United States General Accounting Office

GAO

Testimony

Before the Subcommittees on Military Procurement and Military Readiness, Committee on National Security, House of Representatives

For Release on Delivery
Expected at
2:00 p.m. EST
Thursday
March 21, 1996

ENVIRONMENTAL PROTECTION

Issues Facing the Energy and Defense Environmental Management Programs

Statement of Victor S. Rezendes,
Director, Energy, Resources, and Science Issues,
Resources, Community, and Economic
Development Division

GAO/T-RCED/NSIAD-96-127

Messrs. Chairmen and Members of the Subcommittees:

We are pleased to participate in this hearing on the major environmental issues facing the Departments of Energy and Defense. At the Department of Energy (DOE), a major focus in the last few years has been on improving the cost-effectiveness of the nuclear weapons complex cleanup. Similarly, at the Department of Defense (DOD) cleanup costs have been an issue, but the cleanup effort is part of a larger effort to control the cost of environmental compliance now, while minimizing contamination and associated costs in the future. At DOD, environmental compliance-related activities have overtaken cleanup as the major annual cost.

As our work over the last several years has shown, both departments face monumental tasks in addressing the legacy of environmental problems created by many decades of nuclear weapons production and military operations. Although DOE and DOD have made some progress, major obstacles remain, and the two departments estimate that the total cost of cleaning up their facilities could run as much as $389 billion—about $39 billion for DOD and as much as $350 billion for DOE.

Over the last several years, we have reviewed many aspects of each department's cleanup effort. With regard to DOE's cleanup effort, our testimony today will address (1) how administration of basic laws governing cleanup of the weapons complex affect costs, (2) suggested ways to reduce DOE's costs, (3) issues the Congress should consider regarding DOE's initiative to privatize portions of its cleanup effort, and (4) how excess carryover balances could be used to fund DOE's cleanup effort. With respect to DOD's cleanup program, we will address (1) DOD's use of relative risk as a major factor in ranking individual cleanup sites and (2) how DOD prioritizes, plans, and budgets for its environmental compliance program.

Concerning the DOE cleanup, in summary, we have found the following:

- Changes in how the basic laws governing the cleanup of the weapons complex are administered can potentially reduce cleanup costs. For example, DOE has usually assumed that all of its facilities will be cleaned up so that their use would be unrestricted; however, many facilities are so contaminated that unrestricted use is unlikely. In our August 1994 report on the impact of incorporating land use planning decisions into cleanup decision-making, we found that incorporating more realistic land use assumptions into the selection process for a cleanup remedy under the

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), could result in significant cost savings—from $200 million to $600 million annually, according to DOE.[1]

- In July 1995, we reported (1) that while removing radioactive and hazardous materials through a process known as deactivation can save money—almost $458 million for the projects we could evaluate—DOE did not have a consistent method for determining the relative savings among projects and (2) that without a more consistent method, DOE could select the wrong priority for projects it intends to deactivate.[2] More recently, we have been examining how DOE could speed the environmental restoration of its sites. While our work is not complete, we have found that significant potential exists to use a less restrictive process to plan the remediation of sites, at a significant cost savings.
- As part of its initiatives to reduce the cost of the cleanup, DOE is now proposing to privatize portions of the cleanup, most notably, the vitrification of high-level waste in the tanks at its Hanford facility. While we have not evaluated DOE's privatization proposal, we have conducted numerous reviews of DOE's management of the cleanup and of the Hanford tank farms. Key among the major issues that the Congress should consider in evaluating DOE's privatization proposal are (1) has DOE demonstrated that privatizing the cleanup of the tank farms will reduce the overall life cycle costs of the program to the taxpayer, (2) has DOE adequately defined what liability the government should assume and what liability should be borne by the private firm, and (3) has DOE determined who will oversee the private firm for compliance with environmental, nuclear, and health and safety regulations?
- The Department's excess carryover balances could be used to help fund its cleanup efforts.[3] At the end of fiscal year 1995, DOE's environmental programs had almost $1.8 billion in these balances. Through prior and ongoing work, we have found that in formulating a budget request, DOE officials do not use a standard, effective approach for identifying excess carryover balances that could be used to reduce DOE's budget request. Instead, DOE makes broad estimates of the potentially excess balances in its programs. As a result, DOE cannot be sure it has reduced its balances to the minimum needed to operate its programs.

