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**COMMENTS**  
**of the**  
**NATURAL RESOURCES DEFENSE COUNCIL**  
**on the**  
**DEPARTMENT OF ENERGY'S**  
**ENVIRONMENTAL RESTORATION AND**  
**WASTE MANAGEMENT FIVE-YEAR PLAN (DOE/S-0070)**

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**November 30, 1989**

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On behalf of the Natural Resources Defense Council (NRDC) we are pleased to submit these comments on the Department of Energy's Environmental Restoration and Waste Management Five-Year Plan (hereinafter the "Five-Year Plan" or the "Plan").<sup>1</sup>

In March of this year, the Energy Department committed to preparing a Five-Year Plan to outline how the Department intended to deal with massive environmental problems at its nuclear facilities.<sup>2</sup> The long-awaited Plan, released in August, consists of a main volume of more than 400 pages, and several volumes of supporting appendices containing thousands of "Activity Data Sheets". The Plan has received more attention than almost any recent DOE document.

The Plan separates DOE environmental activities into three categories: (1) environmental restoration, (2) waste management, and (3) corrective activities. "Environmental restoration" involves cleanup of more than 3,000 sites where hazardous and/or radioactive waste have been dumped or leaked, and the decontamination and decommissioning of radioactively-contaminated facilities. "Waste management" includes the treatment, disposal or elimination of hazardous chemical and radioactive waste.

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<sup>1</sup> DOE, Environmental Restoration and Waste Management Five-Year Plan, DOE/S-0070, August 1989. DOE solicited comments on the plan at 54 Fed.Reg. 36372 (September 1, 1989).

<sup>2</sup> Watkins, James D., Letter to Honorable John D. Dingell, Chairman of the House Energy and Commerce Committee, March 23, 1989; and Watkins, James D., Memorandum for all Departmental Elements, Appointment of Mr. Leo Duffy, March 15, 1989.

"Corrective activities" includes upgrades of existing facilities to bring them into compliance with environmental, safety and health standards. This category does not include the day-to-day activities needed to comply with environmental, safety and health standards. Each of these activities are described in an overview section, which also briefly discusses several policy issues. Attachments are used to summarize the major environmental problems and issues at each facility or operations office. These attachments also summarize the annual funding requirement for each activity. Research and development is discussed only in a general overview section without any specific funding proposals.<sup>3</sup> A separate draft "Five-Year Plan" for research and development was recently issued.<sup>4</sup>

The Five-Year Plan only addresses environmental problems at DOE facilities. It does not address the other half of the Department's current crisis - nuclear safety. Safety problems have been primarily responsible for the current halt in nuclear materials production in the United States. The DOE Advisory Committee on Nuclear Facility Safety ("The Ahearne Committee") has scrutinized a limited number of facilities. The Defense Nuclear Facilities Safety Board ("The Glenn Board") has only recently been formed and is restricted in the range of facilities it can investigate.

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<sup>3</sup> Plan at 196.

<sup>4</sup> Applied Research, Development, Demonstration, Testing and Evaluation Plan (November 1989).

Having reviewed the Plan, we find that:

1. The Department has provided an inadequate opportunity for public involvement in the development of current and future Plans;
2. The Plan fails to acknowledge that the increase in proposed environmental spending in the Plan largely reflects accounting procedures rather than new funding commitments;
3. The Plan fails to outline an adequate prioritization scheme;
4. The Plan excludes many important facilities; and
5. DOE's proposed reorganization threatens to diminish the internal oversight role of the Environment, Safety and Health Office.

A. The Department has Provided an Inadequate Opportunity for Public Involvement in the Development of Current and Future Plans

The Energy Department has failed to provide an adequate process for public input into the preparation and revision of its Five-Year Plan. Many of the Department's historic problems can be traced to its history of secrecy and failure to involve the public in its decision-making process. Although EPA and selected States<sup>5</sup> and Indian tribes were given the opportunity to comment on drafts of the first Five-Year Plan, several key States were excluded from the process. Table 1 lists the States with DOE facilities that were not invited to participate in the

<sup>5</sup> Colorado, Idaho, Kentucky, Nevada, New Mexico, Ohio, South Carolina, Tennessee, Washington

TABLE 1

STATES WITH DOE SITES NOT INVITED TO PARTICIPATE  
IN DEVELOPMENT OF FIVE-YEAR PLAN OR PRIORITIZATION SYSTEM

<u>State</u>	<u>DOE Site(s)</u>
- California	Lawrence Livermore National Laboratory (Main Site and Livermore Site 300)
	Lawrence Berkeley Laboratory Energy Technology Engineering Center
	Stanford Linear Accelerator
	Laboratory for Energy-Related Health Research
	Sandia National Laboratories/Livermore
- Florida	Pinellas
- Missouri	Kansas City Plant
- New York	Brookhaven National Laboratory
	West Valley Site
	Knolls Atomic Power Laboratory
	Kesselring Site
- Texas	Pantex Plant

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Source: DOE Office of Energy Research Field Operation Management, Capsule Review of DOE Research and Development and Field Facilities, DOE/ER-3005, September 1986.

development of the Five-Year Plan. DOE also did not provide any opportunity for public interest groups or citizens to participate in the development of the Plan.

The States that were invited to participate are not necessarily those with the most environmentally-significant DOE facilities in view of the exclusion of California and New York. Nor does the selection of States appear to have been based on the defense role of the facility in view of the inclusion of Kentucky, which is the source of only low-enriched uranium, and the exclusion of Texas, which hosts the Pantex Plant where nuclear warheads are assembled. Also, the selection was not based on the States that signed a joint letter to Secretary Watkins<sup>6</sup> earlier this year, in view of the exclusion of Oregon, whose largest city is located downstream of the Hanford Reservation.

The Plan indicates that the development of the National Prioritization System and the review of the forthcoming "Research, Development, Demonstration, Testing and Evaluation (RDDT&E) plan" will be done by the State and Tribal Government Working Group.<sup>7</sup> This group does not include all of the DOE states or any public interest group representative. Admittedly, the Department has created a separate external review group, including citizens' groups, to comment on the prioritization

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<sup>6</sup> Defense Waste Cleanup: A Proposal for a National Solution, April 14, 1989.

<sup>7</sup> Plan at 12.

system. However, the inclusion of these groups occurred only after the National Research Council specifically suggested that "federal agencies, contractors, and communities near DOE sites, as well as environmental and public interest groups" be included in the process for developing a prioritization system.<sup>8</sup> We believe that, rather than creating a separate review group, the Department should simply expand the State and Tribal Government Working Group to include public interest groups and all affected states.

