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Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2005

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David M. Bearden
Analyst in Environmental Policy
Resources, Science, and Industry Division

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Summary

The Department of Defense (DOD) administers five environmental programs in response to various requirements under federal environmental laws. These programs include environmental cleanup, environmental compliance, pollution prevention, environmental technology, and conservation. The Department of Energy (DOE) is responsible for managing defense nuclear waste and cleaning up contaminated nuclear weapons sites. In the second session of the 108th Congress, the most controversial environmental issues have been: whether to provide further exemptions for military readiness activities from certain air quality and environmental cleanup requirements, and whether to provide DOE with the authority to classify certain high-level radioactive wastes at former nuclear weapons sites in a manner that would permit these wastes to be permanently disposed of on-site in Washington, Idaho, and South Carolina.

The House and Senate have passed their respective versions of the National Defense Authorization Act for FY2005 (H.R. 4200). The bill has now moved to conference. The House would authorize the Administration's request of $1.31 billion for cleanup at active military installations and former defense sites, whereas the Senate would authorize $1.35 billion. The increase in the Senate bill would be devoted to former defense sites. Both the House and Senate would authorize the Administration's request of $246 million for base closure activities, including environmental cleanup. Neither the House nor Senate bill includes the environmental exemptions that DOD proposed. For DOE's cleanup of former nuclear weapons sites, the House would authorize $6.91 billion, $40 million less than requested. The House would not provide the authority that DOE requested for the permanent on-site disposal of high-level radioactive wastes in Washington, Idaho, and South Carolina. The Senate would authorize $6.95 billion for the cleanup of former nuclear weapons sites, and would provide targeted authority for permanent on-site disposal of high-level radioactive wastes only in South Carolina.

Although action on FY2005 defense authorization legislation is not complete, the President has signed the Department of Defense Appropriations Act for FY2005 into law (P.L. 108-287, H.R. 4613). It provides $1.36 billion for cleanup at active military installations and former defense sites, $50 million more than requested. Funds for defense-related environmental activities also would be provided in the Military Construction Appropriations Act for FY2005 (H.R. 4837 and S. 2674) and the Energy and Water Development Appropriations Act for FY2005 (H.R. 4614). As passed by the House, H.R. 4837 would provide the Administration's request of $246 million for base closure activities, including environmental cleanup, the same as S. 2674 as reported. As passed by the House, H.R. 4614 would provide $6.89 billion for the cleanup of former nuclear weapons sites, $60 million less than requested. H.R. 4614 would not appropriate any funding for the permanent on-site disposal of high-level radioactive wastes in Washington, Idaho, or South Carolina, as DOE proposed. This report will be updated as developments warrant.

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Introduction

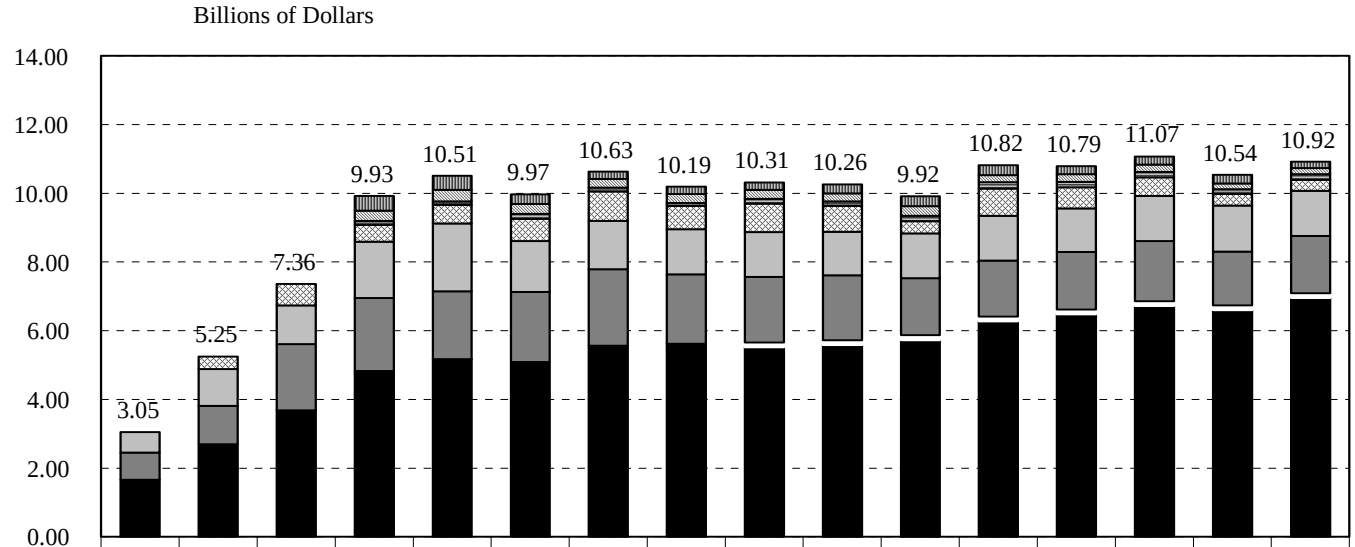
In response to requirements under federal environmental laws, the Department of Defense (DOD) administers five programs to address cleanup and other environmental needs on over 30 million acres of land located on active military installations, and on former military properties. In addition to DOD's environmental programs, the Department of Energy (DOE) is responsible for managing defense nuclear waste, and cleaning up contamination at former nuclear weapons sites. (See **Figure 1** for a history of funding for these activities and the Administration's FY2005 request.) The Environmental Protection Agency (EPA) and the states are responsible for providing oversight and enforcing applicable laws and regulations.

Congress authorizes defense-related environmental programs in the annual authorization bill for National Defense, but it funds these programs under three appropriations bills. Environmental cleanup at active and former military installations, environmental compliance, pollution prevention, environmental technology, and conservation primarily receive funding in the annual appropriations bill for the Department of Defense. Environmental cleanup at bases that have been designated for closure since 1988 is funded in the annual appropriations bill for Military Construction. DOE's management of defense nuclear waste and cleanup of contamination at former nuclear weapons sites is funded in the annual appropriations bill for Energy and Water Development.

The FY2005 appropriations bill for the Department of Defense has been signed into law. To date, defense authorization legislation is in conference, and consideration of the appropriations bills for Military Construction and Energy and Water Development has begun. Among the prominent issues in the debate of authorization legislation and appropriations for FY2005 have been (1) the adequacy, cost, and pace of environmental cleanup; (2) whether additional environmental exemptions are needed to preserve military training capabilities; and (3) whether to provide DOE with the authority to classify certain high-level radioactive wastes in a manner that would permit these wastes to be permanently disposed of on-site in Washington, Idaho, and South Carolina, rather than in a centralized geologic repository, such as Yucca Mountain in Nevada.

This report provides background information on each defense-related environmental program, discusses key funding issues, and examines relevant provisions in authorization legislation and appropriations for FY2005.

