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BY THE COMMITTEE

STATEMENT OF

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(INSTALLATIONS AND ENVIRONMENT)

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

OF THE UNITED STATES SENATE

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INTRODUCTION

DoD has been formally conducting environmental restoration for more than 22 years. Since 1986, when Congress established the Defense Environmental Restoration Program (DERP), DoD has invested over \$28 billion on environmental restoration at over 31,000 sites located on more than 1,600 active facilities, 200 Base Realignment and Closure (BRAC) facilities, and 9,900 Formerly Used Defense Sites (FUDS) properties. As of the end of fiscal year 2007, over 21,600 sites, sixty-nine percent, have met their cleanup objectives and are response complete.

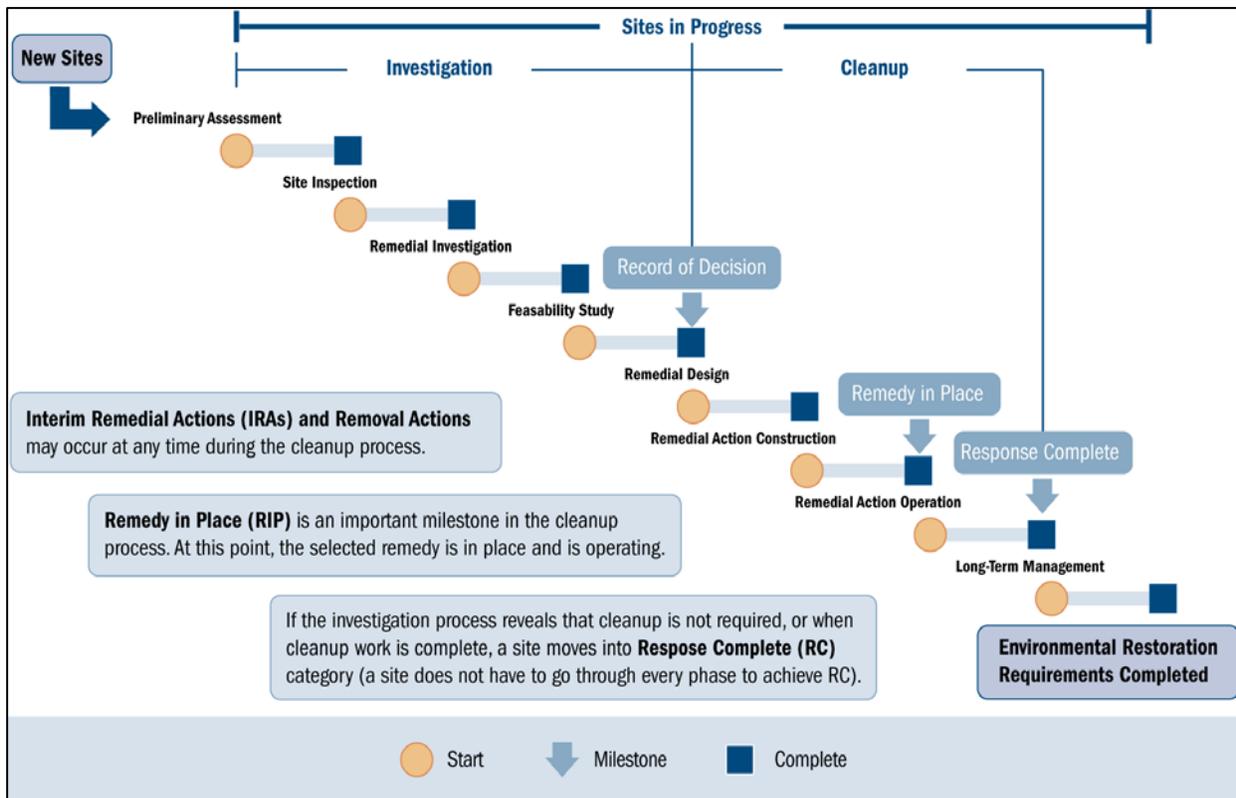
DoD conducts environmental restoration at these sites with the cooperation and assistance of other Federal agencies, State and Tribal governments, and the public. The cleanup process reflects the requirements of DERP, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and CERCLA's implementing regulation, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

DoD is proud of the cleanup progress to date, and remains committed to completing environmental restoration.