The Department's process for considering public comment on the Five-Year Plan, as finally issued, is equally flawed. According to the Plan, the Department will use comments as "input to next year's Five-Year Plan."<sup>9</sup> Hence, until the publication of next year's Five-Year Plan the public will not know whether the Department has chosen to accept or reject comments. Moreover, the Plan makes no provision whatsoever for responding to comments other than the publication of a subsequent annual plan.

Comments on Federal agency policy statements and rulemakings are typically solicited on draft documents, and responses to comments are generally included with the final document. The Department should follow this approach by soliciting comments from the public on a draft of next year's Five-Year Plan. Drafts of the first Five-Year Plan were circulated to the State and

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<sup>8</sup> NRC at 5, August 3, 1989. Supra note 16.

<sup>9</sup> DOE, Environmental Restoration and Waste Management Five-Year Plan, DOE/S-0070, August 1989, at 12.

Tribal Working Group more than 60 days before the final version of the Plan was published.<sup>10</sup> Hence, the Department could clearly circulate a draft of subsequent Five-Year Plans to the public especially since later Plans may not require that DOE address as many difficult policy issues as the first Plan required.

The Department should also prepare a Response to Comments document, which indexes and summarizes comments submitted on the Plan, along with the Department's responses. This document should be provided to each commenter and made part of the docket. By failing to create a process by which comments are explicitly integrated into the Plan or rejected on a sound basis, DOE misses an opportunity to improve its decisionmaking and improve its public accountability.

There are two other actions that DOE should take, which are commonly used by Federal agencies in carrying out rulemakings or developing policy statements. First, the Department should hold hearings to present its draft plan, and to obtain oral comments. Hearings provide an alternative vehicle for public input that may be more accessible to many individuals.

Second, the Department should establish an official administrative docket containing copies of the Five-Year Plan, with Appendices and Activity Data Sheets, along with all comments including those submitted by EPA, States, Indian Tribes and other

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<sup>10</sup> The first draft was published June 12, 1989 and discussed at a meeting of the State and Tribal Government Working Group from June 11-13, 1989. The final version of the Plan was available to the public on August 28, 1989.

groups on the June and July 1989 drafts. Copies of the docket should be available to the public at DOE headquarters, at each Operations Office, in communities adjacent to each DOE facility covered by the Plan, and in communities near those facilities excluded from the Plan discussed below in section D. Copies of the docket should be made available as soon as possible following the close of the comment period.

B. The Plan Fails to Acknowledge That the Increase in Proposed Environmental Spending in the Five-Year Plan Largely Reflects Accounting Procedures Rather than New Funding Commitments

The Five-Year Plan appears to provide for substantial increases in environmental restoration funding as compared with previous appropriations. For example, the Five-Year Plan lists the FY89 environmental restoration spending for the Defense Programs (DP) complex (see Table 2) as \$257 million, while the actual FY89 environmental restoration appropriation for the DP complex was \$159 million. However, rather than a substantial new funding commitment, the Plan actually reflects new accounting procedures that aggregate all remotely environmentally-related projects into environmental budget categories. Thus, the difference between actual FY89 appropriations and the amounts listed in the Five-Year Plan largely reflects the funding for the many ongoing projects that have been re-categorized into environmental restoration from other, non-environmental

**TABLE 2**  
**COMPARISON OF FY89 FUNDING FOR**  
**ENVIRONMENTAL RESTORATION FUNDING FOR DEFENSE PROGRAMS**

DEFENSE SITE NAME	FY89 (DP)* ACTUAL	WATKINS PLAN** FY89 DP "FUNDING"
Kansas City Plant	374	5,598
Los Alamos	450	4,606
Mound Plant	4,510	10,885
Pantex Plant	410	2,200
Pinellas	100	800
Rocky Flats Plant	700	15,982
Sandia/Alb.	400	1,884
Sandia/Livermore	100	780
Fernald	9,550	19,392
INEL	23,175	28,408
SAN (incl. Lvrmr).	10,770	14,749
Nevada Test Site	1,486	1,486
Oak Ridge Nat.Lab	12,021	17,345
Oak Ridge K-25	0	15,423
Savannah River	18,518	35,269
Hanford***	28,123	47,200
Y-12	28,028	28,315
Other Sites	20,610	34,099
<b>TOTAL</b>	<b>159,325</b>	<b>284,421</b>

URANIUM ENRICHMENT SITE NAME	FY89* APPROPRIATION (Thousands)	WATKINS PLAN** FY89 "FUNDING" (Thousands)
Paducah	4,000	10,045
Portsmouth	9,600	12,385
Oak Ridge K-25	19,000	15,423

\* U.S. Department of Energy, Office of the Controller  
 FY90 Revised Congressional Budget Request,  
 Energy and Water Development Appropriations,  
 Atomic Energy Defense Activities, February 21,  
 ("DP" = Defense Programs)

\*\* U.S. Department of Energy, Environmental Restoration  
 Management Five-year Plan, DOE/S-0070, August 198

accounts.<sup>11</sup> The amount of re-categorization for FY89 is more than 60% (\$135 million) of the total environmental restoration budget for the DP complex detailed in the Five-Year Plan. Similarly, more than 15% (\$5 million) of the FY89 environmental restoration funding for the three gaseous diffusion plants are re-categorized in the Five-Year Plan in FY89. Similar comparisons for FY89 non-defense environmental restoration, corrective activities, and waste management cannot be made, due to a lack of publicly-available site-specific appropriation data for those activities. Nonetheless, the Budget and Reporting Code "Crosswalk" provided with the Activity Date Sheets for those sites indicate that a similar, significant re-categorization also occurred in the Five-Year Plan.

The shifting of environmental projects into different budget categories reflects one of the principal objectives of the Five-Year Plan --to consolidate environmental activities into a single line function. This consolidation and related change in accounting procedure, if implemented responsibly, is generally a positive development because it may improve DOE's environmental management budgeting. But, there are a number of troubling aspects to the consolidation that DOE should explicitly address in future environmental plans.

First, nowhere in the 441 page Plan is the large-scale shifting of activities described. The budget figures are

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<sup>11</sup> DOE Controller personnel have stated that past, current and out-year budget amounts are altered whenever re-categorization occurs.

presented in a format which makes the re-categorization difficult to analyze. The scale of this re-categorization becomes apparent only by transferring the budget figures to annual summary tables (see e.g., Table 2). The total spending proposals can then be compared to previous authorizations. The plan should have more explicitly acknowledged this massive shifting of activities.

