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Good morning Mr. Chairman, distinguished members of this Commission, and staff. I am pleased to represent the U.S. Environmental Protection Agency (EPA) before the 2005 Defense Base Closure and Realignment Commission, and thank you for this opportunity to discuss EPA's role at closing and realigning military facilities. EPA's Headquarters and Regional offices have been working alongside the Department of Defense (DoD), other Federal Agencies, tribes, tribal governments, state environmental agencies and affected communities since the first Base Realignment and Closure (BRAC) round in 1988 to ensure that DoD's excess property is sufficiently cleaned and put into productive reuse in a manner protective of human health and the environment. I will be addressing EPA's cleanup and property transfer requirements at BRAC properties, provide a historical perspective on EPA participation at BRAC 1-4 installations, and discuss anticipated differences between this BRAC and prior rounds.

I serve as Director of the Federal Facilities Restoration and Reuse Office (FFRRO) located in EPA's Office of Solid Waste and Emergency Response. This office was created in 1994 with two main responsibilities: oversee the cleanup of federal facilities on the Superfund National Priorities List (NPL), and work with DoD, the military services, other Federal Agencies, tribes, tribal governments, state environmental agencies and affected communities to expedite the cleanup of BRAC installations and support related property transfer activities. FFRRO is EPA's national program policy office for these functions and I have been its Director since its creation.

To date, EPA has had minimal involvement in the BRAC 2005 process. EPA has no role in estimating the costs of environmental cleanups at BRAC facilities, as that duty falls under DoD. Nor have we done any independent review of their estimates, so we are not in a position to

comment on their environmental cost estimates for this round of BRAC. Nonetheless, as in the prior rounds of BRAC, EPA expects to fully support the closing and realigning of military facilities on the finalized BRAC 2005 list, and we plan to build upon the successes achieved for base cleanup and/or property transfer and reuse at the BRAC 1-4 installations.

EPA'S CLEANUP and PROPERTY TRANSFER REPONSIBILITIES

In July 1993, President Clinton announced a base closure program, commonly referred to as the "Five Point Plan". Part of this plan addressed the environmental requirements at BRAC bases, and DoD followed with an environmental policy memorandum in September 1993 describing DoD's planned approach. Additional policy and guidance followed. EPA issued its own BRAC cleanup and property transfer policy in 1996, known as the "Fast Track Guidance". The policy is appended to this testimony, for your information. Our focus was to accelerate the regulatory processes, address regulatory issues related to cleanup with the ultimate aim to expedite the transfer of the bases to the affected communities. Despite criticisms, EPA believes that overall the programs put in place in the 1990's have served the nation and the communities well. However, we believe that bases affected by this round of closures and realignments must draw on lessons learned from the prior rounds of BRAC.

There are many federal environmental statutory authorities that may be involved at a BRAC base, just the same as at an active base. Relevant environmental federal statutes include but are not limited to: the National Environmental Policy Act (NEPA), the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, the Toxic Substances Control Act (TSCA), the Safe Drinking Water Act (SDWA), and the Clean Water Act (CWA). In some cases, states have been

authorized or delegated EPA's authorities under some of these statutes (e.g., RCRA, CWA, SDWA). Additionally, many states have enacted their own laws regarding environmental contamination that also may be relevant.

The Superfund statute is the federal law that is most commonly applied to environmental cleanups at BRAC installations. It governs most cleanup activities undertaken by federal agencies, as well as the transfer of contaminated and uncontaminated federal property. (The notable exception to this is that petroleum contamination must be addressed under RCRA, as it is exempted from CERCLA.) Federal agencies with facilities on the Superfund National Priorities List (NPL) must conduct environmental investigation, cleanup, and property transfer of those facilities according to CERCLA and its implementing regulation, commonly referred to as the National Contingency Plan (NCP). Section 120 of CERCLA specifically pertains to the cleanup of federal facilities on the NPL. Sub-section (h) of Section 120 specifically addresses federal responsibilities pertaining to the transfer of federal properties.

While EPA is considered to be the lead agency for cleanup of privately-owned NPL sites, Executive Order 12580, signed in 1987 by President Reagan, delegated this lead agency cleanup authority under CERCLA to the federal agency conducting the cleanup actions on the facility. At federal facility NPL sites, EPA serves as the "lead regulator" and, among its primary oversight responsibilities, concurs on cleanup decisions made and actions performed by the lead agency. EPA is also responsible for the regulatory process that adds and deletes facilities to the NPL.

The Superfund NPL consists of the hazardous waste sites that pose the greatest threats in the United States and its territories, as determined through EPA's Hazard Ranking System (HRS) or as identified by the State as their top priority site. Sites on the NPL may be in proposed, final,

or deleted status. A proposed site is a facility that EPA has announced it intends to place on the NPL. This action is conducted as a regulatory rule-making process. The regulatory rule-making process requires public notice and comment.

