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BEFORE THE SUBCOMMITTEE ON ENERGY AND AIR QUALITY
AND THE
SUBCOMMITEE ON ENVIRONMENT AND HAZARDOUS MATERIALS
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES 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 2005. EPA and the Administration 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 EPA has worked with the Defense Department to develop the proposals before you today.

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, EPA and DoD 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 Administration feels that the proposed statutory changes before this Subcommittee can allow the services to continue to "train the way they fight," while protecting the health of our citizens and safeguarding our natural resources. The bill satisfies DoD's readiness concerns by providing that EPA, States or a citizen may not take an action under the Resource Conservation

and Recovery Act (RCRA) or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) at operational ranges. However, EPA, States, and the public retain RCRA and CERCLA authorities for off-range migrations of munitions and their constituents. Further, the bill does not amend federal, state, or private authorities under the Safe Drinking Water Act. I would like to highlight for the Subcommittees several of the proposed statutory changes that the Administration proposes to facilitate our twin missions, both vital to the health and security of the nation, as well as how we understand DoD plans to assume these responsibilities.

Proposed Changes to the Clean Air Act

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, the Administration has 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 effects on air quality, but would be given three years to ensure that its actions are consistent with a given state's SIP. The Administration believes this provision effectively addresses the military's readiness concerns, while ensuring timely compliance with air quality standards.

Proposed Changes to RCRA

The Administration's bill also proposes to amend 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 EPA practice and the Military Munitions Rule that have defined EPA's oversight of fired munitions at operations ranges since

1997. The Administration's bill specifically maintains the authority of EPA, the States and citizens to take actions against the military or its contactors 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. The ability of EPA, the States, and citizens to use this authority will be facilitated by the availability of on-range assessment and sampling information that is conducted by DoD under its authorities.

Secondly, the Administration's proposal reflects a statutory definition of "operational range" developed by EPA and DoD. Under the proposed revised definitions of "solid waste" and "range," the military will have statutory assurance that EPA, the States, and citizens will not be able use RCRA to intervene in training activities, weapons development, or other related munitions activities on operational ranges. EPA, the States and citizens still retain the authority to take action under RCRA if such activities pose a threat outside the operational range or after a range is declared by DoD to be no longer operational

The history of interaction between EPA and DoD demonstrates that the two agencies can work together to achieve their respective missions, and EPA will continue to work with DoD to ensure that both missions are successfully carried out under the proposed legislation. 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's Regional Office took action after consultation with Headquarters and used the Safe Drinking Water Act – which remains unaffected under these proposed changes. EPA acted in this single instance 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 by munitions constituents, 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 a supply of drinking water that meets relevant standards now and in the future. The Defense Department shifted some of its training to another facility and has continued to conduct

training at the Massachusetts Military Reservation using small arms, as well as other training without using explosives, propellants and pyrotechnics.

Proposed Changes to CERCLA

The Administration's bill proposes analogous changes to CERCLA, also known as the Superfund law. The changes would exempt from the definition of "release" under CERCLA explosives and munitions and related constituents deposited during normal use while they remain on an operational range. EPA would retain CERCLA Section 106 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. Again, this proposed change to CERCLA regarding the statutory definition of "release" is meant to provide an exemption only while the range is operational and does not impinge on EPA or state authority to take action to address contamination migrating off an operation range. As with the RCRA changes, EPA and State authorities would not be affected on non-operational ranges.

Conclusion

In conclusion, EPA and the Administration believe that the bill appropriately takes account of the interests of the American people in military readiness and in environmental and public health protection. EPA will continue working with DoD, the States, Tribes, federal land managers and the public within the framework of the proposed law to ensure that DoD can carry its national security mission while the Agency is able, at the same time, to carry out its mission of protecting human health and the environment.