Second, the projects shifted to environmental budget categories should be legitimate environmental projects, not exclusively related to maintaining or modernizing materials production facilities. For example, replacing piping in a production facility should be categorized as an environmental project only if it is done for environmental reasons.

Third, to the extent that legitimate environmental projects are re-categorized from out-year materials production budgets, there should be a decrease in the materials production budget categories equal to the amount shifted. The Department should summarize overall program funding (e.g., nuclear weapons materials production, environmental restoration) to demonstrate that any transfer of projects from a non-environmental program to an environmental budget category results in a net decrease in the non-environmental category equivalent to the increase in the environmental category. The Budget and Reporting (B&R) Crosswalk summaries provided with the Activity Data Sheets are not adequate to provide this information. The B&R codes are not defined and no totals or summary table is provided.

C. The Plan Fails to Outline an Adequate Prioritization Scheme

The Five-Year Plan fails to identify an adequate prioritization system for implementing its massive environmental restoration program. Such a prioritization system will be a crucial element in the Department's cleanup program, which is expected to cost tens of billions of dollars and require several decades to complete. Failure to establish accepted priorities for spending such vast sums could undermine the Congressional and public support needed to carry out the plan.

The Five-Year Plan outlines an interim four-tiered priority system that will be used until a National Prioritization System is established. The interim system has four levels:

Priority 1: "activities necessary to prevent near-term adverse impacts to workers, the public, or the environment...and ongoing activities which, if terminated, could result in significant program...impacts."

Priority 2: "activities required to meet the terms of agreements...between DOE and local, State and Federal agencies."

Priority 3: "activities required for compliance with external environmental regulations that were not captured by Priority 1 or 2."

Priority 4: "activities that are not required by regulation but would be desirable to do."

There are troubling aspects to this interim prioritization scheme. First, it is not at all clear that this is the system actually being used. We believe that environmental priorities set in the Five-Year Plan more likely reflect a mix of factors, especially the success individual states have had in securing funding commitments from DOE. As Figures 1 and 2 show, sites in states that have been active in obtaining cleanup agreements or consent decrees (e.g., Washington State and Ohio) are slated to receive a greater relative share of funding than states that have not been as successful in obtaining cleanup agreements (e.g., South Carolina and Tennessee).

Second, the interim priority system places "ongoing activities" (Priority 1) ahead of "meet[ing]...legal commitments" (Priority 2).<sup>12</sup> We believe that this order is inappropriate. Ongoing activities to support a program should not automatically be given a higher priority than meeting environmental requirements. The Department's current crisis can be partly attributed to its historic failure to emphasize environmental compliance.

Third, we are concerned that compliance with agreements between DOE and federal, state, and local agencies is given priority over "compliance with external environmental regulations...."<sup>13</sup> This scheme would, for example, subordinate legally-mandated emissions standards designed to protect human

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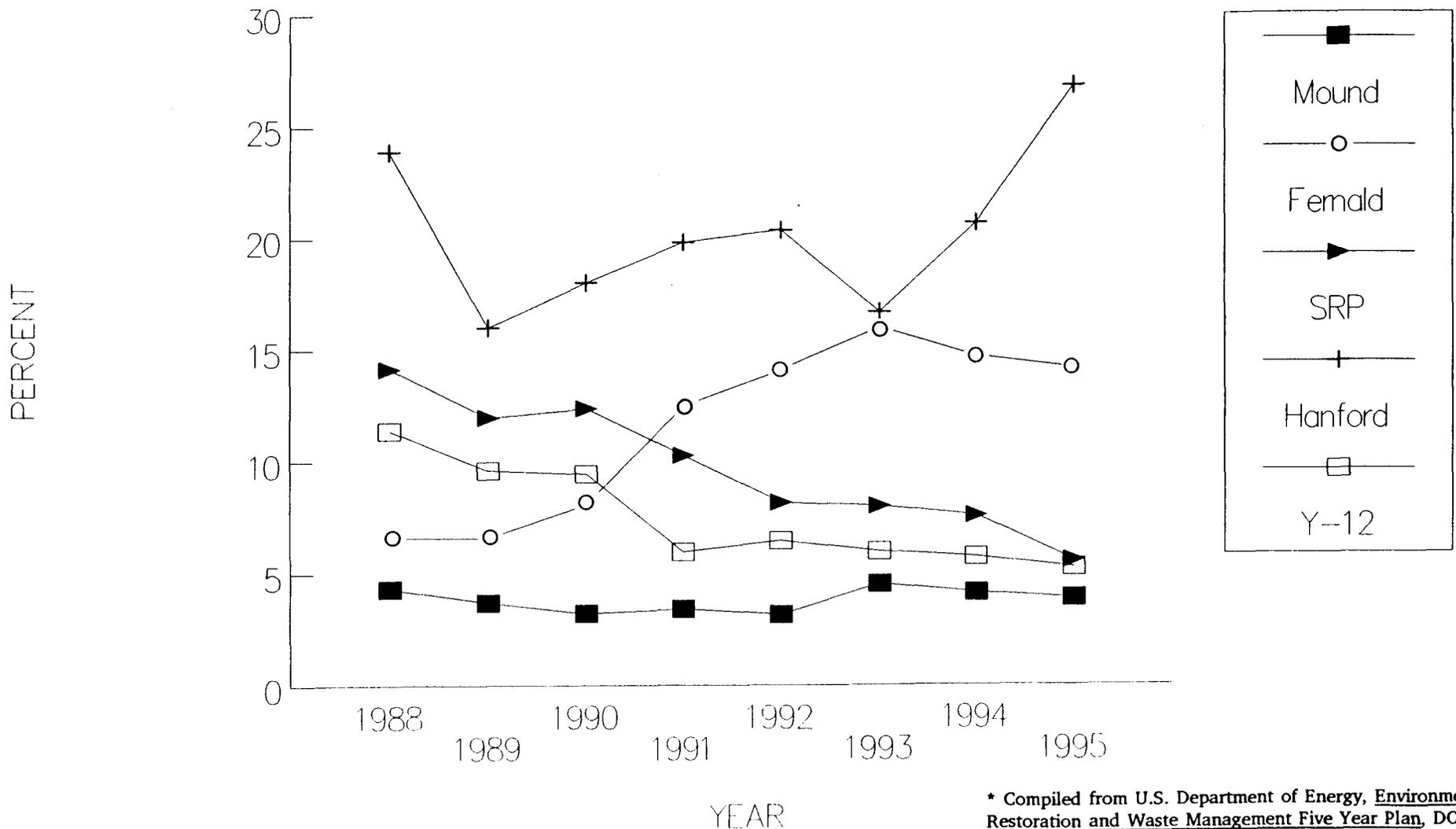
<sup>12</sup> Plan at 14.

