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MEMORANDUM FOR PUBLIC AFFAIRS, FOIA OFFICE

SUBJECT: Defense Environmental Response Task Force

Attached is the transcript of the June 19 meeting of the Defense Environmental Response Task Force, an advisory committee chartered under FACA. At the suggestion of CDR Mark Langerman, I am forwarding the transcript so that it will be available for public review. Should you have any questions, please call me at (703)695-0112.

LTC Hayden Bryan
ODASD(E)

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DEFENSE ENVIRONMENTAL RESPONSE TASK FORCE

TASK FORCE MEMBERS MEETING

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PUBLIC FORUM

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WEDNESDAY, JUNE 19, 1991

The Task Force members met in the Kimball Conference Center, 1616 P Street N. W., Washington, D. C., at 9:00 a.m., when were present:

THOMAS E. BACA, Chairman
CARY JONES, Member
EARL JONES, Member
ANNE SHIELDS, Member
CHRISTIAN HOLMES, Member
SAMUEL GOODHOPE, Member
MARY McDONALD, Member
JAMES M. STROCK, Member
DAVE GRAVALLESE, Member

1 P-R-O-C-E-E-D-I-N-G-S

2 MR. BACA: Good morning. I don't mean to be so formal
3 as to pound the gavel but it's the only way I can get your attention.
4 Welcome. I would like to call this first meeting of the Defense
5 Environmental Response Task Force to order.

6 My name is Thomas Baca. I have been designated as the
7 chairman by Secretary Cheney of the Department of Defense. I am joined
8 by several other persons who have been designated by their respective
9 organizations. Before I introduce them, I would like to say a few words
10 about the mission that this task force has.

11 The task force was created to make recommendations on
12 ways to improve interagency coordination and to streamline procedures
13 relevant to environmental response actions at military installations closed or
14 realigned by Public Law 100-526.

15 The Secretary of Defense has also asked that we look at
16 recommendations for statutory changes that aid in achieving the goal of
17 expediting environmental response action. I hope you get the feeling that
18 both the Congress, the Secretary and the public want action.

19 There was an article in the Washington Post this morning
20 that severely criticized the Environmental Protection Agency superfund
21 program. It perhaps is not a criticism of the agency but I think it is a
22 criticism of the process that we're locked into. We're spending way too

1 much time in process and not enough time in really mediating environmental
2 concerns.
3 The significance of expediting cleanup is very clear when
4 one looks at the economic impact of closing a base in a community. It can
5 be very devastating when one of the major employers in a community is no
6 longer there.
7 Every morning in the Pentagon we get a synopsis of the
8 various news articles that appear across the country and I would like to just
9 read this for your interest:
10 "Cleanup of toxic waste at Fort Devens and its Sudbury
11 Annex will cost $40 million and take up to seven years, hardly full speed
12 ahead for a mission that assumes greater urgency with Devens on the list of
13 bases to be closed. Fast cleanup should be a must for the environment and
14 for the region. The installation is a major contributor to the local economy
15 and its closing would be a serious blow to the surrounding towns."
16 Then it goes on to indicate what a crushing blow it is and
17 the need to expedite the transfer of this base.
18 It even becomes more serious when you have limiting
19 factors, when the environment in base closure. We will have at least one
20 Member of Congress and perhaps others appear before this panel this
21 afternoon and I'm sure they're going to voice the same concern with the
22 expediting of environmental cleanup.

1 I really believe that substance will come out of this effort
2 and I'm sure recommendations are going to be made to go way beyond the
3 specific charge of expediting the 1988 base closure.
4 As you know, a list of 31 major and 12 smaller installations
5 is being reviewed by a second base closure commission. In 1994 and 1995
6 we anticipate two additional lists of closures so the process is going to be
7 pretty involved over the next few years. But I fully expect that
8 recommendations coming out of this of this task force could be transferred
9 to other activities that have cleanup efforts.
10 At this point I would like to introduce the members of the
11 task force. The Attorney General of the United States has designated the
12 Assistant Attorney General, Mr. Richard Stewart as his representative. In
13 his absence, Mr. Stewart will be represented by Ms. Anne Shields, Chief of
14 Policy Legislation and Special Litigation.
15 Mr. Earl Jones, Commissioner for Federal Property
16 Resources, is the representative for the General Services Administration.
17 Mr. Christian Holmes has not yet arrived. Mr. Holmes is
18 the Assistant Administrator for Federal Facilities and is representing the
19 Environmental Protection Agency.
20 Major General P. J. Offingra, Assistant Chief of Engineers,
21 has been selected to represent the Corps of Engineers and he will be
22 represented today by his deputy, Mr. Cary Jones. Cary is an expert in this
23 area and we welcome his input.

1 The National Governors Association has designated Mr.
2 James Strock, Secretary for Environmental Protection for the State of
3 California. Mr. Strock is testifying before Congress this morning and will
4 join us later on today. He will be represented by the Governor of
5 California's representative in Washington, Ms. Mary McDonald.
6 The representative for the National Association of Attorney
7 Generals is Mr. Daniel Morales, the Attorney General of Texas. He will be
8 represented today by the Special Assistant Attorney General, Mr. Samuel
9 Goodhope.
10 The representative of the Speaker of the House has not been
11 designated yet. We hope by at least our next meeting we will have a
12 representative from an environmental interest group.
13 I want to welcome the task force members. This is an
14 extremely important assignment that you've been given. I've waited with
15 great anticipation to this task force convening because I really believe the
16 impact on future environmental restoration is going to be great.
17 We will be circulating a final draft in August of our
18 conclusions and findings.
19 I would at this point like to stop and ask any of my
20 colleagues if they have any comments before we get into our regular agenda.
21 MR. EARL JONES: I've been with the General Services
22 Administration now for approximately 29 years and have quite a bit of
23 experience in the disposition of federal real estate and implementation of the

1 National Environmental Policy Act (NEPA), which is one of the most
2 critical areas of concern in disposing of real estate.
3 We are cognizant of a lot of inconsistencies in policies and
4 procedures and I think that it's commendable that we have an opportunity to
5 focus on this issue.
6 MR. BACA: Thank you very much, Mr. Jones.
7 Anyone else?
8 At this time, I would like to call on Col. Larry Hourcle.
9 Larry is a counsel for the Office of the Secretary of Defense and he's a
10 colonel in the Air Force. He's an environmental law expert and he's going
11 to give us a presentation on the 1988 base closure process and bring us up
12 to date on the recent base closure process.
13 COL. HOURCLE: Thank you, sir.
14 I'd like to talk a little bit about the 1988 process, the
15 current process, really more of why base closure, and at this time I'll put on
16 my other hat, not only as counsel on environmental matters but as counsel
17 to the base closure effort.
18 We're going to be talking obviously about base closures and
19 realignments. The first question is why are we doing this and why are we
20 doing it even more intensely right now.
21 We can talk about just the general reduction in the
22 Department of Defense (DOD) budget as a share of total federal budget
23 amounts. The fact of the matter is that DOD is going to be reducing forces.

1 We're taking a look at projecting ten fewer Army divisions and an army
2 division is about 15,000 people. A division usually takes about one
3 installation.
4 Also relating that to the Air Force numbers, ten few tactical
5 fighter wings. Tac fighter wings usually translate to one installation.
6 Taking a look at where we are today and where we'll be
7 going in the future--
8 By the way, for the members of the task force, there is a
9 hard copy of this briefing that's in the pocket at the front of your book.
10 Looking in terms of people very briefly, we're talking of
11 substantial reductions in the force, drawdowns of 15 to 30 percent and the
12 overall goal of the Department of the Congress is to reduce our intrastructure
13 to a few excellent installations.
14 Let's talk about how we got here. In the past for most of
15 Mr. Jones' tenure at GSA we didn't give them much business in base
16 closure. In fact, I would say for the last 10 to 15 years we closed very, very
17 few defense installations.
18 In 1988 congress realized that had been a problem and
19 wanted to basically readjust our force stricture and our bases and there was
20 a secretary's commission which rendered a report that closed 86 installations.
21 Those are the ones that are currently on the list. The
22 arrangement with the congress is that list is, except for other statutory

1 processes, sacred. We are committed to closing and realigning the
2 installations that were recommended in this report.
3 In 1990 Secretary Cheney announced a list of other bases
4 to study for closure. Congress basically challenged this list and then in the
5 1991 Defense Authorization Act gave us a new process for the closure of
6 installations and that's a process that's running right now.
7 It is also the legislation in Title 29 which creates this task
8 force. Section 2923 does two things that I think are of interest to us.
9 One of the issues that we'll be talking about later or we
10 recommend you consider is the issue of funding for base closure and cleanup
11 and that is a very sensitive issue with the installations.
12 Section 2923 moved all the money for cleanup of closing
13 installations for the 1988 list over to the base closure account and we'll talk
14 about that later.
15 That provision also created this task force to study better
16 ways of resolving the closure and cleanup dilemma, if you will.
17 We are now engaged in a new process with a number of
18 installations that have been designated and proposed by the secretary based
19 on some criteria that was developed through a public process for about 35
20 installations that have now been nominated for additional closures to a base
21 closure commission which is meeting this week and continues its
22 deliberations to issue a report on July 1st.

1 I draw this to your attention because it does mean that there
2 will be additional installations which will be facing the closure and cleanup
3 dilemma and as these commissioners have been going around the country
4 taking testimony the cleanup issue has been one of the main issues raised by
5 the communities with installations proposed for closure.
6 This presidential commission will also consider additional
7 recommendations for closure made by the Department of Defense in 1993
8 and 1995.
9 I mentioned criteria that are being used by this commission
10 and I talk about essentially these criteria went to military value and it was an
11 issue that has been raised for consideration of what the return on investment
12 is and also what the impacts on communities are.
13 In resolving the issue of closure and cleanup with the 1991
14 list, one of the questions with regard to the '88 list was how do you talk
15 about the costs of cleanup in making decisions about base closure and with
16 the 1991 list what the department has done is to say that cleanup is an
17 already incurred cost. We are committed through our Defense Department
18 and restoration program cleaning up all our installations.
19 What will happen is with base closure there will be a timing
20 difference because obviously, as Mr. Baca pointed out from the article, there
21 is an interest in expediting cleanup at closing installations.
22 With regard to the return on investment criteria, decisions
23 were made that one should reduce expected value proceeds, either the

1 amount of proceeds or the timing of those proceeds to deal with the issue of
2 what is involved with cleanup.
3 I wanted to go very briefly through how we got to today,
4 how the task force was created, the statutory basis. If you have any
5 questions about the process, either the base closure process or the statutory
6 process, I would be delighted to take those now.
7 MR. BACA: Any questions of Larry at this point? People
8 are in awe. That presentation was so clear. Thank you, Larry.
9 We will now have Lt. Col. Hayden Bryan outline the
10 operating rules that will be employed by this particular task force and who
11 will also discuss the charter and the pertinent deadlines and requirements
12 imposed on this task force.
13 LT. COL. BRYAN: Thank you, Mr. Chairman.
14 The book in front of you for the members contains a copy
15 of the charter for you reference.
16 The charter includes the objectives set out by Public Law
17 101-510, the Authorization Act for Fiscal Year '91, and asks that the task
18 force recommend to the Secretary for transmittal to the Congress ways to
19 improve interagency coordination within existing laws, regulations and
20 administrative policies of environmental response actions at military
21 installations being closed under the 1988 Base Closure Act.

1 Recommendations should also include ways to consolidate
2 and streamline with existing laws and regulations the practices, policies and
3 administrative procedures of relevant federal and state agencies.
4 The Secretary of Defense is also seeking in this charter
5 recommendations for changes in existing laws, regulations and policies.
6 That is my summary of the charter.
7 I would like to speak for a few minutes about the deadlines.
8 The law requested that a report be sent to Congress on the 5th of November
9 1991. The Secretary of Defense has backed that up to his office one month
10 so we owe the Secretary a report on the 5th of October as so indicated in our
11 charter and I believe the chairman will be discussing with you later other
12 deadlines that are internal to the task force.
13 If there are no questions on that, let me proceed very
14 quickly to review of our operating rules under the Federal Advisory
15 Committee Act (FACA) as it's known. The Secretary of Defense has chosen
16 to charter the task force under the Federal Advisory Committee Act.
17 The Act requires among other things timely notice in the
18 Federal Register of meetings of the task force. It requires that records,
19 transcripts of the task force be available for review and copying by the
20 public.
21 Anyone who wishes to get a copy of the transcript or
22 review it will be able to do it through the Office of Public Affairs,
23 Department of Defense.

1 It requires that detailed minutes must be kept. We propose
2 to go one step further and keep a verbatim transcript of the proceedings of
3 the task force.
4 The Federal Advisory Committee Act also requires that
5 there be designated a federal officer to chair or attend each meeting. Mr.
6 Baca has been so designated by Mr. McMillan, who is the Assistant
7 Secretary of Production and Logistics and the sponsor for the task force.
8 Mr. Kevin Doxey, the executive director for the task force, has been
9 designated as his alternate.
10 The designated federal officer must approve the agenda for
11 each meeting, as well.
12 Any questions?
13 The copy of the rules is also presented in your book. The
14 rules that we propose let me just summarize very quickly. The rules are at
15 Tab 4.
16 The rules state that the task force is charged under the
17 Federal Advisory Committee Act and shall comply with the Act. They state
18 that the meetings will be public, that the task force will meet at the call of
19 the chair or a majority vote of the members of the task force.
20 They require that the chairman will designate a member to
21 preside in his absence and in this case under the Federal Advisory Committee
22 Act the ultimate designated federal officer should also be present for such
23 discussions.

1 The rules provide that the chairman or his designee shall
2 have the authority to conduct the business of the task force; that members
3 may vote by written proxy or through a designated alternate, that the report
4 may be approved by a simple majority of the members and, finally, that a
5 majority vote of the members may change the task force procedural rules.
6 That concludes the rules. Would you like to adopt the rules
7 formally for the record?
8 MR. GOODHOPE: A question on number six. Do we
9 need a written designation for the alternates or are alternates -- can they vote
10 automatically?
11 LT. COL. BRYAN: It would be useful to have that on the
12 record. If you're designated as an alternate, you would not need under these
13 rules -- it is anticipated that someone representing a member who is not
14 officially designated may come in an emergency situation in which case we
15 would require a written proxy.
16 MR. GOODHOPE: And I want to make sure that we
17 reserve the right or whatever for minority reports, minority sections.
18 LT. COL. BRYAN: Absolutely. Additional and minority
19 views would be appropriate.
20 MR. BACA: Any other questions on the rules? If not, I
21 would like a vote of the task force to accept these rules. I hear no objection.
22 LT. COL. BRYAN: Thank you, Mr. Chairman.

1 MR. BACA: At this time we'll present an overview of the
2 normal response process. Col. Louis Jackson who is commander of the U.S.
3 Army Toxic and Hazardous Materials Agency (USATHAMA) -- will give a
4 short presentation and provide us with an overview of the base closure
5 environmental process.
6 Col. Jackson, before you get started, I would like to
7 recognize Chris Holmes who came in and is representing the Environmental
8 Protection Agency.
9 COL. JACKSON: Good morning. My name is Lou
10 Jackson and as Mr. Baca has indicated I am the commander of what's called
11 the U.S. Army Toxic and Hazardous Materials Agency, commonly referred
12 to as USATHAMA.
13 The USATHAMA is a field operating activity of the U. S.
14 Army Corps of Engineers. The organization has a substantial role in the
15 management and execution of the Army's environmental program and the
16 agency is the central manager for the environmental restoration portion of the
17 Army's base closure program.
18 Today I'll cover five basic areas. First, I will identify the
19 individuals and organizations with primary responsibilities for the Army's
20 base closure program. Second, I will discuss the general policies
21 established by the Army for environmental restoration activities during the
22 execution of the base closure program.

1 Third, I will review the process used by the Army as it
2 executes the environmental restoration portion of base closure
3 Fourth, I will summarize the Army's environmental
4 restoration accomplished to date in the base closure program.
5 Finally, I will discuss the experience gained in the past two
6 years while implementing the restoration aspects of base closure, and this
7 analysis will include lessons learned about the process as well as areas where
8 continued improvement can result in a greater benefit to the Army and local
9 communities.
10 Regarding responsibility. The Secretary of the Army has
11 overall responsibility for Army base closure actions. The Assistant Secretary
12 of the Army for Installations, Logistics and Environment has oversight for
13 Army base closure actions.
14 The director of management on the Army staff has
15 execution responsibility for management and execution of all realignments
16 and closures in the Army.
17 The major commands, with assistance from the U.S. Army
18 Corps of Engineers are responsible for execution of the environmental
19 restoration and construction missions.
20 The Army environmental policy for base closure at
21 installations includes the ideal goal of cleaning up contamination to allow for
22 the unrestricted use of the property at the time of transfer.

1 The Army conducts the environmental restoration portion
2 of the base closure program in a manner similar to its installation restoration
3 program referred to as IRP. That is, all threats to life, health or safety are
4 removed, contained or eliminated as quickly as possible and studies are used
5 to identify contamination existing at an installation in accord with applicable
6 federal, state and Army regulations. All environmental contaminants present
7 on the installation that are migrating from it is monitored and contained or
8 treated to acceptable public health or environmental impact levels.
9 Now on a case by case basis, the Army may consider
10 releasing base realignment and closure excess property subject to land use
11 restrictions. In some instances these restrictions could be required in order
12 to maintain long term remedial actions.
13 In other cases, if there is no imminent threat to health,
14 safety or the environment from the contamination and the estimated cost of
15 cleanup is greater than the anticipated receipts from sale of the site, the
16 cleanup of the installation may be deferred to the defense and environmental
17 restoration program in fiscal year '96 or beyond on a worst first basis.
18 Additionally, some facilities may be cleaned and sold in
19 separate parcels rather than as one large package. When the restrictions are
20 attached to the sale, the restrictions must be compatible with activities on
21 neighboring properties and consistent with the expected future use of the site.
22 In all cases, any residual contaminants and use restrictions are fully identified
23 to the buyer.

1 In those cases where the Army installation is being
2 transferred to another federal agency, the Army takes the lead for all
3 restoration studies and investigations. The cost of any cleanup will be
4 negotiated between the Army and the gaining agency. As a general rule, all
5 environmental restoration activities necessary to close or realign installations
6 covered under the BRAC program are funded using the base closure account.
7 Only base closure and realignment activities may be funded from that
8 account.
9 Those expenditures necessary to maintain installations in
10 compliance with federal, state and local environmental requirements, such as
11 Resource Conservation and Recovery Act (RCRA) and National Pollutant
12 Discharge Elimination System (NPDES) permits, come from the normal
13 operating accounts.
14 In managing base closure funds for environmental
15 restoration activities, priority is given to situations where unacceptable human
16 health or environmental hazards exist.
17 Additionally, the Army will meet commitments made to the
18 U.S. Environmental Protection Agency and state regulatory agencies in
19 federal facility agreements and corrective action schedules.
20 Finally, environmental restoration at sites where an
21 economic payback is anticipated will be considered.
22 Now we move to the process that's used by the Army. The
23 process for conducting the environmental restoration portion of base closure

1 is patterned after the Comprehensive Environmental Response Compensation
2 and Liability Act (CERCLA), and the Superfund Amendments and
3 Reauthorization Act (SARA) regulations.

4 The first step is a preliminary assessment. This is a
5 qualitative evaluation of the site focused on its suitability for transfer.

6 During the preliminary assessment, all existing records
7 relating to the environmental condition of the site are evaluated to determine
8 if any environmental hazards are present. A site visit is made. Aerial
9 photographs are evaluated to determine potential areas of contamination such
10 as stressed vegetation and land scars, and current and former employees are
11 interviewed to determine where unreported disposal of hazardous waste may
12 have occurred.

13 The assessment includes buildings for such things as
14 asbestos, transformers for PCBs, and underground storage tanks. As a result
15 of these efforts, potential hazardous waste contamination sources are
16 identified.

17 This document is reviewed by the installation's major
18 command, the base closure, environmental and director of management
19 offices at Headquarters, Department of the Army, as well as applicable
20 elements within the U.S. Army Corps of Engineers.

21 The preliminary assessment typically contains
22 recommendations suggesting further work or additional investigations be
23 conducted to characterize the site.

1 If no hazardous waste or other environmental impacts are
2 identified at the site which would preclude transfer of the property during the
3 preliminary assessment phase, the property can be sold or transferred. It
4 takes approximately six months to prepare the preliminary assessment.
5 At those installations where the preliminary assessment
6 identifies sites with known or suspected contamination a remedial
7 investigation feasibility study was carried out. The remedial investigation
8 feasibility study is used to more precisely determine the nature and extent of
9 environmental contamination. It is accomplished through physically
10 collecting and testing samples from the site. The data obtained is analyzed
11 to determine what health risks may exist and which remedial action
12 alternatives may exist based on the range of land use scenarios.
13 The actions undertaken during this phase are reviewed by
14 and coordinated with Environmental Protection Agency (EPA) and state
15 regulatory agencies. Concurrence is obtained from EPA and the state prior
16 to initiation of field work. EPA and state regulators are provided copies of
17 the remedial investigation feasibility study documents for review and
18 concurrence.
19 Throughout the program there is extensive internal Army
20 coordination among the installation, the major command, Headquarter
21 Department of the Army and the U.S. Army Corps of Engineers.
22 At the completion of the feasibility study, a public meeting
23 is held to review the findings and to obtain public input.

1 At the conclusion of the remedial investigation feasibility
2 study, if no environmental cleanup is required the site can be sold or
3 transferred.
4 When cleanup is required, a record of decision will be
5 prepared. The record of decision is comprised of those documents
6 supporting the agreement reached between the Army and the regulatory
7 agencies on the actions required to mitigate the conditions identified at a site.
8 The remedial investigation feasibility study process can take anywhere,
9 especially with the extensive coordination required, from 20 to 46 months.
10 Efforts are underway to expedite these schedules.
11 Some cleanup actions can be accomplished prior to
12 preparation of a record of decision at the end of the remedial investigation
13 feasibility study. These include removal and cleanup associated with
14 underground storage tanks, asbestos cleanup and actions associated with PCB
15 remediation. Many of these types of actions are being addressed at
16 BRAC I sites during fiscal year '91.
17 A statement of condition will be issued when remedial
18 actions are completed and the site is restored for its intended end use.
19 The statement of condition consolidates information
20 generated during the preliminary assessment, the remedial investigation
21 feasibility study and the remedial action phase. It includes maps and a legal
22 description of the property. This document becomes part of the formal deed
23 of transfer when the property is sold or transferred.

1 The deed for property being conveyed by the Army will
2 contain a covenant warranting that all known remedial actions necessary to
3 protect human health or the environment have been completed. It will
4 further state that if additional Army-caused contamination is later found, its
5 cleanup will remain the responsibility of the Army.
6 If the property is being transferred to another federal agency
7 subject to land use restrictions, wording is placed in the deed so the property
8 will revert back to the Army if it is not used in conformance with the agreed-
9 upon land use.
10 Long-term remedial action such as groundwater treatment
11 may take many years to complete. As part of the operation and maintenance
12 of any remedial action, monitoring will be conducted to ensure cleanup goals
13 are met.
14 On a case-by-case basis, statements of condition may be
15 prepared and the property may be transferred or sold while contaminated
16 groundwater is still being treated. This would be permissible in an area
17 where municipal water is available and where groundwater is not a source of
18 drinking water. Once the Army's groundwater cleanup is completed, the
19 statement of condition would be amended.
20 Accomplishments to date. There are 81 Army BRAC I sites
21 which are being evaluated for closure. Preliminary assessments have been
22 completed for 53 of 53 housing areas and 25 of 28 installations. Preliminary
23 assessments were not prepared for the other three installations since those

1 installations already had ongoing remedial investigation feasibility studies
2 under the installation restoration program.
3 Remedial investigation feasibility studies are currently in
4 progress for 22 of 28 sites. No further actions are planned at four facilities
5 under the base closure program. Future environmental efforts at those
6 facilities will be conducted under the installation restoration program.
7 16 of the 53 preliminary assessments for housing areas
8 indicated no further action was required. An additional 16 housing areas
9 required further sampling and analysis and were determined to contain no
10 hazards. As a result, 700 housing units at 32 of the 53 housing areas have
11 been certified by the Army for release or transfer. The remaining sites are
12 at different stages of remediation.
13 Lessons learned. One of the issues impacting the program
14 has been the belated release of environmental restoration funding for the base
15 closure program. In fiscal year '91 the Army first received funds late in this
16 third quarter.
17 Late release of funds have combined with the ambitious
18 closure schedule to cause considerable management problems and schedule
19 slippage. The Army's schedules in this program will be difficult to maintain
20 unless funds are released early and recommendedly in the first quarter of
21 each fiscal year.
22 Based on our experience with the program, we believe the
23 approach of releasing installations in parcels is possible and desirable. This

1 permits the Army to generate revenue by selling parcels and using the
2 resulting revenue to help offset the cost for base closure.
3 This concept has been utilized at Fort Meade, Maryland,
4 and will be discussed further during Mr. Torrisi's testimony this morning
5 focusing on the Fort Meade experience. This approach will also be
6 considered at other base closure sites once the field studies are completed
7 and uncontaminated areas identified.
8 As I indicated earlier, the Army's goal or the Army's ideal
9 in this program is to carry out environmental restoration that would permit
10 unrestricted land use.
11 When unrestricted land use is not possible, re-use options
12 should be narrowed early in the assessment of the site. Then the data-
13 gathering during the field investigation phase can be tailored to meet those
14 needs. This will result in a less costly program and a faster schedule.
15 The Army is conducting the environmental restoration
16 program in conformance with CERCLA as amended by SARA and its
17 implementing regulations and the National Oil and Hazardous Substance
18 Pollution Contingency Plan. As a result, the program is carried out in full
19 cooperation with EPA.
20 In many EPA regions, base closure plans and reports which
21 are provided for review and comment do not receive timely evaluations.
22 Since Army policy is to obtain regulatory concurrence on the work being

1 done by the Army, lack of EPA participation can slow down the progress of
2 the work.

