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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, tracks legislation to authorize and appropriate funding for them for FY2001, and discusses other relevant legislation in the 106th Congress. This report will be updated as legislative activity occurs.

Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2001

Summary

In the second session of the 106th Congress, authorizing and appropriating funding for national defense programs for FY2001 is a significant consideration in the annual debate over the federal budget. 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 House passed the National Defense Authorization Act for FY2001 (H.R. 4205) on May 18, 2000, and the Senate passed its version of the bill on July 13, 2000. Conference proceedings will likely begin soon after the August recess. The Senate's bill would authorize nearly \$1.32 billion for cleanup at current and former military facilities, \$45 million more than the House's level of \$1.27 billion. The Senate's bill also would authorize \$6.19 billion for DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites, \$234 million more than the House's amount of \$5.96 billion. As in past years, neither bill specifies the total amount of funding that would be 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.

Consideration of legislation to appropriate funding for DOD and DOE's defense-related environmental programs is nearly complete as well. First, the Department of Defense Appropriations Act for FY2001 (H.R. 4576), signed into law (P.L. 106-259) on August 9, 2000, provides \$1.31 billion for cleanup at current and former military facilities. Second, the Military Construction Appropriations Act for FY2001 (H.R. 4425), signed into law (P.L. 106-246) on July 13, 2000, provides \$865.3 million for cleanup at base closure sites. Third, the House passed the Energy and Water Development Appropriations Act for FY2001 (H.R. 4733) on June 28, 2000, and the Senate reported its version of the bill on July 18, 2000. As passed by the House, H.R. 4733 would provide \$5.86 billion for DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites, about \$180 million less than the Senate's reported amount of \$6.04 billion.

Other relevant legislation considered in the first session of the 106th Congress could affect environmental cleanup at military facilities. H.R. 1300 and H.R. 2580, as reported, and H.R. 2956 and S. 1537, as introduced, would amend the remedy selection process at Superfund sites, which also would apply to all of DOD's sites. As introduced, H.R. 617 would clarify requirements for federal compliance with all hazardous waste cleanup laws, and S. 258, as introduced, would authorize new rounds of base closings in 2001 and 2003.

Contents

Introduction	1
Department of Defense	3
Environmental Restoration	3
Military Base Closure	5
Environmental Compliance	6
Other Environmental Programs	7
Department of Energy	8
Authorizing Legislation for FY2001	11
Appropriations Legislation for FY2001	13
Department of Defense	14
Military Construction	15
Energy and Water Development	15
Other Relevant Legislation in the 106 th Congress	16
Superfund Reform	16
Compliance with Federal, State, and Local Cleanup Laws	17
Military Base Closings	18
Selected References	18

List of Figures

Figure 1. Funding for Defense Cleanup and Environmental Programs: FY1990 to FY2000 Enacted and FY2001 Request	2
Figure 2. FY2001 Administration Request for Defense Cleanup and Environmental Programs	2
Figure 3. Cleanup Status at Current and Former Military Facilities as of September 30, 1999	4
Figure 4. Cleanup Status at Base Closure Sites as of September 30, 1999	6
Figure 5. Cleanup Status of Department of Energy Sites as of September 30, 1999	9

List of Tables

Table 1. Department of Energy Sites with Cleanup Activities Projected to Continue Beyond 2006	10
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Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2001

Introduction

Although 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 legislation and appropriations for national defense programs for FY2001 is 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 has 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