A final NPL site is one where EPA has made a final regulatory decision, after receiving public comments, to place it on the NPL. In the context of federal facilities, this means that additional requirements now come in to play, such as EPA approval of remedies and the establishment of an interagency cleanup agreement commonly referred to as a Federal Facilities Agreement (FFA) or Interagency Agreement (IAG). To facilitate the cleanup process, in 1988 EPA and DoD agreed to use a "model" federal facilities agreement which is the basis for all our cleanup agreements at both active and closed DoD installations. Each of the 34 BRAC 1-4 installations that are on the NPL has an FFA in place.

A deleted NPL site is one that has met of all the cleanup objectives specified in remedy selection documents. EPA may delete or partially delete sections of a site from final status on the NPL. To delete a site from the NPL requires that the State concur with EPA that cleanup actions have met the cleanup objectives specified in the remedy decision document and no further response is required to protect human health and the environment. This is also a federal rule-making and requires public notice and comment. Of the 172 federal facilities that have been designated as final on the NPL, 14 have been deleted.

Two of the 34 BRAC NPL bases have 2 separate NPL listings, making a total of 36 NPL sites. Of these 36 NPL sites, 7 have all their environmental remedies constructed and in place. One site that was on the NPL has been removed from the list. Overall, extensive environmental investigation and cleanup progress has been made. EPA has conducted several partial deletions

at installations realigned or closed under BRAC Rounds 1-4, such as Fort George Meade in Maryland.

There has been some confusion regarding what it means when a private site or federal facility such as a DoD installation is placed on the NPL. The confusion stems from misunderstanding whether a facility is listed from "fenceline-to-fenceline" or whether only the contaminated parcels that were scored under the HRS process constitute "the site". In fact, neither perception is true. As EPA typically describes the NPL facility or site in terms of geographic location or site ownership, DoD properties are generally described by the installation's name. So people naturally think an entire installation is on the NPL. Technically, only those portions of an installation where environmental contamination may be found or has been released into the environment and has come to be located constitute the NPL. The NPL is not limited to those portions that were scored under the HRS. After a "base" is placed on the NPL, EPA works with DoD and the State or Tribal regulatory agency to evaluate and add, as appropriate, areas to the overall base cleanup approach typically described as a "site management plan" or "base cleanup plan" that are not part of the original NPL scoring package.

All federal facilities that are listed on the NPL pose actual or potential exposures to hazardous substances, pollutants, or contaminants and actual or potential human health or environmental risks posed by contamination at the facility. Whether an installation remains an active facility, or is closed or realigned under this round of BRAC, a designation as a NPL facility will not change until actual or potential risks to human health and the environment have been addressed. The BRAC list has no bearing on the hazards of the contamination present at the time of a base's NPL designation. Likewise, the states' environmental authorities and responsibilities are not affected by the BRAC designation.

CERCLA Section 120(a) requires that state laws and regulations apply to federal facilities just the same as they would at a privately-owned site. This is true whether a facility is listed on the NPL or not. State environmental programs are usually active partners with EPA at NPL sites and sometimes are parties to FFAs. EPA's involvement at most non-NPL federal facility sites is typically minimal; state environmental regulatory agencies generally oversee the cleanup of these federal facilities. Contamination at military facilities not on the NPL is usually addressed either through the state's own cleanup program, or through the state-delegated RCRA program that oversees active hazardous waste facilities. For the 12 states and 5 territories that have not been delegated RCRA authority, EPA has oversight responsibility to ensure that these cleanups or corrective actions are conducted in accordance with RCRA.

While EPA is not typically involved at most non-NPL federal facilities, this has not been the case at the BRAC installations. EPA has been involved at many of the non-NPL facilities selected for realignment or closure under BRAC Rounds 1-4. Overall, since we created our BRAC program, EPA has participated in the cleanup and transfer of property at 107 BRAC installations. EPA continues to have a role at more than 70 installations closed or realigned under the previous BRAC rounds.

At the 107 installations where EPA has been involved, we principally participated through the BRAC Cleanup Team (BCT). The BCT is comprised of the Base or Service Environmental Coordinator (BEC), and his or her counterparts from EPA and the host state. The idea behind the BCT was to bring together the environmental managers from EPA, the Service and the State to work through environmental issues, make real-time decisions and expedite work. EPA believes that the BCT approach has been instrumental in speeding up the environmental cleanup and property transfer processes. To support the BCTs, EPA also made available

extensive technical assistance through staff such as risk assessors, toxicologists, EPA attorneys and hydro-geologists.