PROGRAM OVERVIEW

The Cleanup Process

The Department's environmental restoration program follows the long-established and well-documented process for conducting environmental restoration under CERCLA and the NCP, as shown in the figure below. While some phases may overlap or occur concurrently, environmental activities at DoD sites are generally conducted in the order shown. In addition, actions in the DERP comply with Resource Conservation and Recovery Act and other legal requirements, DoD regulations such as the Restoration Advisory Board (RAB) regulations (32 CFR Part 202), and DoD Directives, Instructions, policies, and guidance.



Environmental restoration begins with identification of a site where release of contamination posing a known or potential hazard to human health or the environment may have occurred.

In the second phase, called the preliminary assessment and site inspection, basic information about the site is collected, such as determining if there has been a release of hazardous substances, pollutants, and contaminants, identification of populations and environmental receptors potentially affected by the release, and a determination of whether further action is warranted.

For those sites requiring further action, DoD applies either a relative-risk or a prioritization protocol to assign a relative priority for action at each site. The Department’s fundamental premise in site prioritization is “worst first,” meaning that sites with a potential for greater hazard to human health or the environment are addressed before sites posing a lesser hazard.

Combining information on site conditions, the relative priority, and information on other issues such as community redevelopment needs at BRAC facilities and input from Federal and state regulators and the community, DoD determines the sequence in which sites will be worked. In general, as DoD finishes addressing the highest relative-risk sites, funding will shift to medium

relative-risk sites, and then to the lowest relative-risk sites. Using the information from the PA/SI, the Environmental Protection Agency (EPA) may also evaluate the facility for inclusion on the CERCLA's National Priorities List (NPL) (40 CFR Part 300, Appendix B).

For sites warranting further action, a detailed investigation under CERCLA is performed. This process includes assessing the nature and extent of contamination, performing a baseline risk assessment, and evaluating various alternatives for restoration of the site. Thereafter, a Record of Decision (ROD) presents the formal selection of a remedial action that ensures protection of human health and the environment.

After a cleanup decision has been made, sites move to the design, construction, and operation of the selected remedial alternative. Once the remedy construction is complete, the site achieves remedy-in-place. Depending on the complexity of the site, the remedy may operate for an extended period of time. When the remedy achieves the remedial action objectives laid out in the cleanup decision document, the site achieves response complete.

The final portion of the restoration process involves long-term management (LTM), typically at those sites where the remedy does not allow for unrestricted use and unrestricted exposure. This phase, which includes environmental monitoring, maintenance of a remedial action, 5-year reviews and/or land use control maintenance, continues until the site is deleted from the NPL (if listed) and/or formally closed.

PERFORMANCE MEASUREMENT

To measure and manage progress, DoD developed a comprehensive set of program goals and performance metrics. DoD works to achieve these goals by leveraging regulatory partnerships and developing aggressive, detailed plans to ensure the required resources are available to support restoration efforts.

When assessing DERP performance, DoD examines progress-to-date against goals. The most important goals are protecting human health and the environment, reducing risk to acceptable levels, and achieving remedy-in-place and response complete. The evaluation of cost-to-complete (CTC) estimates provides a means to evaluate program planning and the veracity of those estimates.

PROGRAM STATUS

The DERP is a large, complex national program with over 31,000 environmental restoration sites spread across 30 million acres that are presently or were under DoD control. For example, the former Lowry Bombing Range covers approximately 92 square miles (approximately 60,000 acres). The DERP also reflects the need to address the consequences of actions as far back as the Civil War. For example, the 661-acre Spring Valley Site, in Washington, D.C. involves responses to address sites where munitions and other materials were used or disposed of between 1916 and 1920.

As of the end of fiscal year 2007, there are 31,487 sites located on 4,624 DoD properties, with less than thirty percent of these sites listed on the NPL. The status of these sites is depicted in the chart below. As you can see, this is a mature program, as sixty-nine percent of the sites have met their cleanup objectives and are response complete. An additional 9 percent have a remedy in place, continue to operate remedial systems, and are approaching response complete. Thus the remedy is in place or the response is complete at seventy-eight percent of DoD's currently known sites.

