

Report for Congress

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Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2001

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ABSTRACT

The Department of Defense operates six environmental programs: cleanup of past contamination at military facilities, acceleration of cleanup at military bases designated for closure, compliance with environmental laws and regulations that apply to ongoing military operations, pollution prevention, natural resource conservation, and environmental technology. In addition to these activities, the Department of Energy is responsible for managing defense nuclear waste and remediating contaminated sites. This report discusses the federal laws that established these programs, describes their scope and purpose, provides a history of appropriations, indicates the President's budget request for FY2001, examines authorization and appropriations legislation for FY2001, and discusses other relevant legislation considered in the 106th Congress.

Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2001

Summary

While Congress authorizes most federal programs for multiple years, it annually authorizes programs for national defense as well as appropriating funding for them each fiscal year. Of the activities traditionally authorized and funded, the Department of Defense (DOD) administers six environmental programs: cleanup at current and former military facilities, cleanup at base closure sites, environmental compliance, pollution prevention, environmental technology, and natural resource conservation. The Department of Energy (DOE) manages defense nuclear waste and cleans up contaminated nuclear weapons sites. For FY2001, the Administration requested a total of \$10.44 billion for all of the above programs, \$740 million more than the FY2000 funding level of \$9.70 billion.

The second session of the 106th Congress enacted the National Defense Authorization Act for FY2001 (P.L. 106-398, H.R. 4205), which authorized \$1.31 billion for cleanup at current and former military facilities and an additional \$6.15 billion for DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites. It also included several provisions that addressed various environmental matters, including the authorization of payments for numerous environmental fines and penalties. As in past years, the law did not specify the total amount of funding that was authorized for environmental compliance, pollution prevention, environmental technology, natural resource conservation, and cleanup at base closure sites, which receive their funding from larger accounts for operation and maintenance and base realignment and closure respectively.

The second session of the 106th Congress also enacted the three bills that appropriated funding for DOD and DOE's defense cleanup and environmental programs in FY2001. First, the Department of Defense Appropriations Act for FY2001 (P.L. 106-259, H.R. 4576) provided \$1.31 billion for cleanup at current and former military facilities, roughly \$10 million more than the FY2000 funding level of \$1.30 billion. Second, the Military Construction Appropriations Act for FY2001 (P.L. 106-246, H.R. 4425) provided \$865.3 million for cleanup at base closure sites, \$542.7 million more than the FY2000 funding level of \$322.6 million. The increase will primarily be used to pay for outstanding projects approved in FY2000 but not begun until FY2001. Third, the Energy and Water Development Appropriations Act for FY2001 (P.L. 106-377, H.R. 5483) provided a total of \$6.12 billion for DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites, about \$400 million more than the FY2000 funding level of \$5.72 billion.

Other relevant legislation considered, but not enacted, in the 106th Congress could have affected environmental cleanup at military facilities. H.R. 1300 and H.R. 2580, as reported, and H.R. 2956 and S. 1537, as introduced, would have amended the remedy selection process at Superfund sites, which also would have applied to all of DOD's sites. As introduced, H.R. 617 would have clarified requirements for federal compliance with all hazardous waste cleanup laws, and S. 258, as introduced, would have authorized new rounds of base closings in 2001 and 2003.

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Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2001

Introduction

While Congress authorizes most federal programs for multiple years, it annually authorizes programs for national defense, as well as appropriating funding for them each fiscal year. In the second session of the 106th Congress, authorizing and appropriating funding for national defense programs for FY2001 was a significant consideration in the annual debate over the federal budget. Of the activities traditionally authorized and funded, the Department of Defense (DOD) and the Department of Energy (DOE) administer seven environmental programs related to national defense. DOD's programs address the following six activities: cleaning up past contamination at current and former military facilities, accelerating the cleanup of past contamination at military bases designated for closure, complying with applicable environmental laws and regulations to safely dispose of waste and pollutants generated from ongoing military operations, preventing future contamination, developing more efficient and less costly environmental cleanup technologies, and conserving the natural, historical, and cultural resources of the public lands that it administers. DOE is responsible for managing defense nuclear waste generated from the past production of radioactive materials used to construct nuclear weapons and for remediating contaminated sites.

Congress authorizes both DOD's environmental programs and DOE's management of defense nuclear waste and remediation of contaminated sites in one annual authorization bill for national defense, but it traditionally funds these programs in three separate appropriations bills. DOD's programs for environmental cleanup at current and former military facilities, environmental compliance, pollution prevention, environmental technology, and conservation receive funding in the appropriations bill for DOD, but environmental cleanup at base closure sites receives funding in the appropriations bill for military construction. Congress separately funds DOE's management of defense nuclear waste and remediation of contaminated sites in the appropriations bill for energy and water development.

Funding for defense cleanup and environmental programs administered by DOD and DOE represents a relatively small portion of the total budget for national defense. For FY2001, the Administration requested a total of \$10.44 billion for these programs, which is a 7.6 % increase of roughly \$740 million above the FY2000 funding level of \$9.70 billion and is about 3.4% of the total request of \$305.42 billion for national defense. For a history of appropriations for defense cleanup and environmental programs since FY1990, refer to **Figure 1** on the following page. For the percentage of total funding requested for each program for FY2001, refer to **Figure 2** on the following page as well.

Figure 1. Funding for Defense Cleanup and Environmental Programs: FY1990 to FY2000 Enacted and FY2001 Request