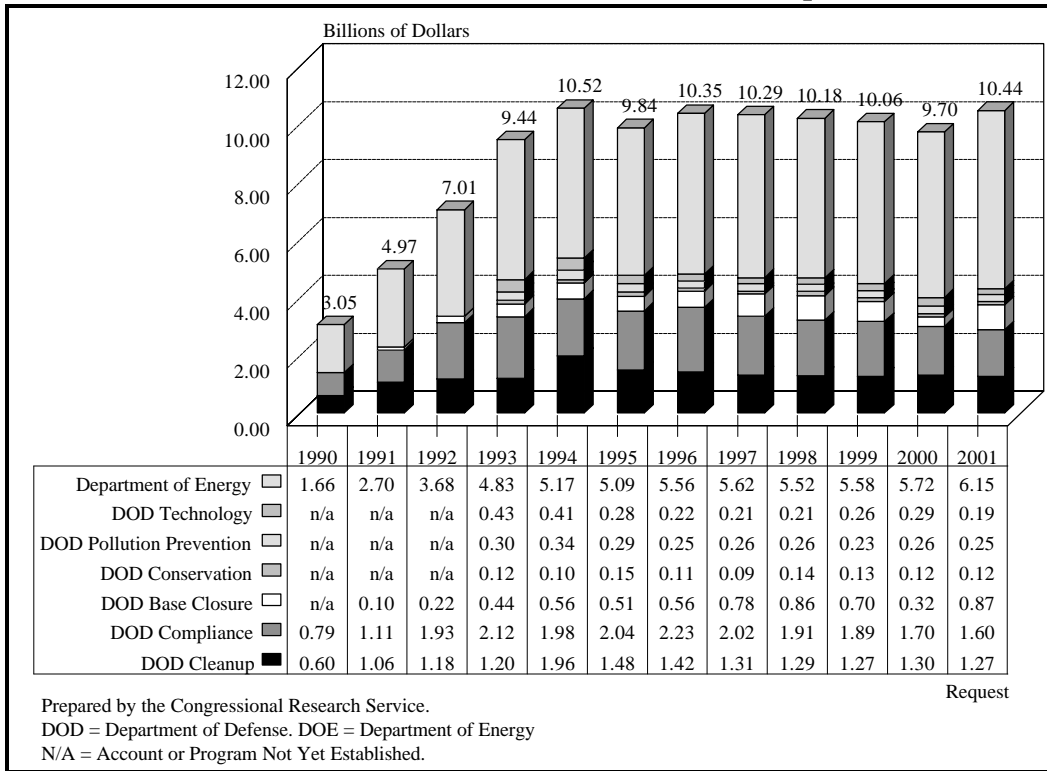
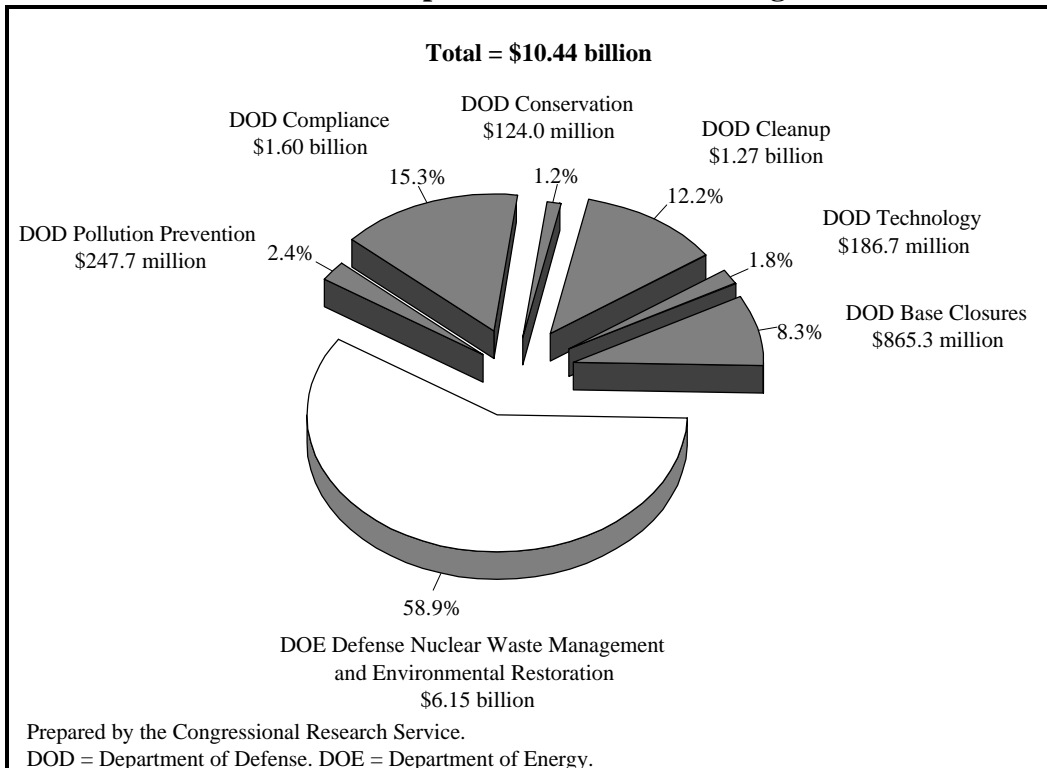


