

**CURRENT THROUGH PL 111-98, APPROVED 11/11/2009**

**TITLE 10. ARMED FORCES**  
**SUBTITLE A. GENERAL MILITARY LAW**  
**PART IV. SERVICE, SUPPLY, AND PROCUREMENT**  
**CHAPTER 160. ENVIRONMENTAL RESTORATION**

Section

- 2700. Definitions
- 2701. Environmental restoration program
- 2702. Research, development, and demonstration program
- 2703. Environmental restoration accounts
- 2704. Commonly found unregulated hazardous substances
- 2705. Notice of environmental restoration activities
- 2706. Annual reports to Congress
- 2707. Environmental restoration projects for environmental responses
- 2708. Contracts for handling hazardous waste from defense facilities
- 2709. Investment control process for environmental technologies
- 2710. Inventory of unexploded ordnance, discarded military munitions, and munitions constituents at defense sites (other than operational ranges)

**10 U.S.C. § 2700**

§ 2700. Definitions

In this chapter:

- (1) The term “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).
- (2) The terms “environment”, “facility”, “hazardous substance”, “person”, “release”, “removal”, “response”, “disposal”, and “hazardous waste” have the meanings given those terms in section 101 of CERCLA (42 U.S.C. 9601).
- (3) The term “Administrator” means the Administrator of the Environmental Protection Agency.

**10 U.S.C. § 2701**

§ 2701. Environmental restoration program

(a) Environmental restoration program.

- (1) In general. The Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the “Defense Environmental Restoration Program”.

(2) Application of section 120 of CERCLA. Activities of the program described in subsection (b)(1) shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of CERCLA (42 U.S.C. 9620).

(3) Consultation with EPA. The program shall be carried out in consultation with the Administrator of the Environmental Protection Agency.

(4) Administrative office within OSD. The Secretary shall identify an office within the Office of the Secretary which shall have responsibility for carrying out the program.

(b) Program goals. Goals of the program shall include the following:

(1) The identification, investigation, research and development, and cleanup of contamination from hazardous substances, pollutants, and contaminants.

(2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment.

(3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

(c) Responsibility for response actions.

(1) Basic responsibility. The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances from each of the following:

(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary.

(B) Each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances.

(C) Each vessel owned or operated by the Department of Defense.

(2) Other responsible parties. Paragraph (1) shall not apply to a removal or remedial action if the Administrator has provided for response action by a potentially responsible person in accordance with section 122 (relating to settlements) of CERCLA (42 U.S.C. 9622).

(3) State fees and charges. The Secretary shall pay fees and charges imposed by State authorities for permit services for the disposal of hazardous substances on lands which are under the jurisdiction of the Secretary to the same extent that nongovernmental entities are required to pay fees and charges imposed by State authorities for permit services. The preceding sentence shall not apply with respect to a payment that is the responsibility of a lessee, contractor, or other private person.

(d) Services of other entities.

(1) In general. Subject to paragraph (3), the Secretary may enter into agreements on a reimbursable or other basis with any other Federal agency, any State or local government agency, any Indian tribe, any owner of covenant property, or any nonprofit conservation organization to obtain the services of the agency, Indian tribe, owner, or organization to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and

cleanup of any off-site contamination resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

(2) Cross-fiscal year agreements. An agreement with an agency under paragraph (1) may be for a period that begins in one fiscal year and ends in another fiscal year so long as the period of the agreement does not exceed two years. This two-year limitation does not apply to an agreement funded using amounts in the Department of Defense Base Closure Account 1990 or the Department of Defense Base Closure Account 2005 established under sections 2906 and 2906A of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(3) Limitation on reimbursable agreements. An agreement with an agency under paragraph (1) may not provide for reimbursement of the agency for regulatory enforcement activities. An agreement under such paragraph with respect to a site also may not change the cleanup standards selected for the site pursuant to law.

(4) Definitions. In this subsection:

(A) The term "Indian tribe" has the meaning given such term in section 101(36) of CERCLA (42 U.S.C. 9601(36)).

(B) The term "nonprofit conservation organization" means any non-governmental nonprofit organization whose primary purpose is conservation of open space or natural resources.

(C) The term "owner of covenant property" means an owner of property subject to a covenant provided by the United States in accordance with the requirements of paragraphs (3) and (4) of section 120(h) of CERCLA (42 U.S.C. 9620(h)), so long as the covenant property is the site at which the services procured under paragraph (1) are to be performed.