3 Now it has been suggested that for future base closures the
4 Army interact with EPA only at National List Priorities (NPL) sites where
5 EPA has active responsibility. At other facilities, the Army could limit its
6 coordinations to the states. The Department of Defense and State
7 Memorandum of Agreement (DSMOA) can be used to provide funds to states
8 to expeditiously review DOD cleanup projects, thus helping to maintain
9 overall schedules.

10 The Army's experience to date is that EPA and state
11 reviewers change several times during a project. This results in midcourse
12 changes in regulatory philosophy and approach. A consistent approach by
13 regulatory agency reviewers would be of great benefit.

14 Since the base closure environmental restoration timelines
15 are short, an early meeting at the start of the process with regulatory
16 agencies to formalize their review process and philosophy is desirable.

17 In conclusion, I would like to advise the task force that the
18 Army has made significant progress to date in conducting the environmental
19 restoration portion of the base closure program and the Army is dedicated to
20 ensuring the maximum number of sites are restored and returned to the
21 private sector in a timely manner.

22 That completes my testimony.

23 MR. BACA: Thank you very much, Col. Jackson.

1 Are there questions?

2 MR. HOLMES: As most of us know, we are struggling
3 with the Pease Air Force problem and I see representatives from the state of
4 New Hampshire here.

5 The problem we have there is essentially can we deed a
6 contaminated or mildly contaminated piece of property to the private sector
7 so as to permit development at Pease Air Force Base once Pease is closed.

8 The tricky part is the reading of CERCLA Section 120(h)
9 which says essentially that the government -- in this case the Air Force -- in
10 the process of deeding property as opposed to leasing property will have to
11 give a covenant and the covenant will have to say that all necessary remedial
12 actions have been taken to protect health and the environment. That's
13 generally what the statute states.

14 When I was reading to you, on page seven where you
15 stated that on a case-by-case basis statements of condition may be prepared
16 and the property may be transferred or sold while contaminated groundwater
17 is still being treated. This would be in an area where municipal water is
18 available, and then you go on.

19 I'm just wondering whether I'm hearing the solution for
20 Pease Air Force Base problems. That's what we are essentially trying to do,
21 is to figure out how we can basically meet the mandate of the statute to
22 protect human health and environment and at the same time to permit
23 redevelopment to go on.

1 Do you have any cases that you could share with the task
2 force, and particularly with the State of New Hampshire and EPA on where
3 you have actually done a deed transfer of contaminated property and still felt
4 you met the mandates of 120(h)?
5 COL. JACKSON: We're not that far along in the process.
6 What I've given to you is a game plan as a possibility.
7 MR. BACA: Chris, if I may interject, that is one of the
8 questions that we will be discussing in further detail and hopefully we'll
9 arrive at least at a suggestion.
10 MR. HOLMES: I guess my other point I wanted to make
11 is when you have a chance if there are some examples per page nine of your
12 statement, where you are having problems with some of the EPA regions
13 regarding the lack of timely evaluations, you might just well let us know
14 informally so we can help out.
15 MR. GOODHOPE: Could you say a few more words on
16 the preliminary assessment and getting this whole thing started. What is the
17 process for going in and looking at all these installations, how do you begin?
18 I mean do you have private contractors? Do you --
19 COL. JACKSON: At least in the Army we use private
20 contractors to do that particular work for us. The particular process that they
21 use is basically a generic process, use of paper surveys, interviews, going
22 through old archives, files or records associated with that installation that go

1 as far back as feasible just to get any indication what the potential may have
2 been at that installation for contamination.
3 MR. GOODHOPE: Are we gearing up to take care of a
4 larger number of installations or getting the Preliminary Assessments (PAs)
5 done on a larger number of facilities and getting into those very quickly?
6 Is there a process, a mechanism, being developed now so
7 that when the base closings start coming out we'll be able to quickly get into
8 the PAs?
9 COL. JACKSON: We were somewhat fortunate in the
10 Army that we actually have -- in our environmental restoration program we
11 have conducted PAs at all of our installations.
12 What we had to do based upon base closure, we may have
13 looked for some different things now, since now the intent was not just to
14 retain the property but to excess it, so we may have enhanced a preliminary
15 assessment that had already been conducted by looking at things now that we
16 didn't otherwise look for.
17 So in terms of a mechanism being in place to conduct
18 preliminary assessments, within the Army we already had that in place and
19 in fact have completed it all for the five installations.
20 MR. GOODHOPE: The other question I have is there a
21 funding contract?
22 COL. JACKSON: Well, Mr. Torrisi has indicated even for
23 the BRAC 91 which, if in fact it comes to pass, we are already leaning

1 forward in the foxhole, so to speak, where we have contract mechanisms in
2 place to hit the ground running if that comes to pass.
3 MR. GOODHOPE: Would we be able to get figures on
4 FTE or anything like that will be dedicated to jumpstarting the process -- I
5 guess not jumpstarting but expanding the process or people who are working
6 on what you're doing so we could see really who is doing the groundwork.
7 It's nice to know that the Secretary is involved and
8 everything but I think we need to try to assess whether there are enough
9 people within the department to make sure that this process starts unfolding
10 very efficiently and effectively.
11 COL. JACKSON: We can provide that information.
12 MS. SHIELDS: I was wondering if there's a reaction to
13 the suggestion made on page nine regarding restrictions and coordination.
14 Is there a problem with that? I hate to put you on a spot.
15 COL. JACKSON: The bottom line is to speed up the
16 process. Experience has shown us at least in the BRAC I situation that
17 especially the states with that have the resources to act in a timely manner
18 and we can turn around reports like in a six-month period.
19 When we put the EPA on top of that and we can't provide
20 any assistance to them, at least at this particular point in time, and due to in
21 some cases a lack of resources, et cetera, that timeframe extends to about a
22 12-month period.

1 MR. HOLMES: I know there's been some frustration in
2 the services on their desire to deal with RCRA or a desire to deal with
3 CERCLA but not their desire to have to deal with overlapping records or
4 instructions dealing with CERCLA and RCRA at the same time.
5 For the benefit of people in this room that may not be
6 totally wrapped up into the world of this, essentially the issue is CERCLA
7 is a law that mandates that cleanup be supervised at the federal level and
8 RCRA at the state level.
9 I guess my answer to this is that if there are CERCLA
10 responsibilities that you're not going to be able to limit your coordination to
11 the states, it's not going to really relinquish responsibilities on those areas.
12 Clearly if it's an NPL site, there is no way that EPA is
13 going to be out of the act.
14 MS. SHIELDS: No, that's right, but I think you're only
15 talking about something that isn't on the NPL today or might be on the NPL
16 tomorrow.
17 MR. HOLMES: I think that even at non-NPL sites, one of
18 the key issues is going to be accepting which EPA is going to have to be
19 involved and CERCLA 120(h) determinations regarding deeds and covenants
20 as they relate to transfer and so far the states didn't want to be involved in
21 that issue. The states are insisting because of the liability change that EPA
22 be involved.

1 I think EPA can explore, and I don't want to use that word
2 bureaucratically, explore ways to minimize overlapping, and God knows we
3 like to do that.
4 MR. EARL JONES: Are you required to prepare a full
5 environmental impact statement on each installation or are there instances
6 where there are findings of no significant environmental problems that
7 necessitate an assessment only as opposed to a full impact statement?
8 COL. JACKSON: In terms of the NEPA portion of base
9 closure, there are indeed some sites where an environmental assessment is
10 sufficient based on the finding of no significant impact and there is no need
11 to do a full-blown environmental impact statement.
12 However, the approach in NEPA in terms of the Army, the
13 environmental impact statements' focus have been primarily based on what
14 realignment action is a consequence, say, of a closure in terms of moving
15 this thing from here to there, the construction associated with that, what that
16 particular impact is.
17 In terms of the work we're doing, the cleanup and
18 restoration, initially we don't have much information to fold into that
19 particular process. At some point down the line as we get more information
20 in terms of the contamination status and the cleanup requirements, then that
21 information would be folded into an impact statement or environmental
22 assessment.

1 The bottom line in terms of what NEPA documentation is
2 required, we do have installations where an environmental assessment is
3 sufficient and not a full-blown environmental impact statement.
4 MR. EARL JONES: How do you go about prioritizing
5 these projects? What's your criteria?
6 COL. JACKSON: In terms of cleanup at a base closure
7 site, the first part is in terms of what the threat is to human health or the
8 environment, in terms of how fast we want to move in terms of proceeding
9 with cleanup.
10 Secondly, another factor, if all of that is taken care of, then
11 we wold do it in normal due course and then the third or final factor is in
12 terms of what the returns are, the economic returns, to the Department of
13 Defense or the Army in order to meet the 1995 deadline that's been imposed
14 by congress.
15 MR. EARL JONES: Have you had to prioritize any of
16 your activity to date?
17 COL. JACKSON: Well, I guess in general our work plan
18 really is a prioritization.
19 MR. TORRISI: Basically as far as funding is concerned,
20 first those areas that impact human health and the environment; secondly,
21 those where we have interagency agreements or federal facility agreements
22 that have to be met, and then lastly it would be those areas that require funds
23 and that are cost-effective to do.

1 COL. JACKSON: Yes, so all our base closure projects are
2 prioritized in that manner
3 MS. SHIELDS: Wouldn't the NEPA analysis that you were
4 talking about be largely part of the Remedial Investigation/Feasibility Study
5 (RI/FS) process you would have already gone through?
6 MR. BACA: Or the CERCLA process, if you want to
7 extend the question.
8 COL. JACKSON: Not necessarily in that the NEPA
9 analysis that I'm referring to is analysis done to determine the impact of the
10 actual closure of this site and the removal of responsibility that may have
11 been at this site at some other particular site. Some construction may be
12 involved. The movement of equipment, that type of thing.
13 In other words, the economic impact, the social impact in
14 terms of the closure, for example. That's the type of considerations that
15 we're looking at in NEPA.
16 Now when you talk about the RI/FS process, we're talking
17 about where there is a high degree of potential for contamination and now
18 we're going to do specific sampling and analysis to first identify that
19 contamination as well as to characterize and to determine the extent of the
20 contamination whereby we can make some determination what's the most
21 effective or feasible method by which to clean up that particular
22 contamination.
23 MR. BACA: Chris, did you have a question?

1 COL. JACKSON: Now that could become a part of the
2 NEPA documentation but it's not necessarily duplicative.
3 MR. HOLMES: I think the simplest way to explain the
4 NEPA potential CERCLA overlap, it's really two timeframes. One, when
5 you're actually doing the cleanup there's a feasibility study that has to be
6 done and that in many ways parallels the NEPA environmental assessment
7 and the policy of EPA is to do everything in the world to avoid to avoid
8 duplication.
9 Where NEPA kicks in again, of course, is in the base
10 closure context where you're looking at the long-term impact, the impact of
11 significant federal government action, so if you take into account an air base
12 that's being closed and might be re-used again for air transport purposes,
13 then you're already going to have your cleanup problems where NEPA and
14 CERCLA will tend to hopefully be integrated but at the same time you're
15 going to have the long-term far harder questions which CERCLA would not
16 be asking which are, namely, what is going to be the impact on the populace,
17 on the environment of noise generated by the planes.
18 I just had a suggestion which I think would be very helpful
19 for all of us and that is if the services could provide case studies as they go
20 along in their analysis it would be very helpful and I think the case studies
21 should really talk about the problems that you're now encountering and
22 problems that you've solved and how you propose to solve these problems
23 as they relate to cleanup and transfer.

1 I jotted down three areas for case studies that I'm
2 particularly interested in.
3 MR. BACA: I might just tell you that we are going to get
4 into case studies as we get into our agenda but go ahead and offer it.
5 MR. HOLMES: The problem with all of this NEPA/
6 CERCLA work is that you deal with real world and hypotheticals and you
7 can get so lost in the hypotheticals you never get down to what the real
8 problem is.
9 I just think the case studies ought to cover how
10 uncontaminated and contaminated property has and could be transferred,
11 where the specific bottlenecks are relating to cleanup and transfer at the state
12 and federal level and how the bottlenecks have been or might be overcome.
13 To share those with the members of this task force,
14 particularly someone that may not live and eat this problem day in and day
15 out, would be helpful.
16 MR. BACA: We'll cover your first suggested case study
17 today and we'll pick up on the more complex problems.
18 MR. GOODHOPE: One more question. On page eight
19 you talk about the late release of funds. Why was there a late release?
20 COL. JACKSON: That's a good question. I'm not sure
21 I'm in a position to answer that question.
22 MR. GOODHOPE: I didn't mean to put you on a spot but
23 --

1 MR. BACA: I'm told that the Congress appropriated the
2 money late but if that is a concern in the process that's something that needs
3 to be identified and suggestions made to resolve it.
4 MR. JONES: You used the terminology that it's an
5 objective to cleanup, where there is contamination to unrestricted use. We
6 experienced confusion because of the lack of clarity of this terminology
7 particularly as it involves our disposal of a property I choose not to identify.
8 There is quite a bit of controversy between the purchaser and the Department
9 of Defense concerning cleanup of the property to unrestricted use.
10 Why wouldn't the objective be to decontaminate up to a
11 standard as opposed to unrestricted use because it seems to me unrestricted
12 use lies to a goodly extent in the eyes of the beholder.
13 Do you have any comments? That terminology seems to
14 have cropped up over the past few years -- cleanup to unrestricted use
15 COL. JACKSON: I think the basis for that particular
16 comment or that particular terminology unrestricted use was to get the point
17 across to all concerned, to include the public as well as the private sector,
18 was that the Army was not going to walk away from any properties that may
19 have been contaminated and that if indeed it was go to be transferred or
20 excessed it would be cleaned up a level that's appropriate to whatever use the
21 buyer or whoever is going to get the property would use it if it was feasible
22 to do so.

1 If it was going to be property where there were go to be
2 child care centers placed there, then it would be cleaned up to any level
3 that's appropriate for child care centers if it's feasible and economical to do
4 so.
5 However, you'll note there is a caveat in my statement that
6 also says on a case-by-case basis the Army will consider restricted land use
7 because there are situations from either an economical or technological
8 perspective where it may not indeed be feasible to clean it up to unrestricted
9 use.
10 MR. BACA: There's a difference in what you're saying.
11 In cleaning up to unrestricted use versus cleaning up to the ultimate use. It's
12 a whole range apart.
13 COL. JACKSON: The terminology used in Army's policy
14 is that it's the Army's goal to clean up all base closure properties for
15 unrestricted use. That would be any use, but as one proceeds in that
16 particular process if you recognize that is not feasible then that may be
17 reconsidered.
18 MR. BACA: I see that then as a problem that perhaps this
19 task force needs to address. Wouldn't it make more sense to have the goal
20 that you're committed to clean up to whatever ultimate use the property is
21 going to be?
22 Rocky Mountain Arsenal is an example. That's going to
23 be a wildlife refuge and would it make sense to clean up to subdivision use.

1 COL. JACKSON: No, but the Army's policy is based upon
2 the fact that normally when we start this particular process we have no idea
3 what the end use is going to be.
4 Once we determine -- In fact, that was one of our suggestions.
5 If we can determine early on what the potential end use is,
6 then the cleanup process will be modified accordingly.
7 MR. BACA: You will be able to prescribe a cleanup
8 standard.
9 COL. JACKSON: A cleanup standard, that's correct, but
10 not knowing what the ultimate use is going to be the Army's policy is at least
11 we're going to start out with the idea that we're going to clean up for
12 unrestricted use.
13 MR. EARL JONES: It's stated on page eight as an ideal
14 of the program. It's like giving clear title to a piece of land. We would like
15 to transfer it with no restrictions on it so that the buyer or the next user
16 doesn't have any problems but obviously that's not always possible.
17 MR. TORRISI: It's been the Army's understanding that the
18 GSA would not accept property for sale unless it's transferred over with that
19 type of terminology. That is, because of past problems that GSA has had
20 with the sale of property that at some time was considered to be contaminated
21 subsequent to the sale that GSA's policy has been -- it was my understanding
22 that they would not accept property unless it was presented to them in that
23 condition.

1 MR. JONES: I won't comment on that.

2 MR. BACA: Other questions of Col. Jackson?

3 You hit upon this overlapping jurisdiction with the
4 Environmental Protection Agency and the states and local regulatory
5 agencies. What in our mind would be an ideal situation that would allow us
6 to expedite remediation? Is here a logical solution?

7 Chris mentioned this area as one that we need to pursue but
8 in you experience what would be a logical way of approaching it if we lived
9 in a perfect world?

10 COL. JACKSON: If we lived in a perfect world and there
11 were no statutory requirements as Mr. Holmes has alluded to, the minimum
12 regulatory coordination that was necessary to ensure that we're doing what
13 we're supposed to do would be the best.

14 Our experience has shown that the bottleneck is in the
15 coordination process with the regulatory agencies, whether it's state or
16 whether it's federal.

17 What has helped somewhat, at least from the state level, is
18 the DSMOA process which provides them resources to get whatever
19 resources they need to expedite their process and that has helped.

20 It's the coordination that's required as we go through the
21 process that takes a while. How one overcomes that based upon the statutory
22 requirements and other requirements, I don't know.

1 MR. BACA: Do you find that there is perhaps some
2 confusion out there as to who has authority? Is it perhaps not clear?
3 COL. JACKSON: In terms of like the state and federal, I
4 don't think it's clear. There is some confusion.
5 MR. BACA: Does that result from statute or turf?
6 COL. JACKSON: My gut tells me it's turf. If by some
7 means it could be folded into one rather than the state tells you one thing and
8 the EPA telling you something else, if we could go to one -- for lack of a
9 better description --regulatory agency that may be combined or whatever and
10 get the report out rather than having to deal with two separate ones, I think
11 that would help.
12 MS. McDONALD: Do you have memorandums of
13 understanding with different state agencies or are you trying to work out
14 those type of arrangements?
15 COL. JACKSON: That is being done at the Department of
16 Defense level in terms of DSMOA, which stands for Department of Defense
17 and State Memoranda of Agreement, where basically the Department of
18 Defense will support or fund the state to assist them in the review process for
19 DOD environmental restoration work.
20 MS. McDONALD: Has that helped? That's obviously
21 been helpful, I would imagine.
22 MR. BACA: That's a new approach. I think it's going to
23 prove very helpful in resolving who has responsibility.

1 We also enter into interagency agreements, bring all parties
2 to a table, but in a sense that's good news and bad news. The good news is
3 that it does bring all the responsible parties to the table and the bad news is
4 that we have to do it in the first place, that laws aren't clear enough so that
5 authority is specified.
6 COL. JACKSON: As Mr. Reese was indicating to me,
7 probably one approach, if a regulatory agency, state or EPA, could be
8 designated as lead very early in the program, that would assist, too, because
9 for a long time you don't know who is really running the show.
10 MR. BACA: You indicated in your testimony at page six
11 that it takes 20 to 46 months do to an RI/FS process. What makes the
12 difference?
13 COL. JACKSON: Between the preliminary --
14 MR. BACA: Why does it take from 20 to 46 months?
15 COL. JACKSON: It would depend upon the installation
16 and the contamination problems that's there. The greater the problem and
17 the more extensive the problem, the longer the RI/FS process.
18 MR. BACA: Does overlap factor into the delay?
19 COL. JACKSON: Right, and at least 12 to 18 months of
20 that is the review process.
21 MR. BACA: In cleaning up these sites, did you arrive at
22 an understanding of what clean is once you determine ultimate use? Is that
23 an activity that you guys engage in?

1 COL. JACKSON: To an extent and that's why we use the
2 term "statement of condition" rather than, say, a statement of clearance,
3 because it may not be in a pristine condition at the time we are ready to
4 release it but it's clearly delineated what the condition of that property is at
5 the time of release that's consistent with whatever the ultimate end use would
6 be of that particular property as well as neighboring properties.
7 So in terms of how clean is clean, clean may not be a
8 hundred percent.
9 MR. BACA: The statement of conditions, though, is the
10 document that would transfer the property with at least a delineation of the
11 condition of the property, is it not?
12 COL. JACKSON: That's correct, condition of the property
13 as it pertains to contamination. It doesn't mean that the property is
14 completely free of contamination. That's why it's called condition rather
15 than clearance.
16 MR. BACA: You talked about no further action. What
17 does that mean?
18 COL. JACKSON: For example, after a preliminary
19 assessment has been conducted, it was determined that the property in terms
20 of being prepared for excess or for sale no further investigative studies or
21 cleanup or remedial actions were required.
22 MR. BACA: Do you keep records of these decisions?
23 COL. JACKSON: Yes, sir.

1 MR. GOODHOPE: I'd like to go into a point that you
2 raised on the RI/FS process taking 20 to 46 months; you say efforts are
3 underway to expedite these schedules.
4 Could you describe those efforts and are we going to run
5 into a real bind? There are only a finite number of people that you can
6 procure services from out there and it may be that they're getting more
7 money from the private sector to go and do the work that they did out there
8 rather than from government contracts.
9 COL. JACKSON: We have found -- our experience has
10 shown that technically there's not much more that can be done to speed it up.
11 I mean you could just pour more money into it and that type of stuff, but
12 there's just certain hoops one has to go through that have certain time
13 intervals and that is primarily the problem.
14 The efforts that I've indicated were ongoing, and this is
15 strictly internal to the Army where the Army leadership would have
16 responsibility for environmental matters. We're making an effort with both
17 the EPA and state regulatory agencies to see what could possibly be done to
18 streamline the review process.
19 Technically, we found out that there is a law of diminishing
20 returns there at some point that even if you had more resources based upon
21 the hoops you have to go through and the intervals associated with that, it
22 wouldn't speed the process up that greatly.

1 MR. HOLMES: Getting back to my point about the case
2 studies, if you have specific examples that you can bring before the task
3 force to lay out where the coordination problems have occurred.
4 COL. JACKSON: We'll do that, sir.
5 MR. HOLMES: It would be very helpful because we could
6 look at what's imagined and what's real.
7 MR. BACA: Other questions? If not, we do have a few
8 minutes and I will allow the audience perhaps to ask any questions that any
9 of you might have. I would ask that you identify yourself for the record.
10 If not, at this point we'll take a break and reconvene at
11 10:30.
12 (Recess.)
13 MR. BACA: What we would like to do next is to convene
14 a panel of experts. Peter, you want to come up?
15 The purpose of this panel is to review case histories. The
16 intent is not to review a particular base but to review a particular situation
17 that existed at a base that was being closed, and hopefully through this
18 process we'll understand unique or conditions that presented problems at
19 some of these bases.
20 I might also indicate that the purpose of this task force, as
21 I indicated, is to advance solutions to come up with ways of expediting
22 remediation and it's not to bash agencies and of course I apologize for
23 picking on EPA. It's so easy to pick on them.