Figure 2. FY2001 Administration Request for Defense Cleanup and Environmental Programs



While substantial changes in funding for DOD and DOE's defense cleanup and environmental programs are unlikely in FY2001, certain factors could create the need to significantly increase or reduce funding for these activities 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, track legislation to authorize and appropriate funding for them for FY2001, and discuss other relevant legislation 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 has 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

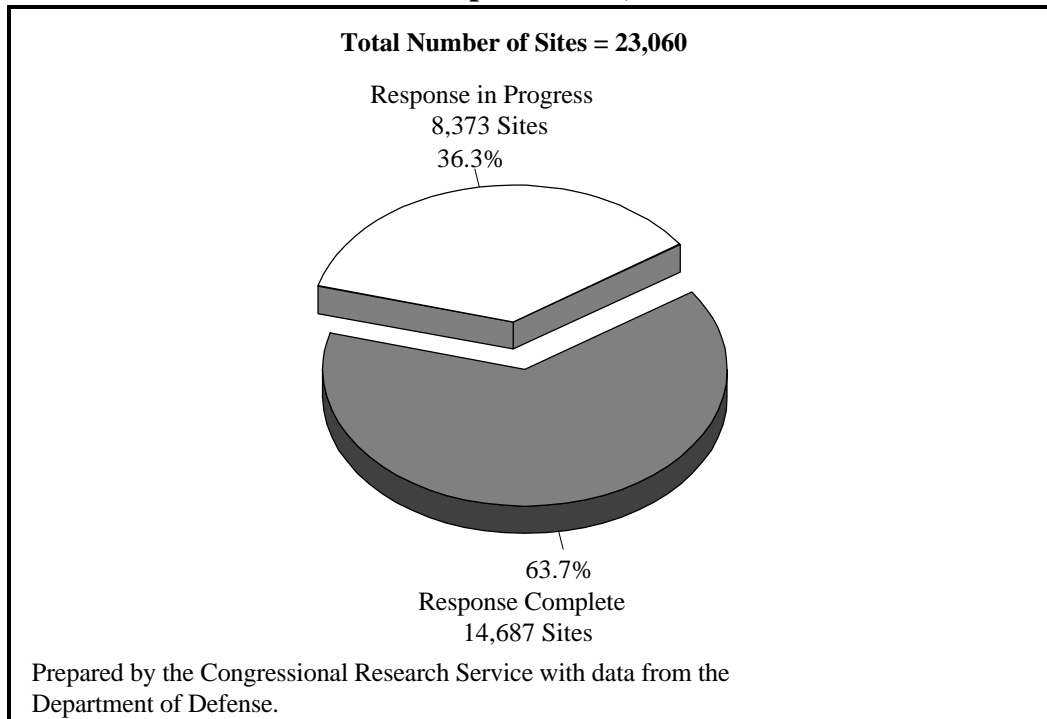
¹ For additional information, refer to the Department of Defense Environmental Network and Information Exchange (DENIX) web site at [<http://www.denix.osd.mil>].

² P.L. 96-510, Section 107(g).

³ P.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 in the annual 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 Congress also specifies the amount of cleanup funding for formerly used defense sites (FUDS). Funding has varied from \$150 million in FY1984 to a high of \$1.96 billion in FY1994. The Administration has requested \$1.27 billion for FY2001, a 2% decrease of about \$27 million below the FY2000 funding level of \$1.30 billion.

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



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

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

⁵ P.L. 98-212, 97 Stat. 1427.

⁶ P.L. 104-201, Section 322.

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

monitoring to ensure that remedial actions adequately addressed contamination. Remediation reportedly was in progress at the remaining 8,373 sites identified for cleanup. (Refer to **Figure 3** above.) 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 has 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 requested for cleanup at base closure sites would show a substantial increase of \$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.

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

⁸ Ibid.