(5) Savings clause. Nothing in this subsection affects the applicability of section 120 of CERCLA (42 U.S.C. 9620) to the Department of Defense or the obligations and responsibilities of the Department of Defense under subsection (h) of such section.

(e) Response action contractors. The provisions of section 119 of CERCLA (42 U.S.C. 9619) apply to response action contractors (as defined in that section) who carry out response actions under this section.

(f) Use of appropriated funds at former DOD sites. Appropriations available to the Department of Defense may be used at sites formerly used by the Department of Defense for removal of unsafe buildings or debris of the Department of Defense.

(g) Removal of unsafe buildings and debris before release from Federal control. In the case of property formerly used by the Department of Defense which is to be released from Federal Government control and at which there are unsafe buildings or debris of the Department of Defense, all actions necessary to comply with regulations of the General Services Administration on the transfer of property in a safe condition shall be completed before the property is released from Federal Government control, except in the case of property to be conveyed to an entity of State or local government or to a native corporation.

(h) Surety-contractor relationship. Any surety which provides a bid, performance, or payment bond in connection with any direct Federal procurement for a response action contract under the Defense Environmental Restoration Program and begins activities to meet its obligations under such bond, shall, in connection with such activities or obligations, be entitled to any

indemnification and the same standard of liability to which its principal was entitled under the contract or under any applicable law or regulation.

(i) Surety bonds.

(1) Applicability of sections 3131 and 3133 of title 40. If under sections 3131 and 3133 of title 40 surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program and are not waived pursuant to section 3134 of title 40, the surety bonds shall be issued in accordance with sections 3131 and 3133.

(2) Limitation of accrual of rights of action under bonds. If, under applicable Federal law, surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program, no right of action shall accrue on the performance bond issued on such contract to or for the use of any person other than an obligee named in the bond.

(3) Liability of sureties under bonds. If, under applicable Federal law, surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program, unless otherwise provided for by the Secretary in the bond, in the event of a default, the surety's liability on a performance bond shall be only for the cost of completion of the contract work in accordance with the plans and specifications of the contract less the balance of funds remaining to be paid under the contract, up to the penal sum of the bond. The surety shall in no event be liable on bonds to indemnify or compensate the obligee for loss or liability arising from personal injury or property damage whether or not caused by a breach of the bonded contract.

(4) Nonpreemption. Nothing in this section shall be construed as preempting, limiting, superseding, affecting, applying to, or modifying any State laws, regulations, requirements, rules, practices, or procedures. Nothing in this section shall be construed as affecting, applying to, modifying, limiting, superseding, or preempting any rights, authorities, liabilities, demands, actions, causes of action, losses, judgment, claims, statutes of limitation, or obligations under Federal or State law, which do not arise on or under the bond.

(j) Applicability.

(1) Subsections (h) and (i) shall not apply to bonds executed before December 5, 1991.

(2) Subsections (h) and (i) shall not apply to bonds to which section 119(g) of CERCLA (42 U.S.C. 9619(g)) applies.

(k) UXO program manager.

(1) The Secretary of Defense shall designate a program manager who shall serve as the single point of contact in the Department of Defense for policy and budgeting issues involving the characterization, research, remediation, and management of explosive and related risks with respect to unexploded ordnance, discarded military munitions, and munitions constituents at defense sites (as such terms are defined in section 2710 of this title) that pose a threat to human health or safety.

(2) The position of program manager shall be filled by—

(A) an employee in a position that is equivalent to pay grade O-6 or above; or

(B) a member of the armed forces who is serving in the grade of colonel or, in the case of the Navy, captain, or in a higher grade.

(3) The program manager shall report to the Deputy Under Secretary of Defense for Installations and Environment.

(4) The program manager may establish an independent advisory and review panel that may include representatives of the National Academy of Sciences, nongovernmental organizations with expertise regarding unexploded ordnance, discarded military munitions, or munitions constituents, the Environmental Protection Agency, States (as defined in section 2710 of this title), and tribal governments. If established, the panel shall report annually to Congress on progress made by the Department of Defense to address unexploded ordnance, discarded military munitions, or munitions constituents at defense sites and make such recommendations as the panel considers appropriate.

