

MAY 2009

Association of State and Territorial

ASTSWMO

Solid Waste Management Officials

FINAL REPORT:

2005 BRAC Round—State Experiences

Results Collected and Finalized by:
ASTSWMO Base Closure Focus Group

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ASTSWMO's mission is to enhance and promote effective State and Territorial waste management programs and affect national waste management policies.

EXECUTIVE SUMMARY

Background

The Base Realignment and Closure (BRAC) process allows the Department of Defense (DoD) to improve its overall military efficiency by reorganizing its installation infrastructure through base closures and mission realignments. Thus far, there have been five rounds of BRAC: 1988, 1991, 1993, 1995, and 2005. Many States and Territories (hereinafter collectively referred to as States) have found that the 2005 BRAC Round (BRAC 05) has been different than previous rounds of BRAC. These differences were first evident in DoD's release of the Base Realignment and Redevelopment Manual (BRRM) in March 2006. The BRRM provides procedures for a closing or realigning installation to follow in the BRAC process. The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) identified many procedures in the BRRM that could affect a State's ability to conduct oversight of the BRAC cleanup program. Some of the identified procedures included:

- ***Using the Environmental Condition of Property (ECP) Process, instead of using the Environmental Baseline Survey (EBS), to document existing environmental data collected by DoD during the active life of the installation.*** The ECP process, from review of the BRRM, appears to be less resource intensive than the EBS and will not include interviews with the former and current installation personnel who have the most knowledge regarding activities at the installation. States will not be involved with the development of the ECP and their approval of the document will not be requested. Additionally, a State's review of the ECP is not eligible for DSMOA funding.
- ***The formation of BRAC Cleanup Teams (BCTs), comprised of staff from EPA, DoD and the State.*** According to the BRRM, BCTs will not be created in the BRAC 05. The existing working relationships related to regulatory oversight will be maintained to facilitate cleanup of the closing installation. Without organized BCTs that work in coordination with the installation, the Restoration Advisory Board (RAB), and the Local Redevelopment Authority (LRA), delays are likely to occur in the cleanup process, and eventually in the transfer of the property.
- ***The BRRM states that the Finding of Suitability for Transfer (FOST) on the closing BRAC 05 installation will be forwarded to the State for comment; it also states that resolving adverse comments from the State is desirable, but not required for transfer of the property.*** It is imperative that States concur with the FOST determinations before finalization. The State should attempt to resolve disagreements with the DoD services through its dispute resolution process.

The ASTSWMO Base Closure Focus Group interviewed a total of 32 States to obtain a clearer understanding of the overall challenges and concerns of the States in this BRAC round. Several years have passed since the implementation of the BRAC 05, and States have identified many challenges and concerns with its implementation, such as lack of funding, lack of communication

with closing or realigning installation, lack of clear roles and responsibilities, and the cleanup of munitions.

Results and Recommendations

Of the 32 States that participated in this effort, 25 States have been impacted by the BRAC 05. In those 25 States, there are 199 BRAC installations in the BRAC 05: 119 closing installations and 80 realigning installations. Of those 199 installations, 22 of the installations are NPL sites. Twenty (20) of these NPL sites had a Federal Facilities Agreement. In addition, two (2) non-NPL sites had a two-party agreement.

Nineteen (19) States that participated in this report indicated that a total of 68 of their BRAC 05 sites are covered under the Defense State Memorandum of Agreement (DSMOA) in their State. For those BRAC 05 sites not covered under DSMOA, some States indicated that funds are not available to conduct oversight of restoration activities, and that most likely no oversight would be conducted due to the lack of funding. Other States reported that oversight would be funded by the State or by other means such as a cost recovery agreement.

Sixteen (16) of the States that that participated indicated that the roles and responsibilities of the State, DoD, contractors, and EPA were clear and understood by all parties. In general, coordination between DoD and States appears to be best at NPL sites, sites covered by two-party agreements, and DSMOA sites. It appears that States have the most questions and uncertainties about those sites that are not included in DSMOA. State roles on BRAC 05 sites, other than those covered by DSMOA, such as Reserve Centers, are unclear. BRAC coordinators should meet with each State to provide a summary on all sites that are not included in DSMOA so that the State can evaluate whether these sites have or may have environmental contamination that requires investigation and remediation. This coordination should be eligible for DSMOA funding or some alternative financial mechanism.