1 MR. HOLMES: You know, it's so much fun sitting here
2 because normally I sit with Peter as everybody bashes me. It's great.
3 MR. BACA: I hope that the testimony presented will
4 highlight some of the problems that we have already experienced. Discussing
5 Pease Air Force Base is Bob Cheney, an assistant attorney general for the
6 State of New Hampshire.
7 MR. CHENEY: I'm an associate attorney general,
8 actually, just for the record. Just a little bit about my background and then
9 I want to introduce you to Pease Air Force Base just very quickly.
10 As an associate attorney general, until this Pease problem
11 overtook my life, I ran at one point the division of public protection. Before
12 that, I was formerly the chief of the environmental protection bureau in the
13 New Hampshire attorney general's office. I've worked there for the last --
14 just a little over ten years and spent most of my time on environmental
15 work, most of my time on CERCLA RCRA enforcement cases.
16 In December 1988 Pease was announced as one of the bases
17 on the first round of closures and then we found out we were number one on
18 the list. The attorney general at that time asked me to start following this
19 project and now I think it follows me.
20 I started working on it a few days a week and now I work
21 on it every day of the week and then some. They are massive projects.
22 If I may take a few minutes, I really want to introduce you
23 Pease Air Force Base. I have just six --

1 MR. BACA: Bob, don't feel rushed. We have plenty of
2 time.
3 MR. CHENEY: I feel like it could take two days.
4 Pease Air Force Base is located in the southeastern quarter
5 of New Hampshire. The base is located right adjacent to a salt water estuary
6 fed by the Piscatagua River out to the Atlantic Ocean.
7 The base is 4,300 acres in size. This is the south end of the
8 base. There is roughly 1,000 acres devoted to the flight line here. There is
9 another area down in this corner that abuts the Great Bay area that's
10 designated on our redevelopment plan for a wildlife refuge, about 1,100
11 acres.
12 There's another roughly 550 acres of wetlands spread
13 throughout the base. We have 22 areas identified in our interagency
14 agreement and consideration that some of those be dropped from the list.
15 We have 160 underground storage tanks here as well, many
16 of which have been pulled but there are some residual problems in some
17 areas.
18 In its heyday, the base had approximately 3,500 military
19 personnel, 100 civilian employees, 400 to 500 dependents. It was a
20 community of a little over 10,000 people.
21 It's bordered on the north here by the town of Newington.
22 Actually the base splits Newington in half when they built the base in the
23 '50s. There's 870 people in the town of Newington and on the south side of

1 the base there is the city of Portsmouth which has about 27,000 people. The
2 entire population of the state of New Hampshire, we just passed a million
3 here in the last census. We're not a big state.
4 This is the base housing area here. This is Portsmouth
5 Avenue right through here. This was generally the industrial area of the
6 base. This was the office operations area. This was the housing area.
7 Focusing in here a little bit in the industrial area, this is the
8 area through here keyed to redevelopment of the base.
9 What we're proposing to do is to take a public benefit
10 transfer under the Federal Surplus Property Act of the airport. This is a
11 transfer that's sponsored by the FAA and would result in the creation of a
12 public airport at the base.
13 That is my main goal in life, I suppose, right now, is to try
14 to assist the state agency that was created here to bring this public benefit
15 transfer about.
16 One of the main issues that we are now wrestling with is
17 one that people have been talking about this morning which is getting back
18 to the CERCLA 120, the proposed transfer.
19 Just very quickly as we focus in here in terms of waste site
20 problems -- this, by the way, is the Air National Guard area.
21 The active military mission here ceased in about last
22 summer. We used to have FV1 bombers, KC135 tanks. Those air wings
23 were moved out last summer, completed in October. Our last active -- this

1 base was closed as an active military installation except for the Air National
2 Guard on Easter Sunday of this past year so these buildings now are all
3 empty. There are no cars here. There are some planes down in this area
4 where the Air National Guard is but the base is in caretaker status.
5 There are 13 civilian Air Force employees who make up the
6 disposal site management team and the Air Force has contracted with E. L.
7 Pan out of Virginia Beach to serve as caretaker. The entire base now is in
8 caretaker status.
9 What we're trying to do here in the industrial
10 redevelopment area primarily it's TCE contamination, primarily from the
11 groundwater. There is a site over here. There's a site at the edge of this
12 building, the old industrial wastewater treatment plant. This is the largest
13 tank on the base called the black hangar.
14 Maintenance shops over here and this grassy area between
15 these two buildings we have another waste site area. From each one of these
16 waste sites we have plumes of contamination. Generally the overburden
17 groundwater flows this way. There are bedrock troughs.
18 The basic point I'm trying to make is that once you get into
19 the issue of groundwater contamination your problem becomes very, very
20 difficult to identify what it is that is contaminated and what is not
21 contaminated.
22 This is the black hangar. This is the waste site area in the
23 back. The black hangar is an area that's extremely important to us. We

1 have a very major client which would be the cornerstone to our
2 redevelopment effort here at the base and go a long way towards making this
3 a successful redevelopment.
4 The black hangar itself is not an area of concern but it is
5 surrounded in by areas of concern. There are -- we now know based on
6 some additional sampling and we just got the results back the other day, that
7 there probably is detectable levels of contaminants really throughout this
8 whole area right here. Our preliminary information is that they are below
9 Maximum Contaminant Levels (MCLs).
10 The base drinking water supply is actually right out here.
11 This is really much further than it looks. This ramp here is I think over a
12 couple thousand feet wide and this is another thousand feet on this grassy
13 area that's out herein the middle.
14 That's part of the base drinking water supply. It's been
15 used for years and years and the whole aquifer underneath the base here is
16 one of the largest aquifer under the base here is one of the largest aquifers
17 in southeastern New Hampshire. They've been monitoring that under the
18 Safe Drinking Water Act for years.
19 Yes, there are detectable levels of TCE in there but they are
20 under MCLs.
21 I'm going to refer to it again later but keep in mind when
22 we're talking about trying to re-utilize this area all the data is not in yet but

1 based on the preliminary data it looks like, yes, we have detectable levels
2 and it looks like they are at or below MCL.
3 What does that mean in light of CERCLA 120(h)? This is -
4 - In the process of doing a public benefit transfer, especially for airport
5 purposes, you work with the sponsoring agency and ours is the FAA.
6 Part of the process of putting together the application for
7 the public benefit transfer is the creation of this document which is one of six
8 plots of an airport layout plan.
9 What this shows is what the Pease Development Authority,
10 which is the agency in charge of the redeveloping phase, says to do. The
11 dark line here represents that area of the base that the state would like to take
12 by public benefit transfer in this process, again accepting out this Air
13 National Guard area which remains a federal enclave.
14 This is all under negotiation right now with the FAA and
15 the Air Force. This represents the state's position and not necessarily agreed
16 to by the FAA or the Air Force.
17 The re-use environmental impact statement came out and
18 was delivered to us yesterday. The significance of that is that 30 days from
19 June 22nd, July 22nd, the Air Force can issue a Record-of-Decision (ROD).
20 Once the ROD and the Environmental Impact Statement (EIS) are issued, at
21 least theoretically they can move forward to transfer the base.

1 We are working now to finalize our public benefit transfer
2 application. One of the obligations on the state is to come up with a
3 proposed instrument of disposal deed and a deed description.
4 The agency I represent, we hired a surveyor yesterday.
5 Now we come down to the very practical problem of drafting the deed and
6 what is and what can be transferred.
7 Let me conclude at the screen here by just again showing
8 you where some of our areas of concern are.
9 The industrial site area is a concern. I pointed out these
10 locations here. Out along our boundary we have the largest area, public
11 landfill number five up in this area here.
12 We have training area two, our only offsite plume migration
13 impacts what's happening down here. We have more waste sites in this area.
14
15 This wetland area up here, there are two waste sites
16 impacting where we draw the lines up here.
17 So I now a confronted with a very real problem and a very
18 short time schedule for trying to figure out how we get a public airport up
19 and running there, and how we get transfer of the title from the Air Force
20 to the State of New Hampshire.
21 If I can just talk for a minute about what the economic
22 impact has been from the closure of the base, I won't go into a great deal of
23 detail but just to put it in context.

1 The Air Force, though they were not required as part of the
2 NEPA process, did do a socioeconomic impact study as well as the regular
3 NEPA study and in that study they indicated that as a result of closure of the
4 base we are probably losing somewhere on the order of 6,500 to 7,000 jobs.
5 Again remember the size of the communities that we're talking about.
6 In addition to that, the nearby Portsmouth Naval Shipyard
7 has been laying off people over the past year and in light of the recession that
8 we're now in, this has had a devastating impact on the State of New
9 Hampshire and our economy, and this issue is indeed the primary issue
10 facing the political leaders in New Hampshire.
11 We do have an IAG signed at the base. We began
12 negotiations--I think it was in November of '89. The negotiations took a
13 year. Again, remember we were the first base to close under base closure
14 and realignment. We had the first IAG at a closing base and a lot of new
15 issues cropped up in terms of what we should be doing in that IAG.
16 For example, the whole issue of moving redevelopment
17 along at a fast pace. As the state of New Hampshire, we want some control
18 over that redevelopment process and how quickly we can restore our
19 economy but in the IAG process we have no control at all or very little
20 control.
21 In the IAG process, first of all the Air Force controls the
22 development of the study and controls the flow of funds, working together

1 with congress. It's not something that's controlled by the state of New
2 Hampshire.
3 In terms of signing off on an IAG, you're waiving your
4 rights under RCRA, you're waiving your rights to pursue the Air Force if
5 funding is not available.
6 The way we tried to work around that is we inserted into,
7 after much intense negotiation, an opt-out provision into the IAG so that if
8 the Air Force pursues funding and doesn't get it, we can opt out of the IAG.
9 They have to have a year to try to pursue this funding but if they don't get
10 the funding, we can get out and pursue what other remedies we may have,
11 if we can resurrect RCRA claims or some other state law claims, we're not
12 bound.
13 In the decision-making process, an issue that developed was
14 in dispute resolution. The way the dispute resolution process is set up in
15 IAG is that the parties get together and you keep bumping it up to a higher
16 level but the buck, so to speak, finally stops with the administrator of the
17 EPA. They get to make the final decision on any given issue dispute in the
18 IAG.
19 One of the concerns that the state of New Hampshire had
20 in that regard is that in this process, at least as to the Air Force and the state
21 of New Hampshire in terms of transferring the property, there is a great deal
22 of mutual incentive.

1 If you accept the fact that your base is going to close, which
2 New Hampshire has, then the Department of Defense wants to sell their base
3 and the state of New Hampshire, we want to redevelop the base and restore
4 the economy.
5 There's a lot of mutual incentive there that I think can work
6 positively and has worked positively in this process that maybe often you
7 didn't find in other interagency agreement processes where it was just a
8 question of an ongoing installation and the speed at which they were cleaning
9 up.
10 The base has no particular incentive if they're not closing
11 other than the force of law and the force of the command structure and all
12 of that.
13 There are new incentives here in base closure and we've
14 taken advantage of those but the agency that has the final say is the EPA, and
15 the EPA does not have a direct incentive in terms of consideration for
16 economic restoration issues as opposed to environmental restoration issues.
17 I'd just like to note for a minute on one point. To the
18 extent that any of my comments sound critical of any particular agency,
19 either Department of Defense or the EPA, I want them to be construed as
20 being institutional questions.
21 I would like to state for the record that in working through
22 this process we have had a great degree of cooperation from the Department

1 of Defense, particularly the Department of the Air Force, and Mr. Holmes
2 and his office and our folks in Region One EPA.
3 The individuals in the process are working very hard and
4 trying to make things come together and we certainly do appreciate that, but
5 institutionally I think there may be some room for improvement and I'll try
6 to mention some of that as I go through my remarks here.
7 MR. BACA: Bob, I appreciate those last comments.
8 That's really what we're after, to identify institutional problems that should
9 be worked on. Thank you.
10 MR. CHENEY: Focusing in on the parcelization issue for
11 a moment, what the statute requires -- CERCLA 120(h) as I read it doesn't
12 prohibit transfers. What it does is it forces you to distinguish between
13 property requiring warranties and property not requiring warranties.
14 In the IAG that we've signed, I think we recognized that in
15 terms of designating areas of concern within the whole base. The whole base
16 was listed on the NPL so as we were going through the IAG process we had
17 to find a way to again start to parcel the base in order to see if some sort of
18 transfer and some sort of transaction could go forward.
19 I think that the main problem in dealing with CERCLA 120
20 as it exists is a very practical one, especially if you're number one of the list
21 and you're this far along in the process, how do you determine what property
22 requires the warranties and what property doesn't require the warranties?

1 New Hampshire discussed this in the context of the IAG
2 negotiations. You have to comment that in the context of the IAG
3 negotiations the federal parties did not want to focus on the transfer issues.
4 They wanted to deal with the environmental issues.
5 Economic concerns and economic considerations from their
6 perspective were outside the IAG process. Nevertheless, they were very
7 critical to the State of New Hampshire's willingness to enter into an IAG.
8 At the point in time we entered into the IAG we had to be
9 reasonably assured that we could go forward with some sort of
10 redevelopment, that we weren't signing on to a document that was going to
11 tie our hands and then lose total control to federal agencies and lose control
12 over our redevelopment process.
13 In the end, it's a little bit of a leap of faith on the part of
14 the state of New Hampshire. There were basically two tacks to take. One
15 was adversarial and one was cooperative. We opted to work cooperatively
16 with the federal agencies at the risk that we had lost some of the control over
17 the process by signing the IAG.
18 Within the context of the IAG we talked about this issue of
19 how do you delineate. The only consensus we reached at that point was that
20 when we had a provision in the IAG that at least by the time the remedial
21 investigation is completed that all the remedial project managers would be
22 willing to draw lines around the areas of concern, i.e., the areas requiring
23 the warranties.

1 At this point in time, now a year from when those
2 discussions took place and being a lot more attuned to the issues here and the
3 transfer process, for New Hampshire and where we sit today and with the
4 agreements we have pending, that's not good enough.
5 It turned out, and this starts to get into where base closure
6 and CERCLA don't meet.
7 The IAG identifies potentially remedial investigation as the
8 vehicle for identifying what you can transfer and what you can't transfer. I
9 think you heard from the prior speaker how long that process takes and that's
10 the case at Pease.
11 Right now the Air Force has sites at Pease divided up into
12 different groups, actually four groups of sites, and they all have RI/FSs
13 coming due at different points in time.
14 That industrial area that I showed you, the remedial
15 investigations in that area are not due to be complete until 1993, yet in 30
16 days the Air Force wants to be ready to transfer the base. Obviously a major
17 disconnect here.
18 The other concern with waiting that long is the planning
19 process. I showed you the airport layout plan which represents what we
20 want to do in terms of the transfer and also what we want to do in terms of
21 redevelopment.
22 That whole process cost the state of New Hampshire with
23 some federal grants $1.2 million. We had to go forward with planning. The

1 base closure train had left the station. We were told we are closing, you ar
2 first, the planes are gone, the caretaker is in so we had to start planning.
3 Replete throughout our planning documents are caveats
4 from our planners saying this is what we would do; however, we don't know
5 what the hazardous waste issue impact will be, we don't know how big the
6 sites will be, we don't know whether or not all this land can ultimately be
7 transferred.
8 That is an extremely important issue to resolve in this whole
9 process. My recommendation there is -- Obviously I think we've got to
10 come up with another process, another mechanism. I don't have any precise
11 outlines of how this would work at this point. I do see --
12 MS. SHIELDS: A mechanism to speed up the transfer?
13 MR. CHENEY: To allow transfer to go forward and to
14 identify what can be transferred given the covenants and where you just can't
15 give the covenants therefore you can't transfer and again the covenant that
16 you're giving is what's necessary -- that remedial action necessary to protect
17 human health and the environment has been taken and this is an issue that we
18 are currently trying to work our way through.
19 I see some potential for doing it at an earlier stage, maybe
20 a site characterization stage which comes part way through the remedial
21 investigation process.

1 Now this concept of doing it earlier won't apply in every
2 circumstance. You may have circumstances where it becomes almost
3 intuitively obvious that there's not a big problem here.
4 For example, I referenced the area around the so-called
5 black hangar where we don't think all the preliminary information is showing
6 that there may not be a significant problem and in fact the levels there may
7 be lower than what's coming out of the base drinking water supply, all of it
8 being under maximum contaminant levels.
9 It seems like there is room here for a process to go forward
10 in conjunction with some institutional controls, you know, don't use this
11 property for day care centers and don't put additional wells into the
12 groundwater, but it seems like there is room here to develop an alternative
13 process to the formal RI/FS ROD process to get to some sort of closure on
14 any given site.
15 Now on other sites, the contamination just may be so high
16 or so difficult to get a handle on that you wouldn't want to make a decision
17 until you had gone through the whole ROD process.
18 I think in the long run, too, there has to be a way to start
19 separating surface and soil issues from groundwater issues.
20 My experience in doing superfund is that in the area of soils
21 you can identify the extent of the contamination pretty quickly. Very early
22 on in the process you can find out where it is and what the levels are and
23 start to quantify your problem.

1 Groundwater is a very much more difficult problem. You
2 identify a problem in the soils, you have some available remedies of either
3 onsite treatment or taking it offsite and incinerating it. You can remove the
4 problem in fairly short order.
5 With groundwater, pump and treat scenarios, if that's
6 what's determined is necessary, will take years, 10, 20, 30 years. This again
7 on the base closure you're given five years to close all these bases.
8 If what CERCLA 120(h) means is that you have to have
9 completed pump and treat before you can sell it, you're not going to close
10 anything in five years and may not close anything in 15 years.
11 I think we all have to work at it and maybe it will need to
12 be legislated ultimately, but I think we all need to work on a process of
13 separating the groundwater and the soils and if you want to call them
14 different operable units to deal with them differently on different time
15 schedules with different types of restrictions and institutional controls.
16 MR. BACA: Thank you and we'll go on to our next
17 panelist. You've raised some excellent issues.
18 Our next speaker will be addressing the situation at Chanute
19 Air Force Base. Mr. Terry Ayers is the Director of the Federal Sites
20 Management Unit in the State of Illinois.
21 MR. AYERS: I'd like to start out with a little bit of
22 background of Chanute Air Force Base. It is located in Rantoul, Illinois,
23 which is 150 miles south of Chicago, and it is scheduled for base closure.

1 The base began operations in 1917. Consequently, there
2 are any historical or pre-regulatory environmental problems at the base.
3 There are at least 23 areas of environmental concern on the
4 base. These include four landfills, a dozen abandoned underground storage
5 tanks, several fire protection training areas and three storage areas.
6 Despite the complexity of studying and remediating these
7 various areas, I believe that the Department of Defense has been forthright
8 and responsible in tackling this sizeable task, particularly since IUPA signed
9 the DSMOA in September of 1990, our relationship and communications
10 with DOD has significantly improved.
11 To aid in this improved relationship, we signed a four-party
12 memoranda of understanding with DOD several months ago. The MOU
13 includes the village of Rantoul where the base is located and the Illinois
14 Department of Transportation.
15 When one analyzes the good relationship, one has to give
16 some of the credit to DOD because of their commitment to the installation
17 restoration program.
18 To analyze Illinois EPA's part of the relationship, you have
19 to gauge where the Illinois EPA is in the regulatory matrix.
20 Illinois is one of the few states that has been delegated
21 nearly every major environmental program. Illinois now has primacy for
22 implementing the RCRA and Hazardous Solid Waste Amendment (HSWA)

1 Acts, the Clean Air Act, the Clean Water Act, the leaking underground
2 storage tank program.
3 We have a midsize state superfund program and have been
4 designated as the lead agency for 16 NPL sites in the state.
5 This cross program coverage and experience enables Illinois
6 EPA to give DOD comprehensive and consistent answers and comments on
7 study documents and reports.
8 Furthermore, the cleanup standards that are developed by
9 Illinois EPA are the same, regardless of whether the site is an underground
10 storage tank or RCRA unit. Illinois EPA's cleanup standards are health-
11 based and not risk based.
12 Chanute Air Force Base is also very lucky that it is not on
13 the national priorities list. The necessary evils that go along with the NPL
14 CERCLA process would significantly slow the pace of remedial work at the
15 base.
16 While Illinois EPA is comfortable with the CERCLA
17 program and its guidance, we believe the CERCLA program is long overdue
18 for a state delegated process. This is not to say that U.S. EPA has not
19 improved the program over the last few years but that too many issues and
20 too many sites are there for just U.S.EPA to deal with alone.
21 DOD sites and non DOD sites on the NPL may double over
22 the next five years. All state and federal environmental agencies must be
23 able to pool their resources.

1 The laws would suggest duplication of effort between the
2 state and federal governments must be changed. The tasks at hand and in the
3 near future are too monumental for us to do twice.
4 That concludes my statement.
5 MR. BACA: Thank you very much, Terry.
6 Our next speaker will be addressing the issues at Norton Air
7 Force Base. Col. Peter Walsh is Director for Environmental Quality at the
8 Office of the Civil Engineer.
9 COL. WALSH: Good morning, Mr. Chairman, and
10 members of the task force.
11 I am the director of the environmental quality and in that
12 responsibility I have under me compliance, cleanup, planning, natural
13 resources and pollution prevention.
14 Focusing on my cleanup responsibilities, we in the Air
15 Force have a goal to have all our contaminated sites finished by the year
16 2000. By "finished," we mean either cleaned up or in some form of final
17 remediation.
18 However, over the last couple of years since we've been
19 working towards this goal we've been thwarted because of many concerns,
20 much of it related to the regulatory processes, and also including some of our
21 contracting processes and, to a certain degree, the lack of motivation within
22 the Air Force.

1 I think we've got the motivation within the Air Force
2 squared away, right from the top on down, and we have been working with
3 the regulators, with EPA in particular, in looking at certain measures to
4 speed up the process.
5 Why I welcome this opportunity to speak to you today on
6 the case history at Norton Air Force Base is that I hope by analyzing what's
7 happening with the base closures that the solutions that we can come up with
8 to break through some of these obstacles that we're identifying can then be
9 parlayed over to the total programs, the rest of the Air Force programs, and
10 allow us to meet that year 2000 goal.
11 I think if we can come up with some breakthroughs here
12 based upon what's happening in base closures, it has a great potential to
13 solve many more problems beyond just base closures.
14 What I want to do today is talk about some of the problems
15 that we have encountered with regard to the interim reviews of Norton Air
16 Force Base and discuss some of the impediments that we see for the final
17 conveyance of Norton Air Force Base into the private sector, which we hope
18 to have happen in June of 1994.
19 We in the Air Force are very much concerned about the
20 impact that closing a base will have on the community. As was stated by
21 Mr. Cheney, it has a significant impact, so what we are trying to do is
22 minimize the interruptions to the community by trying to facilitate a smooth
23 transition to a productive private use.

1 To facilitate this transition, we accommodate development
2 authorities where possible by leasing facilities to them for transition to re-use
3 activities prior to the actual closure of the base. In fact, we are doing that
4 at Pease and we also are attempting to do that at Norton so that the
5 authorities can sublease the facilities to private companies that then can
6 provide civilian jobs to the community and then the overall effect is to create
7 jobs to boost the local economy and to provide a tax revenue.
8 Now to date the Air Force has entered into interim leases
9 with the Inland Valley Development Agency at Norton Air Force Base.
10 To give you some background on Norton Air Force Base,
11 we started studying the base back in 1982 and we identified 22 potential
12 contaminated sites. The one that's of primary interest to our discussions
13 today is a plume of TCE in the groundwater which extends under the central
14 portion of the base, including the facility that we were hoping or that we
15 were looking to have leased by Lockheed Corporation.
16 These contamination levels range from a couple of parts per
17 billion to as high as 4600 parts per billion. There is an interim remedial
18 action being worked under CERCLA to remove and treat some of the TCEs.
19 In other words, what we are going to do is pump from the
20 center of the base and hopefully prevent further expansion of the plume.
21 This is an interim solution and to be accomplished this year, and then we're
22 going to continue work on the RI/FS to be completed in September of 1992
23 from which we hope to have the final remediation determined.