## **10 U.S.C. § 2702**

### § 2702. Research, development, and demonstration program

(a) Program. As part of the Defense Environmental Restoration Program, the Secretary of Defense shall carry out a program of research, development, and demonstration with respect to hazardous wastes. The program shall be carried out in consultation and cooperation with the Administrator and the advisory council established under section 311(a)(5) of CERCLA (42 U.S.C. 9660(a)(5)). The program shall include research, development, and demonstration with respect to each of the following:

(1) Means of reducing the quantities of hazardous waste generated by activities and facilities under the jurisdiction of the Secretary.

(2) Methods of treatment, disposal, and management (including recycling and detoxifying) of hazardous waste of the types and quantities generated by current and former activities of the Secretary and facilities currently and formerly under the jurisdiction of the Secretary.

(3) Identifying more cost-effective technologies for cleanup of hazardous substances.

(4) Toxicological data collection and methodology on risk of exposure to hazardous waste generated by the Department of Defense.

(5) The testing, evaluation, and field demonstration of any innovative technology, processes, equipment, or related training devices which may contribute to establishment of new methods to control, contain, and treat hazardous substances, to be carried out in consultation and cooperation with, and to the extent possible in the same manner and standards as, testing, evaluation, and field demonstration carried out by the Administrator, acting through the office of technology demonstration of the Environmental Protection Agency.

(b) Special permit. The Administrator may use the authorities of section 3005(g) of the Solid Waste Disposal Act (42 U.S.C. 6925(g)) to issue a permit for testing and evaluation which receives support under this section.

(c) Contracts and grants. The Secretary may enter into contracts and cooperative agreements with, and make grants to, universities, public and private profit and nonprofit entities, and other persons to carry out the research, development, and demonstration authorized under this section. Such contracts may be entered into only to the extent that appropriated funds are available for that purpose.

(d) Information collection and dissemination.

(1) In general. The Secretary shall develop, collect, evaluate, and disseminate information related to the use (or potential use) of the treatment, disposal, and management technologies that are researched, developed, and demonstrated under this section.

(2) Role of EPA. The functions of the Secretary under paragraph (1) shall be carried out in cooperation and consultation with the Administrator. To the extent appropriate and agreed upon by the Administrator and the Secretary, the Administrator shall evaluate and disseminate such information through the office of technology demonstration of the Environmental Protection Agency.

## **10 U.S.C. § 2703**

### § 2703. Environmental restoration accounts

(a) Establishment of accounts. There are hereby established in the Department of Defense the following accounts:

- (1) An account to be known as the “Environmental Restoration Account, Defense”.
- (2) An account to be known as the “Environmental Restoration Account, Army”.
- (3) An account to be known as the “Environmental Restoration Account, Navy”.
- (4) An account to be known as the “Environmental Restoration Account, Air Force”.
- (5) An account to be known as the “Environmental Restoration Account, Formerly Used Defense Sites”.

(b) Program elements for ordnance remediation. The Secretary of Defense shall establish a program element for remediation of unexploded ordnance, discarded military munitions, and munitions constituents within each environmental restoration account established under subsection (a). In this subsection, the terms “discarded military munitions” and “munitions constituents” have the meanings given such terms in section 2710 of this title.

(c) Obligation of authorized amounts.

(1) Funds authorized for deposit in an account under subsection (a) may be obligated or expended from the account only to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law.

(2) Funds authorized for deposit in an account under subsection (a) shall remain available until expended.

(3) [Deleted]

(4) [Redesignated]

(d) Budget reports. In proposing the budget for any fiscal year pursuant to section 1105 of title 31, the President shall set forth separately the amounts requested for environmental restoration programs of the Department of Defense and of each of the military departments under this chapter and under any other Act.

(e) Credit of amounts recovered. The following amounts shall be credited to the appropriate environmental restoration account:

(1) Amounts recovered under CERCLA for response actions.

(2) Any other amounts recovered from a contractor, insurer, surety, or other person to reimburse the Department of Defense or a military department for any expenditure for environmental response activities.

(f) Payments of fines and penalties. None of the funds appropriated to the Environmental Restoration Account, Defense, for fiscal years 1995 through 2010, or to any environmental restoration account of a military department for fiscal years 1997 through 2010, may be used for the payment of a fine or penalty (including any supplemental environmental project carried out as part of such penalty) imposed against the Department of Defense or a military department unless the act or omission for which the fine or penalty is imposed arises out of an activity funded by the environmental restoration account concerned and the payment of the fine or penalty has been specifically authorized by law.