Turning to DOD, in summary, our work shows the following:

[1]Nuclear Cleanup: Completion of Standards and Effectiveness of Land Use Planning Are Uncertain (GAO/RCED-94-144, Aug. 26, 1994).

[2]Department of Energy: Savings From Deactivating Facilities Can Be Better Estimated (GAO/RCED-95-183, July 7, 1995).

[3]Carryover balances consist of uncosted obligations and unobligated balances.

- DOD has begun efforts to categorize cleanups within and among facilities based on their relative risk. Our past and ongoing work for this Committee indicates that these efforts are a step in the right direction. About 70 percent of the estimated 10,000 DOD sites believed to need cleanup have been evaluated, but over half of all evaluated sites still are considered high priority without any further ranking within that group. Consequently, some lesser priority sites may exist within the broader high relative risk category. Finally, efforts to rank cleanup sites across geographic and organizational boundaries are still in their infancy.
- DOD does not have sufficient data to manage its environmental compliance programs, with far less oversight data for compliance activities than for cleanup activities. For example, even though the Congress receives annual reports with installation level data for planned and actual cleanup expenditures, DOD's process for compliance data cannot now provide a similar degree of detail. In 1994, the Office of the Secretary of Defense (OSD) established a working group to develop procedures to ensure that necessary data, such as amounts budgeted and spent, can be obtained and reported in detail. It is too soon to fully evaluate DOD's plans to improve oversight of the compliance program, but we are concerned some initial changes may make it harder to distinguish among DOD's highest priorities.

Background

Through its Environmental Management (EM) program, DOE is responsible for environmental restoration, waste management, and facility transition and management at 15 major contaminated facilities and more than 100 small facilities in 34 states and territories. These facilities encompass a wide range of environmental problems, including more than 7,000 locations where radioactive or hazardous materials were released into the environment; almost 200 tanks that contain high-level radioactive waste from nuclear weapons production, some of which have leaked or could explode; and 7,000 production facilities that are now idled and in need of deactivation, decontamination, and decommissioning.

For decades, DOD has operated industrial facilities that generated, stored, or disposed of hazardous wastes. The types of hazardous wastes and contaminants that require cleanup at the majority of DOD's installations are also found at most private industrial operations. The primary contaminants are petroleum-related products such as fuels, solvents, corrosives, and paint strippers and thinners. Contamination has usually resulted from improper disposal, leaks, or spills. Some unique military substances, such as nerve agents and unexploded ordnance, are also found at DOD's installations.

In 1984, the Congress established the Defense Environmental Restoration Program (DERP) to evaluate and clean up contamination resulting from DOD's past activities. DERP's primary goal is to protect human health and the environment from risks posed by contaminated sites. Since 1984, DOD has identified approximately 20,000 potentially contaminated sites (10,000 of which it believes contaminated) at over 1,700 installations, and approximately 3,200 potentially contaminated sites at about 2,200 formerly used DOD installations in the United States.[4]

In cleaning up its sites, DOD and DOE must comply with two major federal environmental laws—the Resource Conservation and Recovery Act of 1976, as amended (RCRA), and CERCLA—as well as with state environmental laws and regulations. RCRA regulates the management of facilities that treat, store, and dispose of hazardous wastes and the cleanup of hazardous wastes released from such facilities. CERCLA governs the cleanup of inactive waste sites—that is, sites where disposal is no longer occurring. The Environmental Protection Agency (EPA) is responsible for administering both acts, but EPA may authorize state agencies to implement all or part of its RCRA responsibility. To implement its responsibilities under these acts, DOE has entered into interagency compliance agreements with EPA and the states. These agreements identify activities—generally called milestones—and schedules for achieving compliance, many of which are legally binding and enforceable. Both departments are also involved in complying with other laws such as the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the National Environmental Policy Act, and the Federal Facility Compliance Act.

Cleaning up these department's sites is an enormous task, that, in the case of DOE, is likely to span multiple generations. Over the last several years, the total estimated cost of the DOE cleanup has risen from about $100 billion in 1988 to $230 billion, with a high end estimate of $350 billion. DOD currently estimates its total costs, from its inception, at almost $39 billion.

[4]DOD had previously used a figure of 8,000 potential sites because that was the number of formerly used defense sites. That number was not based on any indications of contamination, and DOD has revised it based on preliminary assessments.