EPA has responsibilities related to BRAC that are not affected by NPL status. Regardless of whether an installation is an NPL or non-NPL base, EPA must review National Environmental Policy Act (NEPA) documents and provide written comments, as required under Section 309 of the Clean Air Act, as well as perform its responsibilities as a cooperating agency in the NEPA process. EPA must also be consulted on leases entered into by other federal agencies regarding the suitability of a facility to be leased prior to cleanup completion. EPA must provide determinations that cleanup remedies are operating properly and successfully prior to a federal agency transferring a property by deed as described under CERCLA Section 120 (h).

EPA has particular responsibilities at federal facility sites on the NPL. These responsibilities naturally carry over to BRAC sites on the NPL. EPA must enter into interagency agreements regarding cleanup with other federal agencies. (State environmental agencies also may be a party to these agreements.) CERCLA provides that EPA must approve the cleanup decision made by other federal agencies about how to address the hazardous contamination and exposure pathways at the site. Relative to contaminated property transfer, EPA must concur on clean parcel determinations, which are parcels on the BRAC installation where there have been no environmental releases (see CERCLA 120(h)(4)). EPA must give approval for the transfer of all BRAC property on the NPL that occurs prior to the completion of all environmental cleanup activities (i.e., “early transfers”). (States, through their Governors’ offices, must concur on early transfers at both NPL and non-NPL bases.)

With DoD as the primary responsible party for contamination at BRAC facilities, CERCLA provides numerous assurances to new owners taking possession of former DoD

property that they will not be held responsible for contamination that is the result of DoD activities. Under the property transfer provisions of CERCLA, DoD must provide a covenant in the deed to the BRAC property that all remedial action necessary has been taken at the facility. Through a second covenant provided through the deed, DoD must also provide an assurance that the federal government will remain liable for contamination found after the transfer of property that is the result of government activities, and the federal government will conduct the cleanup of that contamination. In addition, Section 330 of the FY 1993 National Defense Authorization Act provides indemnifications for future owners of BRAC property from liability associated with contamination found at BRAC property after transfer has occurred, meaning they bear no responsibility for the cleanup of contamination caused by DoD activities, as long as they have not contributed to the contamination. Recipients of BRAC property can also be afforded the liability protections found under CERCLA Section 107 so long as they meet the required criteria for such protections.

EPA does not pay for any of the cleanup costs associated with base closures or realignments. Rather, the DoD, as the primary responsible party for contamination at BRAC sites and other military facilities, retains the responsibility and liability for cleanup of the contamination caused by their activities.

Extensive site cleanup work has been and is being conducted at each BRAC 1-4 installation and progress continues to be made. Many areas of contamination at these installations are the result of decades of DoD use and operation. Principal types of contaminants include heavy metals, solvents, petroleum product spills, volatile organic compounds, and military munitions and related constituents. Many installations have contaminated groundwater that is extremely difficult to clean up, especially to meet safe drinking water standards.

Despite everyone's best efforts, unexpected environmental contamination sometimes is discovered, adding time and cost to anticipated schedules. At the former Moffett Naval Air Station in California, for example, a historic hanger used to house dirigibles since 1932 has been recently found to be contaminated with polychlorinated biphenyls (PCBs), asbestos and lead-based paint. Hangar 1 is over 1100 feet long, 300 feet wide and almost 200 feet tall. It covers approximately eight acres. Many in the community would like to see it preserved. When the base was closed no one suspected the Hangar to be a source of contamination. The Navy is now working with the National Aeronautics and Space Administration (NASA), the new owner, EPA, the State of California and the local community in exploring options to address the contamination and perhaps preserve the building. Current estimates range up to almost $30 million to address the contamination.

THE NPL AND THE PROPOSED 2005 BRAC RECOMMENDATIONS LIST

DoD proposes to close 33 major bases through the 2005 round of BRAC. Nine of these installations are on the NPL. One of the minor bases proposed for closure is also on the NPL. In total, 68 bases that are currently on the NPL are being considered for a recommended action under this 2005 BRAC round. By EPA's analysis of DoD's recommendations, we believe that 10 NPL facilities may be proposed for closure, 27 NPL facilities may be realigned and 31 NPL facilities may receive personnel gains.

EXPECTED DIFFERENCES: BRAC 1-4 and BRAC 2005

While the environmental cleanup and transfer processes for BRAC installations will follow the same laws and regulations, we expect to see some differences, as indicated to us through discussions with DoD and based on the cleanup progress that has occurred since previous BRAC rounds. Installations that will be on the final BRAC 2005 list already have

cleanup activities well underway or completed. This means facilities are or should be much better characterized, and in some cases cleanup remedies will already be in place. This also means that we do not anticipate any BRAC 2005 base to be added to the NPL in the future.