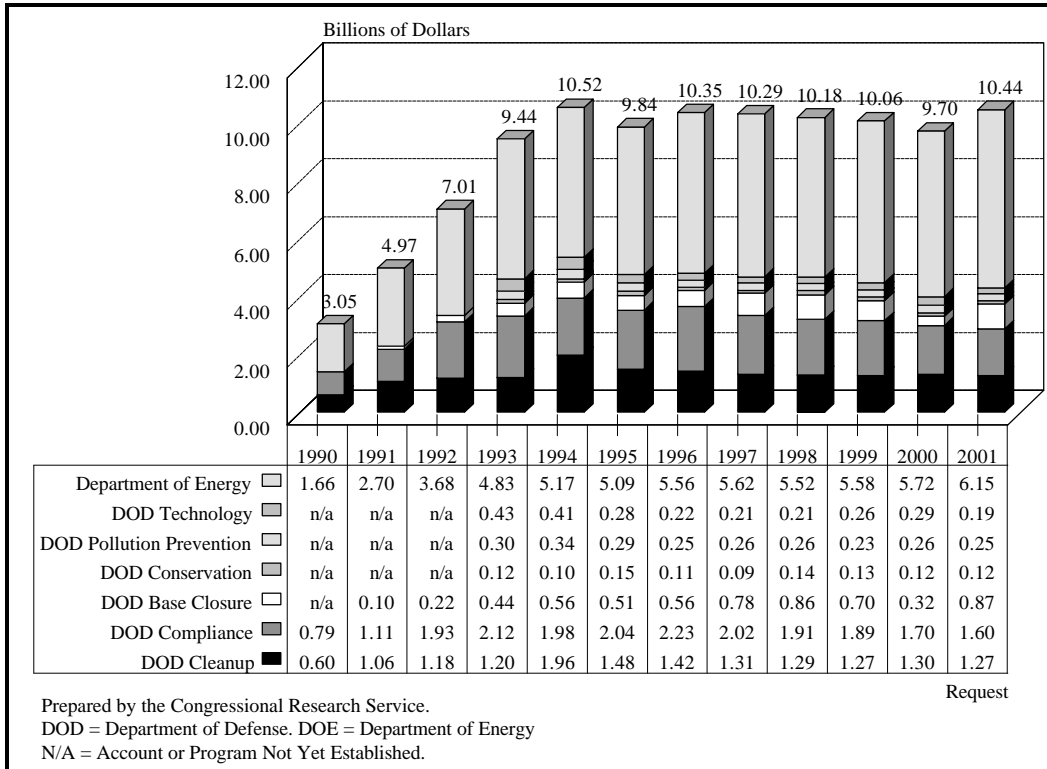
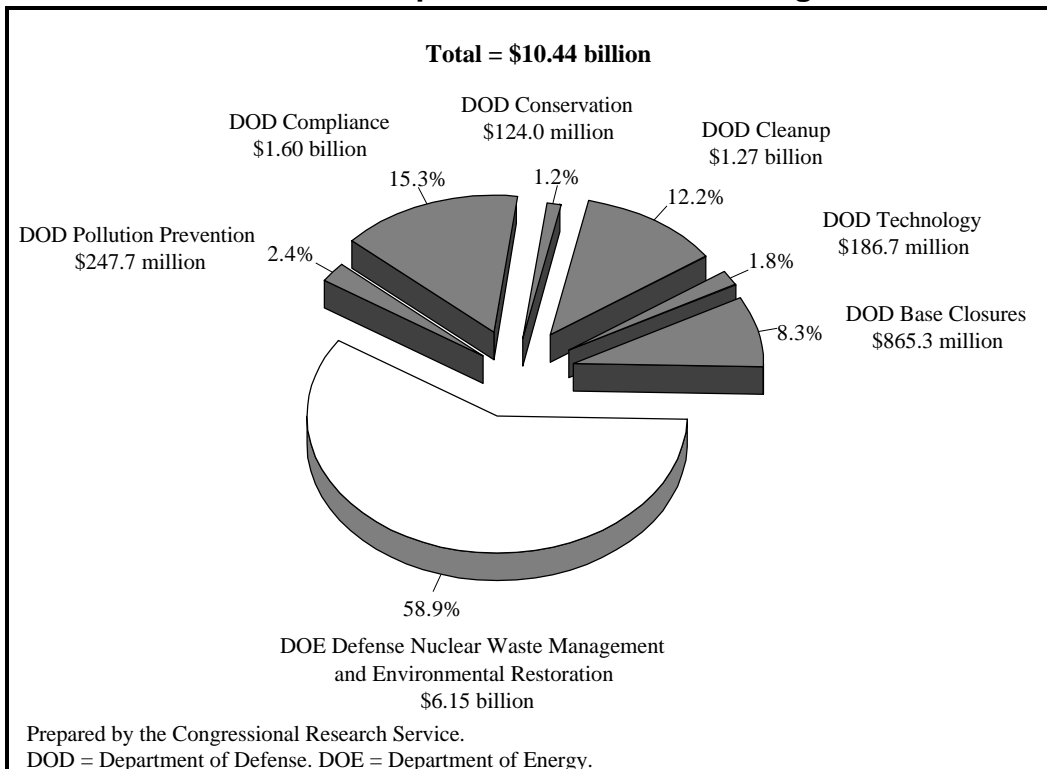


Figure 2. FY2001 Administration Request for Defense Cleanup and Environmental Programs



Certain factors could create the need to significantly increase or reduce funding for DOD and DOE's defense cleanup and environmental programs in future years. For example, cleanup costs could rise if more sites were included in the Superfund program to clean up the nation's most hazardous sites, and compliance costs could rise if environmental laws and regulations became more stringent. However, other factors could cause funding to fall. For example, cleanup could become less costly if cleanup standards were revised, more economical cleanup technologies became available, and pollution prevention efforts were to significantly reduce or eliminate future contamination. In addition to these factors, other national defense priorities could cause funding to shift away from environmental programs.

The following sections of this report provide a brief overview of the federal laws that established DOD and DOE's defense cleanup and environmental programs, describe their scope and purpose, indicate the President's budget request for FY2001, examine authorization and appropriations legislation for FY2001, and discuss other relevant legislation considered in the 106th Congress.

Department of Defense

The Department of Defense operates six environmental programs.¹ In terms of funding, the three major ones focus on cleaning up past contamination on current and former military facilities, accelerating cleanup at base closure sites, and complying with environmental laws and regulations to safely dispose of waste and pollutants from ongoing military operations. Three other programs have smaller budgets, which focus on pollution prevention, conservation, and environmental technology. For FY2001, the Administration requested a total of \$4.29 billion for all six programs, an 8% increase of \$307 million above the FY2000 funding level of \$3.98 billion. Each program is discussed below.

Environmental Restoration

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) created the Superfund program to clean up hazardous waste sites that pose the greatest risk to public health in the United States and established the National Priorities List (NPL) to track them. CERCLA required DOD and all other federal agencies to comply with the statute's requirements for identifying, evaluating, and cleaning up NPL sites under their jurisdiction.² The Superfund Amendments and Reauthorization Act of 1986 (SARA) amended CERCLA and required DOD to comply with the statute's requirements in remediating all of its hazardous waste sites, including those sites that are not on the NPL.³