Many Issues Could Affect the Cost of Cleaning Up the Weapons Complex

The huge cost of cleaning up the weapons complex has been a matter of growing concern, especially to the Subcommittee on Military Procurement. We have reported repeatedly on many issues that have and will affect the cost of the cleanup, including the need for a national, risk-based strategy to set realistic priorities; the need for DOE to more effectively address the complex technical problems that it faces in cleaning up its most vexing problems, such as the high-level tank wastes at Hanford; and the need for effective contractor management.[5] At your request, we would like to address several issues of specific interest to the Subcommittee. These issues include how legislation can affect cleanup costs, ways to reduce cleanup costs, DOE's privatization initiative, and how excess carryover balances could be used to fund DOE's cleanup efforts.

How Legislation Is Administered Can Affect Cleanup Costs

Our August 1994 report on the impact of incorporating land use planning decisions into cleanup decision-making stated that incorporating more realistic land use assumptions into the selection process for a cleanup remedy under CERCLA could result in significant cost savings—from $200 million to $600 million annually, according to DOE's Assistant Secretary for EM. Our report noted that DOE and EPA had been assuming that all of DOE's facilities would be cleaned up so that they could be used for unrestricted use. Consequently, the most stringent environmental requirements were imposed on every cleanup project. However, we found that because CERCLA does not specifically address using alternative land uses, such as industrial parks, EPA's policy had been to assume residential use in its decisions—potentially the most costly cleanup requirement.

Since our report was issued, DOE has begun to work with local stakeholder groups and develop land use plans for its sites. Additionally, in May 1995, EPA issued a directive indicating that cleanup decision-making should reflect "reasonably anticipated future land use" and that this could lead to more expedited, cost-effective cleanups. The practical effect of this directive is not clear. For example, CERCLA states that cleanup alternatives that permanently treat contaminants are preferred. Since some land uses may rely on institutional controls, such as deed restrictions and fencing, to prevent access to the contaminated area, it is not clear whether EPA will be able to consider these types of controls a permanent solution. As we noted in our report, if the Congress agrees that land use planning should be used

[5]Nuclear Weapons Complex: Establishing a National Risk-Based Strategy for Cleanup (GAO/T-RCED-95-120, Mar. 6, 1995), Nuclear Waste: Hanford Tank Waste Program Needs Cost, Schedule, and Management Changes (GAO/RCED-93-99, Mar. 8, 1993), and Department of Energy: National Priorities Needed for Meeting Environmental Agreements (GAO/RCED-95-1, Mar. 3, 1995).

in cleanup decisions, it could amend CERCLA to provide EPA with more specific direction.

DOE's facilities are subject to the cleanup actions and procedures specified by EPA under CERCLA as well as to RCRA-related requirements for corrective action established by EPA or a state regulatory agency. The need to coordinate the requirements of RCRA and CERCLA has created the potential for delays and increased costs. For example, our December 1994 report stated that officials at DOE's Savannah River Site were preparing additional documents to meet CERCLA's requirements, at a cost of about $33,000, for a facility that had been cleaned up and closed in 1990 under RCRA.[6] DOE officials acknowledged that DOE would not be conducting any additional cleanup or disclosing any new information in preparing the required documents. Such problems could continue, since much cleanup work remains to be done, and additional DOE facilities have come under CERCLA regulation.

DOE and EPA have recognized the potential impact of this duplication. DOE has developed an approach where it attempts to avoid duplication by specifying a lead regulator (either EPA or the state) for each cleanup project. Similarly, EPA is developing guidance on designating a lead regulator which it expects to issue in the summer of 1996. While this approach might solve the problem, it will depend on the cooperation of DOE and the EPA regions and states that oversee DOE's facilities. Absent such cooperation, problems with duplication between RCRA and CERCLA could continue to affect the cost of the cleanup.

Specific Opportunities Exist to Reduce Cleanup Costs

In July 1995, we issued a report to the Subcommittee on Military Procurement examining DOE's approach for estimating the savings it could achieve through the deactivation of surplus facilities.[7] We found that deactivation—removing radioactive and hazardous materials from unused buildings—can save money. In estimating the net savings that DOE could realize for the 11 projects for which sufficient data were available for analysis, we found that the projects could yield a net savings of $458 million over their expected life. Despite the significant savings that some deactivation projects can generate, DOE did not have a consistent method for determining the relative savings among projects, and without a

[6]Nuclear Cleanup: Difficulties in Coordinating Activities Under Two Environmental Laws (GAO/RCED-95-66, Dec. 22, 1994).

