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Testimony

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EPA Oversight of DOD Installation
Restoration Program Activities

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Before the
Environmental Restoration Panel
Readiness Subcommittee
Committee on Armed Services
House of Representatives



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Mr. Chairman and Members of the Panel:

I am pleased to be here today to discuss our review of the Environmental Protection Agency's (EPA's) oversight of the Department of Defense (DOD) Installation Restoration Program. Mr. Chairman, as you know, section 120 of the Superfund Amendments and Reauthorization Act of 1986, requires federal agencies to enter into interagency agreements with EPA to clean up their facilities on EPA's national priorities list of hazardous waste sites. Our review examined EPA's national staffing to oversee these federal facility agreements, EPA's Chicago Region V staffing and contractual arrangements to oversee the Twin Cities Army Ammunition Plant (TCAAP) cleanup agreement, and EPA Region V's oversight of the TCAAP agreement compared to that of a private-party site.

Our review showed that the TCAAP agreement, signed on August 12, 1987, delegates cleanup responsibilities among the Army, EPA, and Minnesota's environmental protection agency. The TCAAP site is somewhat different from other federal facilities on the national priorities list because it only covers about 4 square miles of the estimated 25 square mile TCAAP/New Brighton/Arden Hills/St. Anthony hazardous waste site. EPA initially intended to use the TCAAP agreement as a framework for future agreements with the military, but did not because of concerns raised in applying TCAAP's terms to all DOD hazardous waste sites on the national priorities list. On June 17, 1988, after lengthy negotiations, EPA and DOD signed a

model agreement that streamlined EPA's oversight and eliminated some of the TCAAP terms that the military had objected to.

NATIONAL STAFFING AND RESOURCE CONSIDERATIONS

Before section 120 became law, EPA could review and comment on federal agencies' cleanup actions but had little authority to oversee the cleanups or to redirect work EPA thought inappropriate. Since section 120, EPA is responsible for overseeing federal agencies cleanup actions and selecting the final cleanup remedy. However, EPA does not yet have standards for determining the amount of staff time and contractor resources needed to oversee federal facility cleanups. Instead, EPA plans to use its private party workload statistics to estimate regional staffing and contractor resource needs, until federal facility standards can be developed. EPA's private party workload statistics are an average of the regions' staff and contract resources used to oversee the various steps in the cleanup process. These workload statistics show that overseeing the average site cleanup can take between 6 and 7 calendar years, cost about \$730,000 for contractor assistance, and require nearly one full-time EPA staff position. These figures, however, may not apply to future DOD cleanups because the model agreement streamlined EPA's oversight procedures.

The TCAAP agreement requires more EPA staff time and contractor resources than the average site, as reflected by the average

workload statistics for private party sites. EPA and state officials said that the TCAAP/New Brighton/Arden Hills/St. Anthony site requires more staff time and contractor resources because of the extent of contamination, the size of the site, and the affected population. They also said that the site is more complex than the average site because of the number of participants and contractors involved. Under the TCAAP agreement the remedial investigation is being performed by two parties. The Army is conducting the on-base investigation and Minnesota the off-base investigation. The Army will combine the results of both investigations to prepare the overall site feasibility study. At the average site, the private party would do all of the work.

Region V currently estimates that it will spend \$200,000 for oversight and technical assistance at TCAAP in fiscal year 1988. Of this, \$60,000 may be used for contractor assistance. While estimates are not yet final, region V may spend as much as \$300,000 for oversight and technical assistance in fiscal year 1989, with \$160,000 of this amount for contractor assistance. Minnesota's environmental protection agency estimates that it will spend about \$76,000 for technical assistance and oversight of on-base activities in fiscal year 1988 and \$129,000 in 1989.

HOW WELL IS THE TCAAP AGREEMENT WORKING?

All parties said that the agreement is working smoothly. Army, EPA, and state officials said that the TCAAP agreement saved money by eliminating duplication of effort among the three parties. Before the agreement, both the EPA and Army were conducting off-base investigations but shared very little information. A contractor conducted the Army's off-base investigations and the state conducted EPA's off-base investigations. The TCAAP agreement facilitated collaboration among the parties and, according to Army, EPA, and state officials, greatly improved communications.

Although the TCAAP agreement did not become effective until December 31, 1987, the Army, EPA, and Minnesota began applying the agreement's oversight requirements when it was signed in August 1987. During this period, however, EPA and the state exceeded some of the agreement's timeframes for reviewing several Army documents. According to TCAAP officials, these document reviews did not cause the Army to postpone any planned site cleanup activities. Since the agreement's December 1987, effective date, EPA, Minnesota, and the Army have either met their agreed-to document review deadlines or appropriately requested extensions as provided for in the TCAAP agreement.