(g) Sole source of funds for operation and monitoring of environmental remedies.

(1) Except as provided in subsection (h), the sole source of funds for all phases of an environmental remedy at a site under the jurisdiction of the Department of Defense or a formerly used defense site shall be the applicable environmental restoration account established under subsection (a).

(2) In this subsection, the term “environmental remedy” has the meaning given the term “remedy” in section 101 of CERCLA (42 U.S.C. 9601).

(h) Sole source of funds for environmental remediation at certain base realignment and closure sites. In the case of property disposed of pursuant to a base closure law and subject to a covenant that was required to be provided by paragraphs (3) and (4) of section 120(h) of CERCLA (42 U.S.C. 9620(h)), the sole source of funds for services procured under section 2701(d)(1) of this title shall be the applicable Department of Defense base closure account. The limitation in this subsection shall expire upon the closure of the applicable base closure account.

## **10 U.S.C. § 2704**

§ 2704. Commonly found unregulated hazardous substances

(a) Notice to HHS.

(1) In general. The Secretary of Defense shall notify the Secretary of Health and Human Services of the hazardous substances which the Secretary of Defense determines to be the most commonly found unregulated hazardous substances at facilities under the Secretary’s jurisdiction. The notification shall be of not less than the 25 most widely used such substances.

(2) Definition. In this subsection, the term “unregulated hazardous substance” means a hazardous substance—

(A) for which no standard, requirement, criteria, or limitation is in effect under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, or the Clean Water Act; and

(B) for which no water quality criteria are in effect under any provision of the Clean Water Act.

(b) Toxicological profiles. The Secretary of Health and Human Services shall take such steps as necessary to ensure the timely preparation of toxicological profiles of each of the substances of which the Secretary is notified under subsection (a). The profiles of such substances shall include each of the following:

(1) The examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

(2) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

(3) Where appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

(c) DOD support. The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary (1) for the preparation of toxicological profiles under subsection (b) or (2) for other health related activities under section 104(i) of CERCLA (42 U.S.C. 9604(i)). The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

(d) EPA health advisories.

(1) Preparation. At the request of the Secretary of Defense, the Administrator shall, in a timely manner, prepare health advisories on hazardous substances. Such an advisory shall be prepared on each hazardous substance—

(A) for which no advisory exists;

(B) which is found to threaten drinking water; and

(C) which is emanating from a facility under the jurisdiction of the Secretary.

(2) Content of health advisories. Such health advisories shall provide specific advice on the levels of contaminants in drinking water at which adverse health effects would not be anticipated and which include a margin of safety so as to protect the most sensitive members of the population at risk. The advisories shall provide data on one-day, 10-day, and longer-term exposure periods where available toxicological data exist.

(3) DOD support for health advisories. The Secretary of Defense shall transfer to the Administrator such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such health advisories. The Secretary and the Administrator shall enter into a memorandum of understanding regarding the manner in which this subsection shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this subsection.

(e) Cross reference. Section 104(i) of CERCLA (42 U.S.C. 9604(i)) applies to facilities under the jurisdiction of the Secretary of Defense in the manner prescribed in that section.

(f) Functions of HHS to be carried out through ATSDR. The functions of the Secretary of Health and Human Services under this section shall be carried out through the Administrator of the Agency for Toxic Substances and Disease Registry of the Department of Health and Human Services established under section 104(i) of CERCLA (42 U.S.C. 9604(i)).

## **10 U.S.C. § 2705**

### § 2705. Notice of environmental restoration activities

(a) Expedited notice. The Secretary of Defense shall take such actions as necessary to ensure that the regional offices of the Environmental Protection Agency and appropriate State and local authorities for the State in which a facility under the Secretary's jurisdiction is located receive prompt notice of each of the following:

- (1) The discovery of releases or threatened releases of hazardous substances at the facility.
- (2) The extent of the threat to public health and the environment which may be associated with any such release or threatened release.
- (3) Proposals made by the Secretary to carry out response actions with respect to any such release or threatened release.
- (4) The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

(b) Comment by EPA and State and local authorities.

(1) Release notices. The Secretary shall ensure that the Administrator of the Environmental Protection Agency and appropriate State and local officials have an adequate opportunity to comment on notices under paragraphs (1) and (2) of subsection (a).