<sup>13</sup> Plan at 15.

FIGURE 1

# DOE ENVIRONMENTAL RESTORATION

## Percent Funding Distribution

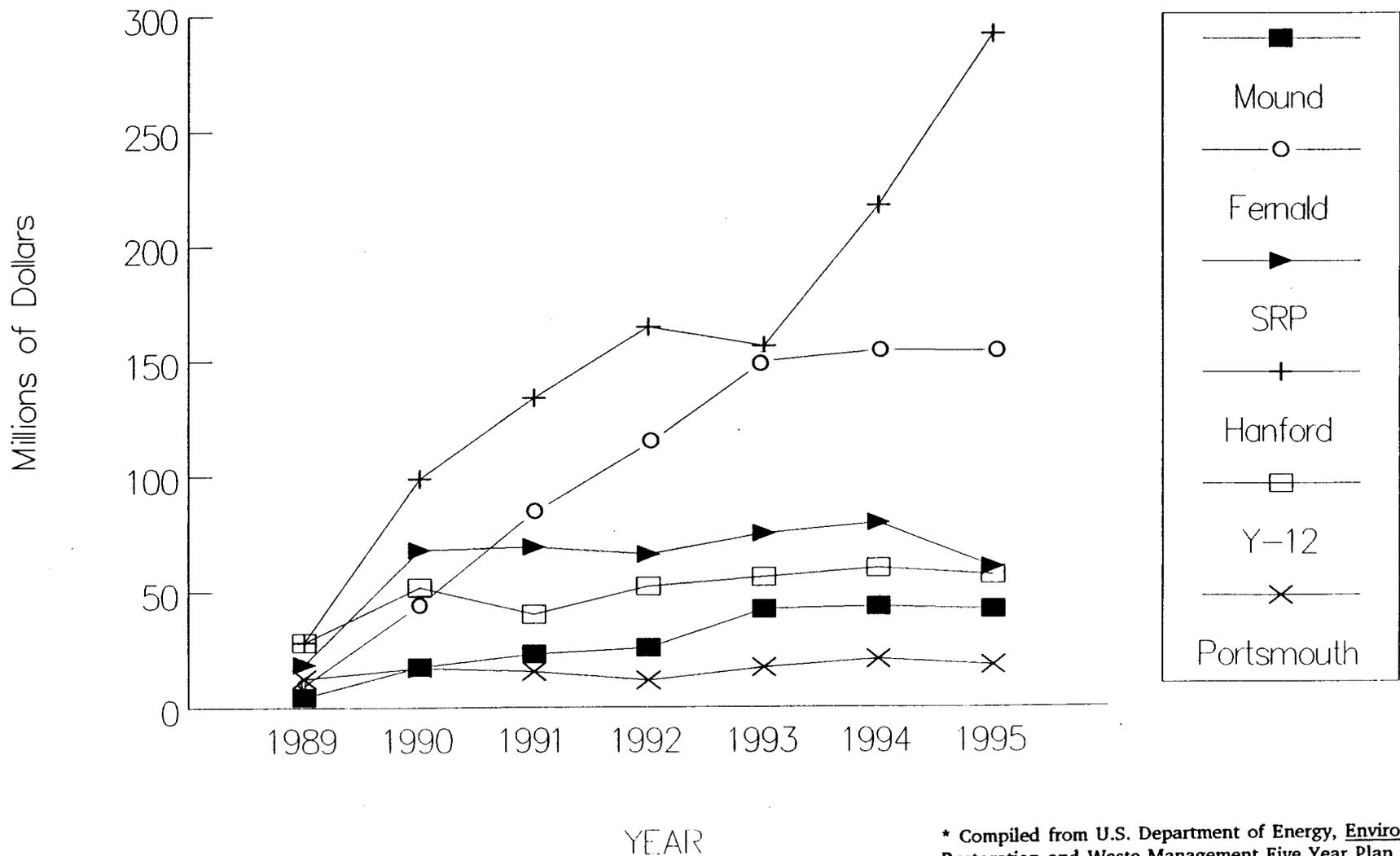


\* Compiled from U.S. Department of Energy, Environmental Restoration and Waste Management Five Year Plan, DOE/S-0070, August 1989. (See Attachment A-1 for percentage distribution.)

FIGURE 2

# ENVIRONMENTAL RESTORATION FUNDING

## Energy Department DP Facilities



\* Compiled from U.S. Department of Energy, Environmental Restoration and Waste Management Five Year Plan, DOE/S-0070, August 1989. (See Attachment A-2 for percentage distribution.)

health to the requirements of whatever compliance agreement DOE reaches with EPA or a State. Hence, funding for meeting a schedule necessary to obtain a hazardous waste permit for a weapons production facility could have a higher priority than complying with standards for radionuclide emissions, depending upon the provisions of a particular compliance agreement.

To replace this interim priority system, the Plan proposes to develop a "National Prioritization System." The prioritization schemes previously developed by the Department are seriously flawed, and substantial work will be required to develop a workable system.<sup>14</sup> We outlined many of the problems with the Department's prioritization system in previous testimony before Subcommittees of the Senate and House Armed Services Committees<sup>15</sup> and in a meeting of the Energy Department's External Review Group. These problems include the unrealistic complexity and data intensiveness of the model, its failure to consider multiple contaminants, and an inappropriate combination of

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<sup>14</sup> The risk-based prioritization system (MEPAS) and budget allocation system (POS) developed by DOE are described in the September 1988 "Prioritization Report" (supra note 4), and "Priority System for Department of Energy Defense Complex Environmental Restoration Program, A Report Prepared for the House Armed Service Committee," U.S. Department of Energy (August 1988), at page 17.