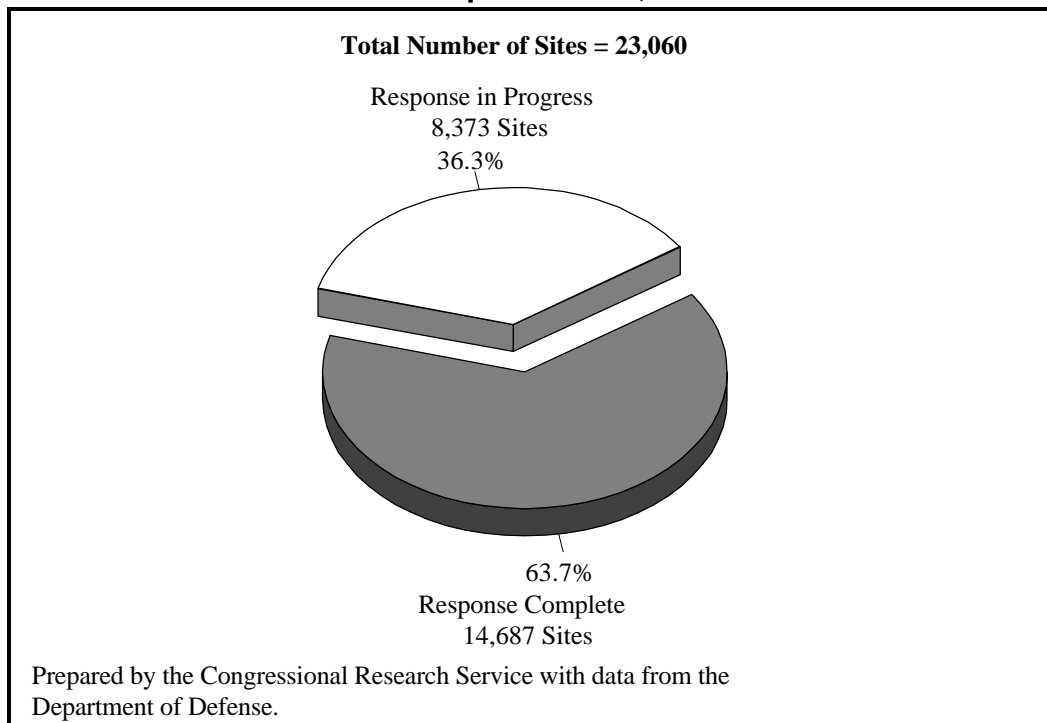
¹For additional information, refer to the Department of Defense Environmental Network and Information Exchange (DENIX) web site at [<http://www.denix.osd.mil>].

²P.L. 96-510, Section 107(g).

³P.L. 99-499, Section 211.

DOD's Defense Environmental Restoration Program centralizes the department's efforts in cleaning up hazardous waste sites on current and former military facilities where past actions led to contamination. Congress traditionally authorizes funding for DOD's cleanup program annually in the national defense authorization bill, but appropriates its funding under the Defense Environmental Restoration Account in DOD's appropriations bill.⁴ Congress established this account in the Department of Defense Appropriations Act for FY1984.⁵ Subsequently, the National Defense Authorization Act for FY1997 divided the account into four subaccounts: Army, Navy, Air Force, and defense-wide sites.⁶ Since then, Congress also has traditionally specified the amount of funding reserved for cleaning up formerly used defense sites (FUDS). The National Defense Authorization Act for FY2001 (P.L. 106-398) amends current law to add an environmental restoration subaccount for FUDS properties to conform with the budgetary practice of reserving cleanup funding for such sites in the annual authorization and appropriations process. Total funding for environmental restoration has varied from an initial level of \$150 million in FY1984 to a high of \$1.96 billion in FY1994. The Department of Defense Appropriations Act for FY2001 (P.L. 106-259, H.R. 4576) provided \$1.31 billion, roughly \$40 million more than the Administration's request of \$1.27 billion, and about \$10 million more than the FY2000 funding level of \$1.30 billion.

Figure 3. Cleanup Status at Current and Former Military Facilities as of September 30, 1999



⁴For a discussion of funding for other national defense programs, refer to CRS Report RL30505, *Appropriations for FY2001: Defense*, coordinated by Stephen Daggett.

⁵P.L. 98-212, 97 Stat. 1427.

⁶P.L. 104-201, Section 322.

By the end of FY1999, DOD had identified a total of 23,060 sites on current and former military facilities that require cleanup under CERCLA.⁷ DOD reported that response was complete at 14,687 sites. However, many sites require long-term monitoring to ensure that remedial actions adequately addressed contamination. Cleanup was reportedly in progress at 8,373 sites. (Refer to **Figure 3** on the previous page.) While cleanup was complete at about 64% of total sites, future cleanup costs at the remaining sites are expected to be significantly more than the amount already spent for remediation. As of the end of FY1999, DOD had spent \$11.83 billion for cleanup and estimated that another \$18.05 billion would be necessary to complete cleanup at sites where remedial actions are underway.⁸

Military Base Closure

Congress has approved four rounds of military base closures since 1988, and the National Defense Authorization Act for FY1990 established a program to speed the cleanup of contamination on base closure sites prior to transferring them from military control to civilian uses.⁹ While the cleanup of former military facilities is funded under the Defense Environmental Restoration Account discussed above, the cleanup of bases designated for closure since 1988 is funded separately under the Base Realignment and Closure (BRAC) account in DOD's budget. Congress has traditionally reserved a portion of each BRAC account for environmental cleanup in the appropriations bill for military construction.¹⁰ Funding has varied from \$100 million in FY1991 to a high of nearly \$860 million in FY1998.

In past years, the President's budget has sought, and Congress has generally enacted, an amount of funding that is sufficient to pay the entire cost of each cleanup project at a base closure site that is approved in the budget year. However, as a cost saving measure, DOD proposed and Congress approved only a portion of total program funding for FY2000 that was necessary to finance projects which were to be completed by the end of the fiscal year. Consequently, the Administration requested a substantial increase in funding for FY2001 to pay for the outstanding amount of the FY2000 program level as well as the new program level for FY2001. Under the President's budget, funding for cleanup at base closure sites would substantially increase by \$542.7 million, or 168%, from \$322.6 million in FY2000 to \$865.3 million in FY2001. However, of the total requested amount of \$865.3 million, about \$365 million, or 42%, would be used to finance projects approved in FY2000 but not begun until FY2001. After this amount is paid for outstanding FY2000 projects, \$500.3 million would remain to finance new cleanup projects to be approved in FY2001. Congress approved the Administration's requested increase in passing the Military Construction Appropriations Act for FY2001 (P.L. 106-246, H.R. 4425), which provided a total of \$865.3 million for base closure cleanups.

⁷Department of Defense. *FY1999 Defense Environmental Restoration Program Annual Report to Congress*. March 2000. p. B-6-1, B-8-1.