Figure 1. Funding for Defense Cleanup and Environmental Programs: FY1990 through FY2004 Enacted and the FY2005 Administration Request



	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005R
Environmental Technology	n/a	n/a	n/a	0.43	0.41	0.28	0.22	0.21	0.21	0.26	0.29	0.29	0.23	0.23	0.25	0.19
Pollution Prevention	n/a	n/a	n/a	0.30	0.34	0.29	0.25	0.26	0.26	0.23	0.28	0.21	0.23	0.22	0.17	0.17
Conservation	n/a	n/a	n/a	0.12	0.10	0.15	0.11	0.09	0.14	0.13	0.16	0.18	0.16	0.16	0.14	0.17
Base Closure Cleanup	n/a	0.37	0.62	0.49	0.54	0.64	0.85	0.68	0.83	0.76	0.36	0.79	0.61	0.54	0.34	0.32
Current and Former Site Cleanup	0.60	1.07	1.13	1.64	1.97	1.48	1.41	1.31	1.30	1.27	1.30	1.31	1.27	1.31	1.34	1.31
Environmental Compliance	0.79	1.11	1.93	2.12	1.98	2.04	2.23	2.02	1.91	1.89	1.66	1.63	1.67	1.75	1.56	1.67
Corps of Engineers FUSRAP	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0.14	0.14	0.15	0.14	0.14	0.14	0.14	0.14
Department of Energy Cleanup	1.66	2.70	3.68	4.83	5.17	5.09	5.56	5.62	5.52	5.58	5.72	6.27	6.48	6.72	6.60	6.95

Prepared by the Congressional Research Service using data from enacted appropriations, Operation and Maintenance Overviews of the Department of Defense, and congressional budget justifications of the Department of Energy.
n/a = account or program not yet established.
FUSRAP = Formerly Utilized Sites Remedial Action Program.
2005R = Administration Request for FY2005

Environmental Activities on Military Lands

DOD administers five environmental programs to comply with federal environmental laws on lands within its jurisdiction. In terms of funding, the two largest programs focus on cleaning up past contamination and on complying with pollution control laws and regulations that apply to day-to-day operations at military installations. Three other programs have smaller budgets. They focus on pollution prevention, environmental technology, and conservation of natural and cultural resources.[1] While there are line-item accounts in defense authorization legislation and appropriations bills for environmental cleanup, there are no line-item accounts for DOD's other environmental activities. Instead, they are funded out of appropriations for the following accounts: Operation and Maintenance, Procurement, Military Construction, and Research and Development. DOD allocates funding out of these accounts based on the availability of annual appropriations and the competing needs of national security activities.

DOD proposed a total of $3.82 billion in funding for all of the above environmental activities for FY2005, $17 million more overall than the amount of $3.80 billion in FY2004. Among the individual programs, DOD has proposed an increase in funding for compliance, conservation, and pollution prevention, and a decrease for cleanup and environmental technology. Background information on each of these programs, key funding issues, and the Administration's FY2005 request are discussed below. Relevant provisions in defense authorization legislation and appropriations for FY2005 are discussed later in this report.

Environmental Cleanup. DOD administers a Defense Environmental Restoration Program to investigate and clean up hazardous waste sites at active and closed military installations, and other former military properties located in the United States. This program is divided into two subcomponents. The Military Munitions Response Program addresses the removal of unexploded ordnance (UXO) and other munitions on former training ranges, and the cleanup of munitions-related contamination. The Installation Restoration Program addresses the cleanup of non-munitions contamination at all other areas on military sites. EPA and the states are responsible for overseeing the cleanup of these lands to ensure that DOD complies with applicable requirements.[2] The Defense Environmental Restoration Program does not address cleanup at overseas military installations. Rather, the commanding

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[1] For additional information on each program, refer to the Defense Environmental Network and Information Exchange (DENIX) website at [http://www.denix.osd.mil].

[2] DOD is subject to the requirements of two federal statutes in conducting its cleanup activities: the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) and the Resource Conservation and Recovery Act (RCRA). CERCLA addresses the release or threatened release of hazardous substances in the United States, and requires contamination to be cleaned up to a level that is protective of human health and the environment (42 U.S.C. 9601 et seq.). RCRA specifies requirements for storing and disposing of solid and hazardous waste, and requires corrective action to clean up environmental contamination that occurs as a result of storage and disposal practices (42 U.S.C. 6901 et seq.). With authorities provided by these statutes, DOD is also subject to state cleanup requirements.

officer of each overseas installation is responsible for administering the cleanup of contamination on these properties in accordance with applicable requirements of the host nation.[3]

Active Installations and Former Military Properties. Funding for cleanup at active and former military installations is authorized under five Defense Environmental Restoration Accounts in the annual authorization bill for National Defense, and is appropriated to these accounts in the annual appropriations bill for the Department of Defense. Three of these accounts reserve funding for the Army, Navy, and Air Force. One devotes funding to a more general category of Defense-wide sites, and another is dedicated to cleaning up Formerly Used Defense Sites (FUDS).[4] For the past several years, annual appropriations for these five accounts combined has been around $1.30 billion, fluctuating somewhat from year to year.

For FY2005, the Administration has requested $1.31 billion for the above accounts, $34 million less overall than the FY2004 appropriation of $1.34 billion. Among the individual accounts, cleanup funding for Army, Navy, and Air Force sites would increase by varying amounts, whereas the FUDS account would decrease by nearly $68 million. The adequacy of funding for cleanup at FUDS sites has been a contentious issue, as some of these properties are now being used for civilian purposes that may present a pathway of human exposure to contamination. Some FUDS sites also were the location of former training ranges where unexploded ordnance and other munitions hazards may be present.

As of the end of FY2003, DOD estimated that $29.90 billion would be needed to complete cleanup at active military installations and FUDS sites.[5] Of this amount, $16.30 billion would be for the removal of unexploded ordnance and cleanup of munitions-related contamination. DOD has not completed its investigation of former training ranges under the Military Munitions Response Program. Estimates of cleanup funding needs may increase in future years as the extent of safety hazards and munition-related contamination is determined, and additional sites with unexploded ordnance are identified.

Military Base Closures. Cleanup at base closure sites is authorized separately under the Base Realignment and Closure (BRAC) Account in the annual authorization bill for National Defense. (Base closure sites are separate from FUDS sites, which were decommissioned prior to 1988.) Appropriations for base closure activities, including cleanup, are provided under the BRAC account in the annual appropriations bill for Military Construction. Congress authorized four rounds of

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[3] The cleanup of contamination at overseas military installations is subject to requirements specified in the Status of Forces Agreement with each host nation. These requirements are generally not as strict as CERCLA and RCRA, and their stringency varies widely from country to country.

[4] FUDS sites are properties that DOD owned or leased in the past and are now devoted to civilian uses. Many of the FUDS sites were used during World War II and prior years.

[5] Department of Defense. Defense Environmental Restoration Program Annual Report to Congress for FY2003. April 2004. Appendix B, p. B-6-1, p. B-10-1, and Appendix C, p. C-6-1, p. C-9-1.

base closures in 1988, 1991, 1993, and 1995, and established a separate BRAC account for each round. These accounts have now been consolidated into one account. The closure and realignment of military bases designated under these four rounds was complete in FY2001. Since that time, BRAC funds have only been used to pay environmental cleanup expenses. In addition to appropriations to the BRAC accounts, proceeds from the sale or lease of property on closed bases support cleanup of contamination on these lands.