Performance based contracts (PBCs) are being utilized to investigate and remediate environmental contamination at a little under half of the BRAC 05 installations accounted for in this report. However, most States indicated that it was too early in the process to identify specific challenges, benefits, or successes.

Although BCTs are not required to be formed in the BRAC 05, nine (9) of the States that participated in the report indicated that they have established BCTs. For the remaining 23 States that do not have BCTs at their BRAC 05 sites, over half have stated there are clear roles and responsibilities for only those installations listed on their Attachment A of their DSMOA.

Nine (9) States that participated in this report have established LRAs at all of their BRAC 05 installations, and six (6) of these States also have developed Reuse Plans at each installation. The remaining 23 States have LRAs at none (0) or some (at least one) of their BRAC 05 installations, and none (0) of these States are aware of Reuse Plans being developed.

Ten (10) of the States that participated in this report indicated that RABs have been established at all or some (at least one) of the BRAC 05 installations in their State. Other States indicated

that RABs have not formed due to lack of interest by the public. Many States are not aware of whether the DoD had sought community interest and offered to create a RAB if there was sufficient interest.

One of the primary differences between BRAC 05 and previous BRAC rounds is the ECP vs. EBS. The report reveals that States were much more involved in the EBS process in the previous rounds of BRAC but are less involved in the ECP. Fourteen (14) States that participated in this report indicated that they have completed ECPs for some or all of their BRAC 05 installations. Fourteen (14) States reported that FOSTs or FOSLs have been developed for BRAC 05 installations in their State and that State input was solicited and concerns were addressed.

Fifteen (15) of the States that participated in this report indicated that munitions and explosives of concern (MEC) and Military Munitions Response Program (MMRP) issues are being adequately addressed within the BRAC process in this round.

Outstanding issues of concern or comments from the States regarding BRAC 05 include the following:

- Some of the basic aspects of the BRAC 05 process have yet to be fully developed and/or disseminated to the stakeholders. Some examples that States have cited are that there is not a clear process for performing environmental restoration work as joint-basing is being implemented, for addressing the Resource Conservation and Recovery Act (RCRA) permit at a closing installation, and for resolving disagreements between the LRA and the DoD service component. This lack of development and dissemination of information will lead to delays in the transfer of the BRAC 05 properties.
- DoD services have not been active in involving States in the BRAC 05 process. It is clear that some DoD services have not contacted the States to address environmental issues and that the States have not been provided with adequate funding to address all of the BRAC 05 installations. This lack of State involvement may cause problems for new property owners after the property is transferred.
- DoD services have unrealistic target dates for transfer of properties. Many of the BRAC 05 installations require intensive environmental investigation and remediation, and it is clear that the target dates will not be met, resulting in delays of the transfer of the property.

It appears that DoD services did not take advantage of the lesson learned from previous rounds of BRAC. Little has been done to solicit State involvement at non-DSMOA BRAC 05 installations. The BRAC 05 process has been most successful when there has been coordination between all parties involved including the State, EPA, DoD services, the LRA, and the RAB. This lack of coordination will lead to delays in the transfer of properties to beneficial reuse, which in turn could lead to an economic decline in the area of the closing installation. With shrinking State incomes and decreasing funding from EPA in the last decade, DSMOA has been the only funding mechanism available to the States to fund oversight activities at DoD facilities. DSMOA funding is not available to conduct oversight activities at over 65% of the BRAC 05

facilities accounted for in this report. This serious lack of funding to conduct oversight of restoration activities could result in the potential transfer of contaminated properties to unknowing future property owners, and endangering human health and the environment.

2005 BASE REALIGNMENT AND CLOSURE (BRAC) ROUND - OVERVIEW

Of the 32 States that participated in the report, there are 199 installations included in the BRAC 05: 119 closures and 80 realignments (Table 1). Factoring in estimates for the remaining 24 States, the number of installations included in the BRAC 05 is less than those included in each previous BRAC Rounds.