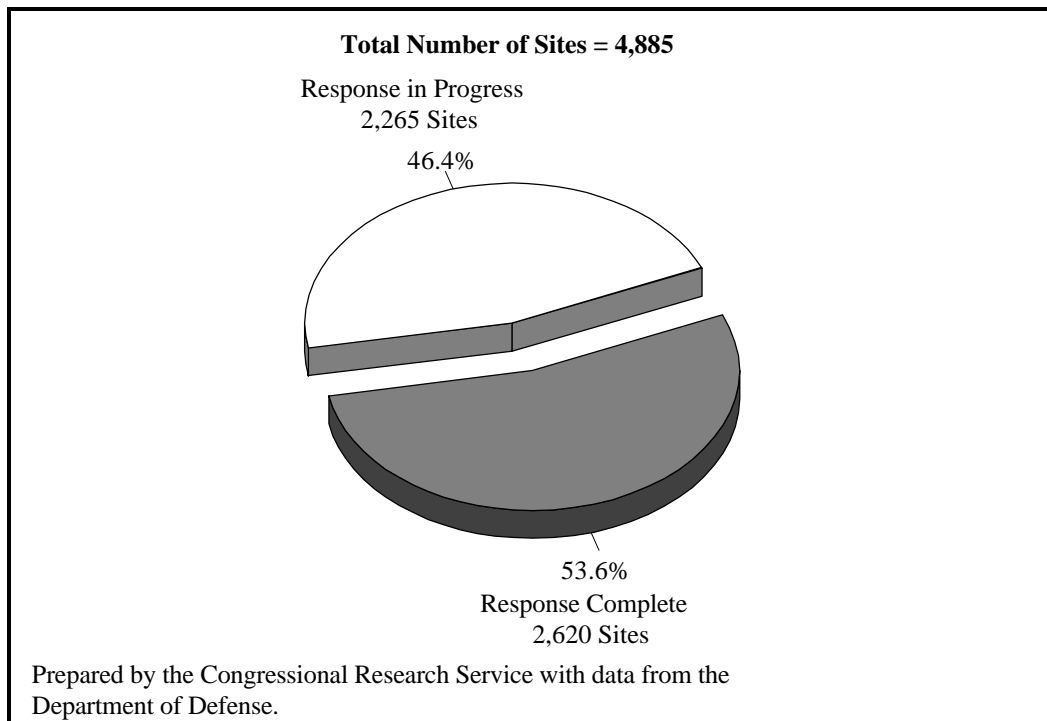
⁸Ibid.

⁹P.L. 101-189, Section 353.

¹⁰For a discussion of other programs funded under this legislation, refer to CRS Report RL30510, *Appropriations for FY2001: Military Construction*, by Mary Tyszkiewicz.

By the end of FY1999, DOD had identified a total of 4,885 sites on BRAC facilities that require cleanup under CERCLA.¹¹ DOD reported that response was complete at 2,620 sites. As with DOD's current and former military facilities, many of the BRAC sites where response is complete require long-term monitoring to ensure that remedial actions adequately addressed contamination. Remediation reportedly was in progress at the remaining 2,265 sites identified for cleanup under the BRAC program. (Refer to **Figure 4** below.) As of the end of FY1999, DOD had spent a total of \$4.18 billion for cleanup costs at military bases designated for closure. The department estimates that an additional \$3.85 billion would be necessary to complete cleanup at sites where remedial actions were still underway.¹²

Figure 4. Cleanup Status at Base Closure Sites as of September 30, 1999



Environmental Compliance

Under federal environmental laws, DOD and all other federal agencies must comply with the same requirements that apply to state and local governments and the private sector. The Resource Conservation and Recovery Act (RCRA), the Clean Water Act, the Clean Air Act, and the Safe Drinking Water Act specify that requirements under those laws apply to defense and all other federal facilities. The Federal Facility Compliance Act of 1992 amended RCRA to clarify in detail that DOD and all other federal agencies are subject to penalties, fines, permit fees, reviews of

¹¹Department of Defense. *FY1999 Defense Environmental Restoration Program Annual Report to Congress*. March 2000. p. B-10-1.

¹²Ibid.

plans or studies, and inspection and monitoring of facilities in connection with federal, state, interstate, or local solid or hazardous waste regulatory programs.¹³ The Act also authorizes and directs the Environmental Protection Agency (EPA) to take enforcement actions under RCRA against any federal agency to the same extent that it would against any other person. Typically, environmental compliance projects include activities such as disposing of solid waste, upgrading and monitoring waste water treatment plants to comply with Clean Water Act standards, and testing and maintaining underground storage tanks.

The National Defense Authorization Act for FY1990 required DOD to annually track the portion of its budget reserved for environmental compliance.¹⁴ However, there is not a centralized account for these activities within the national defense authorization bill or DOD's appropriations bill. Funding for compliance comes from the Operation and Maintenance Accounts for the branches of military service. DOD's budget for environmental compliance has ranged from \$790 million in FY1990 to a high of \$2.23 billion in FY1996. For FY2001, the Administration proposed nearly \$1.60 billion for environmental compliance projects, a 6% decrease of about \$100 million below the FY2000 funding level of roughly \$1.70 billion. DOD attributes the need for less funding in FY2001 to investments in pollution prevention which have reduced the amount of contaminants generated by military activities and led to lower compliance costs. As in past years, DOD will develop its environmental compliance budget for FY2001 from funds appropriated under the Operation and Maintenance Accounts in the Department of Defense Appropriations Act for FY2001 (P.L. 106-259, H.R. 4576).

Other Environmental Programs

In addition to the above activities, DOD administers three programs that focus on pollution prevention, environmental technology, and conservation. The purpose of the pollution prevention program is to reduce or eliminate solid or hazardous waste from being generated and prevent environmental problems before they occur. The environmental technology program supports research, development, testing, and demonstration of more efficient and less costly methods to clean up, manage, and prevent environmental contamination. The conservation program aims to protect the natural, historical, and cultural resources of the 25 million acres of public land that DOD administers, including the protection of endangered species.

DOD began tracking the budget for these programs in FY1993. While these programs are an integral part of the department's environmental strategy, their funding is significantly smaller than the programs for environmental cleanup and compliance. (Refer to **Figure 2** on page 2.) Like compliance, there are no centralized accounts for pollution prevention, environmental technology, or conservation within the national defense authorization bill or DOD's appropriations bill. Their funding also comes from the Operation and Maintenance Accounts for the branches of military service.

¹³P.L. 102-386, Section 102.

¹⁴P.L. 101-189, Section 357.

Under the President's FY2001 budget, funding for conservation would increase while support for pollution prevention and environmental technology would decline. The Administration requested a 5% increase of \$6.3 million for conservation from \$117.7 million in FY2000 to \$124.0 million in FY2001. The requested increase would be used to provide greater support for protecting threatened or endangered species and completing Integrated Natural Resource Management Plans for all installations by the Sikes Act deadline of November 2001. Funding for pollution prevention would decline by \$13.7 million, or 5%, from \$261.4 million in FY2000 to \$247.7 million in FY2001. The completion of several one-time projects accounts for most of the requested decrease. The budget for environmental technology would fall by \$101.7 million, or 35%, from \$288.4 million in FY2000 to \$186.7 million in FY2001. According to DOD, the requested decrease is justified by the completion of projects managed by the Air Force and the Defense Advanced Research Projects Agency and DOD's discontinuance of projects which received earmarked funding in FY2000 under the Research, Development, Test, and Evaluation Accounts. As in past years, DOD will develop its FY2001 budget for environmental technology, natural resource conservation, and pollution prevention from funds appropriated under the Operation and Maintenance Accounts in the Department of Defense Appropriations Act for FY2001 (P.L. 106-259, H.R. 4576).