Total cleanup funding for base closure sites has declined in recent years from $830 million in FY1998 to $344 million in FY2004. Although funding has declined over the past several years, DOD continues to estimate substantial funding needs for cleanup. As of the end of FY2003, DOD estimated that $3.32 billion in additional funding would be necessary to complete all planned cleanup actions at base closure sites.[6] Funding needs for cleanup at base closure sites may rise in future years if additional military bases are selected for closure. The National Defense Authorization Act for FY2002 (P.L. 107-107) authorized a new round of base closings in 2005.[7]

The expense of closing and realigning additional bases, and the costs of cleaning up these bases for other land uses, would cause funding needs for the BRAC account to rise. The amount of funding that would be necessary to clean up additional base closure sites would depend on the type and extent of contamination, and the actions that would be necessary to protect human health and the environment. The degree of cleanup that is required depends on the intended land use of the property after it is transferred. Cleanup at active military installations is typically based on industrial land use, which allows the least stringent cleanup standards to be applied. The cleanup required at such installations could become more stringent, if they were closed and transferred for other land uses that would present a higher possibility of human exposure to contamination, such as residential development.

The adequacy of funding to meet cleanup needs at base closure sites has been a contentious issue, due to potential risks to human health and the environment, and the public's desire to redevelop these properties for civilian uses. The completion of cleanup is key to redevelopment, because the land cannot be used for its intended purpose until it is cleaned up to the extent that it would be safe for that purpose. In March 2004, the General Accounting Office (GAO, now renamed the Government Accountability Office) reported that 44% of the land on closed military bases had not been transferred for redevelopment as of the end of FY2003. GAO stated that "environmental cleanup has long been a key factor in slowing the transfer process."[8]

The Administration would continue the downward trend in cleanup funding for base closure sites in FY2005. The President's FY2005 budget includes $246 million

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[6] Ibid., Appendix B, p. B-10-1, and Appendix C, p. C-9-1.

[7] For further information, see CRS Report RS21822, Military Base Closures: DOD's 2005 Internal Selection Process, by Daniel Else and David Lockwood.

[8] General Accounting Office. Military Base Closures: Observations on Preparations for the Upcoming Base Realignment and Closure Round. GAO-04-558T. March 25, 2004. pp. 9-10.

for the BRAC account. This amount is $124 million less than the FY2004 appropriation of $370 million. DOD has proposed to allocate $322 million for cleanup at base closure sites in FY2005, using the funds that it has requested for the BRAC account, along with unobligated funds from prior year appropriations and proceeds from the sale and lease of base closure properties. This funding level is $22 million less than DOD's allocation of $344 million for FY2004.

Environmental Compliance. In general, DOD and all other federal agencies are required to comply with federal laws and regulations to control pollution to the same extent as any other entity. However, numerous federal pollution control statutes include exemptions for purposes of national security, or for activities that are in the "paramount interest" of the United States.[9] EPA and the states are authorized to take enforcement action against DOD, including the assessment of fines and penalties, if the Department does not comply with applicable requirements for which an exemption has not been granted. The granting of such exemptions has been extremely rare, resulting in DOD being subject to pollution control requirements for most all of its routine operations.[10]

The federal pollution control statutes that most commonly apply to routine military operations include the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act (RCRA), and Safe Drinking Water Act. Common types of environmental compliance projects at military installations include 1) storing and disposing of solid and hazardous waste, 2) replacing and upgrading wastewater treatment plants, 3) monitoring the effectiveness of wastewater treatment systems, and 4) testing and replacing underground storage tanks.

DOD did not begin to track the amount of funding spent on environmental compliance activities until FY1990. DOD allocates funding for compliance from several accounts, including Operation and Maintenance, Military Construction, and Procurement. DOD's budget for environmental compliance peaked at $2.23 billion in FY1996, and there has been an overall downward trend in compliance costs since that time. DOD attributes this decline to the success of its pollution prevention efforts to reduce the generation of waste, lessening the need for treatment and disposal and other compliance actions. However, DOD estimates that it will need to

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[9] The authority for exemptions from pollution control requirements for federal facilities are included in: the Clean Air Act [42 USC 7418(b)], Clean Water Act [33 USC 1323(a)], Resource Conservation and Recovery Act [42 USC 6961(a)], and Safe Drinking Water Act [42 USC 300(j)(6)]. Exemption authority is also provided in the Comprehensive Environmental Response, Compensation, and Liability Act [42 USC 9620(j)], Endangered Species Act [16 USC 1536(j)], Marine Mammal Protection Act [16 USC 1371(f)], and Noise Control Act [42 USC 4903]. For additional information, see CRS Report RS21217, Exemptions for Military Activities in Federal Environmental Laws, by Robert Meltz.

[10] For example, a Presidential exemption from solid and hazardous waste requirements under RCRA has been granted on an annual basis for the Air Force's Groom Lake facility in Nevada. President Bush granted the most recent exemption for this facility in September 2003. (68 Federal Register 60277.) The exemption is scheduled to expire in September 2004. Based on past precedent, it likely will continue to be renewed on annual basis, as long as classified activities continue at this facility. Groom Lake is the only military installation in the United States that receives an annual exemption from an environmental requirement.

allocate more funding for compliance in FY2005 to meet wastewater and underground storage tank requirements and various requirements applicable to Navy training ranges, as well as the need for greater funding to pay increased manpower costs. For FY2005, DOD estimates that it will need to allocate a total of $1.67 billion to comply with applicable pollution control requirements at its installations, $104 million more than in FY2004.[11]

Pollution Prevention. The purpose of the Pollution Prevention Program is to reduce or eliminate waste and pollution, as a means to lower the costs of environmental compliance and to prevent future cleanup liabilities. As noted above, DOD attributes the overall downward trend in environmental compliance costs to the success of its pollution prevention efforts. This program seeks to reduce: 1) the use of hazardous materials, 2) the production of solid waste, and 3) the release of toxic substances, air emissions, and water pollution. Through this program, DOD also funds the implementation of executive orders on waste prevention, recycling, and procurement of environmentally preferable products. The pollution prevention budget has ranged from $340 million in FY1994 to $165 million in FY2004. DOD allocates funding for this program from the accounts for Operation and Maintenance, Military Construction, and Procurement. For FY2005, DOD plans to allocate $171 million, nearly $6 million more than in FY2004.[12] The increase would support Navy programs to reduce water pollution from vessels.