Thirteen (13) of the 32 States have a total of 22 BRAC 05 installations on the NPL. Of these, FFAs agreements have been signed at 20 installations. Kentucky and Louisiana have entered into two-party agreements with the DoD at non-NPL installations (Table 2).

According to States that participated in the report, 68 of the 199 BRAC 05 installations are covered under the State's DSMOA (Table 3).

Table 1 – 2005 BRAC Round Sites

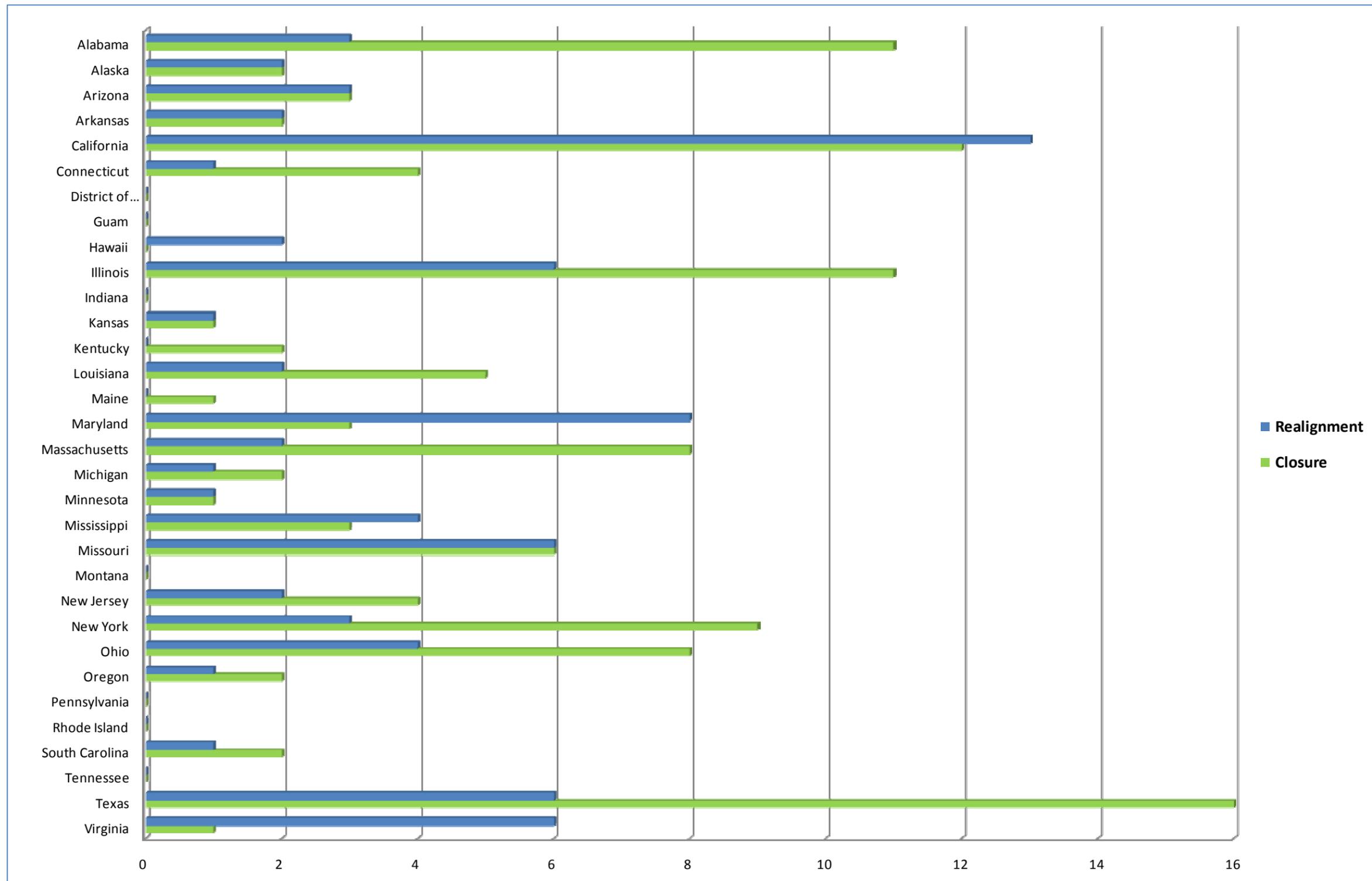


Table 2 – 2005 BRAC Round Installations on NPL and State-Federal Agreements