	Total	NPL	Non-NPL
Total Facilities/Properties	4,624	140	4,484
Total Sites	31,487	8,736	22,751
Sites Remedy-in-Place	2,796 (9%)	1,517	1,279
Sites Response Complete	21,635 (69%)	5,287	16,348

FUNDING

Since 1986, DoD has expended about \$28 billion on restoration efforts. This funding is provided from a variety of sources, including the Component Environmental Restoration (ER) accounts established by statute under 10 USC § 2703 and various appropriations related to the BRAC rounds. The CTC as of the end of fiscal year 2007 was approximately \$12.2 billion for active facilities, \$3.9 billion for BRAC facilities, and \$16.3 billion for FUDS properties.

For the last 8 years, average annual DoD expenditures on environmental restoration have been about \$2 billion. For example, in fiscal year 2007, the Components obligated approximately \$1.1 billion at active facilities, \$492.7 million at BRAC facilities, and \$262.8 million at FUDS properties, for environmental restoration activities. The Department invests the largest portion of annual funding on higher relative-risk sites, continuing its commitment to implement remedies at all of these sites as soon as possible. The majority of the funding was used for actual cleanup activities, with lesser amounts used to complete site investigations, LTM, and program management.

REGULATORY AGENCY INVOLVEMENT

DoD conducts its environmental restoration program in coordination with the U.S. Environmental Protection Agency (EPA) and states. EPA and /or the state environmental representative, is involved in cleanup investigations and remedy selection at DoD facilities. For example, DoD and EPA jointly select remedial actions at DoD facilities on the NPL, and by law EPA makes the selection if there is a disagreement. State input is also actively sought, and state acceptance of a proposed remedy is a criterion considered in remedy selection.

Defense and State Memorandum of Agreement Program

DoD established the Defense and State Memorandum of Agreement (DSMOA) Program to expedite environmental restoration at DoD facilities (both NPL and non-NPL) by improving coordination and communication between DoD and the states. A DSMOA begins a partnership between DoD and a state. To date, DoD has signed 53 DSMOAs with 48 states, 4 territories, and the District of Columbia. The most recent DSMOA is with the State of Iowa, and was signed in 2008. Arkansas, North Dakota, and the U.S. Virgin Islands have not entered into a DSMOA.

Under the DSMOA Program, DoD reimburses states for their costs associated with oversight of environmental restoration activities at DoD's active and BRAC facilities and FUDS properties. For fiscal year 2007, DoD reimbursed states over \$30 million for environmental restoration support, with the average reimbursement for a state being \$585K. The Department is currently working with state and territorial governments through the Environmental Council of States (ECOS) and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) to establish an advisory committee to be tasked with identifying ways to improve the DSMOA Program.

After establishing a DSMOA, DoD and the state enter into a Cooperative Agreement (CA) that outlines the planning and funding structure for the environmental restoration support the state will carry out at DoD facilities for the 2-year period covered by the CA. For the 2008-2010 CA period, DoD signed CAs with 52 state and territorial governments (American Samoa did not submit CA for the 2008–2010 CA period). DoD is currently working to automate and streamline the process for the states to prepare and submit their CA applications. The facility and the state regulator collaborate to develop the Joint Execution Plan, which identifies environmental restoration activities and state services to be conducted during the 2-year CA.

Inter-Agency and Federal Facility Agreements

Under CERCLA § 120(e), at each Federal Facility listed on the NPL, DoD and EPA are required to “... enter into an interagency agreement... for the expeditious completion of all necessary remedial action at such facility.” Interagency agreements are required before the remedy is selected (i.e., within 180 days after completion of the remedial investigation/feasibility study). CERCLA section 120(e)(4) states:

Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

- (A) A review of the remedial action alternatives and selection of the remedial action by the head of the relevant department, agency or instrumentality and the Administrator, or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.
- (B) A schedule for the completion of each such remedial action.
- (C) Arrangements for long-term operation and maintenance of the facility.

An agency that has not entered into an interagency agreement with EPA must report to Congress “an explanation of the reasons why no agreement was reached.” DoD includes information on the status of its interagency agreements in the Defense Environmental Programs Annual Report to Congress.

In 1988, and supplemented in 1999, DoD and EPA agreed to a Model Federal Facility Agreement (Model FFA) to implement this interagency agreement requirement. The Model FFA

addresses more topics than the three minimum provisions specifically identified in CERCLA section 120(e)(4), and contains standardized language on a number of additional issues, including cleanup schedules, dispute resolution, and stipulated penalties. In addition, an FFA is normally signed towards the beginning of the remedial investigation stage while an interagency agreement is only required after the investigation stage is completed.