[7]Department of Energy: Savings From Deactivating Facilities Can Be Better Estimated (GAO/RCED-95-183, July 7, 1995).

more consistent method, DOE could select the wrong priority for projects it intends to deactivate. We recommended that DOE develop a more reliable method for estimating savings and use this method to set priorities for deactivation projects. DOE agreed with our recommendations and said it would develop guidance on estimating savings and use the guidance to determine facility deactivation priorities.

Currently, we are examining for you how DOE could use a process known as "removal actions" to speed the environmental restoration of its sites. A removal action shortens or eliminates some of the planning steps, such as the remedial investigation and feasibility study, normally used for full-scale remedial actions under CERCLA. Although removal actions are sometimes used to respond to emergencies or other urgent circumstances, they can also be used in more routine situations at federal facilities. Removal actions have been used for a variety of cleanups, including treating ground and surface water and excavating contaminated soil. While our work is not complete, significant potential exists to use this less-restrictive process at many DOE sites at a significant cost savings.

Many Challenges Face DOE With Respect to Privatization

As part of its initiatives to reduce the cost of the cleanup, DOE is now proposing to privatize portions of the cleanup, most notably, the vitrification of the high-level waste in the tanks at its Hanford facility. Rather than constructing and operating its own facilities to treat the tank waste, DOE is considering having a company or a consortium of companies finance, design, build, and operate pretreatment and treatment facilities and deliver the finished product—in this case, vitrified waste encased in stainless steel containers—to DOE for a fee. DOE expects this approach to save billions of dollars because the potential for innovation in the marketplace could lead to greater efficiencies and improved performance. A request for proposals to design the first phase of this effort was issued in February 1996, and DOE expects to award competing contracts in August 1996.

It is important to recognize that for all practical purposes, DOE's activities are already privatized. Specifically, DOE primarily relies on management and operating contractors to conduct its programs at its major sites. Under this concept, the government assumes most of the risk for the operations, while the contractor is paid on a cost-plus-award-fee basis. What sets DOE's privatization initiative apart from its traditional approach is DOE's attempt to shift responsibility for financing and much of the risk onto the private contractor.

Although we have not evaluated DOE's privatization initiative, we have conducted numerous reviews of DOE's management of the cleanup and of the Hanford tank farms. You asked us to identify issues that the Congress should consider in evaluating DOE's privatization proposal. While there are many issues to consider, we believe three are the most critical:

- Has DOE demonstrated that privatizing the cleanup of the tank farms will reduce the overall life cycle costs to the taxpayer? As our work has demonstrated, considerable uncertainty exists about the contents of the tanks and the effectiveness of many of the technologies needed to be successful.[8] It is possible that the "risk premium" demanded by a private entity to cover these uncertainties could exceed the efficiency gains that might be realized by privatization.
- Has DOE adequately defined what liability the government should assume and what liability should be borne by the private firms? According to our past work, DOE has not used a consistent approach to indemnify its cleanup contractors, and some contractors have received more favorable treatment than others.[9] Again, given the substantial risk involved, the issue of indemnification bears close scrutiny to ensure that the government does not assume so much of the risk that the effort becomes privatized in name only.
- Has DOE determined who will oversee the private firm for compliance with environmental, nuclear, and health and safety regulations? The facilities to treat Hanford's high level waste will involve hazardous, radioactive materials potentially dangerous to workers and the public. This will require the coordination and cooperation of many agencies, including EPA, the Nuclear Regulatory Commission, the state of Washington, and the Defense Nuclear Facilities Safety Board.

DOE's Large Carryover Balances Continue to Be an Issue

In addition to making the cleanup more cost effective, an additional way to provide funds for DOE's cleanup is through the use of excess carryover balances of uncosted obligations and unobligated balances. Over the last several years, the Congress has reduced DOE's request for new obligational authority and recommended that DOE use balances remaining from prior years' obligational authority that are carried over into the new fiscal year. DOE's EM program had about $1.8 billion in such carryover balances at the end of fiscal year 1996. While DOE needs some carryover balances to pay

[8]Nuclear Waste: Management and Technical Problems Continue to Delay Characterizing Hanford's Tank Waste (GAO/RCED-96-56, Jan. 26, 1996).