(2) Proposals for response actions. The Secretary shall require that an adequate opportunity for timely review and comment be afforded to the Administrator and to appropriate State and local officials after making a proposal referred to in subsection (a)(3) and before undertaking an activity or action referred to in subsection (a)(4). The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

(c) Technical review committee. Whenever possible and practical, the Secretary shall establish a technical review committee to review and comment on Department of Defense actions and proposed actions with respect to releases or threatened releases of hazardous substances at installations. Members of any such committee shall include at least one representative of the Secretary, the Administrator, and appropriate State and local authorities and shall include a public representative of the community involved.

(d) Restoration advisory board.

(1) In lieu of establishing a technical review committee under subsection (c), the Secretary may permit the establishment of a restoration advisory board in connection with any installation (or

group of nearby installations) where the Secretary is planning or implementing environmental restoration activities.

(2)

(A) The Secretary shall prescribe regulations regarding the establishment, characteristics, composition, and funding of restoration advisory boards pursuant to this subsection.

(B) The issuance of regulations under subparagraph (A) shall not be a precondition to the establishment of restoration advisory boards under this subsection.

(C) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to a restoration advisory board established under this subsection.

(3) The Secretary may authorize the commander of an installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) to pay routine administrative expenses of a restoration advisory board established for that installation. Such payments shall be made from funds available under subsection (g).

(e) Technical assistance.

(1) The Secretary may, upon the request of the technical review committee or restoration advisory board for an installation, authorize the commander of the installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) to obtain for the committee or advisory board, as the case may be, from private sector sources technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental hazards at the installation and the restoration activities conducted, or proposed to be conducted, at the installation. The commander of an installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) shall use funds made available under subsection (g) for obtaining assistance under this paragraph.

(2) The commander of an installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) may obtain technical assistance under paragraph (1) for a technical review committee or restoration advisory board only if—

(A) the technical review committee or restoration advisory board demonstrates that the Federal, State, and local agencies responsible for overseeing environmental restoration at the installation, and available Department of Defense personnel, do not have the technical expertise necessary for achieving the objective for which the technical assistance is to be obtained; or

(B) the technical assistance—

(i) is likely to contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation; and

(ii) is likely to contribute to community acceptance of environmental restoration activities at the installation.

(f) Involvement in defense environmental restoration program. If a technical review committee or restoration advisory board is established with respect to an installation (or group of installations), the Secretary shall consult with and seek the advice of the committee or board on the following issues:

(1) Identifying environmental restoration activities and projects at the installation or installations.

(2) Monitoring progress on these activities and projects.

- (3) Collecting information regarding restoration priorities for the installation or installations.
- (4) Addressing land use, level of restoration, acceptable risk, and waste management and technology development issues related to environmental restoration at the installation or installations.
- (5) Developing environmental restoration strategies for the installation or installations.

(g) Funding. The Secretary shall, to the extent provided in appropriations Acts, make funds available for administrative expenses and technical assistance under this section using funds in the following accounts:

(1) In the case of a military installation not approved for closure pursuant to a base closure law, the environmental restoration account concerned under section 2703(a) of this title.

(2) In the case of an installation approved for closure pursuant to such a law, the Department of Defense Base Closure Account 1990 established under section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(h) [Deleted]

## **10 U.S.C. § 2706**

### § 2706. Annual reports to Congress

(a) Report on environmental restoration activities.

(1) The Secretary of Defense shall submit to the Congress each year, not later than 45 days after the date on which the President submits to the Congress the budget for a fiscal year, a report on the progress made by the Secretary in carrying out environmental restoration activities at military installations.

(2) Each such report shall include, with respect to environmental restoration activities for each military installation, the following:

(A) A statement of the number of sites at which a hazardous substance has been identified.

(B) A statement of the status of response actions proposed for or initiated at the military installation.

(C) A statement of the total cost estimated for such response actions.

(D) A statement of the amount of funds obligated by the Secretary for such response actions, and the progress made in implementing the response actions during the fiscal year preceding the year in which the report is submitted, including an explanation of—

(i) any cost overruns for such response actions, if the amount of funds obligated for those response actions exceeds the estimated cost for those response actions by the greater of 15 percent of the estimated cost or \$ 10,000,000; and

(ii) any deviation in the schedule (including a milestone schedule specified in an agreement, order, or mandate) for such response actions of more than 180 days.

(E) A statement of the amount of funds allocated by the Secretary for, and the anticipated progress in implementing, such response actions during the fiscal year in which the report is submitted.