1 Now Norton Air Force Base is also on the national
2 priorities list and a three-party agreement was signed back in 1989 with the
3 EPA Region Nine, with the state and with the Air Force.
4 Now let's look at the case history. Lockheed signed an
5 interim lease for the us of docks three and four of a hangar at Norton Air
6 Force Base in July 1990 and Lockheed planned to use that particular hangar
7 to modify and maintaining Boeing 747 aircraft and ultimately Boeing was
8 looking at obtaining a permanent interest in other docks and other hangars
9 and other administrative facilities on the base upon the closure of Norton Air
10 Force Base.
11 Now this hangar that they were going to lease had been
12 used by the Air Force since the 1960s to repair cargo aircraft, such as the
13 C135s and the 141s, and in doing so they were working on the fuels and
14 hydraulic systems, they were using TCEs and solvents and they also had
15 small electroplating shops within the hangar where they had the likes of
16 cyanide and chromium.
17 Now prior to commencing construction modifications to the
18 hangar, Lockheed undertook engineering studies to determine where the
19 concrete floor could support the 747 aircraft and when borings were taken
20 they determined that they would have to replace the floor with about 12 to
21 14 inches of concrete.
22 During the time they were conducting these engineering
23 investigations, they also discovered that there were volatile organic

1 compounds (VOCs), primarily trichlorethylene, within the top three feet of
2 soil underneath the floor.
3 Now we notified the parties to the IAG in November of
4 1990 of this fact and those members insisted that the Air Force take action
5 for removal of the contaminated soils in accordance with the IAG and
6 consistent with the National Contingency Plan.
7 The National Contingency Plan basically identifies two
8 types of remedial actions allowed. One is time critical and the other is non-
9 time critical, and the type that you take is very much dependent upon the
10 cost, time to complete the removal and whether there is imminent or potential
11 threat to human health and the environment.
12 As a general rule, the time critical removals can be done in
13 two to three months. The non time critical removals can take as long as
14 eight to 12 months, so we're talking a considerable spread here.
15 Now the point you need to know -- this is in November
16 when a notification was made and Lockheed had a commitment to start work
17 in the building in December of 1990 to meet some of their contractual
18 obligations.
19 Now the Air Force spent considerable time and effort with
20 both the EPA and the California Department of Health Services, the two
21 other signatories to the IAG, to determine what action to take.
22 Ultimately the decision was made by the Air Force to take
23 the action based upon the time restricted requirements and basing it on first

1 to protect the workers in the hangar and second to prevent further spread of
2 the contaminants, and third to expedite Lockheed's ability to lay the new
3 floor and commence its new operations there.
4 Both the EPA and the state of California had reservations
5 on whether the correct application of the two methods was applied. In other
6 words, they felt that the expediting to support Lockheed's ability to
7 commence operations was not an appropriate use of this methodology and we
8 should have gone with the non-time critical approach that would have taken
9 8 to 12 months and, of course, would have had consequent impacts on the
10 economy of the area.
11 When the Air Force made its decision, it was without the
12 coordination or official approval of the other two parties to the IAG. In
13 other words, we took it alone.
14 Now I should mention here that both the EPA and the state
15 of California approved the technical solution that we were going with and
16 they agreed not to take any action legally against what we were doing but
17 they were not party to the decision.
18 The problem we have here is to take this action on our own
19 is not a comfortable one for the Air Force and we are concerned that in the
20 future we could find such remedial actions proposals opposed by the
21 regulatory agencies and citizen groups.

1 What we feel that we need here is a more expanded
2 guidance from headquarters EPA verifying how the terms or what can be
3 done under the terms of a time critical action and a non-time critical action.
4 Now this is one of the difficulties that we have encountered
5 at Norton Air Force Base. I would just like to identify other issues that we
6 can see coming up in the near future that will also affect our ability to pass
7 the property at Norton Air Force Base over to the private sector. Some of
8 these have already been mentioned by the preceding speakers.
9 The first one is that the EPA has opted to list the entire
10 military installations on the National Priorities List. This was done to
11 optimize management of the processes within the installation boundaries but
12 it has effectively slowed down cleanups.
13 I think one of the things that we have learned has been
14 stated several times already. When you put an installation on the NPL, it
15 inevitably slows down the process of getting reviews accomplished. We are
16 looking at typically an extra year added to the process of getting an RI/FS
17 accomplished because of the reviews.
18 The second problem associated with this decision to put the
19 entire base on the NPL is that you may have sites within the base that are
20 clean, and of course technically we can sell those sites if they are clean, but
21 it makes it much more difficult to sell a piece of property if it still has the
22 stigma of being on the NPL list. Therefore we will find people more

1 reluctant to buy a property with that type of stigma attached to it, even
2 though it may be in fact clean.
3 The third area that we're talking about is that CERCLA
4 Section 104(a) permits remedial actions on any site and the emphasis in the
5 National Contingency Plan has been on conducting only those remedial
6 actions which are necessary to protect human health and environment.
7 As discussed in this case history, this focus has impeded our
8 ability to accomplish remedial actions specifically for the purpose of
9 conveying property.
10 Another issue that has been raised earlier this morning is
11 the two separate processes that are administered by two separate offices
12 within EPA which govern the cleanup of hazardous waste sites on
13 installations, and we're talking about the CERCLA and RCRA.
14 What we would like to see long-term is one process, one
15 set of standards, and one of the concerns we have with the RCRA is that it
16 does not take into account risks and costs as CERCLA does and so it can
17 result in a different set of standards than we would be to clean up to under
18 CERCLA.
19 The next issue that we have concern with again has been
20 raised previously and that is some EPA regions and state authorities have
21 advanced very restrictive interpretations of CERCLA Section 120(h) which
22 would effectively prohibit transfer of properties until all remedial actions
23 necessary to protect human health and environment have been completed.

1 We would like to see that changed so that the property
2 could be transferred as long as it presents no imminent threat to health or
3 property but such that the Air Force could have access to the property to
4 continue carrying out its responsibility in the cleanup.
5 MR. BACA: Peter, that also goes to a standardize
6 approach among all the regions.
7 COL. WALSH: Right.
8 MR. BACA: Thank you.
9 COL. WALSH: So that in short is a brief summary of the
10 case study at Norton Air Force Base and the immediate lesson to be learned
11 and of course some of the far-reaching promise that we see when we get
12 around to turning the property over in 1994.
13 Thank you.
14 MR. BACA: Thank you, Col. Walsh.
15 Our next speaker is going to address a different situation,
16 talking about Fort Meade, Salvatore Torrisi who is the Chief of Base Closure
17 for the U.S. Army Toxic and Hazardous Materials Agency and he'll be
18 addressing an issue that was identified at Fort Meade.
19 MR. TORRISI: My testimony today will focus on the
20 environmental restoration activities conducted at Fort Meade as part of the
21 Army's base closure program.

1 Under the Base Closure and Realignment Act of 1988, Fort
2 Meade was slated for realignment and partial closure with 9,000 acres being
3 excessed.
4 Fort George G. Meade is a permanent Army installation
5 located on 13,670 acres in Anne Arundel County, Maryland, between
6 Baltimore and Washington, D. C. The northern one-third of the installation,
7 referred to as the cantonment area, contains administrative, recreational and
8 housing facilities. The remaining portion serves mainly as a firing range and
9 training areas with minimal maneuver areas.
10 Currently, Fort Meade provides supporting services for
11 about 65 Department of Defense tenant activities and organizations. The
12 major tenants are the National Security Agency, commonly referred to as
13 NSA; Headquarters First Army; Army Intelligence and Security Command;
14 Naval Security Group and the 6940th Electronic Security Wing of the U. S.
15 Air Force.
16 Fort Meade provides range and training support for other
17 units of the armed services as well.
18 The 9,000 acre base closure parcel consists of the firing
19 ranges and training areas south of the cantonment area, Tipton Army Air
20 Field, the active sanitary landfill, a sewage lift station, an ammunition supply
21 point and potable water supply wells which serve the base.

1 Prior to 1988 the Army was conducting remedial
2 investigations at the active sanitary and clean fill areas as part of the Fort
3 Meade installation restoration program.
4 The Army began its base closure environmental restoration
5 evaluation by conducting a preliminary assessment of the 9,000 acre parcel.
6 The purpose of the assessment was to identify all potentially contaminated
7 areas requiring further environmental investigation and possible remediation
8 prior to release of the property and to identify all areas where there is no
9 contamination. The preliminary assessment was completed in October of
10 1989.
11 The areas requiring further investigation consist
12 predominantly of former and existing landfills and former artillery impact
13 areas.
14 Plans to conduct additional environmental investigations at
15 Fort Meade based on the preliminary assessment were finalized and approved
16 by EPA Region III and by the Maryland Department of the Environment in
17 September of 1990. The plans address the evaluation of the potential risks
18 of chemical contamination.
19 A site investigation of those sites identified in the
20 preliminary assessments is being conducted. Both the remedial investigation
21 report for the active sanitary landfill and clean fill area and the site
22 investigation report are expected to be completed by December of this year.

1 At this time, the site investigation report may identify a
2 need for additional studies at the base closure areas being evaluated. This
3 effort will be subsequently initiated.
4 A feasibility study for the active sanitary landfill and clean
5 fill area is expected to be completed by March of next year.
6 In addition to the environmental investigations to identify
7 chemical contamination, an ordnance survey is to be conducted to locate
8 unexploded ordnance. There is a substantial amount of coordination required
9 when addressing sites containing unexploded ordnance.
10 Coordination is being conducted among a large number of
11 organizations to include USATHAMA, the agency that I work for, the
12 Department of Defense Explosives Safety Board (DDESB), the Army
13 Technical Center for Explosives Safety, the Office of the Deputy Assistant
14 Secretary of the Army for the Environment, Safety and Occupational Health,
15 Headquarters, Department of the Army, Explosive Ordinance Disposal Staff,
16 and the U.S. Army Engineer Division Huntsville.
17 Issues such as the level of effort required to clear an area
18 for restricted surface land use and use without use restrictions are being
19 discussed. Plans for conducting an ordnance survey must be approved by the
20 Department of Defense Explosives Safety Board prior to implementation of
21 field activities.
22 Once all field activities are completed, to include cleanup
23 if necessary, a statement of condition is prepared by USATHAMA. This

1 document describes the condition of the property and requires concurrence
2 by DDESB.

3 Since the beginning of the base closure program, the Army
4 determined that parceling the 9,000 acres could expedite the release of a
5 portion of the property. Although the areas requiring further environmental
6 chemical investigation were limited to a few areas, no property could be
7 immediately released without additional study since there was a potential for
8 unexploded ordnance to be present throughout the entire 9,000 acre parcel.

9 The Army proposed a three-phase approach for releasing
10 property at Fort Meade. This three-phase approach was designed to
11 incrementally parcel the property based on the relative likelihood of the
12 presence of unexploded ordnance.

13 At Fort Meade, the westernmost part of the installation was
14 considered to be the least likely to contain unexploded ordnance. Selection
15 of this tract would have the added benefit of releasing the land most
16 preferred for development first, thus bringing in income to finance base
17 closure activities.

18 USATHAMA requested input from the Corps of Engineers
19 real estate directorate for assistance in determining the parcel boundaries.
20 Specifically a parcel should contain appropriate access and features which
21 make it saleable.

1 Once an ordnance survey had been performed on a parcel
2 and a statement of condition approved, that parcel could be released while an
3 ordnance survey would begin on the next parcel of land.
4 This three-phase parceling concept was ultimately overtaken
5 by events when the fiscal year 1991 Military Construction Appropriations Act
6 directed the transfer of 7600 acres of the 9,000 acres to the Department of
7 the Interior. Department of Interior will add this tract to the neighboring
8 Patuxent Wildlife Research Center.
9 Transferring the property to the Department of the Interior
10 for wildlife and surface use only will require only a surface ordnance survey
11 that should cause minimal impact to vegetation and wildlife in that area.
12 Major issues that have arisen during the Fort Meade base
13 closure environmental restoration program are as follows:
14 Establishing the extent and degree of ordnance survey.
15 Since past records describing impact areas and caliber of munitions utilized
16 are either nonexistent or difficult to reconstruct, it is difficult to determine
17 both the area and depth of ordnance clearance required.
18 Estimating the cost of conducting an ordnance survey while
19 knowing the cost is dependent on the amount of unexploded ordnance
20 recovered. As I just mentioned, at Fort Meade this information is very
21 limited.
22 Reconciling the potential need to clear densely wooded
23 areas of Fort Meade in order to conduct ordnance surveys with the desire to

1 minimize the adverse impacts vegetation clearance would pose in this
2 environmentally sensitive area.

3 Establishing the logistics and parameters for conducting an
4 ordnance survey in the large area of wetlands found at Fort Meade. Both
5 technical feasibility and regulations protecting wetlands had to be considered.
6 Agreement has been reached that an ordnance survey will be conducted in
7 wetlands which are traversable by foot. No survey will be conducted in
8 wetlands that are not traversable by foot.

9 Resolving the conflict between the Department of Defense
10 Regulation 6055.9 which governs the transfer of property contaminated with
11 unexploded ordinance and the fiscal year 1991 Military Construction
12 Appropriations Act which directs the transfer of 7600 acres to the
13 Department of Interior by September 1991, Department of Defense
14 Regulation 6055.9 states: Accountability and control of real property
15 contaminated with ammunition and explosives may not be transferred to
16 agencies outside the Department of Defense and the accountability for such
17 contaminated real property shall remain vested in the Department of Defense
18 until the property is rendered innocuous. By innocuous, it is meant that it
19 is reasonable to assume real property is not contaminated with live
20 ammunition or explosives to an extent that constitutes an unacceptable risk
21 to the general public.

22 This issue is being addressed by Headquarters, Department
23 of Army, and the Office of the Secretary of Defense.

1 Clarifying the uncertain future of the 1400 acre parcel not
2 subject to transfer to the Department of the Interior.
3 The uncertain future use of this 1400 acres may result in an
4 inefficient use of base closure funds by the Army. Under current policy, the
5 Army will prepare and conduct a surface and subsurface ordnance survey in
6 order to release the land without land use restrictions.
7 Meanwhile, the local coordinating council has recommended
8 that this tract also be subjected to use restrictions similar to the tract of land
9 that is added to the Patuxent Wildlife Research Center.
10 If at a later date it is indeed decided that this property, too,
11 will be released for restricted surface land use only, the money spent in an
12 expensive subsurface ordnance survey would have been wasted. An early
13 decision concerning the ultimate use of this acreage would be helpful.
14 In conclusion, the environmental portion of the base closure
15 program is a complex process which is not easily separated from the
16 socioeconomic issues and is an integral part of these activities.
17 It has been a challenge to ensure that all environmental and
18 regulatory issues have been properly addressed. The Fort Meade project will
19 be an even greater challenge to complete in a manner which satisfies local
20 community concerns while simultaneously achieving maximum return on
21 investment by the Army.
22 The Army has restored property at other locations and sold
23 it for local beneficial use in the past. It is not easy, but it can be done.

1 This completes my testimony.

2 MR. BACA: Thank you very much for that excellent

3 testimony. At this point why don't we open it up for questions.

4 MR. HOLMES: From what you've seen, do you see a

5 lesson learned from the Norton experience that would help Bob through his

6 experience?

7 MR. WALSH: There's obviously a lot of interpretation of

8 the regulations which is the source of the current Norton problem and they

9 would be beneficial when we do have those interpretation problems for the

10 headquarters EPA to come in and clarify early on in the game rather than

11 letting that situation fester for any length of time.

12 I think that's one thing that we have learned from that

13 particular scenario.

14 I think with respect to the rest of the problems with Pease,

15 I think we are also fighting those same issues at Norton with respect to

16 120(h), et cetera, so we're looking towards getting that resolved.

17 I think that one issue that I did not present in my earlier

18 testimony that would maybe contribute to a long-term solution would be

19 we've all acknowledged that when a base goes on the NPL that there are

20 certain regulatory processes that we have to go through that add time and

21 effort to accomplishing the work and that seems to run counter to what the

22 community and the state and the Air Force in fact wants to do with these

23 properties that we are closing down.

1 One of the issues that has been put on the table is perhaps
2 that when a base is put up for closure and is accepted by the commission that
3 perhaps it be taken off the NPL and that an agreement be worked out
4 between whatever the service is and some local authorities who have a vital
5 interest in the property both as to getting it as well as that they're getting it
6 in good shape and have those two work out an agreement of how we're going
7 to clean up the base and what circumstances so that we can expedite the
8 process to the benefit of all parties concerned including, I must say, the
9 taxpayer.
10 MR. HOLMES: Whether or not the base is on the NPL or
11 not, you still have Bob's problem and you still have a problem with
12 CERCLA 120(h). You still have the problem of the issuance of the covenant
13 regarding the status of the land and the extent to which it's been cleaned up.
14 I don't think whether it's on NPL or not is going to solve that problem.
15 MR. CHENEY: Could I comment on that?
16 Picking up on Walsh's testimony, too, on the idea of the
17 removals. I think Mr. Holmes is right that you don't -- whether it's on the
18 NPL or not on the NPL doesn't avoid that question. It may avoid some
19 questions of process and expediting the process. Again it would vary from
20 state to state giving a state's comfort with its own CERCLA cleanup
21 capabilities, if you will.
22 I think in New Hampshire we've done enough that we think
23 that we could take the lead. We were in the lead. We worked for three or

1 four years with the Air Force before it was listed on the NPL so I think that
2 would work.
3 We've been following the Norton situation very closely and
4 one comment that Col. Walsh made that I pick up on is this idea of removals
5 which I think ties in a little bit to the comment you just made, Christian.
6 You can prepare certain properties for transfer in some
7 circumstances if you are able to do a non emergency removal action, get the
8 waste out of there and take of the problem in an expedited manner.
9 The concept that I think needs to be given more
10 consideration in the whole process here is the balance between economic
11 restoration and environmental restoration.
12 We all are so attuned to worst first and we've all been
13 saying it for ten years and now we've got different interests and different
14 concerns and worst first isn't necessarily appropriate here in the base closure
15 situation.
16 For example, you may have a situation which is not your
17 worst environmental site on base and with not a great deal of money, not a
18 great deal of analysis you can eliminate a problem by removing some slow
19 contamination of properties that are subject to transfer.
20 Under the worst first scenario, working through the regular
21 IAG process, that's at the bottom of the barrel.

1 The site I identified in the slide is probably one of our least
2 severely contaminated sites but it's the site most dear to redevelopment at the
3 base.
4 Worst first doesn't work. I think we've got to reconsider
5 that approach in both the IAGs and then dealing with the issues on the base
6 in terms of cleanup.
7 MS. SHIELDS: I think you've all made a good explanation
8 of how § 120(h) causes you a considerable amount of heartburn and I'm
9 wondering if we could sort of think pie in the sky for a minute. Let's say
10 we could get a legislative amendment that would say you don't have to clean
11 up the site but you do stay on the hook so that federal facilities would be
12 treated really more equivalently to a private facility. A private facility isn't
13 prevented from transferring. They just don't get off the hook for cleanup by
14 so doing.
15 You live in the area of these facilities. Is that sufficiently
16 protective to satisfy the people in these areas?
17 I think when congress wrote this special provision in §
18 120(h) they wanted to stop handing down contaminated sites from one entity
19 to another and so they saw an opportunity when a site was a federal site to
20 stop it here. We're going to clean it up before we transfer it, and if we
21 didn't do it quite well enough, we will still be on the hook to clean it up
22 more afterwards.

1 Now the question is when we have other priorities like
2 keeping some of these communities economically viable in a base closure
3 situation, is it sufficiently protective of health and the environment and the
4 community in the area to make an exception in this situation and say you can
5 go ahead and transfer it when you know it's not clean but you're going to
6 have to come back and clean it up at some point if that's found to be
7 necessary.

8 MR. CHENEY: I think the protective mechanism is
9 obviously still warranted. It's just I think there needs to be some more
10 gradation and some more discretion, more flexibility because you still want
11 that ultimate protection, you still want to make sure that it's the federal
12 government that is ultimately going to clean up.

13 Certainly from a state perspective -- in New Hampshire it's
14 the state that's running the authority and we're the ones that have the tenants.
15 Certainly we want to be fairly certain before we bring a tenant on the
16 property for our own liability purposes that the property -- that everything
17 has been done that's necessary to protect human health and the environment.

18 My own vision is that CERCLA 120(h) right now envisions
19 that there will -- obviously there was going to be some property that was
20 going to be transferred where remedial action was going to be discovered to
21 be necessary after the transfer. That's 120(h)(3)(B), that covenant, and the
22 fact that reading of the statute, the agency is just supposed to check their files

1 to see what they know about the site and there's nothing in the file you
2 transfer the property.
3 Well, the reason we know so much at Pease is because we
4 had four or five years of installation restoration work ongoing before we got
5 down to transfer.
6 I suppose you could conjure up a situation where you got
7 to base closure and checked the file and there's not much there and you
8 transfer and then you find 25 sites.
9 I think what we're all aiming for is more tools to deal with
10 the case specific instances.
11 MS. SHIELDS: And do you agree that there is some
12 statutory amendment necessary to add in more flexibility, or do you think
13 there's enough flexibility now. In other words, if we just were more creative
14 with using 120, we can do what we need now?
15 MR. CHENEY: If I may, I'll duck that question because
16 that's a discussion that New Hampshire is currently engaged in with EPA and
17 we just haven't got to the bottom line yet. It's premature for me to say.
18 MR. JONES: I'd like to comment on that.
19 I think I'm hearing a couple of things here. I'm hearing an
20 appeal that in order to successfully dispose of these bases, you must have the
21 flexibility to parcelize and you'd like to be in a position to proceed with
22 those portions of the base that are not contaminated. GSA, is totally in
23 accord with what you're saying.

1 I think what I'm also hearing is you are making an appeal
2 for consistency in interpretation of policy. In some instances you are able
3 to parcelize and in other instances you are not because of properties being on
4 the national priority list.
5 I would suggest that we may want to make a review of
6 existing policy because from a disposal perspective, a GSA perspective, as
7 a matter of practice for years we have been parcelizing larger installations
8 and disposing of portions that are not contaminated.
9 A review of existing policies and guidelines might reveal
10 that long drawn out methods of getting it changed in legislation and I think
11 that's something that's critical and should be reviewed.
12 MR. CHENEY: May I respond?
13 I'm not sure it's so much a question of consistency as it is
14 devising a mechanism to do it. Trying to determine what is the property that
15 requires the covenants and what is the property that doesn't require the
16 covenants. How do we do that?
17 Right now we're trying to fit this into the CERCLA process
18 and in so doing, as everyone has explained, that gets you in the process that
19 is sometimes long, drawn out and potentially from the EPA side unfunded in
20 certain instances.
21 What my appeal is for this task force to put its collective
22 wits together and to search out for another mechanism that is equally

1 protective and allows for some determination to be made prior to the formal
2 ROD process being completed.
3 MR. BACA: Does that answer your question?
4 MR. JONES: Yes. I have another question. To what
5 extent is there concurrent planning with respect to environmental initiatives
6 and planning the disposition. That is, planning for the disposition of the
7 installations to dovetail with testing and cleanup efforts and thereby accelerate
8 the process.
9 MR. CHENEY: I have personally been wrestling with that
10 with the state for the last year and a half. Being in a unique position -- In
11 New Hampshire the attorney general's office provides legal counsel to all the
12 state agencies, so I have been dealing in the IAG with our New Hampshire
13 department of environmental services, but at the same time writing statutes
14 and serving as legal counsel to the Pease development authority so in me
15 both of those aspects have been pulled together.
16 Part of what I encountered in going through for example the
17 IAG process is I dealt with the environmental side with both the EPA and
18 Air Force. The real property lawyers weren't there and I kept trying to
19 throw some issues on the table but the response was this is an environmental
20 process and we're not going to deal with those.
21 Then I go to another section of the Pentagon and I find the
22 real property people, many of them formerly having worked for GSA, or at
23 least some of them.

1 Only now as we are really here at the 11th hour at Pease,
2 we're on the verge of trying to work a transfer and I still don't think there
3 is in my mind -- there could be better coordination between the
4 environmental sides and the real property sides of the departments.
5 I know they have made strides here in recent weeks and
6 months to try to start to pull that together but I think that's something we
7 have learned and discovered as this process has gone along, is that you need
8 to have --
9 To make the planning work and to identify these issues and
10 to get the appropriate resolutions in time you need all those perspectives as
11 you're going through the process.
12 Now I imagine for the Department of Defense this puts a
13 tremendous resource strain on the department because there's lots of bases
14 closing and it takes a lot of time. I think that's a very appropriate
15 observation.
16 MR. GOODHOPE: I'd like to return to the comments
17 made by Col. Jackson and followed through on by Mr. Torrisi on
18 parcelization and what happens to those funds.
19 Do those funds go into the treasury when pieces of land are
20 sold?
21 MR. TORRISI: If the land is sold prior to September 1995,
22 those funds go back to the service, the respective service. Subsequent to that
23 date it goes back to the general treasury.