[9]DOE Management: Consistent Cleanup Indemnification Policy Is Needed (GAO/RCED-93-167, July 12, 1993).

for program commitments made in prior years that have not been completed, the Department's large and persistent carryover balances have raised concern in the Congress, and especially in the Subcommittee on Military Procurement, about whether DOE's carryover balances exceed the minimum needed to support its programs.

Over the last several years, we have consistently found that DOE had hundreds of millions of dollars in carryover balances that were not needed for their identified purpose, were not tied to specific needs, or were in excess of expected needs.[10] For example, last year, we identified $46.2 million reserved for 15 environmental management projects at the Savannah River Site that were no longer needed because of cost underruns, reductions in the projects' scope, or cancellation of projects. These persistent findings led us to review whether DOE had an effective approach for identifying carryover balances that exceed its program requirements and may be available to reduce its budget request and whether DOE's process could be improved.

We found that in formulating a budget request, DOE officials do not use a standard, effective approach for identifying excess carryover balances that could be used to reduce DOE's budget request. Instead, DOE makes broad estimates of the potentially excess balances in its programs. For example, EM proposed the use of $300 million in carryover balances for its fiscal year 1996 budget. According to EM officials, that amount was not based on any detailed analysis, and only after it was proposed did the program identify where the available balances might be found. As a result, DOE cannot be sure it has reduced its balances to the minimum needed to operate its programs. Our forthcoming report will make recommendations on how DOE can better estimate the carryover balances it needs to operate its programs and make available additional resources to pay for its efforts.

Opportunities Exist to Improve Management of DOD's Cleanup and Compliance Programs

Addressing DOD's environmental problems also represents a significant undertaking. Cleanup and compliance program costs make up 86 percent (including Base Realignment and Closure [BRAC] costs) of DOD's total $5 billion fiscal year 1996 budget estimate for its overall environmental security program. Cleanup costs, excluding BRAC, total $1.6 billion for

[10]DOE's Fiscal Year 1994 Uncosted Balances (GAO/RCED-95-263R, Aug. 7, 1995), Energy Management: Use of Uncosted Balances to Meet Budget Needs (GAO/RCED-94-232FS, June 6, 1994), and Energy Management: Additional Uncosted Balances Could Be Used to Meet Future Budget Needs (GAO/RCED-94-26, Oct. 26, 1993).

fiscal year 1996, and compliance costs, excluding BRAC, total $2.2 billion.[11] Consequently, ensuring that these programs are well managed has been an ongoing concern of the National Security Committee and its subcommittees.

Setting Priorities for DOD's Environmental Cleanup

In its 1994 annual report to the Congress, dated March 1995, DOD estimated that the cost of cleaning up all of its currently identified contaminated sites will total $38.9 billion. Such an immense undertaking and limited annual funding require that DOD address the most severely contaminated sites first.

In April 1994, we reported that DOD had not effectively prioritized the cleanup of its contaminated sites and that some sites that were identified as high priority posed less of a risk to human health and the environment than sites that were not on the high-priority list.[12] We reported also that DOD's cleanup had proceeded slowly and that relatively few hazardous waste sites had been cleaned up. Citing congressional concerns and our report, DOD began to implement a risk-based prioritization system.

In May 1994, an inter-military service working group developed procedures to prioritize cleanups on the basis of relative risk. Historically, priorities for cleanup were established at the field level using a variety of methods and factors—often by DOD and regulatory personnel—as part of negotiated legal agreements that included study and cleanup milestones. However, the legal agreements did not always ensure that sites posing the greatest risk to human health and the environment were cleaned up first.

In the summer of 1994, DOD issued guidance to implement the relative risk model to place sites in the DERP into high, medium, and low groups. Assignment to a relative risk group considered (1) site contamination (What chemical concentrations are there?), (2) paths that the materials could travel (Is the contamination moving or will it move?), and (3) potential contacts that the contaminants could have with people, animals, or plants (Are there humans or sensitive environments nearby that could be adversely affected?).