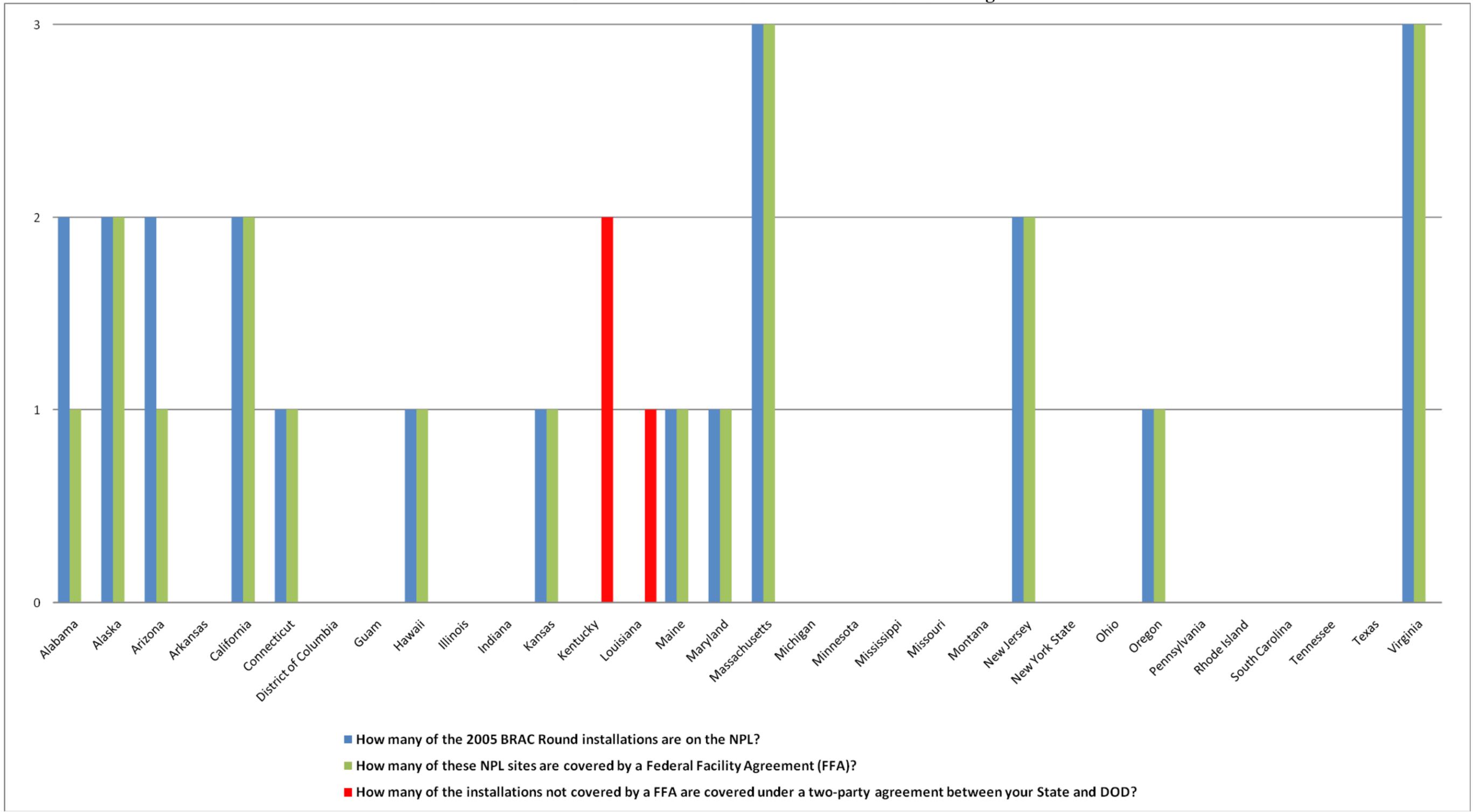
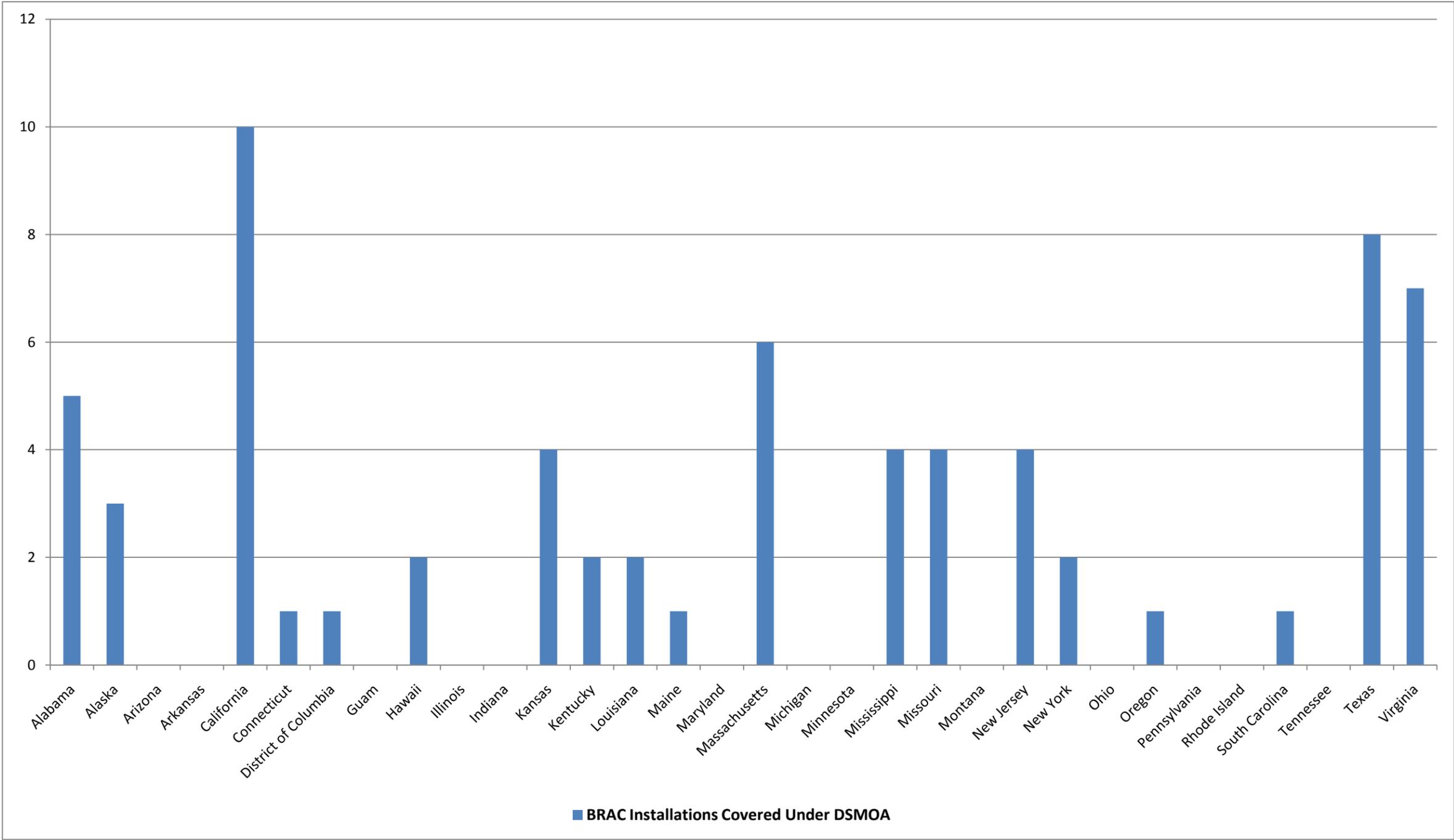


Table 3 – 2005 BRAC Round Installations Covered Under DSMOA



How is State oversight coordinated and funded at installations not on your DSMOA?