Environmental Technology. The environmental technology program supports the research and development of more efficient and less costly methods to manage solid and hazardous waste. These efforts are aimed at helping DOD to comply more easily with pollution control laws and regulations. The program also supports the research and development of more effective and less costly methods to clean up contamination in soil, surface water, and groundwater. Integral to the cleanup of former training ranges, the program supports the research and development of advanced technologies to detect unexploded ordnance. Some Members of Congress, states, environmental organizations, and communities have advocated higher funding for the development of detection technologies that would help to improve the accuracy and pace of identifying safety hazards for removal. The environmental technology budget has ranged from $430 million in FY1993 to around $210 million in FY1997 and FY1998. DOD allocates funding for environmental technology out of its Research, Development, Test, and Evaluation Accounts. DOD plans to allocate $186 million for FY2005, $64 million less than in FY2004.[13] The proposed decrease is due to the completion of several projects administered by the Army to research new cleanup and pollution prevention technologies.

Conservation. The conservation program aims to protect the natural, historical, and cultural resources of over 30 million acres of public land that DOD administers. Activities funded under this program are necessary to comply with

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[11] Department of Defense. Operation and Maintenance Overview: FY2005 Budget Estimates. February 2004. p. 112.

[12] Ibid.

[13] Ibid., p. 113.

federal laws that protect such resources, including the Endangered Species Act and the National Historic Preservation Act. The conservation budget has ranged from $180 million in FY2001 to $90 million in FY1997. DOD allocates funding for conservation from the accounts for Operation and Maintenance, Military Construction, and Procurement. DOD estimates that it will need to allocate $169 million in FY2005 to comply with resource protection requirements and to support related activities, nearly $28 million more than in FY2004.[14] The increase in funding would be for the purchase of conservation easements on lands adjacent to military installations. These lands would serve as buffers to ease the burden of habitat management on military installations, as a means of preventing encroachment on lands needed for training. Congress provided the authority for this practice in the National Defense Authorization Act for FY2003 (P.L. 107-314). (For further discussion, see CRS Report RL31456, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2003*, by David M. Bearden.)

Military Readiness Issues

A prominent issue has been the extent to which requirements to clean up contamination, control pollution, and protect natural resources restrict the use of military lands for training. Central to this issue is whether environmental exemption authority should be expanded to preserve training capabilities. As discussed earlier, Congress included exemptions in several statutes to ensure that military training needs would not be restricted to the extent that national security would be compromised. These exemptions provide the President with the authority to suspend compliance requirements for actions at federal facilities on a case-by-case basis. Such exemptions may be granted if doing so would be either in the "paramount interest of the United States" or in the "interest of national security." Most of these exemptions are limited to one year, but can be renewed.[15]

DOD argues that existing exemptions are too onerous and time-consuming to obtain on a case-by-case basis due to the vast number of training exercises that it conducts on hundreds of military installations across the country. DOD also argues that the time limitations placed upon most exemptions are not compatible with many training activities, due to their ongoing or recurring nature. Instead, DOD favors modifications to numerous environmental statutes that would provide greater flexibility for conducting combat training and other readiness activities without restriction or delay. However, some Members of Congress, states, environmental organizations, and communities have opposed such modifications, pointing to the lack of data to demonstrate the extent to which environmental requirements have restricted training exercises and compromised readiness overall. They argue that expanding exemption authority without justification for its need would unnecessarily weaken environmental protection.

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[14] Ibid.

[15] The Safe Drinking Water Act does not impose a time limit on exemptions from compliance. Under the Endangered Species Act, a special committee "shall grant" an exemption if the Secretary of Defense finds it necessary for national security. This committee may place a time limit on an exemption, but it is not required to do so.

The cumulative effect of environmental requirements on military readiness capabilities is difficult to determine due to the lack of a system to comprehensively track individual cases in which training has been restricted or compromised. In 2002, GAO found that DOD's readiness reports do not indicate the extent to which environmental requirements restrict combat training activities, and that such reports indicate a high level of readiness overall.[16] However, GAO noted individual instances of environmental restrictions at numerous military installations, and in light of this fact, recommended that DOD's reporting system be improved to more accurately identify problems for training that might be attributed to restrictions imposed by environmental requirements. A more recent GAO report found that environmental restrictions are only one of several factors, including urban growth, that affect DOD's ability to carry out training activities, and that DOD continues to be unable to measure the impact of encroachment on readiness.[17]

Congressional Action on Environmental Exemptions

As part of its defense authorization proposals for FY2003, FY2004, and FY2005, DOD submitted a Readiness and Range Preservation Initiative (RRPI) to Congress, requesting targeted exemptions for military readiness activities.[18] DOD proposed this initiative in response to its stated concern that environmental requirements have increasingly imposed restrictions on combat training exercises, a key component of military readiness. The initiative originally proposed targeted exemptions for military readiness activities from certain requirements under six environmental laws: Clean Air Act, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, and Resource Conservation and Recovery Act (RCRA).

Thus far, Congress has provided modified versions of DOD's proposed exemptions from wildlife protection requirements under three of the above statutes. These exemptions were contentious, and there was considerable debate prior to their enactment. The National Defense Authorization Act for FY2003 provided a broad exemption for military readiness activities from the Migratory Bird Treaty Act.[19] (See CRS Report RL31456, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2003*.) The National Defense Authorization Act for FY2004 provided an exemption from the designation of critical habitat under the Endangered Species Act on military lands, if certain conditions are met.[20] Other provisions of that act provided a broad exemption from the Marine Mammal

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[16] General Accounting Office. Military Training: DOD Needs a Comprehensive Plan to Manage Encroachment on Training Ranges. GAO-02-727T. May 2002.

[17] General Accounting Office. Military Training: DOD Approach to Managing Encroachment on Training Ranges Still Evolving. GAO-03-621T. April 2003.

[18] DOD's legislative proposal for FY2005 and its justification are available at DOD's website at [https://www.denix.osd.mil/denix/Public/Library/Sustain/RRPI/rrpi.html].

[19] P.L. 107-314, Section 315.

[20] P.L. 108-136, Section 318.

Protection Act for "national defense."[21] The act also modified the definition of "harassment" of marine mammals, as it applies to military readiness activities, and required the consideration of impacts on military readiness in the issuance of permits for incidental takings. (See CRS Report RL32183, *Defense Cleanup and Environmental Programs: Authorization and Appropriations for FY2004*.)

In defense authorization legislation and appropriations for FY2003 and FY2004, Congress did not provide the exemptions from the Clean Air Act, RCRA, and CERCLA, which DOD had requested. None of the defense authorization and appropriations bills for FY2005 include exemptions from these three statutes either, as discussed later in this report. While the exemptions that Congress has granted were contentious to those concerned about the weakening of wildlife protections, there has been broader opposition to exemptions from the Clean Air Act, RCRA, and CERCLA, due to concern about risks to human health from the potential exposure to air pollution and hazardous substances.

As proposed by DOD, the Clean Air Act language would exempt emissions generated by military readiness activities from requirements to "conform" to State Implementation Plans (SIPs) for achieving federal air quality standards. Under current law, activities of federal agencies which would increase emissions beyond limitations established in a state's SIP are prohibited, unless offsetting reductions from other sources are made. DOD argued that this exemption would provide greater flexibility for transferring training operations to areas with poor air quality, without the possibility of restrictions on these operations due to the emissions that they would produce. DOD stated that the impact on air quality would be minimal, claiming that its emission are relatively minor compared to other sources. States, environmental organizations, and public health advocates argued that the impacts on air quality could be greater and present a risk to human health, especially if localized "hot spots" of pollution were to develop in communities adjacent to military installations where emissions were not controlled.