1 MR. GOODHOPE: Within the service accounts, then, are
2 these funds set aside? There was a comment made that these funds may be
3 used for remediation in other areas. Is that a fact?
4 MR. TORRISI: It is a separate base closure account that
5 has been set aside, yes, separate from the defense environmental restoration
6 program fund. These are segregated accounts so that base closure funds can
7 only be spent at base closure locations.
8 MR. GOODHOPE: For remediation?
9 MR. TORRISI: For study and remediation.
10 MR. GOODHOPE: Does OMB get involved in how that
11 account is disbursed? I know they get involved with everything but have
12 there been any restraints?
13 MR. CARY JONES: Not directly. They would have an
14 oversight.
15 MS. McDONALD: Col. Walsh, you had talked about
16 contracting problems. Are there ways that you could expedite the contracting
17 process? Is it regulations that are impeding it from moving quickly?
18 COL. WALSH: Well, we're looking at a wide variety of
19 options available to us. While this doesn't really -- it does pertain to what
20 is going on here. It pertains more to the entire program.
21 In contracting, we have tried to -- what we have been doing
22 is have a contractor for each phase of the process. We have a very rigid
23 process and you have a contractor accomplishing each phase, usually a

1 different contractor, so you're losing time as you re-advertise and award the
2 new contract. Then the second contractor, again he's putting his reputation
3 on the line so he wants to repeat some of the studies that were done by the
4 previous contractor before he proceeds with his analysis so we're losing a lot
5 of time there.

6 We also have a problem in that in the past we have liked
7 to go to a firm fixed price contract. That is the right way to do construction
8 and we're applying that same approach to remedial work.

9 What that forces you to do is to do more studies so you can
10 better define what's under the ground so you can have a firm fixed price and
11 even then the contractor is going to find a contingency so just going firm
12 fixed price forces you to extend your study some more, whereas if we went
13 with cost plus or unit price type contracts that allow more flexibility to start
14 moving dirt and then move as much dirt as necessary.

15 We're looking at changing our contract approach as well as
16 working with the regulators to perhaps minor alterations to the process.

17 Let me give you one example that has thwarted me. In the
18 Air Force, we have about 4,000 contaminated sites and of those 4,000 sites
19 60 percent of them involve petrol and yet every time we come to a petrol site
20 we start studying it as if we have never seen a petrol site before.

21 What we are exploring and EPA Region 8, for instance, is
22 very receptive to this approach, is perhaps taking on a generic RI/FS, so to

1 speak, and then whenever you come across a site that matches what you've
2 already done an analysis for, you just reference that back.
3 Like we do in the NEPA process, you do a problematic EIS
4 and then you can tier off that EIS. We are looking at the same type of
5 approach.
6 We also have made some breakthroughs with some
7 regulatory agencies. For instance, a major breakthrough occurred a couple
8 of months ago in the state of Georgia at Robbins Air Force Base where
9 instead of us working in isolation with our contractor and doing our studies
10 and then a year or so later walking into the regulatory agency and saying
11 does this meet you needs, instead of doing that we said let's sit down with
12 the regulators, with the state of Georgia, with the base, and look at the sites
13 and see what we know and how much risk can we afford to take and maybe
14 we can make a quantum leap ahead and not do all these detailed studies but
15 actually move into remedial design.
16 In doing that in the State of Georgia at Robbins Air Force
17 Base we have actually been able to accelerate some of the processes by up
18 to a year because all the parties that are involved sat down and agreed that
19 they were comfortable in making a decision. We had enough information to
20 make a good, sound decision.
21 We're exploring all types of possibilities, both in the
22 contracting arena as well as with the regulators to try to expedite this
23 process.

1 MR. BACA: Other questions from the panel?

2 MR. CARY JONES: In the case of Pease, if I understood

3 you correctly, the goal is for that property to become a regional airport.

4 MR. CHENEY: A public airport, yes.

5 MR. CARY JONES: A public airport which would be

6 owned and operated by --

7 MR. CHENEY: The state of New Hampshire would be

8 running it as an authority, an airport authority.

9 MR. CARY JONES: And the FAA's role would simply be

10 permitting and regulatory whatever they do in allowing such things to

11 operate.

12 MR. CHENEY: They actually have a little more oversight

13 than that. It comes from the whole public benefit transfer process which is

14 a fairly old statute. A lot of airports, or at least portions of them, are former

15 military airports and they have this public benefit transfer process in their

16 history and therefore you end up with certain restrictions in the deed -- it's

17 always got to be a public airport, you can't discriminate, no exclusive rights.

18 One of the big ones is the revenues generated have to stay

19 in the airport and that's where FAA has some real oversight, to make sure

20 the revenues stay in the airport and you can't sell or release any of the

21 property without getting a subsequent release by the FAA. Once you take

22 it, that becomes the airport and you can't sell any of that property unless the

23 FAA agrees.

1 The last thing is that airport layout plan I put up on the
2 screen, you are fixed -- the airport layout plan and the airport area identifies
3 future development and that represents an agreement between the FAA and
4 the airport operator as to what both perceive is the future development and
5 you can't go off and move you terminal to the other end of the airport with
6 FAA saying so.
7 MR. BACA: In order to get a flavor for what you're
8 facing at these various bases, is it fair to characterize -- Perhaps we can take
9 Pease.
10 Up to April of this year we had an active base. You have
11 on the base TCE problems. Are they impacting anything but groundwater
12 at this point?
13 MR. CHENEY: Primarily it's just groundwater. Most of
14 them were from leaking underground storage tanks.
15 MR. BACA: Are you getting any VOCs into the buildings
16 that exist on the property?
17 MR. CHENEY: Not that I'm aware of in any of the work
18 that's been done. The Air Force did use this property right up until the time
19 that they left.
20 MR. BACA: So you had people in there. Were any of
21 them exposed?

1 MR. CHENEY: Not that I'm aware of. They are coming
2 up -- they have been on base. We are one of the bases I think selected for
3 study so they will be evaluating that question.
4 So far as I know, most of the contamination issues have all
5 been at a minimum, subsurface, and mostly in the groundwater.
6 MR. BACA: Is the site stabilized? Is the contamination
7 moving off base?
8 MR. CHENEY: There was one AOC of some significance
9 where there is a significant amount of groundwater contamination moving off
10 in the town of Newington but that's one of the most expedited investigation
11 studies and there is actually even an interim remedial measure of pump and
12 treat system that has already been put in place to try to slow the movement
13 of the plume and reduce the amount of contaminants in that moving offsite.
14 MR. BACA: But the point is people can work around these
15 situations and it doesn't impact their health, so parcelization is a viable
16 concept, right?
17 MR. CHENEY: Certainly again I'm most familiar in the
18 industrial area that I showed you in the slide. That's where we have focused
19 our efforts in trying to evaluate that question and there the preliminary
20 information from the state people is that we don't see a problem there.
21 MR. BACA: Would any of you like to comment?
22 MR. AYERS: Since our site, Chanute Air Force Base, is
23 not on the NPL, it's already proceeding with parcelization and there are

1 several properties -- the Department of Commerce and Community Affairs
2 is actively pursuing a commercial interest in the airlines in marketing that
3 property, so they have separated the base into areas that don't have
4 environmental problems, and now are marketing those areas pretty actively
5 and I think with some success.

6 MR. BACA: Peter, would you like to comment?

7 MR. WALSH: I think the main point that we would like
8 to make is that even if the site is contaminated, if the surface poses no risk
9 to life or property we would like to be able to sell that provided we could
10 have access to the property to continue remedial action.

11 We see no value in keeping a piece of property out of
12 circulation for 20 to 30 years just because it's sitting on top of polluted
13 groundwater. If that site can be used and used safely and used productively,
14 we would like to be able to give that to a local development authority
15 provided we can continue to perform our responsibilities in the cleanup.

16 MR. EARL JONES: Would you contemplate restricting use
17 of that property?

18 MR. WALSH: It would have to be on a site-by-site basis.
19 Naturally if you've got higher groundwater, you don't want to put a
20 basement in, but a site-by-site basis. Even in the current bases we -- the
21 base I just recently came from, Edwards Air Force Base, we built a facility
22 over a contaminated site and we just elevated the facility to allow access to
23 the contaminated site and provide sufficient ventilation so it wouldn't cause

1 a health problem within the building but we were able to continue using that
2 particular site so it can be done and I see no reason why it could not be
3 extended to the private sector.
4 MR. BACA: You have a building at Tinker Air Force
5 Base, I believe, that's right over a TCE contaminated site. Have you
6 experienced any problems there?
7 MR. WALSH: Not that I know of.
8 MR. BACA: I would like to break for lunch and the panel
9 will reconvene.
10 (Whereupon at 12:00 noon the matter recessed.)

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 MR. BACA: If we can reconvene the meeting, why don't
3 we excuse the panel for just the next presentation and then we'll have you
4 come back.

5 I would like to have Mike West and Tim Terry sit at the
6 table. Oh, Tim had to go back unfortunately.

7 I would like to introduce Mike West. I introduced him at
8 lunch but for those that were not with us, Mike is a professional staffer
9 serving on the environmental restoration panel of the House Armed Services
10 Committee. Mike and his committee work very closely with the Department
11 of Defense and, Mike, we welcome you here and look forward to your
12 statement.

13 MR. WEST: I'd just like to make it clear that what I'm
14 doing here is representing Chairman Ray who was not able to be here
15 because he had some votes today and House business kept him from coming,
16 but he was very interested in coming here and testifying before you.

17 I would like to summarize some of the issues that Chairman
18 Ray is raising and to emphasize how supportive he is of Mr. Fazio's effort
19 to set up this task force.

20 I think some of the problems that we have had in the last
21 several years with regard to base closure environmental problems as well as
22 problems with DOD bases in general is the need to have some mechanism for

1 looking at regulatory and statutory problems and to come up with
2 recommendations if recommendations are needed.
3 Two years ago the panel held a hearing on DOD base
4 closure environmental issues and I think it was probably the first hearing that
5 was ever held on specifically environmental questions.
6 What we found out at the time was that DOD didn't know
7 very much about environmental issues affecting base closure, that these
8 environmental considerations had not been factored into its base closure
9 decision-making process, and it also became clear that DOD didn't have a
10 very realistic estimate of the costs associated with environmental compliance
11 and cleanup activities related to these base closures.
12 I think that we recognize that DOD's awareness on the
13 environmental aspects of base closure has significantly improved in the last
14 couple of years and that the data that we have seen since that time has
15 reflected that.
16 However, I think the panel and chairman feel that more
17 needs to be done and that this task force represents an important part in that
18 and can play a major role in this process.
19 The chairman's most significant concern and where he
20 thinks the task force can contribute most would be to identify ways to cut
21 through the red tape to expedite the characterization and cleanup of hazardous
22 waste sites at these closed bases.

1 The conflict and overlap which I think we are all very much
2 aware of between federal, state and local laws and regulations make cleanups
3 at DOD bases among the most complex and difficult in the nation. You
4 have a situation in many cases where you have a national priority site that's
5 addressed under CERCLA on the same area that you have a RCRA facility
6 and it requires an awful lot of work to try to reconcile these requirements.
7 We are also aware now from testimony we've received
8 from DOD and EPA that there's more problems with regard to how do you
9 reconcile the cleanup and the NEPA process.
10 I think it's a real challenge to work cleanups at these DOD
11 bases and although there has been improvement, in the past there has been
12 a great deal of mutual suspicion and misunderstanding between DOD
13 personnel and the regulators in trying to sort these things out in a timely
14 fashion.
15 I will say that we've seen quite a bit of improvement in that
16 regard, especially in the relations with DOD and EPA and the chairman who
17 thinks that's a very, very positive development.
18 In addition, we have DOD procurement regulations,
19 contract procedures and funding requirements that really are often
20 inconsistent with moving ahead with a cleanup process. The panel has
21 focused on some of the procurement problems and contractor problems this
22 year and I'm sure that there are others that you would be able to identify as
23 you go through this process.

1 What we're mostly concerned about is that if we have an
2 active DOD base that has a problem, that's regrettable, but to allow the same
3 thing to happen at a closed base could be tragic. It would delay the
4 availability of the property for alternative uses at a time when the
5 communities involved are feeling the most severe economic hardship because
6 of base closure.
7 We also believe it would be more tragic because in recent
8 months the chairman has become more aware of what can be accomplished
9 when all parties are working together. This year he has assisted in the
10 negotiation of supplemental agreements at NPL sites in two Georgia bases.
11 In fact, hopefully by around the 2nd of July, both the
12 Georgia NPL sites will have the supplemental expedited schedules in place
13 and if the one at Albany Marine Corps Logistics Base parallels that at
14 Robbins, the schedules actually could be compressed by months, if not
15 years, without lowering the quality of the cleanup itself.
16 Mr. Ray would like to provide a copy of the Robbins Air
17 Force Base agreement for the record to reflect that.
18 I think the chairman feels that if he can do that at an NPL
19 site or NPL sites at active bases, then the opportunities are even greater at
20 closed bases because there is more pressure to do things in an expedited
21 fashion, and I think there's going to be a greater receptivity, innovation and
22 responsible risk-taking in order to carry it out.

1 The chairman feels that the task force has a tremendous
2 opportunity here to recommend innovative ways to work through current
3 statutory and regulatory requirements and to foster improved cooperation
4 between DOD and the regulators to streamline base closure cleanups.
5 Another major issue that the chairman believes really ought
6 to be looked into very carefully are the legal problems associated with
7 expedited transfer of land at base closure NPL sites.
8 This year the chairman has reviewed the closure and
9 cleanup of property at Pease and Norton Air Force bases and have
10 highlighted the importance and the seriousness of this problem.
11 Because the Environmental Protection Agency has
12 designated all the property contained on these bases as NPL sites, there is
13 concern right now that all the property will have to be cleaned up before any
14 land can be transferred.
15 Equally troubling, it's not clear whether uncontaminated
16 portions could be carved out for expedited transfer and re-use, or that there
17 could be surface leasing of areas affected by subsurface groundwater
18 contamination.
19 We've explored this issue with the Energy and Commerce
20 Committee, with EPA, with the Air Force, and we've actually talked to some
21 lawyers about it. I guess the fairest thing to say right now is that the
22 situation is unclear.

1 The lawyers that we have consulted with have indicated that
2 their analysis suggests that current law provides a litigation lightning rod over
3 these base closure NPL sites about the size of the Washington Monument.
4 Any individual or group who is unhappy about the cleanup
5 or land re-use plan at one of these base closure NPL sites can mount a strong
6 legal challenge that would seriously complicate efforts to attract developers
7 or lenders. The whole thing could be tied up in court for months or years
8 while the community suffers.
9 It was an eye-opening experience because the way that the
10 courts have generally responded to environmental suits in recent years has
11 been to give very broad latitude on standing. You don't have to show any
12 direct injury in order to file suit and it makes it very difficult to prevail on
13 motions to dismiss or summary judgment so you have one of these suits
14 hanging over one of these sites and would seriously complicate the issue.
15 As a result, the chairman introduced legislation, which is
16 included in the package that we provided, HR-2179, that would amend
17 Section 120(h) of the Superfund Amendments and Reauthorization Act to
18 provide for expedited cleanup and transfer of base closure NPL sites.
19 Since the chairman introduced this legislation, the number
20 of communities that might be affected by this problem has grown from five
21 to 14 and if we look at base closure lists that may come out in 1993 and
22 1995, the total could grow to maybe 30 sites, so it represents a very serious
23 problem.

1 I don't think the chairman thinks that this is necessarily the
2 answer but at least it is a proposal in trying to come to grips with this
3 problem and I think that he feels very strongly that it would be useful to our
4 panel a well as Congress if the task force could look into this issue and
5 suggest ways of addressing it administratively or legislatively.
6 It could be that there is an administrative fix in working
7 this, and if there is we would certainly like to get it established as soon as
8 possible.
9 One of the problems that has developed since we've
10 introduced the legislation has been that some, especially the staff on Energy
11 and Commerce Committee, have raised concerns. Parceling out
12 uncontaminated land at these NPL site bases wouldn't be a problem. That's
13 a legitimate thing.
14 However, there is concern about transferring anything that
15 would be considered contaminated and whether that is surface contamination
16 or whether that would be groundwater contamination is not clear.
17 The problem, at least insofar as we've been able to
18 determine, is that most of the property that is attractive for immediate re-use
19 or like use at these bases tends to be the areas where contamination exists.
20 If Congress or if the DOD or EPA or whatever is going to
21 make a decision with regard to the limitation on the re-use of this land, we
22 really have to let these communities know as soon as possible. They have
23 to know what the ground rules are going to be so they can optimize their re-

1 use plans accordingly. If they're going to have to work with the golf course
2 in the "back forty" instead of hangars and runways and shops and so forth,
3 then I think they deserve a clear answer on that as soon as possible.
4 Another thing that surfaced since we've brought this issue
5 up which would be worthwhile for the task force to look into would be to
6 provide recommendations on the role of communities in making land transfer
7 decisions that involve environmental issues. I think this is an issue that I
8 guess has become much more visible to me, anyway, in dealing with this in
9 the last month or so. Should this be an issue that would be resolved
10 primarily by regulatory agencies or by DOD, or should communities be the
11 primary determinants on how they're going to work this problem.
12 I don't think it's clear and I think there's an awful lot of
13 concern and desire at the communities that are involved to have a larger role
14 and to have greater latitude in making these kind of decisions.
15 The experience we had at Pease Air Force Base is they
16 certainly don't understand anything that involves additional delay and
17 uncertainty with regard to land re-use decisions.
18 Another major consideration by the task force that would
19 be appreciated would be to look into and try to identify any other base
20 closure related environmental issues that are unique and deserve special
21 consideration.
22 Over the past two years, the focus of the panel has been
23 primarily on the cleanup issue, how do we go about doing that, and also

1 we're becoming more involved in land transfer. I'm sure that the task force
2 would be able to identify other areas of potential problems and concern that
3 affect the base closure process and the sooner that we are aware of what they
4 are the sooner we can deal with them in congress if we have to.
5 I would just like to echo the chairman's appreciation to have
6 the opportunity to make his views known to the panel and he looks forward
7 to the report and the recommendations of the task force and he offers the
8 cooperation of our panel in any way that we can assist the task force in its
9 efforts to address these issues. I think everybody wants to address the
10 environmental issues in a way that will minimize the economic dislocation
11 and hardship of the communities by base closure and we would like to work
12 with you in any way we can.
13 That's the end of my presentation. If anybody has any
14 questions or clarifications.
15 MS. SHIELDS: I'd like to ask what HR-2179 does, how
16 does it amend 120(h)?
17 MR. WEST: It's right there. You can see it. You'll see
18 that essentially it expands the criteria for remedial action so that remedial
19 action would be -- it expands that criteria. It also expands the removal
20 authority.
21 MR. BACA: Anne, do you have any further questions?

1 MS. SHIELDS: No. I'll go home and study it. In
2 essence, what you've done is write an exception to complete cleanup before
3 transfer?
4 MR. WEST: Three criteria. One criteria is complete
5 cleanup if they want to use that. The second criteria would be no action
6 required. If we're parceling out portions of an NPL site where there is no
7 contamination, we could use there is no action required.
8 Then the third thing, if you have initiated remedial action
9 then you would be able to transfer the land if you did it in a fashion that
10 would not harm and also if you made a commitment to complete all
11 remediation that would be required by the government.
12 Also there is an issue there with regard to removal action
13 that was raised to our attention, that in some cases removal actions under
14 CERCLA are not supposed to be done unless there is an imminent danger.
15 That changes that so you could have a removal action to clean up a hot spot
16 to allow for the parceling out.
17 Then the last part provides for the subdivision of the NPL
18 site if it meets the revised criteria. It's not the only way to draft the
19 legislation but we worked with House legislative counsel and it seemed to be
20 the cleanest way to do it.
21 MS. SHIELDS: This has just been introduced. I assume
22 nothing has happened on it.

1 MR. WEST: Nothing. The expectation is that the panel
2 and the Armed Services Committee will probably have hearings in July or
3 September on it. It has been referred to Energy and Commerce and Mr.
4 Swift's subcommittee for any future consideration there. It's been jointly
5 referred but obviously the jurisdiction is Energy and Commerce.
6 MR. BACA: Any other questions of Mike?
7 MR. GOODHOPE: Actually I do have a question. I
8 thought you said that you were looking at procurement problems, the panel
9 is. What's been going -- What do you mean by looking at procurement
10 problems? I think that's important in the funding requirements, what impact
11 those issues have on facilitating the cleanup.
12 MR. WEST: Well, I think we had a hearing on contractor
13 related problems which I guess is what we would classify as procurement.
14 The question is what kind of contracting tools do we have, what kind of
15 contracting models or methods are we going to be using.
16 There's an awful lot of interest in industry about things such
17 as turnkey approach or something along these lines that would allow for one
18 contractor essentially to sort of take the whole process through with
19 subcontractors and we were looking at alternatives, and will continue
20 looking. Actually, what we want to do is work with Department of
21 Defense very closely and try to focus on it but that is an issue. If you don't
22 have a good contracting vehicle, you're not going to be able to expedite the
23 process and that's one of the problems that EPA has cited when we've been

1 trying to work these expedited cleanup schedules. They said one of DOD's
2 big problems is the contracting process.
3 Other things that have come up, for example, was the
4 bonding industry is very, very concerned about third party liability and
5 testimony that the panel has received indicated that they felt that unless they
6 got a statutory fix that they were not going to provide bonds and if they
7 didn't provide bonds when we get to the cleanup phase on base closure we're
8 going to need to have bonds.
9 Maybe that's an issue we ought to look at to make sure that
10 we're not caught in a situation where community expectations and what
11 Congress wants is thwarted because we have a bonding requirement.
12 Those are the kind of things that we're looking at and we
13 hope to work with Mr. Baca and his office to focus on these things and I
14 guess the report on contractor indemnification and bonding and so forth will
15 be forthcoming shortly.
16 MR. BACA: I hope by the end of this week. Thank you,
17 Mike.
18 One issue I would like to pursue is that an early decision
19 of the ultimate use be made and it's particularly important when we're
20 talking about training ranges where we're apt to have unexploded ordnance
21 and where we're apt not to have technology that's sufficient to correct the
22 problem.

1 MR. TORRISI: I think it's more in the areas where you
2 have chemical contamination. Many of the sites are industrial facilities and
3 in some cases logically these type of facilities may be used in a similar
4 fashion.
5 If a decision could be made early in the base closure
6 process, then our study phase could be narrowed in to address the issues and
7 it would in effect cost less money to evaluate the site and less money to clean
8 the site.
9 MR. BACA: I think that's an excellent point. Rocky
10 Mountain Arsenal is another example.
11 MR. CARY JONES: There are some kinds of unexploded
12 ordnance that can turn into a chemical pollution problem over a period of
13 time.
14 MR. TORRISI: Depending on the geology of the site.
15 There are some sites where you have a high water table and if munitions are
16 in contact with groundwater over time you would have explosives leaking
17 into the groundwater.
18 MR. CARY JONES: So when you're talking about
19 unexploded ordnance, you're not simply talking about the danger of an
20 explosion.
21 MR. TORRISI: Exactly.
22 MR. BACA: Mr. Cheney, if you would maybe expand a
23 little bit on the opt-out provisions that you talked about earlier, that there is

1 a lack of funding for the cleanup and it gives you the opportunity to opt out.
2 If you would maybe say a few more words on that.
3 MR. CHENEY: As the negotiations were ongoing, and this
4 relates to the interagency agreement, the original interagency agreement that
5 we got provided that the Air Force made -- all of its obligations under the
6 IAG were contingent upon the receipt of funding.
7 At the same time, the IAG was perceived to be a document
8 that was going to remain in place and bind the three parties until every site
9 was cleaned up, certified cleaned up, and then the agreement, the IAG,
10 would expire.
11 Again, with the redevelopment concerns in mind we saw
12 ourselves binding ourselves to an agreement that would go on for many,
13 many years and then by signing on the dotted line we had lost control. If
14 funding were unavailable and the Air Force went through its worst first
15 priority model, our whole development possibility would be in jeopardy.
16 What we eventually negotiated was a provision that first of
17 all the Air Force is bound to request sufficient funds to meet the schedule
18 that was set forth in the IAG. If it turns out that over the course of a year
19 sufficient funds are not obtained and they miss the deadline and within a year
20 after missing a deadline they can't get sufficient funds to catch up and meet
21 the next deadline, there's an opportunity for us to get out of this interagency
22 agreement.