Minnesota state officials estimate that the off-base investigation will be completed in June 1989, almost a year later than expected.

State officials told us that the agency did not have enough assigned staff to simultaneously participate in the three-way TCAAP negotiations, help prepare technical attachments for the agreement, as well as monitor off-base contractor work. So, the state stopped much of the off-base work during the TCAAP agreement's negotiations. The Army currently estimates that its on-base investigation, previously due to be complete in July 1988, may be at least 7 months late because of contract difficulties. Thus, the Army does not foresee any major problems waiting for Minnesota's off-base investigation before preparing the site feasibility study.

Future Federal Facility Agreements May Need Less Staff

Our review showed that neither EPA nor the Army would have had sufficient resources to concurrently oversee cleanups at all 63 federal facilities, which includes 23 Army sites, on or proposed for the national priorities list if the TCAAP agreement requirements were applied to them. But neither EPA nor the Army may have to apply TCAAP's requirements to their other sites because the June 1988 model agreement reduces oversight procedures. Under the TCAAP agreement, the Army submits its cleanup documents such as work, safety, and sampling plans to EPA and Minnesota to review, approve, and otherwise assure that its cleanup activities comply with applicable laws and regulations. Under the model agreement, however, the military's cleanup documents are categorized as either primary or secondary, with EPA's approval required for only the primary ones. This may cut the number of reports requiring EPA

approval in half. However, with no model agreements in place, it is too early to determine how the streamlined oversight may affect EPA and Army staff requirements.

HOW TCAAP'S OVERSIGHT COMPARES TO PRIVATE PARTY OVERSIGHT

Since Superfund law now states that federal facilities should be treated substantively and procedurally the same as nonfederal entities, we compared TCAAP's oversight requirements to the oversight that EPA Region V exercises over a similarly complex private party site. Although no two region V sites are identical because of location and type of contamination, we chose the Reilly Tar hazardous waste site as most comparable to TCAAP. Both sites are located in residential communities, both sites contaminated municipal drinking water with carcinogens, and both are subject to EPA and Minnesota's oversight.

We identified nine contractual terms that EPA's settlement agreements and consent decrees generally address and used them to compare the TCAAP and Reilly oversight requirements. The nine terms are penalties, enforceability of the agreements, dispute resolution, progress reporting, permit requirements, financing, force majeure (reasons work can be stopped without penalty), reimbursement of oversight costs, and document review. Both TCAAP and Reilly have provisions for all nine terms, but there are some differences between the two concerning permit requirements,

financing, force majeure, reimbursement for oversight costs, and document review.

While both the TCAAP and Reilly cleanups must comply with the law, we found some contractual differences in the oversight requirements of the two agreements. Under the TCAAP agreement, the Army's on-base cleanup actions are exempted from the procedural requirement to obtain a federal, state, or local permit but must meet the substantive permit requirements by satisfying all of the applicable or relevant federal and state standards. Reilly must obtain all the necessary permit documents for its cleanup activities. The TCAAP agreement also states that the Army cannot be forced to finance activities beyond its appropriations; Reilly, on the other hand, must annually meet long- and short-term financial solvency tests, or be bonded for the remaining cleanup costs. Further, TCAAP work can be delayed or stopped without penalty because of the lack of funding and changes in permit requirements. Reilly can only stop work because of conditions beyond the company's control like severe weather conditions.

Under the TCAAP agreement the Army is liable for all oversight expenses, as well as EPA's and Minnesota's past costs. So far, EPA's past costs and fiscal year 1988 oversight expenses are estimated at nearly \$4 million. The Reilly consent decree, on the other hand, limits the company's liability for past costs to \$2.6 million. Reilly agreed to pay EPA \$1.6 million and the state \$1 million. Region V records show that, as of August 1988, EPA had

already spent about \$2.5 million for Reilly-related activities. Both the Army and Reilly must still pay for all of their ongoing and future cleanup actions. Finally, all of TCAAP's cleanup documents are reviewed by both EPA and the state. Reilly's consent decree has similar terms but, under a cooperative agreement with EPA, the state conducts the technical reviews with EPA's input limited to controversial items.

It is too early to tell what effect these differences may have on the cleanup process. Future agreements with the military may be less similar to the TCAAP agreement and to the Reilly consent decree because of the model agreement between EPA and DOD. The model has no provision for oversight cost reimbursement, cuts the number of documents to be approved almost in half, and provides for penalties to be assessed then appealed through the dispute resolution process. The model also provides that assessed penalties that are not rescinded through dispute resolution must be included in DOD's annual environmental restoration report to Congress. Future agreements may also differ from TCAAP and Reilly because the model does not yet define a role for the states.

Mr. Chairman, this concludes my prepared testimony.