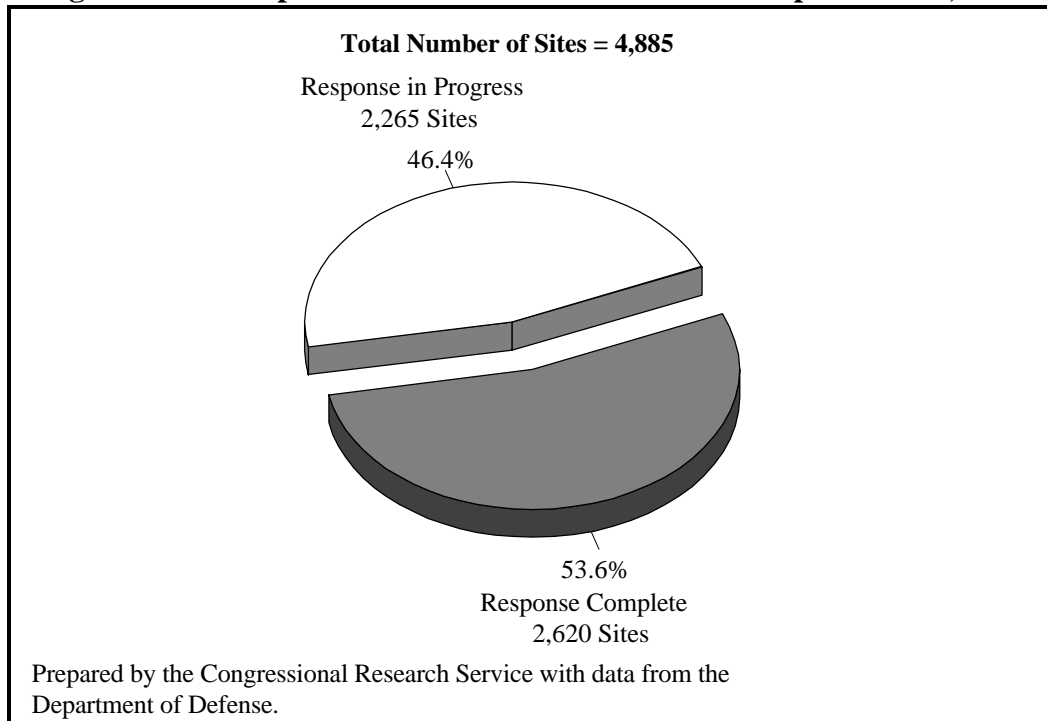
⁹ P.L. 101-189, Section 353.

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

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

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 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

¹² Ibid.

¹³ P.L. 102-386, Section 102.

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 has 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.

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.

Under the President's FY2001 budget proposal, funding for conservation would increase while support for pollution prevention and environmental technology would decline. The Administration has 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

¹⁴ P.L. 101-189, Section 357.

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.

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 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 defense nuclear facilities.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

¹⁵ For 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.

¹⁶ For 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>].

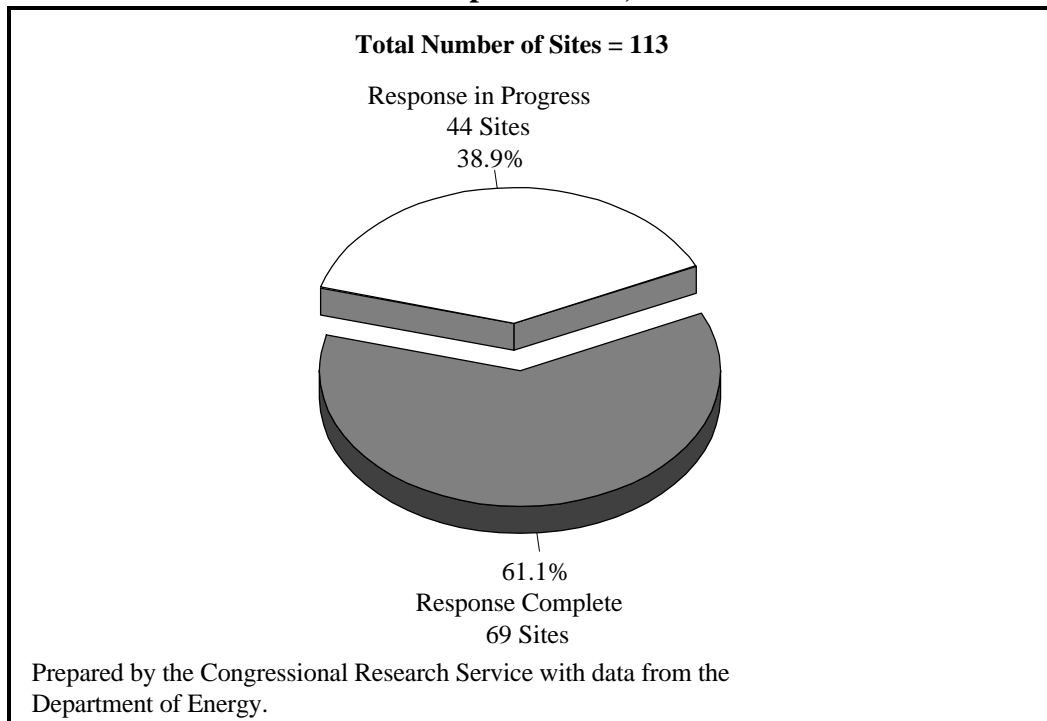
¹⁷ P.L. 102-104, 105 Stat. 529. Prior to the establishment of the Defense Environmental Restoration and Waste Management Account, DOE received funding for managing defense nuclear waste and remediating contaminated sites under the Atomic Energy Defense Activities Account in the appropriations bill for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