1 Now again at any given point in time the wisdom of opting
2 out of the agreement would really have to be scrutinized as to whether that's
3 really the prudent thing to do but it was a concern from the people in the
4 state agencies that, again, here we are signing onto a process where we give
5 up all of our state's rights, all of our RCRA enforcement authority and buy
6 into a process which we have lost control over and this just gave us one
7 realistically not a very easy to use and not an option that we would want to
8 pursue in most cases, this opting out of the agreement and starting back at
9 square one.
10 MR. GOODHOPE: There's nothing -- If there is no
11 funding, there's nothing really for you to enforce the provisions of the
12 agreement. Your only option is to opt out and say let's start over.
13 MR. CHENEY: And then trying to pursue -- The thinking
14 at the time, however tortured it may be, was that you opt out, go under state
15 law, RCRA provisions, if you got a judgment we'll convince the court that
16 public health was threatened, you could force the federal government to go
17 to a judgment fund to get the necessary funds as opposed to just waiting for
18 an appropriation.
19 It's not by any stretch of imagination an optimal way or
20 proceeding but it at least was an option that the state people wanted to have.
21 MR. BACA: I would like to thank our panel members.
22 You have certainly raised some very important issues and offered some
23 solutions and we appreciate your input.

1 Next we will hear a discussion of environmental response
2 issues presented by members of the DOD staff. Following each of the staff
3 presentations, there will be time for the task force to discuss the issues.
4 Larry, do you want to lead off?
5 MR. HOURCLE: My job during this period is to try to
6 organize and present issues to the task force.
7 The staff, which is really the DOD staff, and also two
8 representatives of contractors that we have assisting us in this effort, one is
9 Earth Technologies which brings with it a good background in technical
10 remediation issues and also some substantial experience in actual base closure
11 issues, and also with us for this particular effort are representatives from the
12 Environmental Law Institute, as we endeavor to try to broaden some of our
13 thinking as to creative solutions that we might be able to offer to you as
14 possibilities for further research.
15 The purpose of this part of the agenda is to share with you
16 the staff's thinking as to some five large issues that we believe are presented
17 by base closure and cleanup and then to discuss with you some study options
18 that we have thought of as ways of pursuing these, and then to solicit your
19 thoughts, your consensus, as to which study options we should be pursuing
20 both from those that we will present to you today and others that arose from
21 this morning's overview presentations of the issues.
22 Frankly, we had lunch together to talk about what we heard
23 this morning. We probably decided that there are a number of issues that

1 you may want to discuss that aren't included in these issue papers and part
2 of this effort is to ask you to help us identify those so we can pursue them
3 for your further consideration.
4 Let me talk briefly, such as lawyers can be brief, about the
5 five main issues that we've identified.
6 The range of land use issues, the whole parceling dilemma.
7 I've heard Christian Holmes talk before the current base closure commission,
8 BRAC 91, talking about the clean dirt dirty water problem, are those the
9 kind of areas where property should be able to be transferred.
10 The second range of issues involve the cleanup process and
11 we'll talk to you in a few minutes about some of the issues identified there.
12 When we talked about it, we talked in terms of the
13 regulatory processes, expediting the regulatory processes. I think we heard
14 this morning and you may want to consider some other areas that Col. Walsh
15 so ably identified, such as the contracting process.
16 The interesting thing which you probably noticed this
17 morning is in many respects this area of base closure and cleanup seems to
18 represent all the tough issues that are associated with the environmental
19 program in the United States and that is a problem for us.
20 Technology limits. There are certain areas where the
21 technology just isn't there to do a hundred percent unrestricted use kind of
22 cleanup and one of the dilemmas we've had is ordnance.

1 The good news is we've been dealing with ordnance
2 contaminated sites for a long, long time and Col. Jack Mathews who is head
3 of the Defense Explosives Safety Board will be joining us to lead the
4 discussion on that topic.
5 We'll talk to you about what we have done in the way of
6 kinds of parceling approaches so that we can get some productive use of
7 those pieces of land while we wait for the technology to get on.
8 Another issue is the regulatory authority. Those who have
9 worked with DOD before know that's one of our dilemma issues. You heard
10 about it here, who should take the lead at certain sites, should there be one
11 person in charge. It raises a number of issues about can one regulatory
12 agency defer to another.
13 Lastly, funding gets to be a real concern. Funding is a
14 concern for us. Funding is a concern for the communities.
15 Those are the five big issues. Jay Pendergrass is from the
16 Environmental Law Institute. You should have in your handout -- these are
17 the draft of the issue papers that we have prepared and at the back of each
18 of the five issues are some options for further study. I'll ask Jay to go into
19 the first issue.
20 MR. PENDERGRASS: The first issue seems to revolve
21 around the land use questions and I think basically the people we heard from
22 this morning covered most of these things. There is some background
23 material but basically this deals with the relationship between the cleanup and

1 the land use during and after cleanup and what effect the existing and planned
2 land uses can have on investigation and cleanup and interim land uses.
3 We heard the problems this morning about Norton and
4 dealing with investigation and cleanup when you have an interim use that
5 wants to make use of the facility right away.
6 It brings up the parceling issue that a number of people
7 have talked about, can you subdivide, when can you subdivide, raised at
8 Pease, raised at Norton, what pieces of property have to be covered by the
9 warranty and when do you not need the warranty and the covenant and the
10 deed.
11 The last issue as it's broken out there, A through D, deals
12 with the practices, procedures and policies for determining what the
13 allowable uses of land are, how do you factor the land use of a former base
14 into the cleanup decisions.
15 That is complicated by the fact that you have a number of
16 different statutes that may govern what's going on -- RCRA, CERCLA -- and
17 there are different procedures that can apply for each of those laws and
18 different systems may apply when you are talking about non NPL sites.
19 The study options that we listed on page nine --
20 MR. HOURCLE: Let me interject here that the study
21 options are not to be mutually exclusive. In many cases they overlap one
22 another and give you a range of areas that we can inquire into.

1 MR. PENDERGRASS: In fact, they feed into each other
2 both in what is listed under number one and we find that some of the things
3 are very similar and what's listed under number one may come up again in
4 some of the later ones.
5 1-A would be looking at the circumstances criteria
6 restrictions for the interim uses of land while investigation or cleanup
7 activities are being undertaken.
8 That actually then feeds into what's listed under G for
9 developing a policy to govern the use of parcels that are within an area of
10 concern while investigation and remediation is ongoing.
11 There are other options, such as B, the issue of parceling
12 was talked about by most of the witnesses this morning and the question Ms.
13 Shields asked, to look into and clarify what the meaning of the statutes and
14 regulations is as far as the ability to transfer parcels, whether they're
15 completely uncontaminated or contaminated surface that's been remediated,
16 contaminated groundwater, whatever the situation is.
17 C, identifying the differences in the practices, procedures,
18 policies for determining the uses. The first option might be to study all of
19 the different policies and procedures for RCRA, CERCLA and non NPL land
20 use determinations and then reconcile those differences.
21 One of the chief drawbacks of that is that you might have
22 to be doing an exhaustive survey of policies and procedures in ten EPA

1 regions in 50 states and they might not be doable in the time that the task
2 force has to operate.
3 D is looking at reconciling and combining the oversight
4 regulatory responsibilities under the major federal statutes that govern
5 environmental response on the bases that are being closed. That's an issue
6 and a study option that comes up under all the issues that we've listed in this
7 document.
8 E goes to the question of doing the parceling and if you are
9 talking about transferring a parcel that is maybe going to have restricted use,
10 how do you do that. GSA has some experience with it but maybe there are
11 other things, some innovative methods of land transfer that can be used to
12 deal with the restrictions when you are parceling something
13 MR. BACA: For those of you who don't know the
14 gentleman who just walked in, this is Jim Strock, formerly of Washington
15 who headed the enforcement office of the U.S. Environmental Protection
16 Agency. He is currently in California and I think you have a title of
17 commissioner of environmental protection?
18 MR. STROCK: Secretary.
19 MR. BACA: Sorry.
20 MR. PENDERGRASS: F is related to E. One of the things
21 that I think Bob Cheney mentioned a whole lot in terms of Pease but one of
22 the issues that came up there was how to deal with land that was appropriate

1 for a wildlife refuge and the desire among people to make that available for
2 wildlife.
3 MR. BACA: This is a pretty exhaustive list of issues and
4 questions and I'm convinced if we could provide answers and material to
5 support these concerns that we could easily arrive at a solution.
6 My concern is how are we going to resolve A through G
7 in the short timeframe that we have and are we going to be able to research
8 these issues and gather enough information to arrive at possible solutions.
9 MR. HOURCLE: Resources are never unlimited. Some
10 of these probably have more promising possibilities than others.
11 One thing that would be very useful to the staff would be
12 to get the task force consensus of which are the most promising solutions.
13 Issues that we've discussed are with regard to parceling, what makes sense,
14 should we be pursuing parceling options.
15 I think what another one is, if the task force is interested
16 in the possibility of potential transfers and we've heard that there is a lot of
17 consideration for doing that now and it seems that the law would allow at
18 least lease arrangements where contaminated property could be transferred.
19 What should the department be looking at in the ways of
20 controls over that property? Certainly as was mentioned earlier and we have
21 the same concerns that the state of New Hampshire would have, this is
22 federal property and the federal government is always going to be responsible
23 for that property and we want to make sure that any property that is taken

1 and put outside of our immediate control is going to be sufficiently safe for
2 the populace, that we're comfortable with the transfer and that we've, at least
3 from a lawyer's perspective, minimized the federal government's legal
4 liability for that property.

5 A tough issue with regard to base closure because there is
6 a lot of demand obviously out there for getting these properties into re-use.

7 We've talked about 120(h). Certainly we have installations
8 out there that are being used today. They are being used by the military
9 departments. They have people working on them. They have people living
10 on them. Probably every one has a child care center. These are more like
11 cities than they are traditional EPA superfund sites.

12 Instinctively there seems to be some area for balance
13 between some extent of providing the communities the ability to get
14 economic development on these properties and still have remediation continue
15 on them as they continue today at all of our military installations, where
16 remediation continues today.

17 How much can we undertake? Some of these are much
18 easier than others. I think the first cut at this for the task force may be our
19 best assessment to give you about which of these areas are limited with the
20 current constraints of those which arise out of policy of various agencies.

21 The second level of difficulty might be the regulations of
22 different agencies. A third area of concern is, of course, those where the
23 limitation is actually under the statute and the best we could offer then would

1 be perhaps a task force recommendation about areas that the congress should
2 consider with regard to statutory relief or modifications to deal with the base
3 closure cleanup issues.
4 I guess I ask for some discussion about which areas you
5 think might hold the most hope for relief for the dilemma.
6 MR. BACA: Why don't we open it up for discussion at
7 this point. Congratulations on your efforts.
8 MR. JONES: Let me ask a very basic question. To what
9 extent is land use planning incorporated into the base closure initiative right
10 at the beginning. A formal land use plan where the community has an
11 opportunity to buy into it creates an opportunity for dialogue and discussion.
12 Questions with regard to interim use or disposal could all be addressed at that
13 time.
14 Is land use planning woven into the environmental process?
15 Are there existing tools or mechanisms that can be used to facilitate the
16 process?
17 I also have questions with regard to interim use. Interim
18 use from a real property disposal perspective of course always causes us
19 problems. I'll address what my problems are later but could you answer
20 that?
21 MR. HOURCLE: The department right now as part of the
22 base closure process provides grant monies through our office of economic
23 adjustment to communities that surround the installations to be closed.

1 The purpose of those are community assistance grants for
2 re-use planning for that installation. I think they were helpful with regard to
3 -- we picked up a part of that one and a half million or so that New
4 Hampshire expended for preparing their airport development plan.
5 The Environmental Law Institute and Earth Technology
6 Corporation are here sort of as an outgrowth of another effort that we had
7 going that got melded into this effort which was to take a look at some land
8 use versus cleanup kinds of issues and to see if we could provide some
9 options for these local communities so they could better understand as they're
10 doing their follow on development planning to what extent those development
11 options may be curtailed by contamination that exists on the property that's
12 going to need to be dealt with so that's an area where we're trying to bring
13 it together.
14 A lot of sympathy for helping these communities out to
15 make good use out of these installations that are being closed.
16 MR. EARL JONES: The area of interim use causes me
17 some concern, particularly if interim use contemplates a commitment to
18 permanent use before the formal disposal process commences and, there is
19 a liability question. If a health or safety problem evolves during interim use,
20 who has liability?
21 Interim use may add to rather than reduce, disposal
22 timeframes. How do you address that? Interim use causes me a lot of

1 problems and I wonder if interim use is an integral part of your basic
2 disposal strategy or is it a tool to facilitate and accelerate the process?
3 MR. HOURCLE: I guess we arrived at the interim use
4 issue because it seemed that we had number of installations that have
5 contamination, whether it's asbestos or groundwater contamination. A lot of
6 groundwater contamination at our installations, probably not uncommon in
7 the United States to some level.
8 Groundwater contamination can't be fixed in an instant. It
9 usually involves pump and treat. Technical people can help me but pump
10 and treat in less than 20 years is unusual, 20 to 40 years.
11 We have a situation where if we're going to be doing
12 anything with these properties, we probably are going to have some ongoing
13 remediation over a good period of time.
14 The interim use strategies we talked about and we
15 recommend to consider as a study option would be various forms of partial
16 transfers or limited transfers of the property.
17 We have talked about forms of reciprocal land covenants
18 similar to that used to -- One of my favorite examples of reciprocal land
19 covenants, just as you don't have the latitude to put up any kind of fence you
20 want, we were going to explore the possibilities that in doing a transfer of
21 the property whether we could encumber it with certain kinds of easements
22 and covenants to also give us follow-on rights as a landowner because we're
23 going to have to keep the properties that we're going to need for the pump

1 and treat sites and things like that for a long period of time, to control the
2 kinds of uses that are out there.
3 As Col. Jackson was talking about this morning, is there a
4 possibility that one could transfer this property contingent on the operation
5 of a municipal water distribution system and prevent then people from
6 drilling wells under the property and using the groundwater for drinking or
7 agriculture or whatever until such time as the full pump and treat is in place
8 and we're all satisfied that we're in a situation where the groundwater again
9 is available for uncontrolled use.
10 There are people who like that and there are people who
11 don't like that and the question is whether that's an area that might be
12 productive for further study for us as a way of making use of these
13 installations.
14 MR. GOODHOPE: I think the parceling process and the
15 interim use problem, actually you've alluded to it on page eight, where the
16 transferee might become quote, "an owner or operator", unquote.
17 I think I heard a little bit earlier that you're worried about
18 the potential liability from the federal side. If you don't give the
19 indemnification, which you can't do apparently, that would really inhibit your
20 ability to use any property in the interim and certainly to parcel out if there's
21 a potential for migration.
22 MR. HOURCLE: Indemnification is one other area to take
23 a look at with regard to Pease. We certainly had a number of lender liability

1 issues. It also goes to the extent that if you have a national priorities list
2 site, the whole base is on the national priorities list by virtue of one or two
3 landfills over a very large multi thousands of acres, is a bank going to want
4 to come out and lend the kind of money to allow private industry to come in
5 and develop.
6 There are a lot of very, very difficult issues here. That
7 may be another area that the task force would like to look at, how do we
8 sever the liability.
9 I'm hopeful, I guess the thing I'm trying to get down to is
10 some kind of a consensus about which of these areas to have our folks pursue
11 over the next time.
12 MR. BACA: I would think A and B are definitely two
13 items that we need to pursue. C, I'm not sure what we gain by spending a
14 lot of time understanding the differences.
15 MR. PENDERGRASS: Another point with regard to C,
16 and also with D, is that they both may take a lot of effort to do.
17 MS. SHIELDS: Well, E and F are sort of subdivisions of
18 A, aren't they? I think if you are looking for ways to make transfer
19 arrangements work, you've got to tackle E and F.
20 MR. HOURCLE: I think the other suggestion I heard is
21 here we're looking more at -- I probably should have been a better student
22 of property laws than I was in law school. I'm regretting that right now.

1 I think I did hear concern about the liability issues and how
2 they impact on all of this, too.
3 MR. GOODHOPE: I think you can't give enough comfort
4 to the proposed transferee or purchaser that -- I think there's going to be give
5 and take on both sides so really we would hope that the Department of
6 Justice would have some flexibility in approving innovative ways of
7 transferring property regarding liability assumption.
8 MR. PENDERGRASS: One of the things that you raise is
9 in terms of comfort on liability. If you're talking about restricted uses on
10 land, that in itself, even if you can structure a real estate transaction that
11 allows a transfer but that has some restrictions on it, that may reduce the
12 marketability of that property.
13 MR. HOURCLE: I think we'll get to that later. It is
14 certainly in the department's interest to the extent we can receive moneys for
15 these properties do that.
16 One of the other particular facets of the base closure statute
17 is that the monies we receive for these properties can be put back to DOD
18 use for things like cleanup of the properties so there really is an incentive,
19 a revolving fund kind of incentive to keep those properties as unencumbered
20 as possible.
21 MR. STROCK: You made a suggestion about C and D that
22 made a lot of sense. At the same time, I would be interested to ask our
23 experts what we lose by not looking at those right now. What circumstances

1 might they see coming up? Would there be a real value added to make sure
2 we did focus on that in this context?
3 MR. PENDERGRASS: I think the witnesses this morning
4 identified a lot of concerns about the RCRA CERCLA interface and it
5 potentially comes up in a lot of situations but there is also maybe a limited
6 opportunity to have anything immediate that you can really do about it.
7 We might be recommending legislative changes that given
8 we just did a quick reauthorization of CERCLA and RCRA is just getting
9 started, the issues seem to be already identified. It may not be something
10 that congress is willing to take on. I'm not prognosticator of congress.
11 MR. HOURCLE: We're going to get to issue four which
12 involves some of the regulatory dilemmas, who's in charge kinds of issues,
13 and perhaps these will work -- if you approve continuation of research in
14 issue four these may well fall more into issue four than --
15 We're trying to be exhaustive to the point of perhaps cutting
16 them down too much in preparing this list, although as I say that I guess the
17 next topic, unless there's another question, is issue two.
18 MR. BACA: Just before we go on to issue two, let me ask
19 if there are any other options that you have for us.
20 MR. GRAVALLESE: Related to that, the direction that
21 staff has gotten from the other members seems to make sense to me. I think
22 Christian would agree with it, if EPA has additional thoughts, should we
23 speak to you or to the colonel?

1 MR. BACA: Either way. We would also during this
2 meeting accept any written questions or concerns or suggestions.
3 MS. SHIELDS: I just have -- This may be totally off the
4 wall but it seems to me one notion that's been thrown out is maybe we're
5 defining the NPL site too broadly and that's causing us a lot of heartburn as
6 a result.
7 If there's a way to sort of attack this from the other end and
8 redraw NPL sites so that is a more restricted area, we might work our way
9 out of some of these problems. I have no idea if that's even remotely
10 realistic.
11 MR. BACA: I think that's a great approach.
12 MR. PENDERGRASS: On number two, we're looking at
13 this as the cleanup process. We basically divided it out as sort of the two
14 major parts of the cleanup process determining what the cleanup standards
15 are and then carrying out the cleanup and looking at the laws that govern in
16 the area they will have a different practice policy procedure for determining
17 cleanup standards depending on which of the statutes they come under.
18 We broke out the issues very broadly that way. I think we
19 heard this morning some other things that were not talked about in the
20 background issue paper in terms of regulatory authority review of the
21 documents, the resources available to regulatory authorities, resources
22 available to the department, both internal staff and then also the issue of

1 contractors and how they can be used. I think at one point there was
2 mention that throwing more money at a project doesn't get you anything.
3 Basically I think everybody heard this morning the basic
4 statutory provisions that led up to these problems and CERCLA Section 121
5 that sets what the cleanup standards are going to be on NPL sites, Section
6 120 that specifies that on federal facilities the federal agency must comply
7 with state law.
8 Under RCRA when you have a treatment storage disposal
9 facility that's regulated under RCRA, then you get into corrective actions if
10 there's a release of hazardous waste from that facility or from a solid waste
11 management that's associated with the facility. That's something that we
12 didn't go into any detail on but the provisions for cleanup are different.
13 You also have the difference that CERCLA is a program
14 administered by the federal EPA whereas RCRA can be administered by the
15 states. Different states are delegated different portions of the RCRA
16 program. There have been relatively few that have been delegated the
17 corrective action authority but that is possible.
18 We have listed under the options here, they really are study
19 options, at least the first two identifying differences in the practices and
20 policies and procedures for determining cleanup standards and for carrying
21 out the cleanup under RCRA and CERCLA and applicable state laws and
22 then do something about reconciling those differences.

1 As we talked about with some of the options in One, that's
2 a large task to do and certainly in terms of reconciling those differences it
3 may not actually be possible but it is certainly I think one of the task force
4 could have as its goal.
5 Then number C is a fairly specific point that --
6 MR. BACA: But that could be a recommendation for a
7 legislative fix.
8 MR. PENDERGRASS: Yes. C is fairly specific with
9 respect to the overlap between RCRA corrective action authority and
10 CERCLA and what are the requirements between the two of them and
11 whether RCRA provisions may delay actions that are taken under superfund.
12 Finally, we have the same option as was mentioned in
13 number one that Mr. Strock asked if we would lose anything if we took it
14 out. It does come up throughout this because it certainly appeared to the
15 staff that one of the major issues that cuts across all these is that interface
16 between RCRA and CERCLA.
17 MR. BACA: I think again the task force should
18 recommend legislative changes.
19 MR. PENDERGRASS: What we don't have here are
20 specific options that relate to some of the things that came out earlier about
21 regulatory authority review or the resources issue or contracting.
22 MR. BACA: Any questions on two?

1 MR. STROCK: If I could ask several. Are there EIS
2 issues embedded in this that we need to be aware of, too?
3 MR. PENDERGRASS: Yes. The department is doing
4 environmental assessments, and EISs, on the closure of bases and looking at
5 what is the impact of closure. We did talk about that in terms of the
6 examples. Bob Cheney from New Hampshire mentioned that the final
7 environmental impact statement for the closure of Pease Air Force Base came
8 out yesterday.
9 MR. HOURCLE: In both statutes which set up the base
10 closure commissions, the 88 commission and the current statute, there are
11 NEPA waivers but they do not extend to the requirement of the department
12 to comply with national environmental policy act, quote, during the process
13 of property disposal.
14 So we do have a situation in thinking about it where we will
15 have land use planning grants. We will have RI/FSs or state counterparts or
16 something to an RI/FS talking about the environmental remediation
17 component of the land that's subject to the land use planning grant.
18 On top of that, we do have an obligation to comply with
19 National Environmental Policy Act with regard to property disposal.
20 It would seem logical that some of -- to what extent is it
21 contaminated and what is it going to be used for are probably fair game for
22 analysis under NEPA for property disposal kinds of decisions.

1 Though we've rarely moved up to that point in the disposal
2 process yet, we do have a possibility of potentially redundant studies.
3 MR. STROCK: So where does that leave us?
4 MR. HOURCLE: That may be a fertile area of study for
5 us to take a look at to what extent can the land use processes and the NEPA
6 process all be combined and expedited with regard to bases being closed.
7 MR. STOCK: And how does that interrelate with this
8 statement, NEPA equivalence?
9 MR. HOURCLE: I would assume -- I haven't had to deal
10 much with many NEPAs, that the extent the state is getting involved and
11 making land use planning decisions, the extent the state agency is being
12 created as a land use planning agent, I would imagine that the NEPA process
13 would also kick in. We'll probably have to do an EIS on the amount of
14 paper that's going to go into doing studies probably.
15 MR. STROCK: Could I ask two more questions, hopefully
16 equally enlightening?
17 The point that Mr. Baca made about the number D as I
18 understood it, looked at it as a legislative issue. What about as an
19 administrative issue?
20 MR. HOURCLE: I think there is. Of course there have
21 been those in your old agency who always accused me of reading laws
22 perhaps a little bit too broadly but 120(i) as I recall talks about being
23 consistent with 3004(e) of the corrective action provisions, so to the extent

1 that one were to have corrective action provisions that somehow encompassed
2 the remedial action process, it might be a way or reconciling the two
3 programs.
4 It's certainly not easy in getting out the corrective action
5 provisions that EPA has been underway with for a long time but I think there
6 is certainly a possibility and one of the things that we need to identify for
7 you in the staff work is what are the opportunities for reconciling these
8 things, fixing these problems, short of legislative changes because time's
9 awasting on base closure and the idea of having to affirmatively go forward
10 with legislation is never quick.
11 MR. PENDERGRASS: One of the problems that may not
12 be amenable to administrative things is the issue of what can you consider
13 when you're deciding what the cleanup standard is going to be.
14 Under RCRA there are certain things that can be considered
15 and there are different things that can be considered under CERCLA and that
16 probably cannot be reconciled.
17 MR. STROCK: If I could ask one more basic question.
18 Do I understand that part of option D is discussing some kind of lead agency
19 function of the state or federal agency being accountable for the whole thing?
20 MR. PENDERGRASS: We actually bring it up more
21 specifically under issue four.
22 MR. HOURCLE: This was to see to what extent we can
23 get some of the issues, more the 120(i) versus corrective action versus what

1 needs to be done under CERCLA and the ways to integrate the two programs
2 as opposed to four, where we're trying to see or take on as a study area to
3 what extent there may be authority to have one regulatory agency defer to
4 another. That's what issue four will be all about.
5 MS. SHIELDS: It seems to me we're taking on maybe
6 more than we can handle I'm not sure Jim and I can even agree on how to
7 reconcile CERCLA and RCRA any more, and I don't think this group is
8 going to solve the RCRA/CERCLA interface problem. I think our charter
9 is restricted to making the base closure requirement work better given the
10 statutory responsibilities that we have, and if we have a brilliant insight as
11 to how to make it work better in this situation, then we certainly should share
12 that with people on the Hill and everywhere else. However, I think if we
13 interpret our charter too broadly, we're just never going to finish this.
14 MR. HOURCLE: Among us who probably are going to be
15 doing a lot of work on all these things, we share that. It may be that w get
16 to the point where the task force sentiment is to make a recommendation to
17 Congress that --
18 MS. SHIELDS: It's a microcosm of RCRA/CERCLA
19 problems, and if we can think of a way out of the morass then we'd be doing
20 the country a great service. But I don't think we had better take all of
21 RCRA/CERCLA interface on our plate.
22 MR. BACA: Our charge is not to solve the world's
23 problems.