Of the 32 States that participated in this report, 13 States either indicated that this is not applicable to them, that it is unknown, or gave no response. Three (3) States responded that oversight is unfunded, while eight (8) States indicated that no oversight would be able to be performed at these installations. Five (5) States replied that the State oversight would be funded by the State. Six (6) States responded that its oversight is funded by some other type of cooperative agreement or that they use cost recovery to obtain funding.

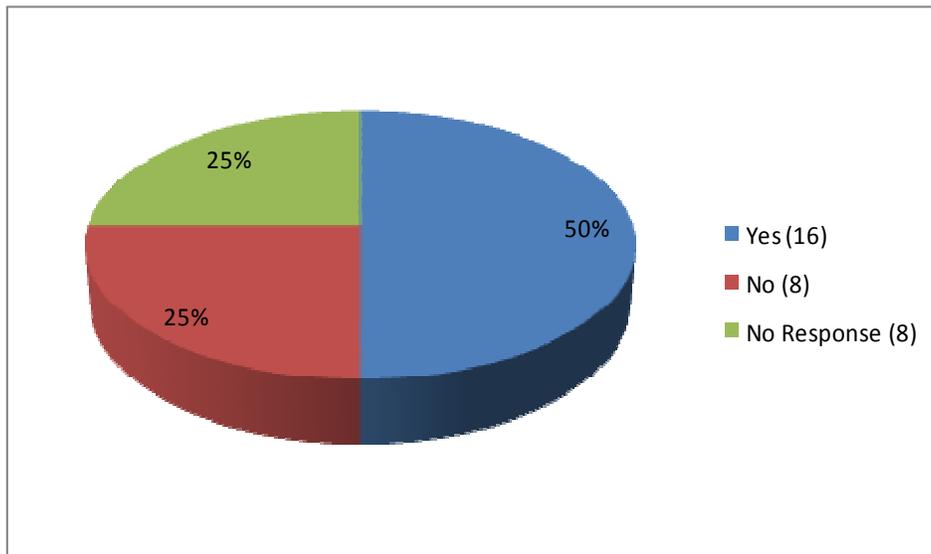
Has DOD worked closely with your State in planning, scheduling work, and addressing State comments?

A total of 23 States provided insight into this question. Of those responding, 14 responded “Yes” and nine (9) responded “No.” Of those States that indicated that DoD has worked with the State in planning and scheduling work and addressing State comments, several of the States noted that this coordination was limited to BRAC 05 sites that were listed on Attachment A of their DSMOA agreement. For sites not listed on Attachment A, such as Reserve Centers, there had been very limited if any contact between DOD and the States.

Are Performance Based Contracts being used?

A total of 22 States provided insight into this question. Of those responding, 10 replied “Yes” and 12 replied “No.” In general, for those States that responded yes, it was too early in the process to identify any specific challenges, benefits, or successes PBCs as it relates to BRAC 05 sites. However, drawing on previous experiences with PBCs, States noted lack of communication and coordination with contractors/subcontractors, and prioritization of limited state resources, as potential challenges in the future. Benefits and successes included expedited schedules and cost savings.

Are roles for State, DoD, contractors and EPA (if involved) clear and understood by all parties?¹



Have Local Reuse Authorities (LRAs) been established for each closing installation?

Twenty-four (24) States responded to this question. Nine (9) States responded that LRAs have been established and 15 States responded that LRAs have not been established. Of the 15 States that indicated that LRAs have not been established, eight (8) added that the State did not know if a LRA was established because the State was not involved with the oversight of those installations. The remaining seven (7) States gave a variety of reasons for not establishing LRAs, such as the installations are too small or lack of interest in reuse of the property.

Have Reuse Plans been developed for each installation?

Twenty-four States (24) responded to this question. Six (6) States indicated that Reuse Plans have been developed for each installation, and 18 States responded that Reuse Plans have not been developed. States that reported that LRAs have not been established also reported that Reuse Plans have not been developed.

Three (3) States that responded that LRAs have been established responded that Reuse Plans have not been developed. One State did not provide an explanation regarding why Reuse Plans have not been developed. Another State indicated that Reuse Plans were developed for all but one installation. The third State responded that the Reuse Plans were completed for most installations, but that a RAB was not established for one of the installations.