¹⁸ P.L. 105-62, 111 Stat. 1332.

set aside for privatizing cleanup projects at DOE's defense environmental management sites.¹⁹

For FY2001, the Administration has requested an 8% increase of \$433 million for all three of the above accounts from \$5.72 billion in FY2000 to \$6.15 billion in FY2001. Of this amount, the President's budget would provide about \$4.55 billion for the Defense Environmental Restoration and Waste Management Account, about \$84 million more than the FY2000 funding level of \$4.47 billion. Funding for the Defense Facilities Closure Projects Account would increase by \$22 million from \$1.06 billion in FY2000 to \$1.08 billion in FY2001. Funding for the Defense Environmental Management Privatization Account would nearly triple, increasing by \$327 million from \$188 million in FY2000 to \$515 million in FY2001. About \$450 million of the request for privatization projects would be used for continuing the Tank Waste Remediation System for high-level waste treatment at DOE's Hanford site in the State of Washington.

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



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** above.) DOE estimates that cleanup will be complete at an additional 23 sites by 2006. As indicated in **Table**

¹⁹ P.L. 105-245, 112 Stat. 1849.

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

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
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.

²¹ Ibid., p. 19.

²² Ibid., p. 9.

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. The House and Senate have appointed their respective conferees on the bill, and conference proceedings will likely begin soon after the August recess. Matters to be resolved in conference include: differences in the amount of funding that would be authorized for DOD and DOE's defense-related environmental programs and differences among several provisions that would affect environmental activities at military facilities. As in past years, neither bill specifies the total amount of funding that would be 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.

As passed by the House, H.R. 4205 would authorize \$1.27 billion for environmental cleanup at current and former military facilities, the same amount that the Administration requested. The bill also would authorize \$25 million for the Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Trust Fund, the same amount as requested. In addition to authorizing funding levels for DOD, the House's version of H.R. 4205 would authorize a total of \$5.96 billion for DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites, about \$190 million less than the Administration's request of \$6.15 billion. Of the \$5.96 billion that would be authorized in the House's bill for DOE, \$4.59 billion would be reserved for the Defense Environmental Restoration and Waste Management Account, \$40 million more than the Administration's request of \$4.55 billion. The Defense Facilities Closure Projects Account would be authorized at \$1.08 billion, the same as requested, and the authorized level for the Defense Environmental Management Privatization Account would be \$284 million, \$231 million less than the request of \$515 million.

In addition to authorizing funding for the above activities, the House's version of H.R. 4205 includes several environmental provisions that would:

- authorize \$993,000 for a supplemental environmental project to satisfy fines imposed by EPA for RCRA violations at Walter Reed Army Medical Center;
- authorize \$377,250 for a supplemental environmental project to satisfy fines imposed by EPA for RCRA violations at Fort Campbell, Kentucky;
- authorize \$20,701 for a supplemental environmental project to satisfy fines imposed by the State of Georgia for RCRA violations at Fort Gordon, Georgia;