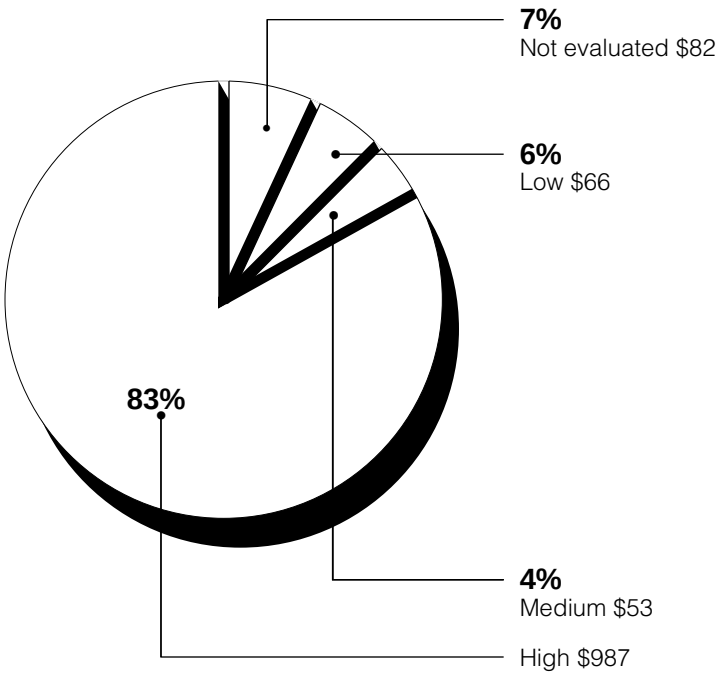
[11]Pollution prevention, conservation, and environmental technology make up the remaining 14 percent of DOD's environmental funding for fiscal year 1996.

[12]Environmental Cleanup: Too Many High Priority Sites Impede DOD's Program (GAO/NSIAD-94-133, Apr. 21, 1994).

DOD expected to complete relative risk evaluations by July 1995 for the estimated 10,000 sites requiring cleanup. However, as of February 1996, evaluations had been done for 7,450 of the sites. These evaluations were to be used as a primary tool for prioritizing cleanup efforts for the fiscal year 1996 budget cycle and making funding decisions. However, the lack of relative risk evaluations for the remaining sites impedes DOD's ability to prioritize and sequence its cleanup work.

In addition, more than one-half, or about 4,000 of the 7,450 sites have been categorized as high risk. DOD and the military services plan to spend 83 percent of their fiscal year 1996 cleanup funds on sites in the high relative risk category. As shown in figure 1, the remaining 17 percent of expenditures is for sites ranked medium, low, or not evaluated. Generally, no further risk distinctions are made among the high risk sites, except for a Navy and Marine Corps effort to prioritize sites in EPA Regions 9 and 10. Not identifying the worst sites among this large number of high risk sites could impede directing scarce environmental resources to those sites posing the greatest risk to human health and the environment.

Figure 1: Fiscal Year 1996 DOD Cleanup Expenditures by Relative Risk Ranking (Dollars in Millions)



Note: Total fiscal year funding of about $1.2 billion was based on a one-time data request from the Army, Navy, Air Force, and the Defense Logistics Agency in February 1996. The total varies somewhat from actual budget data.

Improving DOD's Priority Setting, Planning, and Budgeting for Its Compliance Program

This portion of our testimony addresses our concerns about the current process that DOD uses to set environmental compliance priorities and to provide the funding necessary to meet these priorities. We will also discuss proposed changes in DOD's compliance program that are designed to give DOD management and the Congress more useful information to help them manage and oversee the overall program.

Compliance Priority Setting

We and OSD have noted that DOD's budgeting process does not provide DOD management or the Congress with the information needed to provide for proper oversight. A DOD initiative to provide the data needed to better manage the program has developed new definitions for EPA classes that DOD used to set priorities for compliance projects. However, the initiative could dilute the highest-priority category by increasing the number of

highest-priority projects, and thus significantly reduce management oversight.

DOD's process for compliance requires the services and the Defense Logistics Agency (DLA) to determine environmental requirements and obtain funding for priority needs. DOD's current policy uses an EPA five-category classification system that places the highest priority on those projects at facilities currently out of compliance (Class I) and lesser priority on those not compliance-driven or time sensitive.

In November 1993, we reported that overall environmental compliance funding procedures varied widely among the services.[13] We noted that many military services' compliance-related appropriations requests did not provide detailed project information, impeding DOD's and the Congress' ability to measure costs and progress. Similarly, OSD's Comptroller office stated in July 1994 that DOD's budget reports provide only appropriation-level data that are not sufficient to manage its overall environmental program. The OSD established a working group to develop procedures to ensure that necessary data such as amounts budgeted and spent can be obtained and reported in detail. The military services' internal audit groups have also identified problems with controls over compliance project justifications, fund allocations, and expenditures.