As stated in the Model FFA, the purposes of the FFA are: 1) to ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare, and the environment, 2) to establish a *procedural* framework and schedule for response actions, and 3) to facilitate cooperation and exchange of information between the agencies. In summary, the FFA identifies the roles and responsibilities of DoD, EPA, and the State if the State is a signatory.

The FFA does not identify or select individual cleanup actions. Instead, the cleanup decision document, called the Record of Decision, documents the remedy selection for a specific site. The remedy normally is selected by DoD and concurred in by EPA at NPL sites; if there is a disagreement, EPA selects the remedy. Remedy selection is also fully coordinated with the State and the community.

DoD, through issuance of formal policies and practice, has adhered to the Model FFA, while allowing the DoD Components to include mutually agreed additional provisions on a site-specific basis. At present, DoD has entered into Federal Facility Agreements (FFAs) at 129 of the 140 DoD facilities currently on the NPL. At the remaining 11 DoD facilities, an FFA has not been signed. These include: Fort Meade and Redstone Arsenal (Army); AF Plant 44, Andrews, Hanscom, Langley, McGuire, and Tyndall Air Force Bases, and the Brandywine Defense Reutilization site (Air Force); and Whiting Field Naval Air Station and Naval Computer & Telecommunications Area Master Station, Pacific (Navy). DoD has been working toward reaching agreement on terms at the 11 remaining NPL facilities.

PUBLIC PARTICIPATION

Involving the Public in the Restoration Process

DoD conducts its environmental restoration program with input and assistance from the public. There are requirements for involving the community in the environmental restoration program under CERCLA and the NCP, such as public review and comment on proposed remedies, and developing and implementing a Community Involvement Plan as part of each remedial investigation/feasibility study. Another example is that each DoD facility establishes an information repository as a single source of publicly accessible information concerning ongoing cleanup actions at the facility which includes documents that form the basis or selection of response actions, and other pertinent data.

Restoration Advisory Boards (RABs)

In addition to CERCLA's requirement for public participation, one of DoD's mechanisms for exchange of information between government officials and members of the local community on restoration activities at a DoD facility is the establishment of Restoration Advisory Boards (RABs). RABs also fulfill the statutory requirement for Technical Review Committees (TRCs) where possible and practical. Each facility or FUDS is required to establish a RAB where there is sufficient and sustained community interest. Even where initially there is insufficient interest in forming a RAB, facilities are required to reassess community interest at least every 24 months. DoD currently participates in 296 RABs.

RABs are typically comprised of local residents, representatives of the business community, representatives from EPA, state, tribal, and local government officials, and members of local environmental interest groups and the DoD facility. Ideally, RABs reflect the diverse interests of the community and help identify local concerns associated with a facility's environmental restoration program. The RABs are co-chaired by a DoD representative and a community member.

RABs complement other community involvement activities, such as holding public meetings, distributing informative mailings to the public on facility cleanup activities, and establishing local information repositories. RABs meet regularly to provide input on environmental cleanup issues at DoD facilities. RAB meetings are open to the public, and some facilities make their

meeting minutes available at an information repository or over the Internet. RAB activities include reviewing and commenting on cleanup plans and reports, participating in application of the relative-risk or prioritization protocol, reviewing the schedule for restoration activities, and providing input on cleanup issues key to the decision process. RABs are also conduits of information between the facility and the community at large. In this capacity, they assist DoD in keeping the community informed of facility cleanup activities, and for relaying the community's views and concerns to DoD. In addition to regular RAB meetings, a combination of activities may be conducted to enhance the involvement of the local community. Such activities may include coordinating facility site tours or providing interactive presentations with the use of cleanup technology models.

DoD provides funding to support certain RAB activities; in fiscal year 2007, DoD provided about \$2.5 million to support RABs.

SUMMARY

The Department will continue its long-standing commitment to performing environmental restoration at those facilities where an actual or potential release of hazardous substances, pollutants, and contaminants does or may pose a threat to human health and the environment. To date, DoD has made significant progress toward addressing those sites posing the greatest relative risks. This is partly a result of the fiscal and manpower resources applied to fulfilling these requirements, and partly a result of the partnerships forged with EPA and other federal agencies, state and tribal agencies, and the public. A significant body of work remains ahead of the Department, but we remain committed to completing these efforts and ensuring that protective, permanent solutions address any remaining environmental restoration requirements.