<sup>15</sup> See generally, Reicher, Dan W. and James D. Werner, Testimony before the House Armed Service Committee Procurement and Military Nuclear Systems Subcommittee, February 24, 1989; Reicher, Dan W. and James D. Werner, Testimony before the Senate Armed Services Committee Strategic Forces and Nuclear Deterrence Subcommittee, April 7, 1989; Werner, James D. and James Beard, Testimony before the House Armed Services Committee Defense Nuclear Facilities Panel, May 9, 1989.

carcinogenic and non-carcinogenic effects. In addition to these technical flaws, the Energy Department's prioritization model was developed by DOE without any opportunity for public comment. In February of this year, the DOE Deputy Assistant Secretary for Environment, stated that the decision to develop a prioritization system without public input was done against his recommendation and that he would recommend that the Department submit the prioritization system to public comment.<sup>16</sup>

In its Five-Year Plan, the Department has committed to developing a new system. The system under development, however, appears to be merely a revision of the earlier flawed model. We believe that this previously developed model cannot be salvaged through revisions and should be scrapped. We also believe the Department must face up to the very fundamental question of whether it is even appropriate for DOE to develop its own priority-setting system. The Energy Department is not unique among federal agencies in its need to establish waste cleanup priorities. There are more than a thousand federal facilities where waste cleanup is required, including 177 Air Force sites, 266 Department of Interior sites, and 41 Department of Agriculture sites.<sup>17</sup> In addition to the Energy Department, EPA and the Department of Defense are developing their own

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<sup>16</sup> Oral statement of Raymond Berube before the House Armed Services Committee Subcommittee on Procurement and Military Nuclear Systems, February 24, 1989.

<sup>17</sup> Planning Research Corporation, Federal Agency Hazardous Waste Compliance Docket: Federal Facilities by Agency, October 10, 1988, see 53 Fed.Reg. 46364; November 16, 1988.

prioritization systems. This proliferation of waste cleanup prioritization systems may not be a wise expenditure of taxpayers' money and may result in inconsistent cleanup programs. It is natural for government agencies to want their own priority systems, but it may not make sense for each agency to develop a separate system.

We strongly urge the Department to meet with relevant federal agencies to address this issue of multiple prioritization systems. A conference of federal agencies to address prioritization issues was proposed by EPA for late Summer 1989 but has not yet occurred.<sup>18</sup> There are at least two possible outcomes of such a conference. One possibility is that a uniform national prioritization system is developed that all federal agencies use to set cleanup priorities across the federal government. Another outcome might be that a set of common principles is developed that each agency uses in developing its own prioritization system in order to better assure consistency among federal agencies.

If the Energy Department is to address these fundamental issues, it is very unlikely that an acceptable system can be developed by March 1990 as the Department currently plans.<sup>19</sup> The National Research Council Board on Radioactive Waste Management commented:

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<sup>18</sup> Letter from William K Reilly, EPA, to Richard G. Darman, OMB, June 13, 1989.

<sup>19</sup> Plan at 13, Figure 1.2.1.2. The text on page 12 indicates that the system will be developed by April 1990.

[T]he [Five-Year] Plan does not recognize how much time it will take to develop a proper system for setting priorities. The proposed schedule allows only seven months to develop and initiate [a National Priority System]; the Board believes that to do it right, with public participation, will take more than twice that long. DOE has set itself a deadline...which the Board considers premature and urges DOE to abandon.<sup>20</sup>

We concur with the Board's recommendation to abandon the current schedule for establishing a prioritization scheme. The Department now has a unique opportunity, in conjunction with EPA and other Federal agencies, to establish a sound and accepted prioritization system before most of the high cost remedial activities must be funded. Although the Department has recently admitted that its schedule is "optimistic",<sup>21</sup> it has not yet changed the target date.<sup>22</sup>

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<sup>20</sup> Parker, Frank L., National Research Council, Board on Radioactive Waste Management, Review Comments on Predecisional Draft II of DOE's Environmental Restoration and Waste Management Five-Year Plan, August 3, 1989, at 5.

<sup>21</sup> DOE response to comments of the National Research Council, Board on Radioactive Waste Management, accompanying letter from Leo P. Duffy, DOE, to Mary V. White, NRDC, October 19, 1989, at 6.

<sup>22</sup> Longo, Tom P., DOE, Personal Communication with Jim Werner, NRDC, at DOE Internal Review Group meeting, November 2, 1989.

D. The Plan Excludes Many Important Facilities

Earlier this year, Secretary Watkins committed to a Five-Year Plan that would "coordinate and consolidate all Department clean-up activities into a single, integrated plan of action"<sup>23</sup> (emphasis added). Unfortunately, the plan falls far short of this goal by failing to include many DOE facilities with significant environmental problems.

The Five-Year Plan excludes all DOE naval reactor facilities, which are administered under the Department's Nuclear Energy program. These facilities include:

- Knolls Atomic Power Laboratory, Niskayuna, New York
- Kesselring Site, West Milton, New York
- Windsor Site, Windsor, Connecticut.
- Bettis Atomic Power Station, Pennsylvania
- Naval Reactor Test Facility, Idaho

These facilities are probably the most significant omission from the Five-Year Plan because of their size, potential for environmental risk, and the almost complete lack of independent oversight of their activities. None of the naval reactor facilities were included in the Environmental Survey program, Technical Safety Appraisal Program, the 1988 Needs Report, or the Tiger Team assessment plan. Significant contamination of groundwater with heavy metals, solvents and radionuclides has been identified at some of the facilities. Additionally, widespread areas of soil have been found to be contaminated with

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<sup>23</sup> Watkins, James D., Letter to U.S. Representative Thomas A. Luken, March 23, 1989.

radioactivity, although a comprehensive survey has not yet been completed.

The Five-Year Plan also fails to include facilities in other program offices such as Fossil Energy and the Power Marketing Administrations<sup>24</sup> that were identified in Environmental Survey reports as having significant environmental contamination requiring cleanup, or potential problems requiring investigation. These facilities include, for example:

- **Laramie Project Office, Wyoming.** Problems include: ground water contamination at the Hoe Creek and Hanna Coal Gas experimental sites.<sup>25</sup>

- **Morgantown Energy Technology Center, West Virginia.** Problems include: Mercury, heavy metal and solvent contamination of adjacent streams, sewage system and ponds; and potential radioactive waste contamination of soil.<sup>26</sup>

- **Pittsburgh Energy Technology Center, Pittsburgh, PA.** Problems include: Contamination of nearby streams with oily waste water and coal debris.<sup>27</sup>

- **Strategic Petroleum Reserves, Texas and Louisiana.** Problems include: air pollution from volatile organic

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<sup>24</sup> This exclusion is acknowledged in the Foreword (page x) of the Plan without any justification for diverging from the mandate established to "consolidate all Departmental waste and cleanup activities" in Secretary Watkins' March 15, 1989 "Memorandum to All Departmental Elements" (emphasis added) included as the first appendix to the Plan.