(F) A statement of the amount of funds requested for such response actions for the five fiscal years following the fiscal year in which the report is submitted, and the anticipated progress in implementing such response actions for the fiscal year for which the budget is submitted.

(G) A statement of the total costs incurred for such response actions as of the date of the submission of the report.

(H) A statement of the estimated cost of completing all environmental restoration activities required with respect to the military installation, including, where relevant, the estimated cost of such activities in each of the five fiscal years following the fiscal year in which the report is submitted.

(I) A statement of the estimated schedule for completing all environmental restoration activities at the military installation.

(J) A statement of the activities, if any, including expenditures for administrative expenses and technical assistance under section 2705 of this title, of the technical review committee or restoration advisory board established for the installation under such section during the preceding fiscal year.

(b) Report on environmental quality programs and other environmental activities.

(1) The Secretary of Defense shall submit to Congress each year, not later than 45 days after the date on which the President submits to Congress the budget for a fiscal year, a report on the progress made in carrying out activities under the environmental quality programs of the Department of Defense and the military departments.

(2) Each report shall include the following:

(A) A description of the environmental quality program of the Department of Defense, and of each of the military departments, during the period consisting of the four fiscal years preceding the fiscal year in which the report is submitted, the fiscal year in which the report is submitted, and the fiscal year following the fiscal year in which the report is submitted.

(B) For each of the major activities under the environmental quality programs:

(i) A specification of the amount expended, or proposed to be expended, in each fiscal year of the period covered by the report.

(ii) An explanation for any significant change in the aggregate amount to be expended in the fiscal year in which the report is submitted, and in the following fiscal year, when compared with the fiscal year preceding each such fiscal year.

(iii) An assessment of the manner in which the scope of the activities have changed over the course of the period covered by the report.

(C) A summary of the major achievements of the environmental quality programs and of any major problems with the programs.

(D) A summary of fines and penalties imposed or assessed against the Department of Defense and the military departments under Federal, State, or local environmental laws during the fiscal year in which the report is submitted and the four preceding fiscal years, which summary shall include—

(i) a trend analysis of such fines and penalties for military installations inside and outside the United States; and

(ii) a list of such fines or penalties that exceeded \$ 1,000,000 and the provisions of law under which such fines or penalties were imposed or assessed.

(E) A statement of the amounts expended, and anticipated to be expended, during the period covered by the report for any activities overseas relating to the environment, including amounts

for activities relating to environmental remediation, compliance, conservation, pollution prevention, and environmental technology.

(F) [Redesignated]

(c) Report on environmental technology program.

(1) The Secretary of Defense shall submit to Congress each year, not later than 45 days after the date on which the President submits to Congress the budget for a fiscal year, a report on the progress made by the Department of Defense in achieving the objectives and goals of its environmental technology program during the preceding fiscal year and an overall trend analysis for the program covering the previous four fiscal years.

(2) Each such report shall include, with respect to each project under the environmental technology program of the Department of Defense, the following:

(A) The performance objectives established for the project for the fiscal year and an assessment of the performance achieved with respect to the project in light of performance indicators for the project.

(B) A description of the extent to which the project met the performance objectives established for the project for the fiscal year.

(C) If a project did not meet the performance objectives for the project for the fiscal year—

(i) an explanation for the failure of the project to meet the performance objectives; and

(ii) a modified schedule for meeting the performance objectives or, if a performance objective is determined to be impracticable or infeasible to meet, a statement of alternative actions to be taken with respect to the project.

(d) Definitions. In this section:

(1) The term “military installation” has the meaning given such term in section 2687(e) of this title, except that such term does not include a homeport facility for any ship and includes—

(A) each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary of Defense;

(B) each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances; and

(C) each facility or site at which the Secretary is conducting environmental restoration activities.

(2) The term “environmental quality program” means a program of activities relating to environmental compliance, conservation, pollution prevention, and such other activities relating to environmental quality as the Secretary concerned may designate for purposes of the program.

(3) The term “major activities”, with respect to an environmental quality program, means the following activities under the program:

(A) Environmental compliance activities.

(B) Conservation activities.

(C) Pollution prevention activities.

## **10 U.S.C. § 2707**

§ 2707. Environmental restoration projects for environmental responses

(a) Environmental restoration projects authorized. The Secretary of Defense or the Secretary of a military department may carry out an environmental restoration project if that Secretary determines that the project is necessary to carry out a response under this chapter or CERCLA.