Given that cleanup programs at DoD installations are further along than in the previous four BRAC rounds, the need for BCTs across the board is less clear. For non-NPL facilities, we anticipate that we will be working at the individual base level with the respective Service and with the state regulatory agency to decide whether a BCT will be needed. At NPL sites, we typically have our state counterparts already engaged, so we are not anticipating substantive changes here other than those new duties required by property transfer. Overall, we expect there will be fewer BCTs put in place than previously.

In the prior rounds of BRAC, the cleanup programs were just beginning. However, for the bases proposed on the current BRAC list, cleanup activities at many installations have already occurred and have been completed. At the time remedies were selected, cleanup decisions were made when the installation was an active facility, so the cleanup decisions likely reflect the current uses of the property. Now that these properties may be closing and the reuse may be different, some of these cleanup remedies may need to be revisited.

In contrast to prior BRAC rounds, DoD may choose to dispose of more parcels through the public sale of BRAC properties and DoD may strive to conduct the sale of that property prior to the completion of all cleanup activities. In these scenarios, DoD will use the early transfer authority provided under Section 120 of CERCLA. The early transfer provisions were provided under CERCLA through an amendment passed in 1996. The Services have used the authority at a limited number of NPL and non-NPL bases. We have seen only 10 early transfers of parcels at BRAC 1-4 facilities on the NPL to date. For a facility to be transferred prior to cleanup

completion, EPA must approve the transfer of a property listed on the NPL based on a set of criteria established in the early transfer authorities under CERCLA. The State must also approve the early transfer, regardless of NPL status. The criteria for approval includes that all cleanup will not be delayed because the new party assumes ownership, any interim use of the property will be protective of human health and the environment, if the new owner conducts the cleanup they are financially sound and technically able to conduct the cleanup, and resource requests will continue to be made by DoD to the Office of Management and Budget if DoD will continue conducting the cleanup.

To complement the increased use of early transfer authorities, the Services will strongly consider "privatizing" site cleanup. This means that the Service will seek a third party to assume ownership of the property prior to completion of cleanup, and this third party will also assume responsibility for the remaining cleanup. At facilities on the NPL, EPA will retain the enforceable Federal Facilities Agreement with the military service responsible for the cleanup, and will enter into an enforceable agreement with the third party assuming responsibility for the cleanup to ensure that cleanup milestones are met and not delayed under a privatization scenario. DoD will always remain liable for contamination resulting from government activities, even in the event that the third party cannot complete the cleanup of the property.

Another aspect of early transfer is that a Service may seek to transfer a base that has an active RCRA permit or corrective action order. Under this approach, a Service may want to divide the base into parcels, transferring them to different parties. To make this work, EPA or a state delegated RCRA authority will have to close out and issue new RCRA permits or orders to the transferees. This approach is currently being tested by the Navy and EPA at a non-NPL,

non-BRAC site, where one RCRA permit issued to the Navy is being replaced with several new RCRA orders to be entered into by transferees.

Another difference that may occur is that the Services will prepare Environmental Condition of Property (ECP) reports for each BRAC installation rather than an Environmental Baseline Survey (EBS). These ECP reports will compile all the environmental investigations completed at an installation to date and assess the condition of the property. In previous BRAC rounds, the Services conducted an EBS that surveyed all the property at the installation, determined its condition, and then placed the property in to one of seven categories. EPA used the information contained in the EBS to make property transfer assessments and clean parcel determinations. From the regulator perspective, there are two potential areas of concerns with the ECP reports: first, the environmental information relied on in the ECP may not be up to date, and secondly, there is potential for gaps of data that may be unintentionally overlooked.

Another concern is the extent that public involvement will be carried out where cleanups are privatized. RABs are comprised of members of the community who have an interest in the cleanup of an active or closed military facility. RABs generally have been very successful and helpful to the cleanup process. Cleanup activities are discussed with RAB members who are given the opportunity to provide input. EPA views the public engagement process as a critical element of BRAC because it fosters a local understanding of environmental conditions and challenges on the property. Even when under a privatization scenario, the public participation requirements of CERCLA Section 117 are still applicable.

CONCLUSION

Regardless of the changes to come, we anticipate there will be the same high level of commitment from the DoD and Services to work with EPA, other federal agencies, tribes, tribal

governments, state regulators and the public from the beginning of the BRAC process on cleanup and property transfer, as was evident in BRAC 1-4. We have seen many successes in the cleanup and reuse of BRAC 1-4 installations, and like DoD, EPA has learned from the bumps in the road we have all encountered while getting to those successes. The history and experiences of the past four rounds can set the foundation for a successful BRAC 2005 process and bring additional opportunities along with new beginnings. EPA looks forward to working closer with communities, DoD, tribes and state environmental regulators as we together implement this new round of BRAC.

I thank you for this opportunity to comment and would like to now address any additional questions you may have.