¹ States did not have the opportunity to provide a narrative in order to explain their response to this question.

Has a Base Closure Team (BCT) been established for each closing installation, and is it being effective?

Nine (9) States responded that a BCT has been established at one or more BRAC 05 installations. Each of these States also responded that DoD is coordinating well with them and that roles and responsibilities are clear. Nineteen (19) States responded that no BCTs have been established; of these, 10 stated that for the most part, coordination is good and responsibilities are clear for installations covered under DSMOA. However, they replied that for BRAC 05 sites not included in DSMOA, communication/coordination is lacking and that they are unclear on the site status under BRAC. The remaining nine (9) States indicated that coordination is lacking and the roles and responsibilities are unclear. Four (4) States abstained from the question.

These results indicate that establishing BCTs helps ensure good communication between DoD and State regulators, which should assist DoD in meeting its BRAC goals and requirements.

Has a Restoration Advisory Board (RAB) been established or maintained for each BRAC installation?

Six (6) States replied that a RAB is in effect at all BRAC 05 sites. Four (4) States reported a RAB at one or more BRAC installations, but not at all of them. Three (3) States reported that DoD inquired whether the community wanted a RAB and determined there was insufficient interest. Four (4) States reported RABs were not established because the BRAC 05 sites were small sites with little or no known contamination. The remainder of the responses stated RABs were not in effect at BRAC 05 sites and it was unclear whether DoD sought community interest and offered to create a RAB if there was sufficient interest. Four (4) States abstained from the question.

These results indicate that RABs have been established at NPL sites and some non-NPL sites that are covered by DSMOA. The results also indicate several States do not know whether DoD has sought community interest in a RAB. In some cases interest was sought early in the Defense Environmental Restoration Program (DERP) process, but it is unclear whether interest has been sought more recently (note, the RAB rule calls for re-evaluating community interest at least every 24 months).

For installations included in prior rounds of BRAC, were Environmental Baseline Surveys (EBSs) developed with State regulator input and concurrence?

During prior BRAC rounds, EBSs were mostly developed with State and regulator input and concurrence. Of the 32 states reporting, with installations that were included in prior rounds of BRAC, 21 reported that they are allowed input and concurrence into the EBS process. Six (6) States reported that they do not have input into the EBS process. Five (5) States abstained from the question.

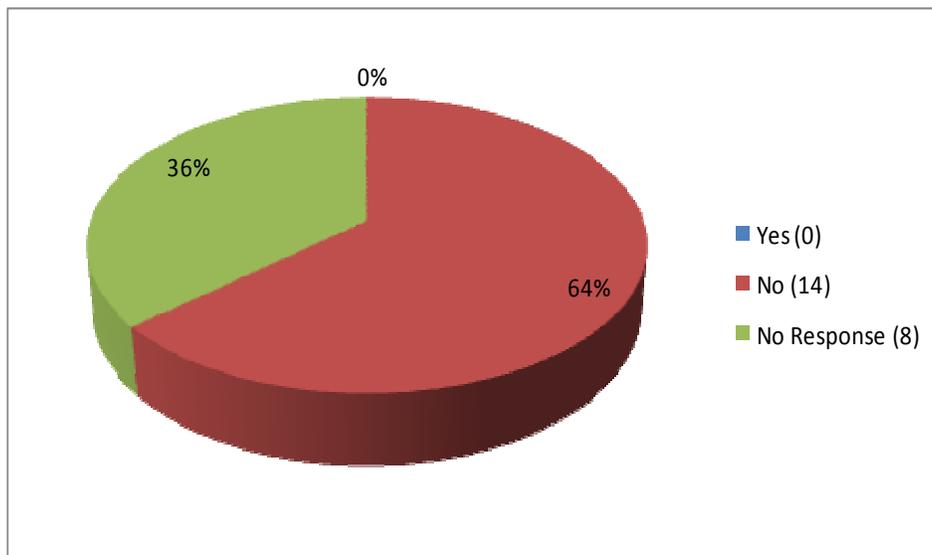
At BRAC 05 installations, have Environmental Condition of Property (ECP) reports been completed?