(b) Treatment of project. Any construction, development, conversion, or extension of a structure, and any installation of equipment, that is included in an environmental restoration project under this section may not be considered military construction (as that term is defined in section 2801(a) of this title).

(c) Source of funds. Funds authorized for deposit in an account established by section 2703(a) of this title shall be the only source of funds to conduct an environmental restoration project under this section.

(d) Environmental restoration project defined. In this section, the term “environmental restoration project” includes any construction, development, conversion, or extension of a structure, or installation of equipment, in direct support of a response.

## **10 U.S.C. § 2708**

§ 2708. Contracts for handling hazardous waste from defense facilities

(a) Reimbursement requirement.

(1) Each contract or subcontract to which this section applies shall provide that, upon receipt of hazardous wastes properly characterized pursuant to applicable laws and regulations, the contractor or subcontractor will reimburse the Federal Government for all liabilities incurred by, penalties assessed against, costs incurred by, and damages suffered by, the Government that are caused by—

(A) the contractor’s or subcontractor’s breach of any term or provision of the contract or subcontract; and

(B) any negligent or willful act or omission of the contractor or subcontractor, or the employees of the contractor or subcontractor, in the performance of the contract or subcontract.

(2) Not later than 30 days after such a contract or subcontract is awarded, the contractor or subcontractor shall demonstrate that the contractor or subcontractor will reimburse the Federal Government as provided in paragraph (1).

(b) Applicability.

(1) Except as provided in paragraph (2), this section applies to each contract entered into by the Secretary of Defense or the Secretary of a military department, and any subcontract under any such contract, with an owner or operator of a hazardous waste treatment or disposal facility during fiscal years 1992 through 1996 for the offsite treatment or disposal of hazardous wastes from a facility under the jurisdiction of the Secretary of Defense.

(2) This section does not apply to—

(A) any contract or subcontract to perform remedial action or corrective action under the Defense Environmental Restoration Program, other programs or activities of the Department of Defense, or authorized State hazardous waste programs;

(B) any contract or subcontract under which the generation of the hazardous waste to be disposed of is incidental to the performance of the contract; or

(C) any contract or subcontract to dispose of ammunition or solid rocket motors.

(c) Exception to reimbursement requirement. Notwithstanding subsection (a), in the case of any contract to which this section applies, if the Secretary of Defense or the Secretary of the military department concerned determines that—

(1) there is only one responsible offeror or there is no responsible offeror willing to provide the reimbursement required by subsection (a) for such contract; or

(2) failure to award the contract would place the facility concerned in violation of any requirement of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.),

then the contract may be awarded without including the reimbursement provision required by subsection (a).

(d) Definitions. In this section:

(1) The term “hazardous waste” has the meaning given that term by section 1004(5) of the Solid Waste Disposal Act (42 U.S.C. 6903(5)), except that such term also includes polychlorinated biphenyls.

(2) The term “remedial action” has the meaning given that term by section 101(24) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(24)).

(3) The term “corrective action” has the meaning given that term under section 3004(u) of the Solid Waste Disposal Act (42 U.S.C. 6924(u)).

(4) The term “polychlorinated biphenyls” has the meaning given that term under section 6(e) of the Toxic Substances Control Act (15 U.S.C. 2605(e)).

(e) Effect on liability. Nothing in this section shall affect the liability of the Federal Government under any Federal or State law or under common law.

## **10 U.S.C. § 2709**

§ 2709. Investment control process for environmental technologies

(a) Investment control process. The Secretary of Defense shall ensure that the technology planning process developed to implement section 2501 of this title and section 270(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 110 Stat. 2469) provides for an investment control process for the selection, prioritization, management, and evaluation of environmental technologies by the Department of Defense, the military departments, and the Defense Agencies.

(b) Planning and evaluation. The environmental technology investment control process required by subsection (a) shall provide, at a minimum, for the following:

(1) The active participation by end-users of environmental technology, including the officials responsible for the environmental security programs of the Department of Defense and the military departments, in the selection and prioritization of environmental technologies.

(2) The development of measurable performance goals and objectives for the management and development of environmental technologies and specific mechanisms for assuring the achievement of the goals and objectives.

(3) Annual performance reviews to determine whether the goals and objectives have been achieved and to take appropriate action in the event that they are not achieved.

