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**TESTIMONY OF
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BEFORE THE
SUBCOMMITTEE ON MILITARY READINESS
OF THE
COMMITTEE ON ARMED SERVICES
U.S. HOUSE OF REPRESENTATIVES**

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Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to speak with you today on behalf of the Environmental Protection Agency about the Administration's proposed National Defense Authorization Act of Fiscal Year 2004. We believe the proposed bill appropriately addresses two equally compelling national priorities: military readiness and the protection of human health and the environment. These priorities are not at odds, and we appreciate the Defense Department's willingness to work with us to craft the proposals before you today.

As you know, the proposed bill would make changes to certain pollution control laws that EPA administers and to laws concerning wildlife protection and habitat preservation, which are the province of other Federal agencies. I'll confine my remarks here today to the laws under EPA's jurisdiction.

In the wake of September 11th, we understand more than ever the importance of military readiness in combating traditional and emerging foes. Both EPA and the Department of Defense (DoD) agree that environmental protection is essential to readiness – from preserving military training grounds and developing more efficient weapons systems to safeguarding our servicemen and women. After all, the two agencies share an important mission: the protection of both our national and

environmental security. One holds little value without the other, and we believe neither mission should be sacrificed at the expense of the other. Toward that end, EPA and DoD have for years worked cooperatively toward achieving these goals, with tangible benefits to both the military and the public alike.

The bill before this Subcommittee is the result of just such collaboration. Together, the two agencies resolved key issues in a way that allows the Services to continue to “train the way they fight,” while protecting the health of our citizens and safeguarding our natural resources. I would like to highlight for the Subcommittee several of the proposed statutory changes the two agencies developed to facilitate our twin missions, both vital to the health and security of the nation.

Proposed changes to the Clean Air Act provide the military with needed flexibility, while protecting air quality

EPA recognizes that military readiness depends on DoD’s ability, particularly in the aftermath of September 11th, to move assets and materiel around the nation – perhaps on short notice. Such large-scale movements of people and machines may have impacts on State Implementation Plans (or SIPs) for air quality.

Accordingly, EPA and DoD developed proposed changes to the Clean Air Act’s SIP provisions to allow the military to engage in such activities while working toward ensuring that its actions are consistent with a SIP’s air quality standards. Under the proposed bill, the military would still be obliged to quantify and report its impacts on air quality, but would be given three years to ensure that its actions are consistent with a given state’s SIP. We believe this compromise effectively addresses the military’s readiness concerns, while ensuring timely compliance

with air quality standards.

Proposed changes to RCRA will allow flexible and appropriate munitions oversight.

The Administration's bill also proposes two changes to the Resource Conservation and Recovery Act, or RCRA, the nation's solid and hazardous waste law. First, the bill contains language that would change the statutory definition of "solid waste" under RCRA to provide flexibility for DoD regarding the firing of munitions on operational ranges, while clarifying that the definitional exemptions are not applicable once the range ceases to be operational. This change comports with existing EPA policy and the Military Munitions Rule that have defined EPA's oversight of fired munitions at operational ranges since 1997. The bill specifically maintains the ability of EPA, the states and citizens to take actions against the military in the event that munitions or their constituents migrate off-range and may pose an imminent and substantial endangerment to human health or the environment, if such materials are not addressed under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

Secondly, the agencies worked together to craft a clear, common-sense definition of "range." Under the revised definitions of "solid waste" and "range," the military will have statutory assurance that EPA will not intervene in the firing of or training with munitions, while the public may rest secure in the knowledge that EPA, states and citizens have authority to take action if munitions pose a threat off-range or after a range is closed.

We note, for the record, that in its history, EPA has in only one instance taken an enforcement action that resulted in the cessation of live fire training at a military base – namely, at the Massachusetts Military Reservation (MMR) on Cape Cod, Massachusetts. There EPA took action only after

determining that the groundwater aquifer underlying MMR, the sole source of drinking water for hundreds of thousands of Cape Cod residents, was threatened with contamination – and only after efforts to support voluntary action failed to stop the spread of contamination. Today at MMR, EPA is overseeing cleanup work to ensure that Cape Cod residents have an adequate supply of drinking water now and in the future. The Defense Department has continued to conduct training at MMR using small arms, as well as other training without using explosives, propellants and pyrotechnics.

Analogous changes to CERCLA will preserve the Agency’s Superfund authority to address contamination which presents an imminent and substantial endangerment.

The Administration’s bill proposes analogous changes to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as the Superfund law. It would exempt from the definition of “release” under CERCLA explosives and munitions deposited during normal use while on an operational range. It is important to note that EPA would retain authority to take action to abate an imminent and substantial endangerment to public health and the environment due to the deposit or presence of explosives and munitions on an operational range. As with the proposed changes to RCRA, the change to CERCLA affords the military flexibility in handling munitions at operational ranges, but ensures that EPA has the ability to act should the military’s response be inadequate to address the most important public health and environmental concerns.

Ongoing collaboration on munitions

Meanwhile, EPA continues to collaborate with DoD and state and tribal regulators to develop a new approach to cleaning up ordnance, explosives and munitions at non-operational ranges throughout the United States. This new approach, an expected product of the Munitions Response Committee

(MRC), is designed to work within the framework of existing Federal and state authorities. Under the new process, Military Departments, EPA, Federal Land Managers, and the states and tribes will coordinate, where appropriate, and integrate their respective statutory and administrative authorities under Federal and state environmental laws. The development of Federal, state and tribal partnerships and public participation will be key characteristics of the new process. We believe that the proposed bill complements the partnerships we are building through the Munitions Response Committee and will help the Agency ensure that munitions at both operational and non-operational ranges are subject to sound environmental management.

The new proposal would authorize the transfer of obsolete vessels for use as artificial reefs

The bill would also authorize the Secretary of the Navy to transfer certain vessels for use as artificial reefs, but retain key environmental safeguards under CERCLA, RCRA and the Toxic Substances Control Act (TSCA). These ships are often contaminated with asbestos and PCBs. EPA is working closely with the Maritime Administration to determine if and when reefing is appropriate, and to find suitable ship-scraping facilities at home or abroad to dispose of obsolete ships in a safe and environmentally sound manner.

Proposed changes in wetlands mitigation banking

One other environmental provision of the bill deserves mention here. It would allow military departments to use military construction funds to make payments to wetlands mitigation banking programs and consolidated user sites when the department is engaged in an activity that may adversely affect a wetland. A wetlands mitigation bank is typically a privately-owned site – in many instances, prior converted cropland – where wetlands are restored. Wetlands mitigation

banks have enjoyed increasing acceptance and success since the mid-1990's, and the new bill would simply clarify that military funds could be used for this purpose.

Conclusion

In conclusion, we believe that the Administration's bill appropriately takes account of the interests of the American people in military readiness and in environmental protection. I am confident that DoD and EPA can work together within the framework of the proposed law to ensure that America's armed forces are able to train to carry out their national security mission and that the Agency is able to carry out its mission of protecting human health and the environment.

This concludes my prepared remarks. Thank you for the opportunity to present EPA's views. At this time, I would be happy to answer any questions the Subcommittee members may have.