<sup>25</sup> DOE Office of Environmental Audit, Environmental Survey Preliminary Report, Morgantown Energy Technology Center, DOE/EH/OEV-21-P, June 1988.

<sup>26</sup> Supra Note 21.

<sup>27</sup> DOE Office of Environmental Audit, Environmental Survey Preliminary Report, Pittsburgh Energy Technology Center, DOE/EH/OEV-27-P, September 1988.

compounds, inadequate oil spill containment, and potential ground water contamination.<sup>28</sup>

Finally, several DOE facilities were excluded from the Five-Year Plan without any acknowledgment of their potential for environmental risk. Some of these facilities include:

- Bonneville Power Administrative Site, Oregon;
- Notre Dame Radiation Laboratory, Indiana;
- Princeton Plasma Physics Laboratory, New Jersey;
- Shippingport Atomic Power Station, Pennsylvania; and
- Western Area Power Administration, Colorado.

If the Department has excluded these facilities on the basis of low potential for environmental risk, then that determination should be stated explicitly along with the exclusion criteria.

E. DOE's Proposed Reorganization Threatens to Diminish the Internal Oversight Role of the EH Office

The Five-Year Plan proposes a reorganization to centralize responsibility for carrying out environmental activities.<sup>29</sup> In August, Secretary Watkins approved a plan to begin implementing this reorganization.<sup>30</sup> Recently, the Energy Department specifically proposed a new position of Assistant Secretary for Waste Management and Environmental Restoration to manage

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<sup>28</sup> DOE Office of Environmental Audit, Environmental Survey Preliminary Report, Strategic Petroleum Reserve, Texas and Louisiana Gulf Coast, DOE/EH/OEV-34-P, January 1989.

<sup>29</sup> Plan at 22.

<sup>30</sup> Duffy, Leo P., Action Memorandum to the Secretary. "Establishment of an Organization to Implement the Environmental Restoration and Waste Management Five Year Planning Initiative", August 3, 1989.

responsibilities outlined in the Five-year Plan.<sup>31</sup> Although this new position may help consolidate and coordinate environmental activities, we are concerned that it could lead to the reduction or elimination of the authorities of the existing Office of the Assistant Secretary for Environment, Safety and Health (EH). We are extremely concerned about the impact of any reorganization on the existing EH office.

The EH office serves a valuable role in ensuring environmental compliance among the program and field offices by providing guidance and oversight. Guidance and oversight are known, in modern management terms, as "staff" functions. Such responsibilities are in contrast to "line" functions, which involve actually managing and carrying out operations. Virtually all major industrial corporations recognize the importance of separating line and staff responsibilities. Without adequate separation of these functions, oversight cannot be truly independent and therefore cannot be effective. Although they cannot substitute for external oversight, these internal staff functions are especially important at the Energy Department because of the chronic understaffing of EPA and state regulatory agencies.

The Five-Year Plan provides only a brief mention of the EH "audit and appraisal programs."<sup>32</sup> Internal environmental

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<sup>31</sup> Barber, Jeff, Inside Energy, "DOE Seeks New Assistant Secretary Post", October 9, 1989.

<sup>32</sup> Plan at xii.

oversight is discussed in several places in the Plan without any specific description of the EH role.<sup>33</sup> Because of the importance of the EH office in providing guidance and independent internal audits, this role should have been included in the plan as an integral part of assuring environmental compliance.

Internal Energy Department memoranda indicate that "independent internal oversight" will be carried out by a new Office of Environmental Quality Assurance/Quality Control, which would report to the new Assistant Secretary for Environment and Waste Management (see Figure 3).<sup>34</sup> We are concerned that this office will substitute for rather than be a supplement to the existing EH Office of Environmental Audit. In addition, Regulatory Compliance groups established under the new Deputy Assistant Secretaries for Waste Operations and Environmental Restoration may similarly replace rather than supplement the existing Office of Environmental Guidance and Compliance under the Assistant Secretary for Environment, Safety and Health. Nowhere in DOE's recent memoranda is the existing EH function mentioned.

The basic problem with the apparent reorganization is that the proposed Assistant Secretary would be responsible for carrying out the line function of environmental cleanup,

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<sup>33</sup> Plan at 36, 42 and 77.

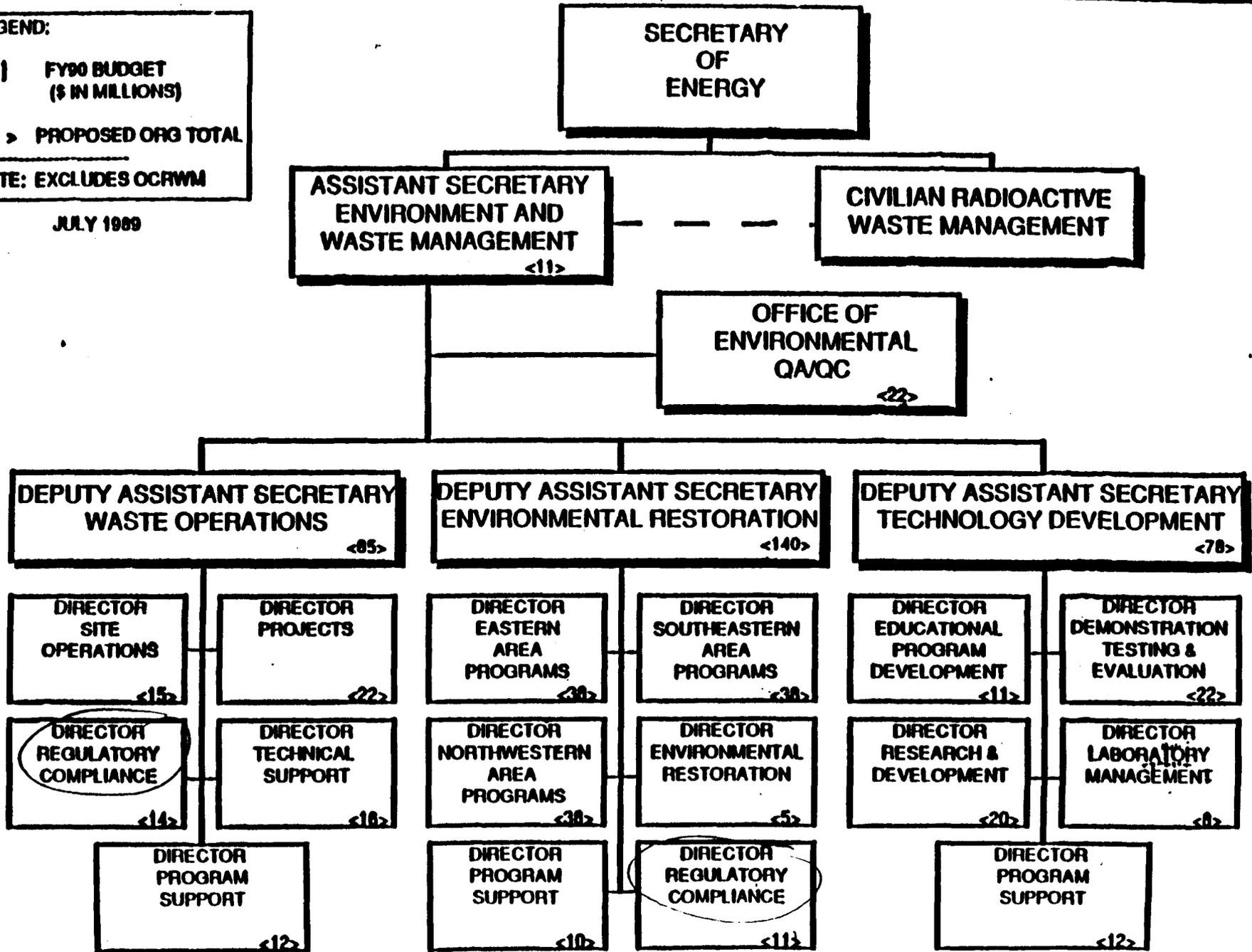
<sup>34</sup> Duffy, Leo P., DOE Memorandum to The Secretary: "Establishment of an Organization to Implement the Environmental Restoration and Waste Management Five Year Planning Initiative", August 1989.