Department of Energy

In the late 1980s, the United States ceased its production of radioactive materials used in the construction of nuclear weapons due to military projections that the nuclear weapons stockpile was sufficient to protect national security and respond to future threats. However, environmental problems associated with producing these radioactive materials continue to pose a risk to human health and safety today. Since the beginning of the U.S. atomic energy program, DOE and its predecessors have been responsible for managing defense nuclear weapons and related waste. In later years, DOE expanded its efforts to include the environmental restoration of radioactive sites and those with hazardous contamination in buildings, soil, and water on the department's facilities, to ensure their safety for future uses. Congress traditionally authorizes funding for these activities in the annual authorization bill for national defense, and appropriates funding for them in the appropriations bill for energy and water development.¹⁵

In 1989, the Bush Administration developed a separate program within DOE to consolidate the department's efforts in cleaning up the environmental problems caused by defense nuclear waste.¹⁶ Subsequently, Congress established the Defense Environmental Restoration and Waste Management Account under the Energy and Water Development Appropriations Act for FY1992 to specify the amount of funding

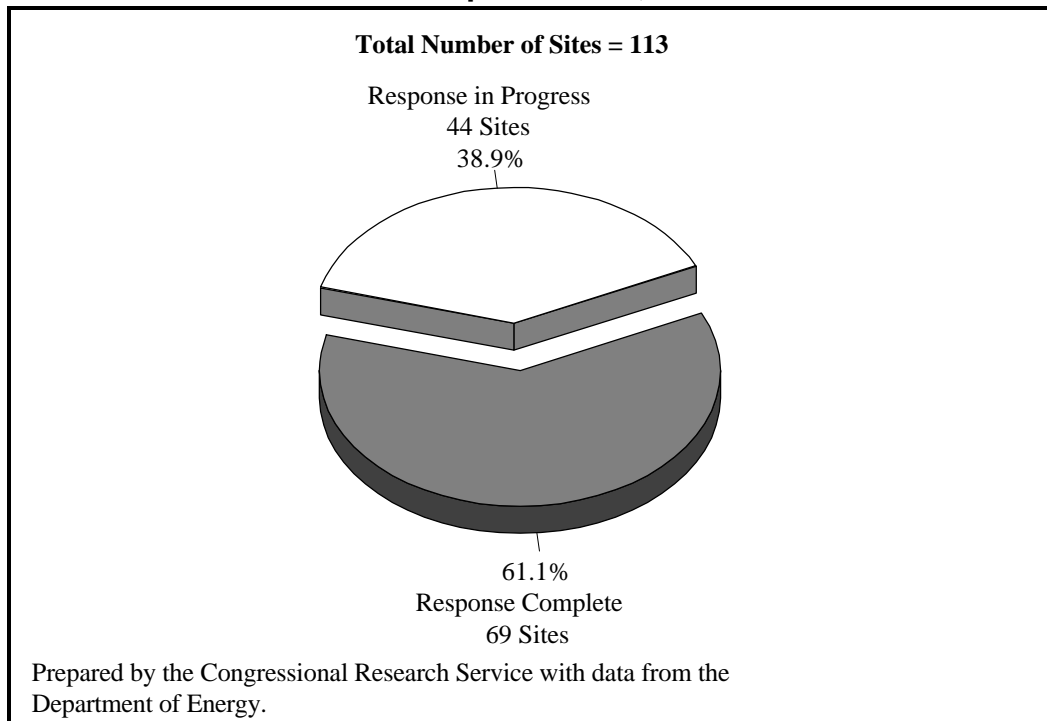
¹⁵For a discussion of funding for other DOE programs, refer to CRS Report RL30507, *Appropriations for FY2001: Energy and Water Development*, coordinated by Marc Humphries and Carl Behrens.

¹⁶For additional information on this program, refer to the Department of Energy's web site for the Office of Environmental Management [<http://www.em.doe.gov>].

reserved for this program.¹⁷ Later, Congress created a Defense Facilities Closure Projects Account under the Energy and Water Development Appropriations Act for FY1998 to indicate the amount of funding allocated for expediting the cleanup and closure of certain defense nuclear facilities by 2006.¹⁸ The following year, Congress established a Defense Environmental Management Privatization Account under the Energy and Water Development Appropriations Act for FY1999 to specify the amount of funding set aside for privatizing cleanup projects at DOE's defense environmental management sites.¹⁹

The Energy and Water Development Appropriations Act for FY2001 (P.L. 106-377, H.R. 5483) provided a total of \$6.12 billion for all three of the above accounts, roughly \$400 million more than the FY2000 funding level of \$5.72 billion, and about \$30 million less than the Administration's request of \$6.15 billion. Of the total appropriation of \$6.12 billion, \$4.97 billion was reserved for the Defense Environmental Restoration and Waste Management Account, \$1.08 billion was set aside for the Defense Facilities Closure Projects Account, and \$65 million was allocated to the Defense Environmental Management Privatization Account.

Figure 5. Cleanup Status of Department of Energy Sites as of September 30, 1999



¹⁷P.L. 102-104, 105 Stat. 529. Prior to the establishment of the Defense Environmental Restoration and Waste Management Account, DOE received funding for managing defense nuclear waste and remediating contaminated sites under the Atomic Energy Defense Activities Account in the appropriations bill for energy and water development, but the bill did not specify the amount of the funds reserved within the account for these activities.

¹⁸P.L. 105-62, 111 Stat. 1332.

¹⁹P.L. 105-245, 112 Stat. 1849.