1 MR. CARY JONES: But I think to the extent that it says
2 identify the differences, and I don't know how much of that has been done,
3 but perhaps to the extent that that's one of the goals I think that would be a
4 worthwhile thing to do.
5 MR. HOLMES: To follow up on a point that was being
6 made this morning, there are an awful lot of issues we're looking at here but
7 I think that after we get through today's iterations and we have a chance to
8 catch our breath that you've really got to try to prioritize as to what you
9 consider to be two or three or five or six or whatever are really the key
10 points of leverage.
11 Let's just say it turns out that the key recommendation of
12 this group is going to basically say Congress wants Federal facilities to be
13 treated like private facilities and there's an awful lot of parity and
14 covenanting and therefore we need a narrowly crafted legislative fix that
15 deals with the covenanting issue.
16 I have a feeling that you're going to find that there are two
17 or three leverage points that are going to solve an awful lot of your
18 problems.
19 MR. BACA: Good point.
20 MR. PENDERGRASS: I hear the task force saying we
21 should do the things listed in A and B, identifying differences, not trying to
22 reconcile those differences and not trying to do something under D.
23 MR. BACA: Right.

1 MS. SHIELDS: And I think we should concentrate more
2 on the execution of how to make this work better. I think it was Col. Walsh
3 this morning who was talking about that. We may be able to have a generic
4 plan for a cleanup of a certain type of problem.
5 There may be a lot of similar problems on a lot of these
6 bases and just because it's a different base you don't have to do the same
7 study over again. You may already have one so you can skip that phase and
8 go on to the next one.
9 It's those sort of practical suggestions we should make. We
10 certainly need you to look at whether we can do that given the present
11 statutory structure, but if we can and if we think that's a possibility then that
12 seems to make a lot of sense. MR. HOURCLE: I think there's a consensus
13 that that's one that we should probably follow up on.
14 MR. BACA: Let's go on to issue three.
15 MR. MATHEWS: What I would like to do is to walk you
16 through the issue that was presented to me and slightly rewrite the options.
17 If you'll bear with me, I hope you'll be able to follow this.
18 The statement of the issue is are there sites where
19 remediation is not technologically feasible or for which the cost is prohibitive
20 and, if so, what uses if any can be made of the sites and what mechanisms
21 are needed to protect the public in perpetuity from the risks associated with
22 the sites.

1 I'd like to suggest to you that we have in place in the area
2 of munitions, which is what I'm going to limit this to, what we need to
3 attend to that.
4 Most frequently we're talking about military installations or
5 former military installations that were contaminated by munitions residue.
6 Two of the installations that immediately come to mind are those out of the
7 '88 report, Jefferson Proving Ground and you heard about Fort Meade.
8 At Jefferson Proving Ground alone, it's estimated there
9 were 23 million rounds of munitions fired here and about one and a half
10 million of those are assumed to remain as high explosive dud fired ordnance,
11 which means if you dig it up and touch it may explode and kill.
12 Munitions residue contaminates military installations in
13 many forms. The simplest would be an earth fragment or casing but that's
14 not what we're really here to talk about.
15 The things that are really hazardous in our terms are the
16 other end of the spectrum. That's a piece of high explosive ordnance that
17 has not function and it's dud fired. It's potential is it could maybe go off and
18 hurt somebody.
19 I'd like to make a subset or narrow your focus a minute and
20 say that it's important to understand that when we talk about contamination
21 here, I'm not talking about it in your generic normally understood terms.
22 It may well be that some ordnance is, as you referred to,
23 is hazardous if it gets out in the soil. This by and large is not that case. If

1 there is anything in it that is hazardous, it's extremely minute amounts and
2 it's heavily encased in steel. It's not a major issue if it's an issue at all.
3 In fact, in most cases this ordnance if it does become
4 uncased and exposed to the soil, it is essentially fertilizer that actually
5 improves the environment.
6 What the hazard is the explosive and it's primarily a hazard
7 to you and I, thinking people, who pick it up and drop it, kick it and it goes
8 off and kills us. Birds and animals are normally not by nature
9 a problem.
10 The regulatory status is unclear to me about where RCRA
11 or CERCLA and such are involved.
12 You need to understand that not every military installation
13 has got this problem and even where it occurs, it might be limited to one or
14 two areas on an installation, just limited areas.
15 What the problem is it's very difficult to determine what the
16 scope of it is. We have areas that go back a hundred years or more that have
17 been in heavy use and nobody really has the records and the records are
18 inaccurate.
19 The feasibility and the cost of remediation depends on the
20 future use of it. In some areas where it was there for a limited amount of
21 time and in limited amounts, it can be fairly quickly and easily cleaned up.
22 The primary areas are artillery ranges, bombing ranges where you have deep
23 penetration, and I'll talk to that in a minute.

1 Our standards, DOD standards, do not permit custody
2 transfer of land that's contaminated with explosives that may endanger the
3 public when the contamination may not be remediated to the point that
4 technology and resources permit.
5 I need to explain what I mean by may not be
6 technologically feasible at this time, it may be prohibitively costly and, this
7 is key, it may be a long-term continuous process.
8 Think of land, if you will, as a large pudding with lots of
9 nuts and berries and fruits in there. You can clean it up. Where bombing
10 and artillery has gone down 30 or 40 feet, you clean up the surface and it
11 percolates and a week late it's just like you never cleaned it up and it
12 continues forever and ever. It just seems to be endless.
13 You need specialized equipment. It's extremely expensive
14 and labor-intensive and it's very dangerous in many cases. The variability
15 of costs is illustrated, if you've got the handout you'll see -- for instance,
16 some of the estimates we had on Jefferson. Surface cleanup they said 550
17 million; if you go down three feet, 2.8 billion; six feet, 3.8 billion; ten feet,
18 five billion dollars; unrestricted cleanup over five billion.
19 I've just told you that even that week after you clean it up
20 it may be back, so it's like bailing the sea with a spoon.
21 In addition, another thing to consider is that current
22 technology limits our ability to actually see where the contamination is, to

1 detect it, if you will, determine he range of it and once we see it then to get
2 down to it.
3 We do have some devices that allow us to look down
4 through the ground with radar. Under the right conditions you can see down
5 as far as 15 feet but the conditions may not be right. If your ordnance is
6 down 30 feet or more, it doesn't necessarily give you everything you need
7 to know.
8 There needs to be some more work done on that. I need
9 to tell you that the services are spending money all the time on technology
10 but they haven't focused necessarily on this area. They focus primarily on
11 trying to recover from attack of an enemy.
12 In most cases we're talking about impact areas themselves
13 are not going to be amenable to real cleanup. They're going to have to be
14 restricted to wildlife refuges and things of that sort. The area around them
15 may be cleaned up to limited use capability in other areas that had only
16 minor contamination might be cleaned up to the extent where they could be
17 unrestricted as far as re-use.
18 What have I really said? We have been parcelling, in fact,
19 and we need to be able to do that.
20 I would like to kind of illustrate that. It's kind of a story
21 of how we got where we are. Very quickly --you don't have this, I might
22 as well tell you that now in case you're looking.

1 In February 1970, President Nixon at that time issued
2 Executive Order 11508 and that set in motion identifying and disposing of
3 unneeded federal land. There were a series of ordnance problems that
4 occurred right after that where we found we were leasing land that had been
5 impact areas and it was causing a lot of trouble.
6 In October of '72 the Assistant Secretary of Defense for
7 Installations and Logistics issued a memo directing that all actions having to
8 do with release of land that involved explosives having been stored or used
9 there had to be coordinated through my board and get our approval.
10 Essentially what I'm trying to say is for about 19 years
11 we've been in the business. It was formalized in August of '79, though, so
12 we're talking 12 years, if you will. It went into our safety standard.
13 I'll say parenthetically we exist by public law. We were
14 chartered to write a standard for how munitions be stored and handled and
15 it was found in 1949 by the attorney general of the United States that our
16 standard because our foundation in law has the force of law for DOD so we
17 were officially including this, what you have today, in our standard for the
18 last 12 years.
19 This became our current policy partly because of an incident
20 that happened at what was formerly Fort Hancock, New Jersey, later
21 Gateway National Recreation Area in New Jersey.

1 From 1876 to 1920 it was used as an artillery test area.
2 They fired artillery in it. The records indicate something like 10,000 rounds
3 a year went in there and that's 46 years, so that's a bunch.
4 In 1962, the Army did the best cleanup it could in the area
5 and leased it to the state of New Jersey for a recreation area, but they warned
6 that of the 1570-some acres that 250 of those were this impact area and
7 should not be used for the public, and they got a hold harmless clause added
8 into the State of New Jersey.
9 In '72 then they released the land to the national park and
10 in '77 the secretary of the Army formally transferred it to the Department of
11 Interior, and about two years later the incidence of live duds being found and
12 having to be saved by Army ordnance people had reached such a frequency
13 and was causing so much trouble that the Secretary of Defense wrote a letter
14 to the Secretary of the Interior and advised him that they needed to close the
15 park and take a look at safety.
16 At that time they were finding rounds all the time and
17 typically there were 50,000 to 70,000 on the beaches and they would find a
18 couple of 12-inch round weighs, about a thousand pounds, 450 pounds of that
19 is high explosive, and these were -- 80 percent of them were of a nature that
20 they were an imminent hazard to anybody that touched them.
21 As soon as they closed it, Congress raised the issue of how
22 fast could we get it back into use because people missed their beaches and

1 the Army EOD mounted a cleanup effort -- explosive ordnance disposal is
2 EOD.
3 When they were finished, they had determined which areas
4 were safe and could be released unrestricted to the public. They had
5 decontaminated some but found it too contaminated to clean up permanently.
6 Those were declared wildlife refuges. In some cases they build elevated
7 walkways across these areas so you could go out and look at the wildlife and
8 get from one safe area to another.
9 In a nutshell, that's substantially the way we've been
10 operating now for quite some years. We've basically been parcelling.
11 I get to the options and actually what's listed here as A
12 through D I would suggest to you is what we have been doing for quite some
13 time.
14 The essence of it is we need to be able to continue to
15 parcel, and you can identify your clean areas, you can release those
16 unrestricted, you perform cleanup of some areas and you release them with
17 restrictions. You have to establish in perpetuity ways of protecting the public
18 and you use those as wildlife refuges and our regulations do not permit
19 releasing the title. You can lease the use of it to wildlife but DOD has
20 responsibility for keeping it clean, responding, keeping it placarded and
21 anything that happens is on DOD's head. That's the first one.

1 The second one is E and I would suggest to you -- it says
2 here use funds for base closure account to research and develop technology
3 for explosive ordnance disposal. I'll rewrite that, too.
4 You can either ask the service to focus some of their
5 already existing research and development effort in this way, or alternatively
6 you could suggest that some money from this account is shared with the
7 services on a dual basis.
8 I will tell you my experience has been that when you share
9 some money, a little bit of money gets you control and makes sure that it's
10 focused and since both parties pay money they are both interested in the
11 result and they actually get better results for less money so that would
12 actually be the better way.
13 MR. BACA: Questions?
14 MR. GOODHOPE: How many bases are we talking about,
15 or are we talking about every base?
16 MR. MATHEWS: No, not every base. Most bases in the
17 military have had some munitions but most of those have been, most of the
18 area has been little exposed and most of them have had very little, you know,
19 a firing range or something like that where you're firing rifles and it's not
20 a problem.
21 There are a limited number of areas that have been proving
22 grounds, bombing ranges, artillery ranges, and within an installation that
23 contains one of those you have to determine what area is safe that can be

1 released immediately and you actually work from the outside in. You release
2 the easy areas first instead of working on the hard areas.
3 MS. SHIELDS: When you say "release," you mean just
4 make them available to the public. You don't mean to sell them.
5 MR. MATHEWS: If you can, and we can -- If we can
6 verify through ground surveillance, through aerial, whatever it takes, that the
7 area is clean and clear and it can be released unrestricted even though it's on
8 an installation that's got one of these pits from hell.
9 That area that can't be cleaned up needs to be definitized
10 and it needs to be protected and safe but in many cases large amounts of land
11 can be released. Even your famous Fort Meade has areas on it that are quite
12 easily verified clear. You logically do the easy parts first.
13 MR. EARL JONES: We've worked with you for many
14 years and there are policies and procedures which appear to be very, very
15 effective in dealing with this issue. You have released contaminated
16 properties through the years that we have transferred to the Fish and Wildlife
17 Service or to local governments with restrictions on use. But would you
18 agree there are properties that it's cost prohibitive to clean up?
19 MR. MATHEWS: Not only that but it's such a continuous
20 process that any cleanup is momentary. MR. JONES: How do you feel
21 about sharing some of the funds to clean up former explosive ordnance sites?
22 Wouldn't there be priorities much higher than this?
23 MR. MATHEWS: I'm not sure of the question?

1 MR. EARL JONES: The last item, E, says use funds from
2 the base closure account to research and develop technology for explosive
3 ordnance disposal.
4 MR. MATHEWS: First of all, I widened that by instead
5 of disposal, detection and disposal, and I would say detection is ahead of
6 disposal because in fact if I can determine an area is clear it can be released.
7 A good case in point is if I have to walk through an area
8 I can't get to because my technology doesn't allow me to do it from a
9 helicopter, then I can't really tell what that area is like and I'm limited on
10 what I can do as far as releasing it.
11 If I can develop the technology to see it by flying over it in
12 a helicopter and measure it and know exactly what was where, then perhaps
13 I could release areas that I now physically can't even track.
14 MR. BACA: If munitions are not hazardous waste --
15 MR. MATHEWS: Some are but we're not talking about
16 that here.
17 MR. STROCK: Hazardous substances?
18 MR. MATHEWS: Speaking for me, I will tell you that I
19 don't think most of the things we're talking about here are. Now I will tell
20 you that we do have ammunition that can -- chemical ammunition quite
21 clearly can.
22 MR. BACA: I agree with that but your typical impact
23 range --

1 MR. MATHEWS: That should not normally be the case.

2 MR. HOURCLE: With regard to the Defense

3 Environmental Restoration Program, our basic cleanup fund, there are certain

4 categories of activities we can undertake for restoration of land. There's the

5 area of the chemical contamination that we've talked about at Norton at

6 Pease.

7 One of the subcategories before building demolition, which

8 is the lowest priority category as we look at it, is the area of EOD types of

9 problems where it presents a safety hazard so for those purposes it

10 historically has been funded by the department.

11 MR. MATHEWS: I have to say that's exactly right. If

12 you just step aside and get out of the narrow focus of this particular issue,

13 there are cases especially in the manufacture of ammunition where that's

14 true.

15 MR. HOURCLE: When you get into what do you do with

16 old expired ordnance, a case can be made that is in fact by definition a

17 RCRA regulated activity and the question then becomes, although we ar

18 probably getting off the task force's track, the question then becomes do you

19 follow the normal RCRA regulatory procedures for dealing with that or do

20 you follow the kinds of safety procedures we have when we're up at ELI and

21 they have this is the complaint department, take a number and it's a hand

22 grenade.

1 When you've got a hand grenade or you've got one of those
2 duds, the thought of evacuating the beach and immediately going over to the
3 regulatory agency for a permit is probably not where we want to be with
4 regard to munitions.
5 MR. MATHEWS: And we've been made subject to that.
6 MR. HOURCLE: These are difficult issues. I think the
7 flip side would be taking Jefferson Proving Ground and calling it a RCRA
8 disposal site. I'm not sure if that's really where we want to be and some of
9 the RCRA handling procedures with regard to how you store things are really
10 not compatible with military munitions, whether you use an open building or
11 closed building or what the venting requirements are and things like that.
12 We're getting completely off track. That was saying that
13 with regard to munitions they are a unique element of a hazardous
14 material/hazardous waste, and probably should be subject to some special
15 handling practices that really take a look at the safety and operational
16 requirements associated with munitions.
17 MR. MATHEWS: Let me respond and I'll give you two
18 subsets real quickly. One is when we get into disposals and we dispose of
19 ordnance, we can get in that area very quickly. Some ordnance has got
20 hazardous things in it. The kind of large ordnance in an impact area
21 wouldn't necessarily or if it was it wasn't very much. I'm thinking about
22 lead azide, mercury fulminate and things of that sort. However, you can have
23 some small arms rounds that we have to dispose of that because you have so

1 much of it in the cartridge itself and you have so many cartridges, it turns
2 out that you can have all sorts of problems unless they are handled properly.
3 Luckily, we normally have been smart enough to specify a
4 certain subset within that and that's the only place that was expended, but
5 you do have things that are dangerous in the generic way from a chemical
6 health environment hazard point of view.
7 MR. BACA: Any other questions?
8 MR. GOODHOPE: How many bombing ranges and
9 artillery ranges are we talking about? There is a finite number. How many
10 are we talking about?
11 MR. MATHEWS: I don't have that information here. We
12 wouldn't be looking to any great extent to any Navy installations associated
13 with closures. The Navy doesn't --I don't know of any occasions where the
14 Navy has eve done any firing kinds of activities.
15 Some of the Air Force installations have ranges associated
16 with them. Normally what we're closing with the Air Force installations is
17 the environmental restorations the flying mission part of the installation and
18 not the range structure that goes with them.
19 (TASK FORCE MEMBER NOT IDENTIFIED): At Fort
20 Meade, do we propose to do a real cleanup there or is that just going to be
21 routine and transferred into the Patuxent Wildlife which is normally the way
22 we handle those types of transactions?

1 MR. HOURCLE: I think the current issue is the extent of
2 the study which is going to be performed to make the next decision point
3 which is what's the cleanup requirement with regard to ordnance at Fort
4 Meade and I think it's between the DOD staff and the Army.
5 MR. TORRISI: Basically with respect to the 7600 acres the
6 proposal would be to do a surface sweep of the 7600 acres and minimize the
7 environmental impact of the area. With respect to the balance of the
8 property, it would be a more comprehensive surface and subsurface survey
9 to remove any potential rounds.
10 Bear in mind that in the 1400-acre parcel of land, there is
11 really no documentation which identifies this as an impact area. We feel
12 there's a very low likelihood but we still have to go through the process to
13 certify that there are no rounds or, if there are rounds, remove them from the
14 site.
15 MR. STROCK: If I could ask a couple of questions. This
16 is not one that has to with expediting process. This is one that can affect
17 what's going to get cleaned up at all, as I read it.
18 In the statement of issue it says are there sites where
19 remediation is not technologically feasible or, in effect, economically
20 feasible. Then you go on to say, in the first sentence, that this "most
21 frequently arises" in this kind of situation. Where else does it arise?
22 MR. MATHEWS: I would say it would be land that we
23 had taken perhaps in World War Two for our use. It wasn't military

1 installations but it wa a gunnery range, for instance, out in Hawaii where the
2 Navy fired their heavy weapons into it.
3 MR. HOURCLE: We've had one reactor site which we
4 have not been able to clean up at Watertown.
5 MR. STROCK: We would need a list of specific
6 installations and also parts of other installations so that people don't think this
7 is in effect a separate priority system being set up.
8 Also I wanted to add for the record that there may be
9 disagreement as the applicability of CERCLA to these kinds of hazardous
10 substances. There may be differences on, that and the states and I want to
11 be sure there's not an impression left that there was uniform agreement on
12 your view of the law.
13 MR. BACA: There's also in item D, how does DOD retain
14 title and respond to closure under BRAC?
15 MS. SHIELDS: Are there exceptions there that if you
16 decide something can't be cleaned up then you --
17 MR. HOURCLE: We don't have any exception under
18 BRAC I or the current -- We've had some problems in that area that may
19 require statutory relief.
20 MS. SHIELDS: Isn't Rocky Mountain Arsenal going to be
21 a wildlife refuge, but isn't the state of Colorado going to have title?
22 MR. HOURCLE: Possibilities of transferring to other
23 federal agencies.

1 Another question of course that comes up is there are still
2 continuing needs for training, particularly with regard to the national guard,
3 and if you recall about two years ago there was congressional criticism for
4 DOD acquiring new lands for training ranges and one of the things that has
5 been under study is taking a site like Jefferson Proving Ground and
6 determining to what extent it might be usable as a guard training range rather
7 than having the guard acquire some new piece of property.
8 MR. BACA: Other questions?
9 MR. ETHRIDGE: I'd like to make just one comment very
10 quickly.
11 Under tab eight of your briefing book there are the
12 regulations, the DOD regulations that relate to transfer of ordnance
13 contaminated property, just for your information.
14 MR. BACA: As far as the options, it appears to me that
15 A through D would be recommendations that this task force could make. E
16 is a policy question.
17 MR. STROCK: And I understand that before the next
18 meeting there would be an inventory of what would be included.
19 MR. BACA: Inventory and I think the other question was
20 applicability of CERCLA.
21 MR. PENDERGRASS: This one raises the overlapping
22 duplicative regulatory responsibilities and to what extent they can be

1 combined or delegated into a single regulatory authority. RCRA is a
2 delegable program. CERCLA is not.
3 The issue of whether you could delegate the CERCLA
4 program to the states and whether that would in fact be a way of speeding up
5 the process and one way you can look at it is in terms of the task force's
6 charge from Congress to improve interagency coordination is if you eliminate
7 one of the agencies that has to coordinate you can cut down on the amount
8 of time spent on that activity.
9 It is a legislative issue. EPA has already made some forays
10 into the question when it was considering the revisions to the NCP and there
11 was a lot of controversy about it.
12 Although the EPA does have provisions for activity states
13 on NPL sites, they do that by negotiating cooperative agreements and state
14 memorandum agreements with the states that will allow the states to take the
15 lead on certain sites and a lot of states have done so.
16 It still comes down to that CERCLA is a federal program
17 and in the final analysis the final decisions are made by EPA.
18 In contrast, RCRA can be delegated. Some states including
19 Illinois now have corrective action authority and delegated authority to
20 oversee the corrective action process.
21 That particular piece of the RCRA program has not been
22 delegated to as many states as the first part that was passed in 1980 and
23 corrective action came along in the 1984 amendments.

1 So issue four is just looking at delegating the CERCLA
2 program making the CERCLA program, which has come up before in the
3 other issues of is it possible or beneficial to reconcile the two programs.
4 If you delegate CERCLA to the states and the state then has
5 delegated authority under both RCRA and CERCLA, maybe that state can
6 reconcile its practices and procedures internally. One of the other
7 possibilities would be to go ahead and do that legislatively from Congress
8 but, again, that issue has come up before and that's not something that can
9 be done in a quick easy fix.
10 MR. BACA: I might just react, I'm not sure if we have
11 time or it's our responsibility to determine why states are not satisfied with
12 the criteria. I think that's something that EPA ought to worry about.
13 MR. HOURCLE: This is an area that's worth pursuing I
14 guess is the fundamental question.
15 MR. BACA: Well, pursuing from that angle, obviously
16 there are areas where we could advance recommendations.
17 MS. SHIELDS: I'd say to the extent you could come up
18 with some ideas under B to reconcile them at particular bases within our
19 mandate. But I don't know.
20 MR. HOURCLE: I hear some dissension. I guess I'm not
21 sure -- is B in or out or do we need to focus on that? I guess what I --
22 MR. BACA: I guess we need a staff recommendation.