DOD's proposed exemptions from RCRA and CERCLA would define "solid waste" and "release" in federal statute as not including military munitions on operational ranges. Whether environmental cleanup requirements under these two statutes apply depends on whether a substance is a solid waste, or whether there has been a release of a hazardous substance. In effect, the proposed exemption would allow munitions and munitions-related contamination to remain on a training range indefinitely, as long as the range remained operational. DOD stated that this exemption would codify existing federal regulations under the Military Munitions Rule, and argued that it would not present greater risks to human health and the environment. Some Members of Congress, states, environmental organizations, and communities countered that the proposed language was broader than current regulation, and that the definition of operational range would allow DOD to designate practically any lands on a military installation as such, thereby exempting munitions and related contamination from environmental cleanup.

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[21] P.L. 108-136, Section 319.

The above and other issues were addressed in a hearing held jointly by the Subcommittee on Energy and Air Quality and the Subcommittee on Environment and Hazardous Materials of the House Energy and Commerce Committee on April 21, 2004. Some Members stated their support for greater environmental compliance flexibility for military readiness purposes. Other Members highlighted the lack of data to determine the extent to which such flexibility was needed, and expressed concern that the impacts of the proposed exemptions on human health and the environment would be greater than DOD had characterized. Issues were also raised in association with this hearing as to whether the House Energy and Commerce Committee or the House Armed Services Committee had jurisdiction over DOD's proposal. Subsequent to the contentious hearing debate, exemptions from the Clean Air Act, RCRA, or CERCLA have not been included in FY2005 defense authorization legislation and appropriations bills.

Cleanup of Former Nuclear Weapons Sites

At the end of the Cold War in the late 1980s, the United States ceased its production of nuclear weapons. However, radioactive and other hazardous wastes generated from the production of nuclear weapons continue to pose a risk to human health and the environment. Since the beginning of the U.S. atomic energy program, the Department of Energy (DOE) and its predecessor agencies have been responsible for managing the production of nuclear weapons and related waste. In later years, DOE expanded its efforts to include the environmental restoration of radioactive sites, and those with other hazardous contamination. In 1989, the Bush Administration established an Environmental Management Program within DOE to consolidate the Department's efforts to clean up contamination from defense nuclear waste, as well as waste from civilian nuclear energy research.[22]

Applicable Requirements. In carrying out the Environmental Management Program, DOE is subject to requirements of the Atomic Energy Act of 1954, CERCLA, and RCRA. DOE is not subject to external agency oversight of its compliance with the Atomic Energy Act. However, EPA and the states play a significant oversight role in DOE's compliance with CERCLA and RCRA. DOE has signed numerous legally binding compliance agreements with EPA and the states to perform cleanup activities and dispose of wastes according to specific deadlines, which would fulfill the requirements of these two latter statutes.

Cleanup Status and Costs. Much attention has focused on the amount of time and money needed to treat, manage, and dispose of defense nuclear waste and to clean up related contamination. The waste management and cleanup challenges are substantial. DOE reports that there are 114 large sites in 31 states and one U.S. territory where the production of nuclear weapons, and civilian nuclear energy research and development activities, resulted in radioactive and other hazardous contamination. Together, these sites occupy approximately 2 million acres, which is equivalent to the land area of Rhode Island and Delaware combined.

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[22] For additional information on the Environmental Management Program, refer to DOE's website at [http://www.em.doe.gov].

According to DOE, all response actions were complete at 76 of these sites as of the end of FY2003, at a cost of approximately $70 billion. However, most of the sites that have been cleaned up thus far are relatively small and are among the least hazardous. The sites where cleanup remains underway contain some of the most severely contaminated areas. DOE estimates that cleanup at the remaining sites will not be complete until 2035, at a cost of $142 billion. The greatest outstanding cleanup liabilities are at defense sites that were involved in the production of nuclear weapons.

Appropriations Accounts. Two appropriations accounts fund cleanup at defense nuclear waste sites. The Defense Site Acceleration Completion Account provides funding for activities that are directly involved in the cleanup of contaminated sites and the acceleration of site completion. The Defense Environmental Services Account funds activities that indirectly support the mission of accelerated cleanup and closure, such as policy development and coordination, and the integration of mission activities across the complex of sites. Congress authorizes funding for these accounts in the annual authorization bill for National Defense, and appropriates funding for these activities in the annual appropriations bill for Energy and Water Development.

Administration's Cleanup Reform Initiative. At the Administration's request, Congress established these two accounts in FY2004 to focus funding on DOE's cleanup reform initiative to lower costs and speed the pace of cleanup.[23] DOE launched its cleanup reform initiative in FY2003. While there has been broad support for accelerating cleanup and reducing costs, questions have been raised as to how these goals could be achieved without weakening environmental protection. DOE's initiative is based on assessing the risk of exposure to determine which cleanup remedies are selected. Risk is currently one of many factors that DOE uses to select cleanup remedies. Altering the current process to use risk as the primary factor could result in decisions to contain waste on site as a means of preventing exposure, rather than removing it. While containment can often be accomplished more quickly and at less cost, the possibility of future exposure remains if the method of containment fails over time. Some Members of Congress, states, environmental organizations, and communities have expressed concern about this approach.

DOE has proposed to continue its cleanup reforms in FY2005 and has requested a total of $6.95 billion for the two above accounts. Of this amount, $5.97 billion would be allocated to the Defense Site Acceleration Completion Account, and $982 million would be allocated to the Defense Environmental Services Account. The total request for both accounts is approximately $350 million more than the FY2004 appropriation of $6.60 billion.

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[23] Congress previously authorized and appropriated funding for the cleanup of defense nuclear wastes sites under three accounts: Defense Environmental Restoration and Waste Management Account, Defense Facilities Closure Projects Account, and Defense Environmental Management Privatization Account. Prior to these accounts, Congress set aside funding for cleanup of these sites under the Atomic Energy Defense Activities Account, which was a centralized account that funded multiple purposes.

High-level Waste Proposal. As part of the Administration's cleanup reform initiative, the requested $350 million increase would fund a "High-level Waste Proposal" to speed the closure of tanks storing high-level radioactive and other chemical wastes at the Hanford site in Washington, the Savannah River site in South Carolina, and at the Idaho National Engineering and Environmental Laboratory (INEEL). The volume of these wastes is substantial. For example, DOE reports that at the Hanford site there are over 50 million gallons of high-level radioactive and chemical wastes stored beneath the surface in 177 tanks. The tank wastes at Hanford, and the other two sites, that are classified as "high-level" radioactive wastes must be removed and safely stored in a centralized geologic repository, as required by the Nuclear Waste Policy Act of 1982. (For more information, see CRS Report RL32163, *Radioactive Waste Streams: An Overview of Waste Classification for Disposal*, by Anthony Andrews.)