FIGURE 3

# SUCCESSFUL IMPLEMENTATION OF FIVE-YEAR PLAN REQUIRES CENTRALIZED LINE ORGANIZATION

**LEGEND:**  
 | | FY90 BUDGET  
 (\$ IN MILLIONS)  
 < > PROPOSED ORG TOTAL  
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 NOTE: EXCLUDES OCRWM

JULY 1989



\* Source: August 3, 1989 Memorandum from Leo P. Duffy, Special Assistant to the Secretary for Coordination for DOE Waste Management, to Energy Secretary Watkins.

compliance and waste management, as well as the staff responsibility of overseeing that such activities are performed properly. Admittedly, the massive environmental cleanup and compliance work needed at Energy Department facilities may require a separate program office under a new Assistant Secretary. However, this line function should not be under the direction of the same Assistant Secretary charged with oversight.

Our concern about the merging of line and staff functions is not hypothetical. In May, the Energy Department announced that it would shift internal nuclear safety oversight from EH into three program offices -- Defense Programs, Nuclear Energy, and Energy Research.<sup>35</sup> This reorganization represents a significant step backwards in the progress that has been made in recent years to establish some accountability in Department operations. In fact, under Secretary Herrington the oversight function of EH was actually strengthened. In 1985, Secretary Herrington stated, "[a]t present, oversight responsibility for environment and safety is scattered among the Assistant Secretaries. [O]versight responsibility for the environment, safety and health function will be consolidated and upgraded...."<sup>36</sup> Secretary Watkins' reorganization would reverse this earlier reorganization, which

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<sup>35</sup> Secretary of Energy Notice SEN-6-89, "Departmental Organization and Management Arrangements", May 1989, and SEN-6A-89, September 28, 1989.

<sup>36</sup> Herrington, John S., DOE News: "Herrington Announces 3-Point Plan to Strengthen Environment, Safety and Health Programs", R-85-111, at 1, September 18, 1985.

was one of the more positive developments at the Energy Department under the previous administration.

The proposed elimination of internal safety oversight within EH has been criticized by former Nuclear Regulatory Commission chairman John Ahearne, now chairman of the DOE Advisory Committee on Nuclear Facility Safety. Commenting on the proposed reorganization, Mr. Ahearne indicated that, although "prime responsibility for safety and environment should rest with line management, we believe that it is equally important to maintain a strong, independent oversight function."<sup>37</sup> Transferring EH responsibility to the nuclear program offices and to the new Office of Environment and Waste Management flies directly in the face of this important principle.

The proposed reorganization has also been criticized from within the Energy Department. We have obtained copies of letters written by a nuclear engineer, Darrell A. Huff, in the Department's EH Office of Safety Appraisals.<sup>38</sup> Mr. Huff notes that the reorganization would not only fail to provide effective oversight, but would also be inefficient because of the duplication of technical capabilities. Currently, technical specialists from EH provide oversight of multiple program offices. Under the proposed reorganization, personnel would be

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<sup>37</sup> The Energy Daily, Volume 17(167), "Ahearne Hits Reorganization Plan", at 1, September 1, 1989.

<sup>38</sup> Huff, Darrell A., Letters to Representative Harley O. Staggers (June 1, 1989 and July 20, 1989) and Senator Jay Rockefeller (October 27, 1989). Mr. Huff is a resident of West Virginia.

assigned to a single program office, and specialists could no longer be shared by programs. According to Mr. Huff, "instead of hiring 6 seismic experts across three separate safety organizations, you may only need 4 such experts in a single organization". He concluded, "I do not believe that...the proposed self-assessment organizations...are sufficiently independent of the financial and production pressures such that these organizations could function as truly independent entities."<sup>39</sup>

In response to concerns about the Department's reorganization plans, DOE recently amended the May proposal to include an Office of Nuclear Safety, which would be responsible for "advis[ing] the Secretary of whether line management and its self-assessment functions are adequately assuring nuclear safety." (emphasis added).<sup>40</sup> But this proposal fails to acknowledge that self-assessment is simply not the same thing as the independent assessment that EH could carry out. Similarly, the proposed Office of Environmental Quality Assurance/Quality Control would be relegated to assuring the adequacy of "self-assessment" rather than performing independent assessments.

The Energy Department should withdraw its proposed reorganization of the EH safety office announced in May. Moreover, DOE should not proceed with any similar dismantling of the EH environmental office. Finally, DOE should clearly

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<sup>39</sup> Huff, October 27, 1989.