1 MR. HOURCLE: Staff recommendation would probably
2 be to see whether the barrier was an administrative barrier or a statutory
3 barrier and get back to the task force and then have you take a cut as to
4 whether that one is worth pursuing.
5 MR. STROCK: Are numbers A and C things that you
6 would be able to report back? That sort of goes beyond this group but it
7 would be useful to have the information.
8 MR. HOURCLE: Perhaps if EPA already has some
9 information on that and they could get back to us. I think if we could get it -
10 - just an idea whether are current studies, so relevant studies within the next
11 two weeks. If there are, we could arrange to get copies of them and provide
12 them to the task force members in preparation for the next meeting to see
13 whether it's the kind of thing the task force members think we should be
14 pursuing. If there is no information, we'll get back to the members and say
15 there is no information.
16 The last issue is a simple one, how do we pay for it. Let
17 me give you a brief history.
18 I think most of you are aware that the Defense Department
19 has a fund for environmental restoration called the defense environmental
20 restoration account (DERA), a special account, a lot of flexibility in that,
21 which is used for tackling the problem associated with contaminated
22 installations and formerly used sites, current estimate about 17,000 sites

1 under study. Traditionally those funds were available for the base closure
2 properties.
3 In the same statute that created this task force, Congress
4 decided that for the 1988 closure sites they would have all restoration being
5 funded out of the base closure account as opposed to the defense
6 environmental restoration account.
7 The current statute for BRAC 91 is discretionary as to
8 whether environmental restoration is funded out of the base closure account
9 or defense environmental restoration account and I give you that by way of
10 background.
11 With regard to the base closure accounts, one of the facts
12 that's there is that monies from proceeds for base closures are usable for
13 things like environmental restoration at the installations which are being
14 closed, which gets to a suggestion that was made by Congressman Brown
15 from California that there might be a possibility of somehow using the
16 prospect of commercial development at these installations to help fund the
17 restoration.
18 That seemed to be an interesting issue from the standpoint
19 of the concerns raised by the states as to, well, we're going to take this
20 property, how do we really know that there is going to be money provided
21 by congress in the out years to actually fund a long-term remediation project.
22 In looking at that, we identified one immediate -- and it's
23 probably not even a recommendation for further study -- a piece of

1 information for you as to whether you want to do something with it in the
2 nature of a recommendation, and that is to the extent we can use base closure
3 account funds, base closure accounts go away within about a five-year
4 timeframe so if the task force is interested in this as a possibility a
5 recommendation to extend the period of those accounts would be appropriate.
6 It is two separate accounts, between the 1988 and the
7 current 1991 authorization.
8 We also came across a rather innovative situation in
9 Massachusetts in talking with some people that used to be at Clean Sites
10 where land that was being -- this was a superfund site -- the title for the
11 property was being held by a trust which was managing basically the land
12 distribution and the cleanup using the proceeds from the land distribution to
13 recycle into the trust, setting up yet a third entity to manage the kind of
14 process.
15 We wanted to surface that to you as one of the more
16 interesting concepts that we came across and see whether there was any
17 interest in further exploration of how that could possibly be integrated into
18 the base closure and cleanup situation.
19 We're required I believe to report installation by installation
20 to the committee, Mr. Ray's committee, about what is the program.
21 MR. BACA: Is this part of the appropriations bill or is it
22 an understanding between somebody who is testifying and the appropriate
23 committee, or where does the policy have its genesis?

1 MR. HOURCLE: Congressional oversight of Congressman
2 Ray's environmental restoration panel, not reduced to statutes. It comes
3 generally through the give and take of the hearings and the oversight process
4 supplemented then by a requirement for a report that we have that talks about
5 giving installation by installation funding objectives over the following year.
6
7 MR. DOXEY: If you're looking for a statute, 10 U.S.
8 Code 2701 talks about the establishment of the DERA program and the role
9 of the secretary and one role is to develop an approach to cleanup. Within
10 that allowance he has chosen by policy to approach cleanups on a worst first
11 basis and then we go into the mechanism that is used.
12 MR. GOODHOPE: Now that we have found out that there
13 is some legal basis somewhere that establishes the program -- I've got to find
14 out what it means to be worst first. What is worst?
15 MR. BACA: Let us provide you some documents.
16 MR. GOODHOPE: Okay, that would be great.
17 MR. HOURCLE: Which gets to another issue which is that
18 Congress has amply funded the entire restoration program to the extent that
19 we've never had to come to grips with the real hard issue of what in fact is
20 worst because there has been enough money to do it as fast as we can do it.
21 In the statute that sets up the '91, 93 and 95 base closure
22 commissions also has a provision similar to that in '88 that talks about use

1 of the base closure account, monies for environmental restoration, so we can
2 do that.
3 The funding limitation in the base closure account for this
4 statute is that it goes away almost immediately after the '95 commission
5 finishes and I think that's just a legislative oversight.
6 They did not however with this statute say that the base
7 closure account was the only source of federal funds for cleanup at
8 installations being closed.
9 MR. JONES: And you don't have to compete with other
10 defense programs with regard to the use of this money. It's earmarked.
11 MR. HOURCLE: The money is appropriated by Congress
12 into the base closure account to be supplemented by other monies from land
13 sale proceeds. I'm going to have to check about residual value on overseas
14 installations because I believe we can also supplement with those proceeds
15 as well.
16 Then it would only be an issue within the base closure
17 account of what's needed to provide -- there are other things which can be
18 funded out of base closure account as well. In '88 we were doing a lot of
19 moving around because we didn't see the dramatic drawnout forces that I
20 showed you this morning of the number of divisions going away. It was just
21 sort of reorganizing a static force optimally so some of the monies, most of
22 the monies, in fact, in the '88 account are going into the new construction

1 and movements costs associated with those realignments and, yes, the
2 cleanup monies compete against those.
3 The reason for doing that I think is pretty obviously is
4 Congress is concerned that there be adequate funds available to make sure
5 that base re-use wasn't impeded by lack of funds for cleanup of installations
6 that are being closed.
7 MR. BACA: Why don't we take a break and then we'll
8 have a staff wrapup.
9 (Recess.)
10 MR. CARY JONES: I'm not sure we closed on that last
11 issue but I was just going to make on other comment.
12 Except for agreeing that it would be a great idea to get that
13 five-year thing extended, we weren't really sure we had a problem there that
14 needs solving, but as you and some others said there is some discretion about
15 how DERA is used and about how the base closure account is used.
16 I guess the reaction sort of was that this may be a question
17 we don't want to ask or get into or we might lose some of that discretion.
18 MR. HOURCLE: Yes, that's one area we were trying to
19 get to. I was really trying to focus on is there a possibility of using some of
20 these self-sustained funding mechanisms where if we decide we're going to
21 do long-term cleanup a way of taking some of those proceeds and plunging
22 them right back into the cleanup, either by virtue of sale proceeds or to the
23 extent we're going to be doing long-term leasing because of 120(h)

1 prohibitions on deed warranties, a way that maybe we could structure those
2 lease arrangements so they would be going into a trust arrangement for a
3 long-term cleanup and that might provide communities a better feel about
4 how it's going to get paid for than DOD running over with deficiency act
5 clauses.

6 MR. BACA: Well, we're not really looking for --

7 MR. HOURCLE: We weren't really trying to focus in on
8 DERA or base closure account as much as maybe seeing whether the task
9 force was titillated by the possibility of some really possibility from the
10 commercial sector to take a look at it.

11 MR. BACA: Why don't we go on to the next step for the
12 committee, Mr. Doxey.

13 MR. DOXEY: Thank you, Mr. Chairman.

14 I thought this would be a good opportunity to sort of talk
15 about the schedule for task force meetings in the future so everybody can
16 plan their calendars ahead.

17 Secondly, to talk a little bit about the report preparations
18 and what the task force needs to do in order to meet the schedule that was
19 outlined this morning.

20 I would like to first address the third item, C, opportunities
21 for additional information gathering. As you can see from some of the case
22 studies this morning, there is some of information that is out there and we've
23 just touched upon some of that.

1 What we'll be doing is working with our staffs and your
2 staffs to narrow our focus and get more in depth information so that issues
3 identified are evaluated. You'll have all the information all at one place
4 when you go to evaluate these issues.
5 MR. BACA: It may be useful for members of the task
6 force who have not been on a military base to tour a military base, not
7 necessarily one that's being closed but just so you can understand what it is
8 to have an NPL site and not NPL site, the activities surrounding that
9 particular problem.
10 MR. DOXEY: And we would make that available to you.
11 If there is any need for field trips or if you find you want to visit any
12 installations that are case studies we talked about today.
13 Pease Air Force Based was the issue of apportionment.
14 Chanute was the non NPL versus NPL. Norton was interim use and Meade
15 being the munitions. Those are only some of the issues.
16 If there is a need, we are available, the staff is available to
17 coordinate and set up any type of trips.
18 Go back to the actual schedules for report preparation. If
19 you back up from the November 5th congressional deadline and the
20 secretary's desire to see the report on October 5th, that gives us very little
21 time.
22 When you look at the actual report preparation, we would
23 be looking at a final draft around September 1st that we would hope to

1 circulate for approval among the task force members and of course we would
2 incorporate any additional views or minority views that may come about as
3 we go through the issues.
4 In order to do that for September circulation, I think we
5 would be looking at a first draft beginning around August and to arrive at a
6 first draft in August that really says we've got about two months between
7 now and August to arrive at that, so if you use that as a guide and work back
8 into it you are basically looking at a next meeting to be in mid-July which
9 will give us some time to boil down some of the information that we have
10 now and then provide it to you and give you ample time to review it and also
11 add any other areas --
12 I heard a call for the opportunity to go back and research
13 this and if different agencies would like to surface new issues and put them
14 forward, we need to have the mechanism to accommodate that.
15 If we look at a mid-July date, keeping with a mid-week
16 schedule, we would be looking at possibly more than one day because I think
17 this was very good overview but we really need to get into the issues and
18 we're going to need more than one day.
19 We were looking at around the 17th and 18th of July and
20 then if need be we would meet in August, perhaps the 27th of August, which
21 at that time we would have the first draft being circulated and a tentative
22 meeting at the end of August, the 27th, to sort of have the board together for
23 any issues that need to be further developed.

1 That's pretty tight and it's also factoring in a lot of time for
2 various staffs.
3 One thing that I think will be very important as we go
4 through this is if each of the members could designate or allow us to work
5 with you staffs, a shadow staff of the task force, that would allow us to
6 freely exchange information back and forth.
7 One commitment that my staff will make in doing this is
8 that there were a lot of things that were said that were very good today and
9 I think you need to have that verbatim transcript back in your hands so you
10 can reflect on what was said.
11 We hope to have that back to you along with a written
12 summary of any agreements that the task force has come to by next week.
13 We'll have that back to you so we can make sure that we have identified the
14 menu that we're going to be addressing over the next couple months.
15 I also heard as we went through some of the issues an
16 opportunity for some of the task force members to be involved or to take the
17 lead on some of these areas. I think as we go through this and summarize
18 those issues and rehash a little bit about what we've agreed to, I think the
19 committee should be considering that and possibly by vote make that
20 assignment and also make assignments to the staff that you would like us to
21 look at and provide information.
22 I think that's important as we have to narrow our efforts if
23 we're going to have products that are going to be useful.

1 With that, if we want to open up to any debate on the
2 calendar or the schedule before we get into a summary f the issues.
3 MR. BACA: Are the dates proposed satisfactory? Okay.
4 MR. DOXEY: And the process that we propose for the
5 circulation of the report, does that seem acceptable?
6 MR. BACA: Why don't you make sure of that after so
7 they don't get stuck.
8 MR. DOXEY: We'll do that. Basically we'll make every
9 effort -- As soon as the chairman gets it in his hand, all the members will
10 have all the documents as well.
11 MS. SHIELDS: Kevin, you're talking about circulating a
12 first draft prior to this meeting on the 27th of August so that we'll have it.
13 MR. DOXEY: We're actually looking at the beginning of
14 August. I figured on the 17th and 18th of July we would pretty much have
15 a lot of that information locked in and that would give me approximately two
16 weeks to do the necessary administrative requirements to package it and then
17 we would make that available to you around the first of August and then you
18 would basically have a month to review it and if there wa a need to meet on
19 the 27th we would do that. If there was consensus and we reached
20 agreement, then we would basically not need to meet in August.
21 Then we would have the, quote, official final draft on
22 September 1. I think that would be the time where we can actually see the
23 issues jelled and if there are any additional views or minority views that we

1 want to put in that would be the time. That would be basically a month for
2 everybody to work the finished product.
3 MR. CARY JONES: We'll meet here?
4 MR. DOXEY: Yes, unless you vote otherwise, we have
5 total flexibility. Whatever you would like to do.
6 MR. BACA: Does anyone have a problem?
7 MR. DOXEY: So just to recap, we'll have the next
8 meeting on the 17th and 18th of July and we will get the information out to
9 you as early as possible. I've committed to a verbatim transcript and a
10 summary of what our understandings are by the end of next week.
11 Our first draft we'll shoot for the first of August with the
12 final draft in September for transmittal on October 5th to the secretary.
13 MR. BRYAN: I just had one issue and that is that a couple
14 members of congress have expressed an interest in testifying during our next
15 set of meetings and to the extent that we do set up hearings, if there are other
16 witnesses that we need to hear from on any of these issues as you go forth
17 and you're thinking about it, we would appreciate early notice of who these
18 experts might be so we can plan to have them here and have written
19 testimony in advance.
20 MR. DOXEY: As we begin to summarize the issues, as far
21 as for administrative purposes, within my staff we have Lt. Col. Hayden
22 Bryan and Lt. Col. Steve Walker. They are sort of our principal people
23 doing the administrative requirements and I think that as we work through

1 those issues it would be a good focal point to ensure that the issues are
2 flowing so that we don't have, for example, let's say Larry working one
3 issue and one of the members working another issue.
4 I think we need to funnel those through the chairman so that
5 each of the members can be involved if they would like on certain areas so
6 that we don't get sidetracked.
7 Unless there is an objection, we'll move into the actual
8 issues. The first issue.
9 MR. HOURCLE: At page nine there's a listing of study
10 options for issue one and what I heard was that we will be looking at options
11 A and B which will also include E and F.
12 We will also take a look at what the overall liability issue
13 complications are and as an additional issue to take a look at how NPL sites
14 are defined and what our latitude is for definition of NPL sites on federal
15 facilities.
16 Have I missed anything on issue one? If not, I'll move to
17 issue two on page 12 where again study options A and B will be pursued,
18 particularly -- I'm not sure whether it will be included or additionally we're
19 taking a look at expediting systems like generic RI/FS type work.
20 MR. DOXEY: Let me add to that. I think I heard Ms.
21 Shields mention about focusing upon execution, not necessarily --
22 MS. SHIELDS: These options overlap with a lot of options
23 later on, don't they?

1 MR. HOURCLE: There is some overlap. These were
2 intended to go more to the processes. The other one, issue four, more
3 looked at the ability under the law to delegate -- to have a lead agency
4 appointed -- agreed, tend to overlap, slightly different coverage.
5 MR. GOODHOPE: I'm trying to figure out where
6 Congressman Ray's points on page five of his testimony come in -- "in
7 addition, DOD procurement regulations, contract procedures and funding
8 requirements are often inconsistent with expedited cleanup efforts."
9 It's probably responsive to a concern I think it fits in B here
10 but maybe fits in later, also.
11 MR. HOURCLE: As part of the process, that's one thing
12 I wanted to focus on. There were a couple -- certainly the contracting issue
13 we didn't get agreement to pursue.
14 There are a couple of issues, one is how we do the
15 contracting, the problems with competition in contracting, having to compete
16 separate parts of the process as opposed to turnkey contracts.
17 Another associated issue which we're about to release a
18 study on is competitiveness in the industry as affected by liability concerns
19 of contractors and we can have additional information for you at the next
20 meeting certainly about that.
21 I see some nodding of agreement. It seems to me that's
22 something we should be pursuing and presenting some more information on
23 to the task force at the next meeting.

1 MR. DOXEY: I would say we would probably want that
2 included within this option, the contracting issue, and integrated into the
3 process.
4 MR. HOURCLE: Yes, the process, okay.
5 MR. GOODHOPE: I assume that includes making sure that
6 internally you would be set up to make sure that RFPs or whatever it is that
7 goes out, that there is no bottleneck there, the question I posed earlier of how
8 many people do you really have behind this effort.
9 MR. HOURCLE: Adequacy of the resources and
10 organization for execution.
11 MR. DOXEY: Actually we are required to report that to
12 congress as part of Sections 341 and 342 of our report so we'll just make that
13 available to you.
14 MR. HOURCLE: I'm a little bit lost on issue three which
15 is our munitions issue as to whether we had any areas for further study
16 except providing a list of installations at the next meeting to see where this
17 is a problem, either in the munitions or any other kinds of unique
18 examinations that might be at these installations.
19 Also by the next meeting we should have the report of the
20 '91 base closure commission and we should have finalized those lists of
21 installations. That's due out on July 1st.
22 MR. GOODHOPE: I think Jim also asked about the
23 nonmilitary installation problems and there may be some -- I do know that

1 for example there is an Indian reservation that has a rather large bombing
2 range on it. I'm sure there are a lot of -- there may be BLM land or some
3 other land that's been used in the past. I don't know how that fits into here
4 at all.

5 MR. DOXEY: It does very much fit in and it fits in like
6 a service and we call it formerly used defense sites and the Corps of
7 Engineers has been asked by the department to be our executive agent so they
8 will handle not only Army but they will handle Navy and Air Force and
9 there is quite an extensive problem out there.

10 MR. HOURCLE: We'd be happy to get you some
11 information about that program and any other member of the task force who
12 wants to know more about the formerly used defense sites program we'll be
13 happy to --

14 MR. STROCK: But you will look at places where there
15 may be a technological or economic feasibility problem beyond ordnance or -
16 -

17 MR. HOURCLE: Yes, to try to identify the extent we've
18 got any information on other kinds of cleanup technology problems at any of
19 the sites designated for closure.

20 MS. SHIELDS: I think your problem here really is to just
21 reconcile what Col. Mathews said you are already doing within your
22 mandate--to transfer these bases under the base closure act. So maybe that's

1 the only place where more time needs to be spent, i.e., how do we figure out
2 somebody we can transfer these to.
3 MR. DOXEY: Do we even want to -- Taking that one step
4 further, do we even want to have the task force delve into this issue in total,
5 or is it more of an information briefing.
6 MR. STROCK: No, no. I want to make sure I understood
7 something. The way that was worded, a potential number of state issues on
8 how you define those categories so I would not want us to go into this issue.
9 MR. HOURCLE: Four, on page 20, we're going to
10 explore what the barriers are, whether they are administrative or statutory
11 with regard to B. EPA is going to see if they have any additional
12 information to offer with regard to A and C and with regard to D, to the
13 extent that we can look for some ideas within our mandate of efficiency,
14 trying to achieve efficiencies, we'll take that on.
15 The last is five on page 24, and I'm not sure we got to a
16 final vote or consensus on whether any of these the task force wants to have
17 us explore further.
18 MR. DOXEY: Before we get into that, let me just maybe
19 add one thing and sort of highlight.
20 I think what we've done on this issue is talk about a
21 remedial trust type innovative idea versus how are we going to get the money
22 for activities later on in the future and I think within the department the
23 responsibility is clear that we have to budget for those resources.

1 What we are offering here as an issue is more or less
2 should we look outside of the department and look to other innovative
3 techniques.
4 I think there is clear authority within the department to
5 make a decision. I don't think we are really looking for that kind of
6 direction, we are looking outside into something innovative.
7 MR. HOURCLE: I saw some nods. We'll pursue it a little
8 bit farther and see where it takes us.
9 MR. STROCK: Yes, I like innovation.
10 MR. HOURCLE: All in favor --
11 (Laughter.)
12 MR. HOURCLE: When we come back we'll take probably
13 a harder look at the problems associated with the base closure account
14 termination date.
15 Are there any other issues? One that we talked about was
16 I guess with regard to issue one, the duplication of reports trying to get a
17 better sense for how we could potentially integrate the NEPA requirement,
18 the IR/FS requirement and the land use studies that we're funding for the
19 communities.
20 MR. BACA: That was an issue that was raised.
21 MR. HOURCLE: And that would be under issue two.
22 Any others that come to mind from the task force members?
23 MR. JONES: Where is parcelization?

1 MR. HOURCLE: Parcelization would be under issue one
2 where we're trying to get a better sense of when in the cleanup process do
3 you start working your land use issues. I guess we could also maybe take
4 a look at that duplication of reports in there, too. The issue is to what extent
5 should land use --
6 It seems to some that land use and eventual land use or
7 interim land use and remediation are dependent to some extent on one
8 another and the question is which one do you look at first, how do you relate
9 and integrate the two of them together and what are the strategies and
10 mechanisms for doing that.
11 I guess that's what we're trying to explore with this set of
12 study objectives in issue one.
13 MS. SHIELDS: Larry, somewhere in here you'll be taking
14 a look at Mike West's bill as to whether we think that's a good way to
15 expedite the procedure?
16 MR. HOURCLE: Why don't we take that on specifically
17 as an analysis of how --
18 MR. DOXEY: I don't know if you want to have it as an
19 issue but, yes, we can provide an analysis and how it impacts the
20 department.
21 MR. BACA: What else?
22 MR. HOURCLE: Unless the members of the task force
23 have some other areas to explore --

1 MR. GOODHOPE: There was actually an issue again
2 raised by Congressman Ray's testimony and that is community involvement.
3 Perhaps Mr. Cheney would also have perspective on this, on the difference
4 between the community's interest and maybe the overall state interest.
5 The community obviously is being hurt economically and
6 wants to get things done very quickly, whereas the people within the state
7 may say we really need to worry about this environmental problem a little bit
8 more.
9 MR. HOURCLE: Agreed. Is that the kind of patina that
10 probably overlays the land use issue?
11 MR. CHENEY: Very much so. It become a real -- There
12 was a year-long debate in New Hampshire that was resolved in the New
13 Hampshire legislature. I'm not sure what this task force can do to
14 resolve those local really political problems other than what the Department
15 of Defense has been saying since the first day they came to the state of New
16 Hampshire which was coordinate, coordinate, coordinate and unify and then
17 come talk to us. It was just a struggle to do that.
18 Among other things, our base happens to be located at
19 Portsmouth, one of the democratic strongholds in New Hampshire and the
20 highest ranking democrat in New Hampshire is Congressman Swett and the
21 state house minority leader so there's another whole layer of tension that
22 comes into these things and I think you want to stay far away from that.

1 MR. GOODHOPE: I think if the delay in taking the action
2 is on the part of the community and the state then that should be brought out.
3 MR. HOURCLE: I think what we can provide for you at
4 next hearing perhaps is some testimony if you're interested by our office of
5 economic adjustment, wonderful people trying to help local communities,
6 providing the land use planning grants and other kinds of financial assistance
7 to help them get through these problems.
8 I'm sure they would be most willing to talk about what
9 kinds of assistance they are affording communities and perhaps get into a
10 discussion with you all about maybe some ways they could shift the focus of
11 that to encompass some of the kinds of problems we're hearing here on
12 closure and cleanup.
13 They've got some good stories to tell about how they have
14 had successes in development of installations that have been closed and you
15 may find it both hopeful, interesting and informative.
16 MR. DOXEY: We've identified a lot of issues and I think
17 the question that remains is how are we going to tackle those issues.
18 I heard EPA basically picking up a couple of the
19 subelements within these and I think I maybe want to offer that out for
20 discussion about do we want to -- how exactly do we want to work the actual
21 dealing with these issues.

1 We've done a lot of work to date and I would propose that
2 we can continue to do that and we would welcome the involvement of your
3 staff and I think we want to continue that as we go along.
4 If there are any interest areas that we've got that any of the
5 members would like to pay more attention to, I think this would be the time
6 that you want to highlight those and we'll work much closer with you to help
7 formulate those issues, some of the state issues, for example, community
8 involvement as we go through that. I think State involvement would be
9 really helpful.
10 Also I think as we go through the apportionment, obviously
11 GSA is going to have a lot of involvement so I think we are going to be
12 leaning heavily on your staff, Mr. Jones, to help us work those issue because
13 we do have a lot of work before us.
14 MR. BACA: Anything else?
15 MR. DOXEY: I believe that's all the areas I would have,
16 Mr. Chairman, as a wrapup.
17 MR. BACA: Thank you, Mr. Doxey, and I would like to
18 thank the committee members and the task force. It's going to be an exciting
19 activity and I think it's an activity that can provide some good long-term
20 solutions.
21 Again, if there is anything we can provide to you, any
22 information, let us know, and we'll see you on the 17th of July.
23 (Whereupon at 4:07 p.m. the matter concluded.)