## **10 U.S.C. § 2710**

§ 2710. Inventory of unexploded ordnance, discarded military munitions, and munitions constituents at defense sites (other than operational ranges)

(a) Inventory required.

(1) The Secretary of Defense shall develop and maintain an inventory of defense sites that are known or suspected to contain unexploded ordnance, discarded military munitions, or munitions constituents.

(2) The information in the inventory for each defense site shall include, at a minimum, the following:

(A) A unique identifier for the defense site.

(B) An appropriate record showing the location, boundaries, and extent of the defense site, including identification of the State and political subdivisions of the State, including the county, where applicable, in which the defense site is located and any Tribal lands encompassed by the defense site.

(C) Known persons and entities, other than a military department, with any current ownership interest or control of lands encompassed by the defense site.

(D) Any restrictions or other land use controls currently in place at the defense site that might affect the potential for public and environmental exposure to the unexploded ordnance, discarded military munitions, or munitions constituents.

(b) Site prioritization.

(1) The Secretary shall develop, in consultation with representatives of the States and Indian Tribes, a proposed protocol for assigning to each defense site a relative priority for response activities related to unexploded ordnance, discarded military munitions, and munitions constituents based on the overall conditions at the defense site. After public notice and comment on the proposed protocol, the Secretary shall issue a final protocol and shall apply the protocol to defense sites listed on the inventory. The level of response priority assigned the site shall be included with the information required by subsection (a)(2).

(2) In assigning the response priority for a defense site on the inventory, the Secretary shall primarily consider factors relating to safety and environmental hazard potential, such as the following:

(A) Whether there are known, versus suspected, unexploded ordnance, discarded military munitions, or munitions constituents on all or any portion of the defense site and the types of unexploded ordnance, discarded military munitions, or munitions constituents present or suspected to be present.

(B) Whether public access to the defense site is controlled, and the effectiveness of these controls.

(C) The potential for direct human contact with unexploded ordnance, discarded military munitions, or munitions constituents at the defense site and evidence of people entering the site.

(D) Whether a response action has been or is being undertaken at the defense site under the Formerly Used Defense Sites program or other program.

(E) The planned or mandated dates for transfer of the defense site from military control.

(F) The extent of any documented incidents involving unexploded ordnance, discarded military munitions, or munitions constituents at or from the defense site, including incidents involving explosions, discoveries, injuries, reports, and investigations.

(G) The potential for drinking water contamination or the release of munitions constituents into the air.

(H) The potential for destruction of sensitive ecosystems and damage to natural resources.

(3) The priority assigned to a defense site included on the inventory shall not impair, alter, or diminish any applicable Federal or State authority to establish requirements for the investigation of, and response to, environmental problems at the defense site.

(c) Updates and availability.

(1) The Secretary shall annually update the inventory and site prioritization list to reflect new information that becomes available. The inventory shall be available in published and electronic form.

(2) The Secretary shall work with communities adjacent to a defense site to provide information concerning conditions at the site and response activities. At a minimum, the Secretary shall provide the site inventory information and site prioritization list to appropriate Federal, State, tribal, and local officials, and, to the extent the Secretary considers appropriate, to civil defense or emergency management agencies and the public.

(d) Exceptions. This section does not apply to the following:

(1) Any locations outside the United States.

(2) The presence of military munitions resulting from combat operations.

(3) Operating storage and manufacturing facilities.

(4) Operational ranges.

(e) Definitions. In this section:

(1) The term “defense site” applies to locations that are or were owned by, leased to, or otherwise possessed or used by the Department of Defense. The term does not include any operational range, operating storage or manufacturing facility, or facility that is used for or was permitted for the treatment or disposal of military munitions.

(2) The term “discarded military munitions” means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions

that have been properly disposed of, consistent with applicable environmental laws and regulations.

(3) The term “munitions constituents” means any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions.

(4) The term “possessions” includes Johnston Atoll, Kingman Reef, Midway Island, Nassau Island, Palmyra Island, and Wake Island.

(5) The term “Secretary” means the Secretary of Defense.

(6) The term “State” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions.

(7) The term “United States”, in a geographic sense, means the States, territories, and possessions and associated navigable waters, contiguous zones, and ocean waters of which the natural resources are under the exclusive management authority of the United States.

(8) [Redesignated]

(9) [Deleted]

(10) [Redesignated]