- authorize \$78,500 for a supplemental environmental project to satisfy fines imposed by the State of Colorado for RCRA violations at Pueblo Chemical Depot, Colorado;
- authorize \$20,000 for a supplemental environmental project to satisfy fines imposed by the State of Utah for RCRA violations at Desert Chemical Depot, Utah;
- authorize \$108,800 for a cash penalty imposed by the State of West Virginia for RCRA violations at Allegheny Ballistics Laboratory;
- authorize \$5,000 for a cash penalty imposed by EPA for Clean Air Act violations at the Naval Air Station in Corpus Christi, Texas;
- authorize up to 5% of annual environmental restoration funding for relocating facilities on current or former defense sites if cleanup is required due to a release of hazardous substances; and
- mandate that the environmental impact statements already completed for low-level training flights satisfy requirements under the National Environmental Policy Act of 1969.

As passed by the Senate, H.R. 4205 would authorize nearly \$1.32 billion for environmental cleanup at current and former military facilities, \$45 million more than the House's proposal and the Administration's request of \$1.27 billion. The Senate's increase would be devoted to accelerating environmental cleanup at former military facilities. Like the House, the Senate's version of the bill also would authorize \$25 million for the Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Trust Fund. For DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites, the Senate's version of H.R. 4205 would authorize a total of \$6.19 billion, \$234 million more than the House's level of \$5.96 billion and roughly \$40 million more than the requested amount of \$6.15 billion. Of the Senate's authorized level of \$6.19 billion for DOE, \$4.42 billion would be allocated to the Defense Environmental Restoration and Waste Management Account, about \$170 million less than the House's amount of \$4.59 billion and \$130 million less than the requested level of \$4.55 billion. The Defense Facilities Closure Projects Account would be authorized at \$1.08 billion, the same as the House's amount and the Administration's request. The Senate's authorized amount for the Defense Environmental Management Privatization Account would be \$540 million, \$256 million more than the House's proposal of \$284 million, and \$25 million more than the request of \$515 million. During floor debate, the Senate authorized another \$150 million in funding for additional cleanup activities at DOE's Hanford site in Richland, Washington.

In addition to authorizing funding for the above activities, the Senate's version of H.R. 4205 includes the House's provisions that would authorize funding to pay environmental fines and penalties and allow the use of environmental restoration funding for relocation expenses. However, the Senate's bill also includes several other

environmental provisions that are not contained in the House's version of H.R. 4205, which would:

- authorize an additional \$7,975 to pay a fine for violations of environmental law at Fort Sam Houston, Texas;
- amend 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;
- designate the environmental restoration accounts as the sole source of funding for long-term operation and maintenance expenses at defense cleanup sites;
- require specific congressional authorization during the next 3 years for fines and penalties of \$1.5 million or more (including supplemental environmental projects to satisfy such fines and penalties) imposed by other federal agencies against DOD for violations of environmental law;
- authorize \$5 million, with an offset, for the Strategic Environmental Research and Development Program to support technologies to detect and transport pollutants resulting from live-fire activities;
- streamline DOD's reporting requirement under the Strategic Environmental Research and Development Program to include the activities of the Scientific Advisory Board;
- authorize \$98,210 to reimburse EPA for costs incurred in overseeing the emergency removal of explosives at the former Nansemond Ordnance Depot in Suffolk, Virginia;
- authorize DOD to continue a ship disposal project in FY2001 to scrap decommissioned Naval vessels in an environmentally sound manner; and
- require the Army to submit a report to Congress by October 1, 2000 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.

Appropriations Legislation for FY2001

Consideration of legislation to appropriate funding for DOD and DOE's defense-related environmental programs for FY2001 is nearly complete. First, the President has signed the Department of Defense Appropriations Act for FY2001 into law, which will fund cleanup activities at current and former military facilities. Second, the

President also has signed the Military Construction Appropriations Act for FY2001 into law, which will provide funding for cleanup activities at base closure sites. Third, the House has passed the Energy and Water Development Appropriations Act for FY2001, and the Senate has reported its version of the bill, which would fund DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites. Each law and bill 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 provides approximately \$1.31 billion for cleanup at current and former military facilities, the same as the Senate proposed, about \$30 million more than the House's amount of \$1.28 billion, and roughly \$40 million more than the Administration's request of \$1.27 billion. The Senate's increase above the House's proposal and the Administration's request, which was signed into law, will be devoted to increasing the pace of cleanup activities at contaminated sites located on former military facilities. As in past years, the law does not indicate the total amount of funding that will be 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, they will be funded, along with numerous other activities, under the operation and maintenance accounts specified in the bill.