DOD began an environmental quality initiative in 1995 to promote consistency in compliance definitions, categories, and requirements. DOD has identified goals, strategies, budget items, and measures of merit for three of its environmental quality pillars: pollution prevention, conservation, and compliance. DOD developed new definitions for four of the five EPA classes, but it has not provided specific guidance to the military services.

We agree with DOD's general approach, but have concerns that the class definitions in DOD's plan (1) are a significant departure from DOD's past definitions, (2) do not conform to EPA's definitions, and (3) may expand the number of projects that qualify for funding under compliance Class I, without being able to distinguish among different types, as shown in the following examples:

- While EPA explicitly limits Class I to facilities currently out of compliance as documented by notices of violation or consent agreements, DOD's new

[13]Environmental Compliance: Guidance Needed in Programming Defense Construction Projects (GAO/NSIAD-94-22, Nov. 26, 1993).

definition adds projects to address requirements where the facility may not be out of compliance for 2 or more years.

- Although specific procedures have not yet been finalized, DOD's descriptions also indicate that items that EPA includes in Class III (such as inventories, surveys, studies, and assessments) could also be routinely funded as Class I projects.

EPA states that designating a project as, for example, Class III, does not mean the project is necessarily less important than one in Classes I or II. Nonetheless, the inclusion of greater numbers of indistinguishable projects under a redefined Class I could reduce management oversight. In discussing this issue OSD officials said it was not their intent to dilute the compliance priority setting process. Rather, they stated that they wished to permit better recognition of must-fund items within each class. They said it may be too late to define the classes again this year, but that they will act to ensure that the priorities are not diluted in the process.

DOD's Compliance Planning, Review, and Budgeting Processes

Each military service performs environmental self-assessments as a means of helping it determine its environmental needs. For example, the Air Force has its Environmental Compliance and Assessment Management Program, and the Army has its Environmental Compliance Assessment System. The services have set up standards for these self-assessments, which generally require an internal assessment performed by the installation each year together with an external assessment, usually performed by the major command every 3 years. The findings from these assessments may identify regulatory requirements and currently or soon-to-be-out-of compliance conditions and are thus used to help classify projects selected to correct the situation. This helps installations to rank project lists.

Other means that installations use to develop requirements include inspections by EPA and state or local regulators. For example, regulators in California now have what they consider to be a cooperative working relationship with many military installations. An effort commended by regulators in California was a partnership with DOD called the California Military Environmental Coordinating Committee. The Committee brings together California regulatory agencies, EPA, and the military to help solve mutual problems. The regulators believe that the Committee fosters cooperation, coordination, and communication between DOD and the regulator community.

As requirements are developed at the installation level, they are also ranked. As noted previously, while installations prioritize projects according to EPA's classification system, they also add additional rankings to differentiate projects within each classification. Some installations rank projects as high, medium, or low within each class, according to how critical they are to the installations' environmental programs. As an example, all Army Class I-designated projects are, by definition, of high importance. However, Class II and III projects are further subdivided into high, medium, and low, and this distinction is used to further rank the projects for funding.

Our initial discussions with the military services' headquarters officials indicate that only the Marine Corps prioritizes individual compliance projects among installations so that a service-wide prioritized list of environmental projects is developed. According to a headquarters program manager, the Corps has been prioritizing at its 25 installations for about 5 years. The Marine Corps headquarters officials revise this list as needs change.

Installations develop a ranked unconstrained list of environmental compliance projects and forward these detailed lists to their major command. Major commands review projects, scrub their funding requests, and decide which projects they will support. Major commands forward their approved list to headquarters for further review and approval. The review process varies by service, but generally the review is directed at the major command program level and, except for the Marine Corps and DLA, does not normally include a review of specific projects and priorities. However, the military services' headquarters officials review some projects, like military construction, or they may sample individual projects as shown in the following examples:

- The Army Environmental Center reviews a sample of projects forwarded by the major commands to the service's headquarters. The Center's goal is to improve future project submittals.
- DLA reviews all project submittals.
- The Marine Corps is the only service that takes this process to completion by setting priorities at the major command and headquarters levels.