DOE reports that there are a total of 113 sites where the past production of atomic materials used to construct nuclear weapons led to severe contamination in need of environmental remediation. By the end of FY1999, DOE had completed all response actions at a total of 69 sites.²⁰ (Refer to **Figure 5** on page 9.) DOE estimates that cleanup will be complete at an additional 23 sites by 2006. As indicated in **Table 1** below, the remaining 21 sites will require long-term cleanup projects extending well beyond this time, and DOE estimates that the last of its sites will not be cleaned up until 2050. However, long-term “stewardship” activities will still be necessary at many sites after cleanup is complete to manage stored radioactive waste, maintain other contained hazardous materials, and monitor the ongoing treatment of contaminated ground water. DOE is already performing long-term stewardship activities at 30 of the 69 sites where response actions are complete.²¹ Including post-cleanup expenses for all sites, DOE estimates that future remediation costs could range from \$151 billion to \$195 billion from FY2000 to FY2070.²²

Table 1. Department of Energy Sites with Cleanup Activities Projected to Continue Beyond 2006

State	Site	Projected Completion
California	Energy Technology Engineering Center	2007
California	Lawrence Livermore National Laboratory Main Site	2007
Colorado	Rio Blanco Site	2007
California	General Electric Vallecitos Nuclear Center	2008
California	Lawrence Livermore National Laboratory Site 300	2008
Nevada	Project Shoal Area	2008
Nevada	Central Nevada Test Area	2009
Nevada	Tonopah Test Range Area	2009
New Mexico	Gnome-Coach Site	2010
New Mexico	Gasbuggy Site	2011
Kentucky	Paducah Gaseous Diffusion Plant	2012
Ohio	Portsmouth Gaseous Diffusion Plant	2013
Nevada	Nevada Test Site	2014
New York	Separations Process Research Unit	2014
Tennessee	Oak Ridge Reservation	2014
New Mexico	Los Alamos National Laboratory	2015

²⁰DOE. Office of Environmental Management. *Status Report on Paths to Closure*. March 2000. p. 2.

²¹Ibid., p. 19.

²²Ibid., p. 9.

State	Site	Projected Completion
New York	West Valley Demonstration Project	2015
South Carolina	Savannah River Site	2038
New Mexico	Waste Isolation Pilot Plant	2039
Washington	Hanford Site	2046
Idaho	Idaho National Engineering and Environmental Laboratory	2050

Source: Department of Energy. Office of Environmental Management. *Status Report on Paths to Closure*. March 2000. p. 23-27.

Authorizing Legislation for FY2001

On May 12, 2000, the House Armed Services Committee filed its report on the National Defense Authorization Act for FY2001 (H.R. 4205, H.Rept. 106-616), and the House passed the bill on May 18, 2000. The Senate Armed Services Committee reported its version of the authorization bill (S. 2549, S.Rept. 106-292) on May 12, 2000. The Senate inserted the text of S. 2549 into H.R. 4205 as a substituting amendment and passed its version of H.R. 4205 on July 13, 2000. A House-Senate conference committee resolved the differences between the two bills and filed its report (H.Rept. 106-945) on October 6, 2000. The House passed the conference agreement on October 11, 2000, and the Senate passed it on October 12, 2000. The President signed H.R. 4205 into law (P.L. 106-398) on October 30, 2000. As in past years, the law did not specify the total amount of funding that was authorized for environmental compliance, pollution prevention, environmental technology, natural resource conservation, and environmental cleanup at base closure sites, which receive their funding from larger accounts for operation and maintenance and base realignment and closure respectively.

P.L. 106-398 authorized approximately \$1.31 billion for environmental cleanup at current and former military facilities and an additional \$25 million for the Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Trust Fund. In addition to authorizing funding for DOD, the law authorized a total of \$6.15 billion for FY2001 to fund DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites. Of this amount, approximately \$5.97 billion was authorized as new funding, and the remaining \$174.4 million was authorized from unused prior year balances.

Of the total authorized amount of \$6.15 billion for DOE, about \$1.08 billion was authorized for defense facilities closure projects, and \$90.1 million was authorized for two privatization contracts: a spent nuclear fuel dry storage project and an advanced mixed waste treatment project. However, the authorization for privatization projects was entirely derived from unused prior year balances, and no new funding was authorized. The House had proposed to authorize \$284 million for privatization projects, and the Senate had approved an authorized level of \$390 million. Both

amounts included support for the Hanford Tank Waste Remediation System for high-level waste. However, DOE cancelled the privatization contract for this project due to the failure of the contractor to provide a viable cost estimate. Consequently, the conference committee on H.R. 4205 chose to authorize it under the Defense Environmental Restoration and Waste Management Account with traditional funds.

In addition to authorizing funding for the above activities, P.L. 106-398 included several environmental provisions that:

- ! amended current law to establish a separate environmental restoration account for Formerly Used Defense Sites to conform with the current budgetary practice of specifically reserving cleanup funding for such sites in the authorization and appropriations process;
- ! designated the environmental restoration accounts as the sole source of funding for long-term operation and maintenance expenses at all DOD cleanup sites;
- ! authorized up to 5% of annual environmental restoration funding through September 30, 2003, for permanently relocating facilities on current or former defense sites if cleanup is required due to a release of hazardous substances, pollutants, or contaminants;
- ! streamlined DOD's reporting requirement under the Strategic Environmental Research and Development Program to include the activities of the Scientific Advisory Board;
- ! authorized up to \$2 million in settlement for a \$16 million notice of violation issued by EPA on March 5, 1999 for Clean Air Act violations at Fort Wainwright, Alaska;
- ! authorized \$993,000 for a supplemental environmental project to satisfy fines imposed by EPA for RCRA violations at Walter Reed Army Medical Center, Washington, D.C.;
- ! authorized \$377,250 for a supplemental environmental project to satisfy fines imposed by EPA for RCRA violations at Fort Campbell, Kentucky;
- ! authorized \$20,701 for a supplemental environmental project to satisfy fines imposed by the State of Georgia for RCRA violations at Fort Gordon, Georgia;
- ! authorized \$78,500 for a supplemental environmental project to satisfy fines imposed by the State of Colorado for RCRA violations at Pueblo Chemical Depot, Colorado;
- ! authorized \$20,000 for a supplemental environmental project to satisfy fines imposed by the State of Utah for RCRA violations at Desert Chemical Depot, Utah;

- ! authorized \$7,975 for a cash penalty imposed by the State of Texas for permit violations under RCRA at Fort Sam Houston, Texas;
- ! authorized \$108,800 for a cash penalty imposed by the State of West Virginia for RCRA violations at Allegheny Ballistics Laboratory, West Virginia;
- ! authorized \$5,000 for a cash penalty imposed by EPA for Clean Air Act violations at Naval Air Station, Corpus Christi, Texas;
- ! authorized \$1,650 for a cash penalty imposed by EPA for Clean Air Act violations at the Marine Corps Combat Development Command, Quantico, Virginia;
- ! authorized \$98,210 to reimburse EPA for costs incurred in overseeing the emergency removal of explosives at the former Nansmond Ordnance Depot in Suffolk, Virginia;
- ! specified that the National Environmental Policy Act of 1969 does not require a programmatic, nationwide environmental impact statement for low level flight training as a precondition to the use of any airspace by the military for such purposes;
- ! authorized DOD to continue a ship disposal project in FY2001 to scrap decommissioned Naval vessels and require DOD to submit a report to Congress on the project by December 31, 2000;
- ! required that the management and oversight of the Defense Environmental Security Corporate Information Management Program be consistent with the Clinger-Cohen Act of 1996, section 331(a) of the National Defense Authorization Act for FY1999, DOD directives, and other relevant statutes, directives, regulations, and management controls that apply to investments in information technology and related services, and required DOD to submit a report to Congress within 60 days of enactment on the mission, personnel, organization, oversight, and activities of the program;
- ! required the Army to submit a report to Congress by February 1, 2001, on the future application for both phases of Plasma Energy Pyrolysis System Technology that would possibly reduce costs of treating and disposing of hazardous substances and toxic waste; and
- ! expressed the sense of Congress that every effort should be made to apply all known public and private sector innovative technologies to restore a former defense manufacturing site in Santa Clarita, California to productive use.