DOE has proposed to speed the closure of the tanks at these three sites by classifying some of the waste as "incidental to reprocessing," and to dispose of it as low-level waste by mixing and immobilizing it with a cement "grout" inside the tank. Some Members of Congress, states, environmental organizations, and communities have opposed DOE's proposal, arguing that none of the tank wastes should be allowed to remain in place because of the possibility that the grouting could deteriorate over the long-term and allow contamination to migrate, creating pathways of exposure. However, others assert that methods to remove all of the tank residues would generate a new hazardous waste stream that would need to be managed properly to prevent exposure. There also could be significant risks of exposure to workers inside the tanks who would be tasked with removing the residues.

Thus far, DOE has grouted high-level radioactive wastes in two tanks at the Savannah River site. The Natural Resources Defense Council (NRDC) legally challenged DOE's authority to dispose of these wastes in this manner. In 2003, the U.S. District Court for Idaho ruled that DOE does not have the authority to classify the tank wastes at the Savannah River site, or any other site, as anything other than high-level radioactive waste.[24] Consequently, these wastes would have to be removed and disposed of in a centralized geologic repository as required by the Nuclear Waste Policy Act.

The Secretary of Energy has asked Congress to enact legislation that would provide DOE with statutory authority to classify some of the tank wastes as incidental to reprocessing at Hanford, Savannah River, and the INEEL, thereby exempting them from disposal requirements for high-level radioactive waste in the Nuclear Waste Policy Act. If this authority were provided, whether the wastes could be left in the tanks and grouted in place would ultimately depend on the concurrence of state regulatory agencies who issue the permits for tank closures. DOE's FY2005 budget justification document indicates the Administration will request the $350 million for its High-level Waste Proposal after the above legal issues are resolved. However, the budget justification appears contradictory, as the $5.97 billion requested for the Defense Site Acceleration Completion Account does include this $350 million as part of the total request for the Environmental Management Program.

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[24] NRDC v. Abraham, 271 F. Supp. 2d. 1260 (D. Id. 2003).

Cleanup of Other Radioactive Contamination

In addition to former nuclear weapons production sites, smaller sites were contaminated with low-level radiation from the processing and storage of uranium and thorium ores during the early years of the U.S. nuclear weapons program. The majority of these sites were owned and operated by private contractors from the 1940s to the 1960s. Cleanup at these sites is performed under the Formerly Utilized Sites Remedial Action Program (FUSRAP), currently administered by the Army Corps of Engineers. DOE's predecessor agency, the Atomic Energy Commission, established this program in 1974 under authorities provided in the Atomic Energy Act. In response to concerns about the pace and cost of cleanup under DOE's management, Congress included provisions in the Energy and Water Development Appropriations Act for FY1998 (P.L. 105-62) to transfer the FUSRAP program to the Army Corps of Engineers.

The Corps reports that a total of 49 sites with radioactive contamination have been identified since 1974, and that cleanup is complete at 28 of these sites. As of April 2004, the Corps reported that cleanup was ongoing or planned at the remaining 21 sites.[25] Prior to FY1998, cleanup at these sites was funded out of available funds allocated to DOE's former Defense Environmental Restoration and Waste Management Account, and to the prior Atomic Energy Defense Activities Account. Since the creation of a dedicated account for FUSRAP and transfer of the program to the Corps, Congress has provided approximately $140 million in annual funding. The Administration has requested this amount again for FY2005.

Authorization Legislation for FY2005

The House passed the National Defense Authorization Act for FY2005 (H.R. 4200, H.Rept. 108-491) on May 20, 2004. The Senate passed its version of the bill (S. 2400, S.Rept. 108-260) on June 23, 2004. The Senate then incorporated the text of S. 2400 into H.R. 4200 as a substitute amendment, passing this latter measure as well. The Senate appointed its conferees on H.R. 4200 on June 24, 2004. Both bills would authorize funding for national defense programs, including defense-related environmental activities administered by DOD and DOE. As in past years, both bills specify funding levels for environmental cleanup on current and former military lands and at former nuclear weapons sites. They do not specify funding for DOD's other environmental activities, including environmental compliance, conservation, pollution prevention, and environmental technology. Funding for these activities would be authorized as part of the accounts for Operation and Maintenance, Military Construction, Procurement, and Research and Development.

Both bills also include provisions that address various environmental issues related to defense activities. Among the most controversial are provisions in the Senate bill that, in effect, would amend the Nuclear Waste Policy Act to provide targeted authority in South Carolina for DOE to classify certain high-level radioactive

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[25] U.S. Army Corps of Engineers. Formerly Utilized Sites Remedial Action Program Update. April 2004. p. 3. For further information, refer to the Army Corps of Engineers website at [http://hq.environmental.usace.army.mil/programs/fusrap/fusrap.html].

wastes in a manner that would allow these wastes to be permanently disposed of on-site, with that state's concurrence. Neither the House nor the Senate bill include environmental exemptions from the Clean Air Act, CERCLA, or RCRA, which DOD requested. Funding authorizations proposed in each bill for environmental cleanup, and selected provisions relevant to cleanup, are discussed below.

Cleanup of Current and Former Military Lands. H.R. 4200 would authorize the Administration's request of $1.31 billion for the five Defense Environmental Restoration Accounts that fund the cleanup of past contamination at active military installations and Formerly Used Defense Sites (FUDS) that are now being used for civilian purposes. S. 2400 would authorize $1.35 billion for these accounts. Most of the Senate's increase would be for the cleanup of FUDS sites. Both bills would authorize the Administration's request of $246 million for the Base Realignment and Closure Account (BRAC). As discussed earlier, DOD has proposed a total of $322 million for cleanup at base closure sites in FY2005, using funds from the BRAC account, unobligated funds from prior year appropriations, and proceeds from the sale and lease of base closure properties.

Regarding the cleanup of base closure sites, the Senate bill would authorize DOD to reimburse private owners of former military property for cleanup actions taken after the transfer of the land. CERCLA generally requires DOD to clean up contamination on base closure sites prior to transfer of the land, and DOD is retroactively liable for any cleanup actions that are needed after the transfer to remediate contamination that was not originally addressed.[26] The pace at which DOD performs post-transfer cleanup on former military properties has been an issue among private owners of these lands, who must wait for the completion of the cleanup before the property can be used for its intended purpose. The authority provided in the Senate bill would allow DOD to reimburse private owners who wish to pay for the cleanup themselves, in order to speed the pace of remediation.

The Senate bill also addresses the cleanup of groundwater contamination, which is common at many military installations. Groundwater contamination often requires more time and money to remediate than soil or surface water contamination, especially if the groundwater must be pumped and treated. The Senate bill would require GAO to conduct a study of: alternative technologies for the cleanup of groundwater contamination available to DOD; the potential benefits and limitations of these technologies, their cost, capabilities, and possible legal restrictions on their use; and other matters deemed appropriate. GAO would be required to submit the study to Congress by April 1, 2005, and to include recommendations for administrative or legislative action.