DOD's policy has placed the highest priority on projects for facilities currently out of compliance and subject to an enforcement action. The next highest priority facilities are those facilities that will be out of compliance soon. The services' environmental headquarters officials told

us that they fund, within budget limitations, all EPA Class I and EPA Class II projects that will be out of compliance soon. (As noted previously, such projects and others would be considered Class I under DOD's plans for fiscal year 1998.) In addition, the services also fund recurring "must-fund" activities. These activities may include but not be limited to manpower, fees and permits, sampling and analysis, and hazardous waste disposal.

Most environmental compliance funding is provided to the services through the Operation and Maintenance (O&M) appropriation. However, significant funds are also provided by the Military Construction appropriation, especially for the Navy and Air Force. The Defense Business Operations Fund (DBOF), a nonappropriated account, also provides significant funds for environmental compliance within the Navy and DLA. DLA funds over 98 percent of its compliance activity from DBOF.

OSD and military service headquarters do not currently monitor expenditures for environmental compliance projects. As noted earlier, the services' major commands review proposed installation projects. Our visits to each headquarters office and selected commands and facilities showed little monitoring of specific expenditures except at the installation level. Funds from DOD and the services' O&M accounts, which provide the majority of compliance funding, can be authorized by major commands or installation officials to be used for other purposes—environmental or nonenvironmental.

DOD and the services currently cannot provide overall environmental compliance budget execution data to show that the projects they funded were actually executed. DOD has established a joint working group to develop operating procedures to implement a new budget execution reporting procedure. The extent to which actual expenditures will be monitored under the new reporting procedures is not clear at this time.

Some headquarters officials believe that installation commanders have adequate incentives to comply with environmental regulation, as they risk being fined and/or jailed for environmental violations discovered on their installations. The services' officials believe that indirect measures, such as the decreasing numbers of notices of violation and enforcement actions, can indicate that installation commanders are using their environmental funding for environmental projects.

Issues Raised by Internal Audit Agencies Regarding Compliance Management Activities

In a May 1995 report,[14] the Army Audit Agency found that environmental managers (1) overestimated the number of must-fund environmental projects; (2) overestimated project costs; and (3) did not keep adequate documentation to support requirements. The Agency reviewed 196 projects classified as must-fund for fiscal year 1993 and found that 51 (27 percent) costing $22 million should not have been classified as must-fund.

In a May 1995 report,[15] the Air Force Audit Agency found that for the nine installations visited 95 percent of projects funded with fiscal year 1993 environmental compliance moneys were qualified projects. However, major commands and installations authorized some projects that did not qualify for environmental compliance funding. The Agency found 17 projects valued at $3.2 million that did not qualify for environmental compliance funding.

In a January 1996 report,[16] the Naval Audit Service found that Navy and Marine Corps activities based justification for one of six environmental projects proposed for its 1997 Military Construction Program on outdated data. The project was nonetheless considered partially valid. The Service examined another 43 projects that were not justified as environmental. The Navy Audit Service had similar overall findings in previous reviews of the 1996 and 1995 Military Construction programs.[17]

Messrs. Chairmen, this concludes our prepared statement. We will be glad to respond to any questions you may have.

[14]U.S. Army Audit Agency, Program Execution for Environmental Projects, Audit Report: NR 95-708 (May 17, 1995).

[15]U.S. Air Force Audit Agency, Report of Audit: Management of Environmental Compliance Funds, Project: 94052022 (May 10, 1995).

[16]U.S. Naval Audit Service, Military Construction, Navy Projects Proposed for Fiscal Year 1997, Audit Report: 024-96 (Jan. 8, 1996).

[17]U.S. Naval Audit Service, Military Construction, Navy Projects Proposed for Fiscal Year 1996, Audit Report: 94-0013 (Nov. 29, 1994) and U.S. Naval Audit Service, Military Construction, Navy Projects Proposed for Fiscal Year 1995, Audit Report: 93-0017 (Dec. 22, 1993).

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are $2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884-6015

or visit:

Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders may also be placed by calling (202) 512-6000
or by using fax number (301) 258-4066, or TDD (301) 413-0006.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

PRINTED ON RECYCLED PAPER

United States
General Accounting Office
Washington, D.C. 20548-0001

Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100

Official Business
Penalty for Private Use $300

Address Correction Requested