In addition to providing funding for the above activities, P.L. 106-259 allocates \$60 million for the Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Trust Fund, the same amount as the Senate proposed but about \$35 million more than the House's level and the Administration's request of \$25 million. The law also includes the Senate's funding level of \$10 million to assist Native Americans in mitigating the environmental impacts of military activities on tribal lands, \$2 million more than the House's proposal of \$8 million. Additionally, the law contains two of the Senate's environmental provisions that will:

- allocate \$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

- limit “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 does 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 appropriates \$865.3 million for cleanup at base closure sites, the same amount that the House and Senate had proposed and the Administration requested. The law also transfers \$9.6 million in current 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 the bill without written report on July 18, 2000. Floor consideration of H.R. 4733 will likely begin in the Senate soon after the August recess. As passed by the House, H.R. 4733 would provide a total of \$5.86 billion for DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites, about \$180 million less than the Senate's reported amount of \$6.04 billion and approximately \$290 million less than the Administration's request of \$6.15 billion.

Of the total amount of \$5.86 billion that would be appropriated by the House-passed version of H.R. 4733 for DOE's management of defense nuclear waste and cleanup of contaminated nuclear weapons sites, \$4.52 billion would be allocated to the Defense Environmental Restoration and Waste Management Account, nearly \$120 million less than the Senate's reported amount of \$4.64 billion and about \$30 million less than the Administration's request of \$4.55 billion. Both the House and Senate versions of the bill would reserve \$1.08 billion for the Defense Facilities Closure Projects Account, the same as the Administration's request. As passed by the House, H.R. 4733 would provide \$259 million for the Defense Environmental Management Privatization Account, approximately \$65 million less than the Senate's reported amount of \$324 million and a \$256 million decrease from the requested funding level of \$515 million. According to the House Appropriations Committee's report on H.R. 4733, \$194 million of the amount that would be provided for privatization projects would be reserved for the Tank Waste Remediation System for high-level waste treatment at DOE's Hanford site in Richland, Washington. However, the Senate's reported version of the bill does not specify how much of the privatization account would be reserved for this project.

Other Relevant Legislation in the 106th Congress

During the first session of the 106th Congress, several bills were introduced that could affect environmental cleanup at military facilities. While it appears unlikely that such legislation will receive further consideration in the second session, similar issues may possibly be addressed next year in the 107th Congress. Among the legislation considered in the first session, four Superfund reform bills would alter the process for selecting cleanup remedies at National Priorities List (NPL) sites, and any changes would apply to all defense sites not on the NPL as well. Another bill would clarify requirements for federal compliance with all hazardous waste cleanup laws. Additional legislation would authorize further rounds of military base closings and possibly create 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 legislation under consideration in the 106th Congress to reform the Superfund program, four bills would alter the process for selecting cleanup remedies at NPL sites. However, any changes to this process would also apply 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 ordered the bill to be reported on October 13, 1999. 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 include provisions that would amend the remedy selection process at Superfund sites and incorporate 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 lead to higher cleanup costs at federal facilities. As introduced, H.R. 2956 would require 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 require institutional controls at sites where contaminants are not reduced to levels that allow unrestricted use. Attempting to reduce contamination to background levels and adopting a broader use of institutional controls would likely increase remediation expenses significantly. As reported, H.R. 1300 would grant 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 rise if states insist on measures that are 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 specifies that DOD and all other federal agencies are 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 addresses hazardous waste response and cleanup. The bill also would waive any U.S. immunity with respect to state and local cleanup requirements as long as they are not more stringent than those required under federal law. As introduced, H.R. 2956 includes similar provisions that would clarify the extent to which DOD and other federal agencies are subject to all federal, state, and local hazardous waste cleanup laws.

²³ For 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.

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

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 for the past three years to close additional facilities beyond those designated in 1995, Senator McCain introduced a bill (S. 258) on January 20, 1999, that would authorize new rounds of base closings in 2001 and 2003. The amount of funding that would be necessary to accelerate environmental restoration activities at additional bases designated for closure would depend on the type and extent of contamination present at such facilities. Costs to accelerate cleanup could be high if the bases selected for closure contain severely contaminated sites that are 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.

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