Related to groundwater contamination, the Senate bill includes a "Sense of the Senate" provision that addresses the cleanup of perchlorate, a substance commonly used in munitions propellants. This substance has been found in groundwater at numerous military installations across the country and has been detected in many

[26] 42 U.S.C. 9620(h).

public water supplies and private drinking water wells.[27] Consequently, there has been significant public concern about the potential risks of perchlorate to human health. There currently is not an enforceable federal or state drinking water standard for this substance that could be applied to cleaning it up. The National Academy of Sciences (NAS) is studying the health effects of perchlorate to assist EPA in developing a federal drinking water standard. The state of California is in the process of developing a standard as well, and is awaiting the results of the NAS study. In the absence of a generally applicable cleanup standard, EPA has applied state public health goals to the cleanup of perchlorate at certain sites.[28]

The Sense of the Senate provision states that DOD should develop a national plan to remediate perchlorate contamination to ensure that the Department can respond "quickly and appropriately" once a drinking water standard is established. It also states that DOD should continue remediation that is underway, develop a plan for remediation at sites where perchlorate is present in groundwater or surface water at levels that pose a hazard to human health, and continue evaluating and prioritizing sites for cleanup without waiting for the development of a federal standard. A "Sense" of the House or Senate expresses the opinion of that respective chamber on the matter at hand, and is not legally binding.[29] Consequently, if the Sense of the Senate regarding perchlorate were enacted, DOD would not be required to comply with the Senate's direction. Whether DOD could take the above actions would depend on various factors, including the availability of appropriations.

Cleanup of Former Nuclear Weapons Sites. H.R. 4200 would authorize $6.91 billion for the two accounts that fund DOE's cleanup of former nuclear weapons sites, $40 million less than the Administration's request. Of the House amount, $5.93 billion would be allocated to the Defense Site Acceleration Completion Account, and $986 million would be allocated to the Defense Environmental Services Account. In its report on the bill, the House Armed Services Committee indicated that no funding would be authorized for the Administration's High-level Waste Proposal to permanently dispose of high-level radioactive wastes on-site in Washington, Idaho, and South Carolina. Instead, funding would be authorized only for waste management and cleanup activities in those states that are "not prevented by the [2003] federal district court ruling or are not otherwise deemed inappropriate due to the legal uncertainty resulting from the court ruling."

S. 2400 would authorize $6.95 billion for the cleanup of former nuclear weapons sites, $41 million more than the House, and slightly more ($1 million) than requested. Of the Senate amount, $5.97 billion would be allocated to the Defense Site Acceleration Completion Account, and $982 million would be allocated to the Defense Environmental Services Account. The bill would provide targeted authority

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[27] For a list of military installations in the United States where perchlorate contamination has been found in groundwater, refer to EPA's website at [http://www.epa.gov/fedfac/pdf/Releases_04_29_04-with-datesDB.pdf].

[28] For a list of examples, refer to EPA's website at [http://www.epa.gov/fedfac/documents/perchlorate_site_summaries.htm.]

[29] For further discussion of this type of provision, see CRS Report 98-825, Sense of Resolutions and Provisions, by Paul S. Rundquist.

for classifying some of the high-level radioactive wastes in South Carolina as incidental to reprocessing, according to criteria approved by the Nuclear Regulatory Commission. These wastes are currently stored in underground tanks at the Savannah River site near Aiken, South Carolina. With this authority, DOE would be permitted to dispose of these wastes by mixing them with a cement "grout" in the tanks and sealing the wastes in place. This disposal method would be subject to regulatory approval by the state of South Carolina. S. 2400 would not provide such authority for Washington and Idaho, which DOE requested.

Both bills would require DOE to arrange for the National Academy of Sciences (NAS) to study the characteristics of high-level radioactive and other hazardous wastes stored in tanks in Washington, Idaho, and South Carolina, and the merits of DOE's proposal to grout some of these wastes in place. The study also would include alternatives and recommendations for disposal of the tank wastes. The NAS would be required to submit a final report to Congress and DOE on the findings and recommendations of this study within one year of entering this arrangement. H.R. 4200 would authorize $1.5 million out of DOE's defense environmental management funds for the NAS to conduct the study, whereas S. 2400 would authorize $750,000.

Appropriations for FY2005

In addition to authorization legislation, the second session has taken action on the three appropriations bills that fund defense-related environmental activities. The President has signed the FY2005 appropriations bill for DOD into law. It provides more funding than in FY2004 for cleanup at active military installations, but decreases funding for cleanup on former military lands. The House has passed, and the Senate has reported, the FY2005 appropriations bill for Military Construction, both of which would provide less funding for the cleanup of base closure sites than in FY2004. As in the authorization bills, neither the final version of the FY2005 appropriations bill for DOD, nor the Military Construction bills under consideration, include the exemptions from the Clean Air Act, CERCLA, or RCRA, which DOD requested. The House also has passed the FY2005 appropriations bill for Energy and Water Development. It would provide more funding for the cleanup of former nuclear weapons sites than in FY2004, but would not provide any funding for the Administration's proposal to permanently dispose of certain high-level radioactive wastes in Washington, Idaho, and South Carolina. Further discussion of each bill is provided below.

Department of Defense. The House and Senate passed the conference agreement on the Department of Defense Appropriations Act for FY2005 (H.R. 4613, H.Rept. 108-622) on July 22, 2004. The President signed the bill into law (P.L. 108-287) on August 5, 2004. The law appropriates specific funding levels for environmental cleanup activities, but as in defense authorization legislation, there are no comprehensive line-item accounts for DOD's other environmental activities, including environmental compliance, conservation, pollution prevention, and environmental technology. As in past years, DOD will allocate funding for these activities from funds appropriated by the law to the accounts for Operation and Maintenance, Procurement, and Research and Development.

As indicated in the table below, the law provides $1.36 billion for the five Defense Environmental Restoration Accounts that fund the cleanup of past contamination at active military installations and Formerly Used Defense Sites (FUDS), more than the House or Senate would authorize. The enacted appropriation is $50 million more than the Administration's request, and is $10 million more than Congress provided for FY2004. The amount above the request would be devoted to cleanup at FUDS sites. However, funding for cleanup at these sites would be less than appropriated for FY2004. The law provides the same amount that the Administration requested for cleanup at active Army, Navy, and Air Force installations, an increase above the FY2004 appropriation. In addition to these funds, the law provides $10 million for the mitigation of environmental impacts resulting from military activities on Indian lands.

Table 1. Defense Environmental Restoration Accounts: FY2004 Enacted, FY2005 Request, and Action on Appropriations

Defense Environmental Restoration Account	FY2004 Enacted	FY2005 Request	P.L. 108-287 (H.R. 4613)
Army	$396,018,000	$400,948,000	$400,948,000
Navy	$256,153,000	$266,820,000	$266,820,000
Air Force	$384,307,000	$397,368,000	$397,368,000
Defense-wide	$24,081,000	$23,684,000	$23,684,000
Formerly Used Defense Sites	$284,619,000	$216,516,000	$266,516,000
Total	**$1,345,178,000**	**$1,305,336,000**	**$1,355,336,000**

Regarding cleanup at military installations in general, the law limits the use of "indefinite delivery/indefinite quantity" contracts to no more than 35% of the total funding obligated for environmental cleanup projects in FY2004. Under this type of contract, funds are awarded for an indefinite number of services for an indefinite period of time. They are generally more suitable for complex cleanup projects addressing extensive contamination that may present unforseen needs and require more time to complete than originally estimated. There have been ongoing concerns in Congress that the cost and scope of these contracts have become so large that they are difficult to manage. In recent years, Congress has included provisions in DOD's appropriations bill to limit their use.