Appropriations Legislation for FY2001

The second session of the 106th Congress completed consideration of all three bills that appropriated funding for DOD and DOE's defense cleanup and

environmental programs in FY2001, and the President signed each bill into law. First, the Department of Defense Appropriations Act for FY2001 (P.L. 106-259, H.R. 4576) provided funding for cleanup activities at current and former military facilities, environmental compliance, pollution prevention, environmental technology, and natural resource conservation. Second, the Military Construction Appropriations Act for FY2001 (P.L. 106-246, H.R. 4425) provided funding for cleanup activities at base closure sites. Third, the Energy and Water Development Appropriations Act for FY2001 (P.L. 106-377, H.R. 5483) provided funding for DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites. Each law is discussed below.

Department of Defense

The Senate Appropriations Committee reported the Department of Defense Appropriations Act for FY2001 (S. 2593, S.Rept. 106-298) on May 18, 2000, and the House Appropriations Committee reported its version of the bill (H.R. 4576, H.Rept. 106-644) on June 1, 2000. The House passed H.R. 4576 on June 7, 2000. The Senate inserted the text of S. 2593 into H.R. 4576 as a substituting amendment and passed its version of H.R. 4576 on June 13, 2000. A House-Senate conference committee resolved the differences between the two versions of the bill and filed its report (H.Rept. 106-754) on July 17, 2000. The House passed the conference agreement on July 19, 2000, and the Senate passed it on July 27, 2000. The President signed H.R. 4576 into law (P.L. 106-259) on August 9, 2000.

P.L. 106-259 provided approximately \$1.31 billion for cleanup at current and former military facilities, about \$10 million more than the FY2000 funding level of \$1.30 billion and approximately \$40 million more than the Administration's request of \$1.27 billion. The increase above the requested amount was devoted to increasing the pace of cleanup activities at contaminated sites located on former military facilities. As in past years, the law did not indicate the total amount of funding that was appropriated for environmental compliance, pollution prevention, environmental technology, and natural resource conservation, as there are no line item accounts for these programs like there are for environmental cleanup activities. Rather, DOD will develop its FY2001 budget for these programs from funds appropriated under the Operation and Maintenance Accounts specified in the law.

In addition to providing funding for the above activities, P.L. 106-259 allocated \$60 million for the Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Trust Fund, \$25 million more than the FY2000 funding level of \$35 million, and \$35 million more than the Administration's request of \$25 million. The law also included \$10 million to assist Native Americans in mitigating the environmental impacts of military activities on tribal lands, \$2 million more than the FY2000 funding level of \$8 million. Additionally, the law contained two of the Senate's environmental provisions that:

- ! allocated \$10 million from the Navy's Operation and Maintenance Account to accelerate the disposal and scrapping of decommissioned vessels, with the requirement for the Navy and the Department of Transportation to develop criteria for selecting ships for disposal or scrapping based on their potential for

causing pollution, creating environmental hazards, and their cost of storage; and

- ! limited “indefinite delivery/indefinite quantity” contracts of \$130 million or higher to 35% of total funding obligated for environmental cleanup projects in FY2001.

However, the law did not include three of the Senate’s other environmental provisions which would have:

- ! prohibited the use of funds for the preventative application of “dangerous pesticides” in areas owned or managed by the Department of Defense that may be used by children;
- ! provided \$5 million for the Environmental Security Technical Certification Program for technologies that would be used to detect unexploded ordinance from live-fire activities; and
- ! provided \$5 million for the Strategic Environmental Research and Development Program to support technologies that would be used to detect and transport pollutants resulting from live-fire activities.

Military Construction

The Senate Appropriations Committee filed its report on the Military Construction Appropriations Act for FY2001 (S. 2521, S.Rept. 106-290) on May 11, 2000, and the House Appropriations Committee filed its report on its version of the bill (H.R. 4425, H.Rept. 106-614) on May 11, 2000, as well. The House passed H.R. 4425 on May 16, 2000, and the Senate inserted the text of S. 2521 into H.R. 4425 as a substituting amendment and passed its version of the bill on May 18, 2000. A House-Senate conference committee filed its report on the bill (H.Rept. 106-710) on June 29, 2000, and the House passed the measure later that day. The Senate passed the conference agreement on June 30, 2000. The President signed H.R. 4425 into law (P.L. 106-246) on July 13, 2000.

P.L. 106-246 appropriated \$865.3 million for cleanup at base closure sites, the same as the Administration requested, but \$542.7 million more than the FY2000 funding level of \$322.6 million. As discussed on page 5, the Administration requested a substantial increase in funding to pay for outstanding projects that were approved in FY2000 but not scheduled to begin until FY2001. Of the total appropriation of \$865.3 million for cleanup projects at base closure sites, \$365 million will be used to finance outstanding projects from FY2000, and the remaining \$500.3 million will be used to finance new projects to be approved in FY2001. The law also transferred \$9.6 million in unexpended FY2000 funds from the Defense-Wide Operation and Maintenance Account to a special account reserved to fund cleanup activities required under CERCLA at the Macalloy site in Charleston, South Carolina. Additionally, the conference committee on H.R. 4425 included report language which directs the Army to develop and operate a thermochemical conversion pilot plant at Fort Ord in California for remediating hazardous materials. This process changes asbestos and other hazardous substances into a non-hazardous mineral. According to the

committee's report, DOE has demonstrated the effectiveness of the technology, and EPA has approved it for use as an environmental remediation technique.

Energy and Water Development

On June 23, 2000, the House Appropriations Committee reported the Energy and Water Development Appropriations Act for FY2001 (H.R. 4733, H.Rept. 106-693), and the House passed the bill on June 28, 2000. The Senate Appropriations Committee reported its version of H.R. 4733 (S.Rept. 106-395) on August 30, 2000, and the Senate passed the bill on September 7, 2000. A House-Senate conference committee resolved the differences between the two bills and filed its report (H.Rept. 106-907) on September 27, 2000. The House passed the conference agreement on H.R. 4733 on September 28, 2000, and the Senate passed it on October 2, 2000. The President vetoed the bill on October 7, 2000, due to objections over provisions regarding the Missouri River, the California Bay-Delta Initiative, and earmarked funding for projects not requested by the Administration. The House passed the bill again on October 11, 2000, with a 2/3 majority required to overturn the President's veto, but the Senate did not vote to do so. A revised conference agreement (H.R. 5483), which did not contain the provisions that the President found objectionable, was inserted into the conference agreement on the Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act for FY2001 (H.R. 4635, H.Rept. 106-988). The House and Senate passed the conference agreement on October 19, 2000. The President signed the bill into law (P.L. 106-377) on October 27, 2000.

