

US EPA ARCHIVE DOCUMENT

**TESTIMONY OF
JOHN PETER SUAREZ
ASSISTANT ADMINISTRATOR
OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT
OF THE
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE**

APRIL 1, 2003

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to speak with you today on behalf of the U.S. Environmental Protection Agency (EPA) about the Administration's proposed National Defense Authorization Act of Fiscal Year 2004. We believe the proposed bill appropriately addresses two important national priorities: military readiness and the protection of human health and the environment. These priorities can both be achieved at the same time, 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 DoD leadership recognize the vital importance of both the mission of protecting human health and the environment and the mission of protecting national security. Both believe that 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 the American people.

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. Indeed, we have recently reached agreement with DoD on language clarifying that the proposed changes to solid waste and Superfund laws apply only to operational ranges under the jurisdiction and control of the military services. The Administration has cleared this language and intends to send it to Congress in the near future. This action underscores the Administration’s interest in keeping any changes limited and sharply focused.

Today, I would like to highlight for the Subcommittee several of these proposed statutory changes the two agencies developed to facilitate our twin missions.

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

EPA recognizes that military readiness depends on DoD’s ability 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 armed forces 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 armed forces would still be obliged to quantify and report their impacts on air quality prior to initiating the readiness activity, but would be given three years to ensure that their actions are

consistent with a given state's SIP. We believe this compromise effectively addresses military 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 U.S. Government in accordance with the law 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 armed forces 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 against the U.S. Government in accordance with the law if munitions pose a threat off-range or after a range is closed.

The history of interaction between EPA and DOD demonstrates that the two can work together effectively to achieve their respective missions, and this should instill confidence that the two agencies will continue to work together well to carry out those missions under the proposed legislation. EPA has in only one instance found it necessary to take 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 under the Safe Drinking Water Act when it determined 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 the drinking water supply for Cape Cod residents meets all relevant standards now and in the future. In response to EPA's decisions, the Defense Department shifted some of this training to another facility and limited its training at MMR to 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

flexibility to the armed forces in handling munitions at operational ranges, but ensures that EPA has the ability to act when necessary 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 polychlorinated biphenyls (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 crop land – 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

Working together, EPA and DOD have developed a legislative proposal that addresses the concerns of the armed forces about future applications of EPA's statutes and regulations, while at the same time preserving the Agency's ability to protect public health and the environment. In the context of MMR, for example, EPA would still have the authority to protect the drinking water from imminent and substantial endangerment under the provisions of the proposed bill.

Similarly, the proposed legislation would codify the so-called "munitions rule" under RCRA – an existing EPA regulation that sets forth the conditions under which EPA and the states can respond under RCRA to environmental threats at both operating and closed military ranges. The proposed legislation also states clearly that EPA is authorized under CERCLA

section 106 to address imminent and substantial environmental threats at both operating and closed ranges.

In conclusion, both the Administrator and I support this bill. We believe that it 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 you may have.