potential source of contaminants, both substantive and procedural, in the same manner, and to the same extent, as any other person, including payment of reasonable charges and fees (42 USC 300h-7(h)).

State Regulations

Nevada State Health Division, Bureau of Health Protection Services, Safe Drinking Water Regulations

DOD and Navy Requirements

OPNAVINST 5090.1B, Chapter 8, Drinking Water Systems and Water Conservation

Applicability of regulations listed above to Fallon ranges:

The only source of potable water at the Fallon Ranges Training Complex is located at the "Centroid" an electronic warfare facility located in Dixie Valley. This potable water source does not meet the Federal definition of a public water system, but does meet the states definition of a public water system. This source of water; however, is not located on any of the active range areas where munitions are used, which is the scope of RSEPA. In addition to the lack of potable water at any of the Fallon ranges (Bravo 16, Bravo 17, Bravo 19, and Bravo 20), there is no sole source aquifer located at any of the ranges. Therefore, the Federal and state safe drinking water regulations, based upon information known about the range thus far, does not apply to the Fallon ranges.

Q. Environmental and Explosives Safety Management

Environmental and Explosives Safety Management regulations that have the potential to apply to Fallon ranges:

DOD and Navy Requirements

- DOD Directive 4715.11 – Environmental and Explosives Safety Management on Department of Defense Active and Inactive Ranges Within the United States, August 17, 1999.
- DOD 6055.9 – Standard (STD): DOD Ammunition and Explosives Standards. Undersecretary of Defense for Acquisition and Technology. April 1999.

Applicability of regulations listed above to Fallon ranges:

DOD Directive 4715.11 applies since the Fallon Range Training Complex (FRTC) includes 4 active ranges: Bravo 16 (R-4803), Bravo 17 (R-4804), Bravo 19 (R-4810), and Bravo 20 (R-4802/R-4813). Existing documentation does not mention inactive ranges, but this regulation would apply to those as well.

Although DOD 6055.9-STD applies to Naval operations at the FRTC, it focuses primarily on the safe storage and handling of munitions and waste military munitions. While this is obviously relevant to the sustainment of the ranges at FRTC, munitions are not stored on any ranges and handling is limited to disposal activities conducted by explosive ordnance disposal (EOD) personnel, which are covered under other regulations. Furthermore, the U.S. Department of Defense Explosives Safety Board (DDESB) enforces DOD 6055.9-STD through onsite inspections with the Navy's Ordnance Environmental Support Office (OESO), who verifies compliance with the Resource Conservation and Recovery Act (RCRA) Military Munitions Rule (MMR). Therefore, this standard does not apply to the Range Condition Assessment of ranges at FRTC.

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Appendix A

Range Sustainability Environmental Program Assessment (RSEPA) Range Condition Assessment (RCA) Phase II Guidance Fallon Ranges (Bravo 16, 17, 19, 20), NAS Fallon, Nevada

Two things to keep in mind, at all times, during environmental regulatory compliance evaluation:

- 1) We are trying to determine any regulatory issues that may threaten continued use of range.
- 2) We are trying to determine if there has been or there is the potential for a release of chemicals into the air or a migration of chemicals into soil and water that could negatively affect humans, animals, plants or habitat, now or in the future.

RSEPA RCA Phase II, “Pre-Site Visit Information Collection” Report

Please answer questions 1 – 3 below for each environmental compliance area that you are determining applicability to this range (both operational range areas and any range support operations/facilities). Answers to these questions constitute the information required for the RSEPA RCA Phase II Report.

Formatting: Answer questions in box in black Arial 12 Font. No italics, bulleting/numbering, bolding, underlining...etc. Titles can be in title case and in quotation marks, if need. Type as much as you need to in each box. Not limited by size of box that you see here.

1. <u>Name of media</u> or environmental area that you are determining applicability to this range (e.g., Air Quality, Water Quality, Hazmat/Waste).
2. <u>List</u> the Federal, state, and local regulations that pertain to the media/environmental area that you named above.
3. <u>Briefly state</u> , of the regulations you just listed above, which apply or don't apply to this range and why .