As the Administration requested, the law does not provide any funding for payment to the Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Trust Fund. The Navy has completed its planned cleanup actions on Kaho'olawe Island, and transferred access authority back to the State of Hawaii in November 2003. The Navy ceased its use of the island as a training range in 1995, and began the cleanup of the former range according to standards for the removal of munitions specified in a Memorandum of Agreement with the State of Hawaii, signed in May 1994.[30] There has been some disagreement as to whether the Navy has cleaned up the island according to these standards. Whether additional funding may

[30] For the full text of the Memorandum of Agreement, refer to the Navy's website at [http://www.hawaii.navy.mil/CNBDATA/Kahoolawe/LegalDocs/MOU.htm].

be necessary for further cleanup of the island is uncertain. (For additional discussion of the final bill, see CRS Report RL32305, *Authorization and Appropriations for FY2005: Defense*, by Stephen Daggett and Amy Belasco.)

Military Construction. The House passed the Military Construction Appropriations Act for FY2004 (H.R. 4837, H.Rept. 108-607) on July 22, 2004. The Senate Appropriations Committee reported its version of the bill (S. 2674, S.Rept. 108-309) on July 15, 2004. On September 15, 2004, in preparation for floor consideration, the Senate struck the entire text of H.R. 4837 and inserted as a substitute amendment the full text of S. 2674, as reported. Thus, the Senate will base its floor consideration of H.R. 4837 on the text of its substitute amendment. Although there are significant differences between the two versions of H.R. 4837, both the House and Senate would provide $246 million for the Base Realignment and Closure (BRAC) Account to fund environmental cleanup. This amount is the same as the Administration requested, and as would be authorized by the House and Senate. It is $124 million less than the FY2004 appropriation.

Table 2. Base Realignment and Closure Account: FY2004 Enacted, FY2005 Request, and Action on Appropriations

FY2004 Enacted	FY2005 Request	H.R. 4837 as Passed	S. 2674 as Reported
$370,427,000	$246,116,000	$246,116,000	$246,116,000

In addition to funding cleanup at base closure sites, both the House and Senate versions of H.R. 4837 would provide greater flexibility for the payment of environmental cleanup costs associated with the upkeep of certain types of military housing. A similar provision was included in the final versions of the FY2003 and FY2004 appropriations bills. This provision would limit the cost of maintaining and repairing general and flag officer quarters, unless Congress is notified 30 days in advance that costs will exceed a certain amount ($20,000 in the House version and $35,000 in the Senate version). However, if the costs above these amounts are solely for environmental cleanup activities that could not be reasonably anticipated at the time of the budget submission, both bills would authorize DOD to notify Congress of the higher costs "after-the-fact." Providing an exception from early notification requirements for unforseen environmental costs could help to ensure that cost limitations do not prevent DOD from taking timely action to comply with requirements to address threats to human health and the environment. (For additional discussion of these bills, see CRS Report RL32310, *Appropriations for FY2005: Military Construction*, by Daniel H. Else.)

Energy and Water Development. The House passed the Energy and Water Development Appropriations Act for FY2005 (H.R. 4614, H.Rept. 108-554) on June 25, 2004. As indicated in the table below, H.R. 4614 would provide $6.89 billion for the two accounts that support DOE's cleanup of former nuclear weapons sites. Of this amount, $5.93 billion would be allocated to the Defense Site Acceleration Completion Account, and $958 million would be allocated to the Defense Environmental Services Account. The total amount for these two accounts is $286

million more than the FY2004 appropriation, and is $65 million less than the Administration's request.

Table 3. Defense Environmental Management Accounts: FY2004 Enacted, FY2005 Request, and Action on Appropriations

Defense Environmental Management Account	FY2004 Enacted	FY2005 Request	H.R. 4614 as Passed
Defense Site Acceleration Completion	$5,617,719,000	$5,970,837,000	$5,930,837,000
Defense Environmental Services	$985,296,000	$982,470,000	$957,976,000
Total	**$6,603,015,000**	**$6,953,307,000**	**$6,888,813,000**

H.R. 4614 would not provide the $350 million that the Administration requested for its High-level Waste Proposal to permanently dispose of high-level radioactive wastes on-site in Washington, Idaho, and South Carolina. Instead, the bill would appropriate $274 million for tank waste management and cleanup activities in these states at the Hanford and Savannah River sites and the Idaho National Engineering and Environmental Laboratory, which are not "precluded" by the 2003 district court ruling. In its report on the bill, the House Appropriations Committee specified that it "supports resolution of this issue through the judicial appeals process or through comprehensive legislation that would address the problem in a consistent manner nationwide," rather than only in selected states (as the Senate has proposed for South Carolina in S. 2400).

In addition to the issue of how to dispose of high-level radioactive waste, the House Appropriations Committee expressed concern about the feasibility of DOE's overall plans to accelerate cleanup and lower costs at the 114 sites across the country that make up the former defense nuclear weapons complex. The committee noted recent delays in cleanup schedules and cost overruns of certain projects, as an indicator that these plans could be ineffective. The committee also raised concerns regarding DOE's delay in submitting a report to Congress on statutory changes that may be necessary to allow accelerated cleanup to proceed, and the need for agreements with the states on all elements of the Performance Management Plans for each site. These plans outline how accelerated cleanup would be accomplished.

H.R. 4614 would also appropriate $64 million for DOE's Office of Legacy Management. The Administration had requested $66 million, the same as the FY2004 appropriation. Of the House amount for Legacy Management, $33 million would be allocated to defense sites, and the remaining $31 million to non-defense sites. Congress provided the funding for DOE to establish this office in the Energy and Water Development Appropriations Act for FY2004 (P.L. 108-137). The primary function of the office is to assess long-term stewardship needs once cleanup is complete, to ensure that DOE's planned cleanup remedies continue to be effective in the future. These planning assumptions are currently based on a time frame of 150 years. DOE previously administered these responsibilities under multiple elements of its Environmental Management program.

In addition to funding for DOE, H.R. 4614 would provide $190 million for the Formerly Utilized Sites Remedial Action Program (FUSRAP), administered by the Army Corps of Engineers as part of its civil works budget. As discussed earlier, the FUSRAP program addresses radioactive contamination at sites where uranium and thorium ores were stored and processed during the early years of the U.S. nuclear weapons program. The House amount for this program is $51 million more than the FY2004 appropriation, and $50 million more than the Administration requested. In its report on the bill, the House Appropriations Committee indicated that the increase in funding would be for expediting the completion of ongoing cleanup projects and funding new projects. (For additional discussion of this bill, see CRS Report RL32307, *Appropriations for FY2005: Energy and Water Development*, coordinated by Carl Behrens.)