P.L. 106-377 provided a total of \$6.12 billion for the three major accounts that support DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites, about \$400 million more than the FY2000 funding level of \$5.72 billion, and approximately \$30 million less than the Administration's request of \$6.15 billion. Of the total amount of \$6.12 billion that was signed into law, \$4.97 billion was allocated to the Defense Environmental Restoration and Waste Management Account, about \$500 million more than the FY2000 funding level of \$4.47 billion, and roughly \$420 million more than the Administration's request of \$4.55 billion. Most of the increase, \$377 million, was due to a transfer of funding for the Hanford Tank Waste Remediation System project from the Defense Environmental Management Privatization Account to the Defense Environmental Restoration and Waste Management Account. As discussed earlier on page 12, DOE canceled the privatization contract for this project due to the failure of the contractor to provide a viable cost estimate. The project will now be funded under the Defense Environmental Restoration and Waste Management Account as a cost plus incentive fee contract.

To continue projects still being performed under privatization contracts, P.L. 106-377 allocated \$65 million to the Defense Environmental Management Privatization Account. The law also rescinded \$97 million in funds that were previously appropriated under the privatization account for the Hanford Tank Waste Remediation System project. Approximately \$1.08 billion was set aside for the Defense Facilities Closure Projects Account, the same as the Administration requested, but about \$20 million more than the FY2000 funding level of \$1.06 billion.

Funding was increased to ensure that the goal of completing cleanup at certain defense nuclear facilities by 2006 remains on schedule.

Other Relevant Legislation in the 106th Congress

During the 106th Congress, several bills were considered which could have affected environmental cleanup at military facilities. While this legislation was not enacted prior to adjournment, similar bills may possibly be introduced in the 107th Congress. Among the legislation considered, but not enacted, in the 106th Congress, four Superfund reform bills would have altered the process for selecting cleanup remedies at National Priorities List (NPL) sites, and any changes would have applied to all defense sites not on the NPL as well. Another bill would have clarified requirements for federal compliance with all hazardous waste cleanup laws. Additional legislation would have authorized further rounds of military base closings and possibly created the need to accelerate environmental cleanup at such facilities prior to transferring them to other uses. Each of these bills is discussed below.

Superfund Reform

Among the legislation considered in the 106th Congress to reform the Superfund program, four bills would have altered the process for selecting cleanup remedies at NPL sites. However, any changes to this process would also have applied to all military facilities not on the NPL since DOD is required to comply with CERCLA in cleaning up all of its hazardous sites. First, Representative Boehlert introduced the Recycle America's Land Act of 1999 (H.R. 1300) on March 25, 1999, and the House Committee on Transportation and Infrastructure filed its report on H.R. 1300 (H.Rept. 106-353) on September 30, 1999.²³ Second, Representative Greenwood introduced the Land Recycling Act of 1999 (H.R. 2580) on July 21, 1999, and the House Committee on Commerce filed its report on the bill (H.Rept. 106-775) on July 20, 2000. Third, the late Senator John H. Chafee introduced the Superfund Amendments and Reauthorization Act of 1999 (S. 1537) on August 5, 1999. Fourth, Representative Pallone introduced the Children's Protection and Community Cleanup Act of 1999 (H.R. 2956) on September 27, 1999.

H.R. 1300, H.R. 2580, and S. 1537 included provisions that would have amended the remedy selection process at Superfund sites and incorporated some of EPA's Superfund administrative reforms intended to increase flexibility in cleaning up sites and thereby lower cleanup costs. However, H.R. 2956 and certain provisions in H.R. 1300 could have lead to higher cleanup costs at federal facilities. As introduced, H.R. 2956 would have required remedial actions to reduce contamination to background levels to the maximum extent that is technically feasible if cleanup standards are not clearly protective of children's health, or the bill would have required institutional controls at sites where contaminants were not reduced to levels that allowed unrestricted use. Attempting to reduce contamination to background levels and adopting a broader use of institutional controls would likely have increased

²³For a summary of the bill, refer to CRS Report RS20321, *Superfund Reauthorization: A Summary of H.R. 1300, as Reported*, by Mark Reisch and Mary Tiemann.

remediation expenses significantly. As reported, H.R. 1300 would have granted states acting under interagency agreements the legal authority to make final determinations on which cleanup remedies are used at certain sites on defense and other federal facilities. Cleanup costs at such sites could have risen if states insisted on measures that were more expensive to implement than those preferred by federal agencies.²⁴

Compliance with Federal, State, and Local Cleanup Laws

To clarify requirements for federal compliance with all federal, state, and local hazardous waste cleanup laws, Representative DeGette introduced the Federal Facility Superfund Compliance Act of 1999 (H.R. 617) on February 8, 1999. As introduced, H.R. 617 specified that DOD and all other federal agencies would have been subject to penalties, fines, administrative orders, enforcement sanctions, procedural requirements, inspection and monitoring of facilities, and reviews of plans, studies, and other documents imposed under any federal, state, or local law that addressed hazardous waste response and cleanup. The bill also would have waived any U.S. immunity with respect to state and local cleanup requirements as long as they were not more stringent than those required under federal law. As introduced, H.R. 2956 included similar provisions that would have clarified the extent to which DOD and other federal agencies are subject to all federal, state, and local hazardous waste cleanup laws.

Military Base Closings

Authorizing additional rounds of military base closings could lead to an increase in the amount of future funding necessary to accelerate environmental restoration activities. While Congress has rejected proposals to close additional facilities beyond those designated in 1995, Senator McCain introduced a bill (S. 258) in the first session of the 106th Congress on January 20, 1999, which would have authorized new rounds of base closings in 2001 and 2003. The amount of funding that would have been necessary to accelerate environmental restoration activities at additional bases designated for closure would have depended on the type and extent of contamination present at such facilities. Costs to accelerate cleanup could have been high if the bases selected for closure contained severely contaminated sites that were on the National Priorities List under the Superfund program. During floor debate over the National Defense Authorization Act for FY2001 (H.R. 4205), the Senate rejected an amendment introduced by Senator McCain which would have authorized additional rounds of base closures and realignments in 2003 and 2005.

²⁴For further discussion of this legislation, refer to CRS Issue Brief IB10011, *Superfund Reauthorization Issues in the 106th Congress*, by Mark Reisch.

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