

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.”

The scope of the DERP is defined at 10 U.S.C. 2701(b), which states: “Goals of the program shall include the following: (1) The identification, investigation, research and development, and cleanup of contamination from hazardous substances, and 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.” * * *

B. Military Munitions Use

Military munitions are used in training for combat, in munitions testing, and in weapons research, development, testing, and evaluation. When a military munition is used, but remains unexploded either by malfunction, design, or any other cause, it is called unexploded ordnance (UXO) and may pose an explosive hazard. Other military munitions may have been disposed of or abandoned, becoming what is known as a discarded military munitions (DMM). DMM are sometimes disposed of or abandoned through an attempt at treatment by burning or open detonation; other times DMM are directly disposed of or abandoned. When UXO or DMM are present at a location where DoD no longer intends to use military munitions, there are potential hazards. DoD established the Military Munitions Response program (MMRP) as part of the DERP specifically to address potential explosive and environmental hazards associated with UXO, DMM, and the chemical constituents of these munitions (*i.e.*, munitions constituents). The purpose of this Protocol is to assign a relative priority to locations where a munitions response is needed to mitigate these potential hazards.

C. Implementing Guidance for the DERP

DoD's primary implementing guidance for the DERP is the Management Guidance for the Defense Environmental Restoration Program (September 28, 2001), hereinafter referred to as the Management Guidance. The Management Guidance is issued by the Deputy Under Secretary of Defense (Installations & Environment) (DUSD (I&E)) and is available on the World Wide Web at <http://www.dtic.mil/envirodod/Policies/PDDERP.html>. The Management

Guidance defines the basic program structure for DoD's environmental restoration activities and includes specific provisions addressing munitions responses. These provisions include:

- Establishing the Military Munitions Response program category within the DERP to implement and track munitions responses
- Defining munitions responses as actions, including investigation, removal actions, and remedial actions, to address the explosives safety, human health, or environmental risks presented by UXO, DMM, or MC
- Directing the DoD Components to identify and establish an inventory of certain locations where a munitions response may be required
- Requiring DoD Components to evaluate the hazards posed where the presence of UXO, DMM, or MC are known or suspected to be present, and to conduct an appropriate munitions response
- Requiring the DoD Components to conduct munitions responses in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. 9601 *et seq.*), Executive Order (E.O.) 12580, Superfund Implementation (January 23, 1986) and E.O. 13016 Superfund Amendments (August 28, 1996), and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300).

D. The National Defense Authorization Act for Fiscal Year 2002

As DoD began to implement these requirements, Congress passed and the President signed into law several new requirements related to UXO, DMM, and MC. These provisions, found in the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107), Sections 311-313, were codified 10 U.S.C. 2703 and 2710.

One of these requirements, specifically 10 U.S.C. 2710(a), directed the Secretary of Defense to develop an inventory of munitions response sites that are known or suspected to contain UXO, DMM, or MC. Per 10 U.S.C. 2710(b), DoD is also required to develop, in consultation with representatives of the States and Indian Tribes, a proposed protocol for assigning to each munitions response site in this inventory a relative priority for response activities related to UXO, DMM, and MC based on the overall conditions at the munitions response site. Further, after public notice and comment on the proposed protocol, DoD is to issue a final protocol and apply the

final protocol to all munitions response sites listed on the inventory.

The statute specifically excludes from the inventory required under 10 U.S.C. 2710(a) and, therefore, from application of this Protocol all locations that are:

- Not currently or were not previously owned by, leased to, or otherwise possessed or used by DoD (excluded because these locations do not meet the definition of a defense site)
- Not known or suspected of containing UXO, DMM, or MC (excluded because these locations are not included in the inventory)
- Outside the United States (excluded per 10 U.S.C. 2710(d)(1))
- Locations where the presence of military munitions is a result of combat operations (excluded per 10 U.S.C. 2710(d)(2))
- An operating storage or manufacturing facility (excluded per 10 U.S.C. 2710(d)(3))
- Used for, or were permitted for, the treatment or disposal of military munitions (excluded per 10 U.S.C. 2710(e)(1))
- An operational range (excluded per 10 U.S.C. 2710(d)(4) and 10 U.S.C. 2710(e)(1)).

As of the end of FY02, DoD has identified 2,307 munitions response sites in the inventory, an increase of 553 from the number DoD initially reported at the end of FY01. The FY02 inventory is comprised of 1,691 munitions response sites at FUDS, 542 at active installations, and 74 at installations subject to closure as part of the Base Realignment and Closure program. The current estimate of the costs of munitions responses for munitions response sites in the inventory exceeds \$11.5 billion. More detailed information on the inventory can be found in the Fiscal Year 2002 Defense Environmental Restoration Program Annual Report to Congress. This report can be accessed via the World Wide Web at <http://www.dtic.mil/envirodod/DERP/DERP.htm>.

IV. Development of the Protocol

Soon after enactment of 10 U.S.C. 2710, the Office of the Deputy Under Secretary of Defense (Installations & Environment) convened a working group with representatives from the DoD Components knowledgeable in explosive safety or environmental restoration. This DoD work group led the effort to develop the Protocol for prioritizing munitions response sites, including conducting preliminary discussions and interviews, constructing and testing the Protocol, and consulting with stakeholders