The question regarding ECP reports generated mixed results. Thirteen (13) States reported that no ECPs had been completed at any of their BRAC 05 installations. For the 12 States reporting that they *had* received and reviewed ECPs for BRAC 05 sites, all but one (1) reported that they had only received ECPs for *some* of the installations. In some cases, the ECPs that were received only covered a portion of the installations (such as facilities), but did not address all of the environmental media. In one case, lack of any funding for State review caused the State to simply issue letters of non-concurrence. Seven (7) States abstained from the question.

Are Findings of Suitability to Transfer (FOSTs) and/or Findings of Suitability to Lease (FOSLs) being developed in coordination with the State and are State comments/concerns being addressed?

Fourteen (14) States reported that FOSTs and FOSLs have been developed with State regulator input *AND* that State comments and concerns were addressed. By contrast, 11 States reported that they either received no ability to comment or provide input on FOSTs or that the FOSTs have not yet been completed. In one case, the State notified DoD that it could not concur on the completed FOST, yet the DoD has not responded. Seven (7) States abstained from the question.

Has environmental work been privatized through early transfer?²



² One State that answered “No” indicated that the Army is currently negotiating privatizing the cleanup for a portion of an installation that is planned to be transferred to their current munitions contractor. The contractor would then take over the cleanup from the Army.

Another State that answered “No” indicated that it had done privatized early transfers with installations on prior BRAC Rounds.

Are munitions and explosives of concern (MEC) and Military Munitions Response Program (MMRP) issues being adequately addressed within the BRAC process?

Of the 32 States that participated in this report, 23 States responded to this question. Of those, 15 answered that MEC and MMRP issues are being adequately addressed within the BRAC process. The remaining eight (8) States answered that these issues were not being adequately addressed. It seems for some that these issues are being handled under processes other than BRAC and that the consensus in most cases is that communication is lacking and more coordination is warranted.

Are there any other outstanding issues of concerns or comments regarding BRAC 05?

Several States cited concerns that point to uncertainties with the BRAC 05 process. From their responses, it is apparent that some basic aspects of the BRAC 05 process have yet to be fully developed and/or disseminated to the stakeholders. One State is quoted as saying that, “It is unclear how environmental restoration work will proceed as joint-basing is implemented. At closing installations where DoD does not own the land, it seems like we are having to make up the process as we go.”

According to another State, closure of an installation has been slowed by “ongoing disagreements between the [LRA’s] reuse plan and the [DoD service component’s] disposal plan.” Moreover, “significant issues still need to be worked out regarding the RCRA permit (e.g., transferring the permit, issuing a Corrective Action Order in lieu of the permit, financial assurance requirements, etc.).” Other States indicated that they were not aware of some of the sites listed under BRAC 05.

Another issue voiced by the States is lack of State involvement. According to one State, “DoD’s unwillingness to involve the States will initially speed up the process, but there may be problems later in the process for the new property owners caused by lack of State involvement and concurrence.” Another State indicated that it is willing to participate and assist, but there has been no information concerning most of the listed facilities to date. One State indicated that none of the Services have requested its involvement. In a related issue, some States are experiencing a lack of funding for oversight of environmental work at BRAC 05 sites. One State indicated that two (2) of their BRAC 05 facilities are not listed on their DSMOA Attachment A, and another State added that there are “concerns for funding of ECP and other reviews not currently listed on the DSMOA Attachment A.”

Unrealistic target dates for transfer of properties from DoD is another challenge States are identifying. One State indicated that DoD wants “to release their property interests; however, they have yet to finish characterizing the sites, develop Records of Decisions, and implement remedies.” A State facing a similar issue added that “many areas of [an installation] still need to be fully investigated,” and that “many details need to be worked out on an accelerated schedule to achieve Early Transfer” by the DoD’s target date. In addition to delays in implementing transfer of properties from DoD, incomplete information regarding environmental conditions at these properties leads to uncertainties about the cost and duration of future remedial activities, according to some States.

Finally, one State voiced concerns with lack of measures to address specific contaminants of concern at its installations, including a leaking nuclear reactor, munitions, polychlorinated biphenyls, and contaminated sediments.