<sup>40</sup> SEN-6A-89 at 4.

describe the proposed roles for the Office of Environment, Safety and Health and the Office of Environment and Waste Management in the next Five-Year Plan.

F. Miscellaneous Comments and Corrections

1. For all DOE sites, Corrective Activities funding requirements<sup>41</sup> are not separated into individual program office responsibilities (defense programs, energy research, and nuclear energy) in the same way as environmental restoration<sup>42</sup> and waste management.<sup>43</sup> In addition, no column headings are provided for the corrective activities Attachment. Hence, it is impossible to determine the meaning of the entries in the different columns.

2. The Five-Year Plan does not provide the same level of information on environmental restoration funding requirements for the Hanford Reservation as provided for other facilities. The environmental restoration funding for Hanford is split into four areas - 100, 200, 300, and 1100 areas.<sup>44</sup> The sum of the funding requirements for these areas in FY90, for example, (\$53.083 million) does not equal the total environmental restoration

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<sup>41</sup> Plan at 214-249.

<sup>42</sup> Plan at 259-313.

<sup>43</sup> Plan at 316-361.

<sup>44</sup> Plan at 302-309. These areas reflect the separation established by the Superfund National Priority Listing by EPA.

funding needs of the entire reservation (\$99.4 million).<sup>45</sup> On a related note, the total Hanford environmental restoration funding requirements given in section 3.0 are not broken down into program office responsibility (defense programs, energy research, and nuclear energy) in the same manner typically used in Attachment B for other sites. Hence, it is not possible to determine how much funding will be required for each program office.

3. The FY92 defense programs environmental restoration funding requirement for Idaho Installations is listed as \$870,000 although the funding for FY91 and FY93 are listed as \$85.85 million and \$70.17 million, respectively. Presumably, the FY92 figure should be \$48.87 million, based on the difference between the nuclear energy requirements and the total. The Department should correct this apparent typographical error. DOE should also explain the 43 percent decrease and subsequent increase assuming the \$48.87 million figure for FY92.

4. The Plan incorrectly lists Region II of EPA as being responsible for the New Brunswick laboratory.<sup>46</sup> This laboratory is located in New Brunswick, Illinois, for which EPA Region V is responsible, not New Brunswick, New Jersey, for which EPA Region II is responsible.

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<sup>45</sup> Plan at 114.

<sup>46</sup> Plan at 281.

## ATTACHMENT A-1

## DISTRIBUTION OF ENVIRONMENTAL RESTORATION FUNDING

DEFENSE SITE NAME	PERCENT OF TOTAL ENVIRONMENTAL RESTORATION BUDGET							
	1988	1989	1990	1991	1992	1993	1994	1995
Kansas City Plant	0.34%	2%	0.44%	0.74%	0.67%	0.60%	0.59%	0.54%
Los Alamos	0.51%	2%	1%	3%	4%	4%	4%	4%
Mound Plant	4%	4%	3%	3%	3%	5%	4%	4%
Pantex Plant	0.93%	0.8%	0.6%	1.5%	1.2%	1.1%	1.0%	1.1%
Pinellas	0.12%	0.3%	0.2%	0.4%	0.4%	0.5%	0.6%	0.4%
Rocky Flats Plant	2%	6%	6%	6%	4%	4%	3%	4%
Sandia/Alb.	0.36%	0.7%	0.9%	1.0%	1.4%	0.9%	0.7%	1.0%
Sandia/Livermore	-	0.3%	0.2%	0.2%	0.3%	0.3%	0.3%	0.0%
Fernald	7%	7%	8%	12%	14%	16%	15%	14%
INEL	11%	10%	18%	13%	6%	7%	8%	9%
SAN (incl. Lvrmr).	10%	5%	5%	3%	3%	3%	2%	2%
Nevada Test Site	0.35%	1%	1%	2%	2%	4%	8%	7%
Oak Ridge Nat.Lab	8%	6%	10%	9%	14%	14%	11%	6%
Oak Ridge K-25	-	5%	6%	8%	10%	10%	9%	10%
Savannah River	14%	12%	12%	10%	8%	8%	8%	6%
Hanford***	24%	17%	18%	20%	20%	17%	21%	27%
Y-12	11%	10%	9%	6%	6%	6%	6%	5%
Other Sites	6%	12%	0%	0%	0%	0	0	0
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

\* Compiled from U.S. Department of Energy, Environmental Restoration and Waste Management Five Year Plan, DOE/S-0070, August 1989.

## ATTACHMENT A-2

ENVIRONMENTAL RESTORATION FUNDING  
FOR ENERGY DEPARTMENT FACILITIES  
(\$ thousands)

FISCAL YEAR	1989	1990	1991	1992	1993	1994	1995
SITE NAME							
Portsmouth	12,385	17,080	15,418	11,544	17,044	20,544	18,044
Kansas City Plant	374	2,413	4,994	5,380	5,615	6,234	5,815
Los Alamos	450	8,203	18,102	31,666	35,526	36,972	38,392
Mound Plant	4,510	17,538	22,927	25,570	42,292	43,364	42,169
Pantex Plant	410	3,240	10,046	10,046	10,046	10,661	12,046
Pinellas	100	1200	2,900	3,545	4606	5,808	4,258
Rocky Flats Plant	700	32,130	40,984	29,948	36,647	33,606	45,732
Sandia/Alb.	400	5,042	6,868	11,364	8,817	7,212	10,694
Sandia/Livermore	100	1,120	1,310	2,257	2,900	2,900	0
Fernald	9,550	44,353	84,127	113,867	149,759	154,395	154,111
INEL	23,175	97,028	85,851	46,914	70,173	88,760	95,361
SAN (incl. Lvrmr).	10,770	25,196	20,298	28,003	26,227	18,111	16,666
Nevada Test Site	1,486	3,125	15,352	18,602	33,492	82,863	77,399
Oak Ridge Nat.Lab	12,021	53,227	60,527	112,075	133,100	113,235	66,440
Oak Ridge K-25	0	35,465	57,206	84,457	89,852	89,436	108,512
Savannah River	18,518	67,833	69,205	66,010	74,960	79,490	60,410
Hanford***	28,123	98,800	133,800	164,800	156,400	217,500	291,800
Y-12	28,028	51,825	40,140	52,250	56,000	60,000	57,000
Other DP Sites	20,610	-	-	-	-	-	-

\* Compiled from U.S. Department of Energy, Environmental Restoration and Waste Management Five Year Plan, DOE/S-0070, August 1989.