

The Role of States in the Cleanup of Environmental Contamination on Former Military Properties

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Major Federal Statutory Cleanup Authorities

Comprehensive Environmental Response,
Compensation, and Liability Act (CERCLA)

42 U.S.C. 9601 et seq.

Resource Conservation and Recovery Act (RCRA)

42 U.S.C. 6901 et seq.

Applicability of Federal Cleanup Authorities to Military Lands

Section 120 of CERCLA specifies that all federal departments and agencies, including the Department of Defense, are subject to the requirements of that statute.

The Federal Facilities Compliance Act of 1992 (P.L. 102-386) specifies that all federal facilities, including military installations, are subject to the requirements of RCRA.

Federal statutory requirements for the Department of Defense Environmental Restoration Program are also codified at 10 U.S.C. 2701-2710.

Scope of Contamination from Military Activities in the United States

Activities of the Department of Defense have resulted in environmental contamination in all 50 states and many U.S. territories.

The Department of Defense is responsible for the cleanup of this contamination in accordance with CERCLA, RCRA, and other relevant requirements. Categories of contaminated military lands include:

Active Installations

Base Realignment and Closure (BRAC) Installations

Formerly Used Defense Sites (FUDS)

Number of Contaminated Military Installations and Properties: BRAC, FUDS, and Active

	IRP (Non-Munitions)	MMRP (Munitions)
BRAC:	221	71
FUDS:	1,707	1,541
Active:	1,564	292
Total:	3,492	1,904

Source: Department of Defense Environmental Programs Report to Congress for FY2006, Appendix N, Table N-2, p. N-2-1.

Department of Defense Cleanup Cost Estimates

	Costs Through FY2006	FY2007 to Completion
BRAC:	\$6,936,638,000	\$3,895,902,000
FUDS:	\$3,205,879,000	\$16,081,089,000
Active:	\$16,359,784,000	\$12,615,395,000
Total:	\$26,502,301,000	\$32,592,386,000

Source: Department of Defense Environmental Programs Report to Congress for FY2006, Appendix N, Table N-2, p. N-2-1.

Variables Affecting Cleanup Costs

Costs could be higher than estimated if contamination is more extensive than originally thought, or the land is used for less restrictive purposes than currently assumed, possibly requiring a greater degree of cleanup in the future than anticipated.

Questions about Accuracy of Department of Defense Estimates

Some Members of Congress, states, and environmental organizations have questioned the Department's cleanup cost estimates, noting that contamination could be more extensive, and that the estimates do not reflect stricter cleanup that may be needed to make the land safe relative to potential future use.

The Department of Defense maintains that its estimates are based on the most recently available information, and that it routinely revises its estimates as more is learned about cleanup needs.

State Role in Oversight of Cleanup

U.S. Environmental Protection Agency (EPA) takes the lead in overseeing the cleanup of federal facilities listed on the National Priorities List (NPL) of the nation's most hazardous sites, with state participation.

States generally oversee cleanup of contaminated sites not placed on the NPL, and particularly those that are cleaned up primarily with authorities under RCRA.

Authorities for State Participation in Cleanup Decisions

Section 120(f) of CERCLA specifically requires the opportunity for state officials to participate in the planning and selection of remedial actions conducted by federal agencies, including the Department of Defense.

Through the issuance of permits by states under RCRA, states also have authorities to participate in, and concur on, cleanup decisions at regulated military facilities.

Applicability of State Cleanup Standards

Section 121 of CERCLA also requires that all applicable, appropriate, and relevant requirements (ARARs) be met in cleaning up contamination, including state standards deemed applicable, appropriate, or relevant to a site.

Reimbursable Agreements

States also can play a role in cleanup through entering reimbursable agreements with the Department of Defense to identify, investigate, and clean up contamination. [10 U.S.C. 2701(d)].

However, the scope of these agreements is limited by the availability of federal funding to reimburse the state, and by time restrictions imposed by federal statute for purposes of fiscal planning.

State Concurrence for Early Transfer of Contaminated BRAC Property

States play an additional role in concurring on the early transfer of BRAC properties.

Section 120(h) of CERCLA generally requires cleanup to be complete before BRAC property can be transferred for reuse. Property can be transferred “early” if assurances are provided that the cleanup will be completed and the property will be used for purposes that would be safe relative to the contamination.

Early transfer requires the concurrence of the Governor of the State, and the concurrence of the U.S. EPA if the property is listed on the NPL.

The Significance of Land Use in Cleanup Decisions

Federal and state agencies that participate in cleanup decisions consider land use in determining the degree of cleanup that is required.

Different land uses result in different risks of human exposure to contaminants, and therefore require different degrees of cleanup.

BRAC installation cleanup is based on the *intended* reuse of the land. FUDS properties already in civilian reuse require cleanup based on *current* use.

Active installation cleanup is based on *military* use.

Redevelopment of BRAC Properties

The feasibility of environmental cleanup can be key to economic redevelopment of a BRAC property, as the land must be cleaned up to a point that is safe for its intended reuse before it can be redeveloped.

Potential Delays in Cleanup at BRAC Properties

Cleanup of BRAC properties can be delayed if there is disagreement over land use between parties.

Certain land uses could be less practical, or infeasible in some cases, because of the cost or technical complexity of the degree of cleanup that would be required.

Accordingly, limitations on cleanup can in turn limit the potential for reuse of the land.

Decisions on Reuse of BRAC Properties

Ultimately, the Department of Defense is responsible for determining the reuse of a closed military base, as federal law generally does not require the Department to transfer a property for a particular purpose, or to a particular recipient.

The role of states in the cleanup of BRAC properties is primarily limited to concurring on the adequacy of cleanup actions, based on the land use that the Department of Defense finally agrees upon with the recipient of the property.

Annual Reporting on Status and Costs of Cleanup

The most recent information on the status and costs of cleanup at individual military properties in each state and U.S. territory is available in the Department of Defense Environmental Programs Report to Congress for FY2006, released March 2007.

The report is available on the Defense Environmental Network and Information Exchange Web Site of the Department of Defense at:

<http://www.denix.osd.mil>