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**SENATE SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT
OF THE SENATE COMMITTEE ON ARMED SERVICES**

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Mr. Chairman, I am appearing today on behalf of the Attorneys General of Colorado, Idaho, Utah, and Washington. I am also submitting a detailed written statement on behalf of these four and other Attorneys General. In addition, these four Attorneys General co-sponsored a resolution which was passed by the National Association of Attorneys General at their last meeting. I will address only those parts of the Department of Defense's legislative proposals that would amend the Clean Air Act, the Resource Conservation and Recovery Act (or RCRA) or the Comprehensive Environmental, Response, Compensation and Liability Act (known as CERCLA). The states are the primary implementers of the Clean Air Act and RCRA, and are major partners with EPA under CERCLA.

First, we absolutely support the goal of maintaining the readiness of our nation's military. As is highlighted by the current conflict in Iraq, the men and women of our armed forces must have all appropriate training. At the same time, we strongly support our environmental laws and, we know that military activities can adversely impact human health and the environment. Furthering military readiness and ensuring environmental protection are compatible goals, not mutually exclusive ones. The current statutory framework allows state regulatory agencies to work together with the Department of Defense to harmonize military readiness concerns with environmental concerns.

We would like to make three main points today.

- First, as far as we are aware, the Department of Defense has not identified a single instance in which these three laws have actually adversely impacted readiness. Consequently, we do not believe that the proposed amendments are necessary.
- Second, RCRA, CERCLA, and the Clean Air Act already provide sufficient flexibility to accommodate potential conflicts, in the unlikely event they occur.
- Third, we also think that the Department of Defense's amendments go far beyond its stated concerns with maintaining military readiness, and would likely be construed by the courts to provide Defense, other federal agencies, and even private contractors, broad exemptions from state and EPA authority under RCRA, CERCLA and the Clean Air Act.

The existing statutory framework already strikes the right balance between readiness and environmental protection. The statutes of concern to the states already allow the President to exempt the Department of Defense from their requirements on a case by case basis. The Department has never invoked these exemptions for military readiness needs. In the unlikely event that environmental requirements imposed by states under these statutes conflict with military readiness, the existing exemptions allow sufficient flexibility to ensure readiness and still provide for accountability in every other case.

Accountability is important because federal agencies, including the Department of Defense, do not have a good history of compliance with environmental requirements. Federal agencies have consistently had a worse compliance record than private industry. There is one exception. Since 1992, when Congress authorized states to assess penalties against federal agencies for hazardous waste violations, federal agencies' hazardous waste compliance rates have steadily improved, and now surpass the private sector. We ask that Congress not turn its back on this progress but instead that you remain steadfast in your commitment to holding the federal agencies to the same standards as everyone else. The well-being of our citizens should not depend on whether they happen to live on or near a military base.

As an example of the problems with the Department's proposal, I will briefly discuss section 2019. This section defines when munitions, explosives, unexploded ordnance and their constituents are solid wastes, and thus subject to state regulation under RCRA as hazardous wastes. The Department's proposed re-definition of "solid waste" is intended to, and likely does, preempt state and EPA authority over munitions, explosives and the like at operational ranges.

We disagree with the Department's position that these amendments simply codify EPA's existing RCRA regulations, known as the "munitions rule." Contrary to the Department's assertions, proposed section 2019 reaches far beyond operating ranges. This section likely also preempts state and EPA authority at former ranges, at Defense sites other than ranges, Department of Energy sites, and even at private defense contractor sites. In contrast, nothing in the munitions rule preempts state authority to require cleanup of munitions-related contamination, whether it be at an operating range, former range now in private ownership, or private defense contractor facility.

Under section 2019, the only time munitions that have been used or fired on an operational range can be a solid waste is if (1) they are removed from the range; (2) they are recovered and then buried; or (3) they migrate off range and are not addressed under CERCLA. This definition likely eliminates state and EPA authority over cleanup of munitions that were deposited on an operational range and simply remain there after the range closes. These residual munitions are precisely the problem at closed and transferred ranges. The Department of Defense estimates there are up to 16 million acres of former ranges contaminated with unexploded ordnance. Many of these ranges are now in private hands.

In addition to the obvious explosive hazards, the constituents in many munitions and explosives have toxic or potential carcinogenic effects, and can contaminate groundwater. The Department of Defense's proposal would likely preempt or limit state and EPA authority over these chemical constituents. One of these chemicals is perchlorate, a constituent of munitions and explosives that has contaminated public water supply wells near the Massachusetts Military Reservation, the Aberdeen Proving Grounds in Maryland, and has contaminated surface and groundwater at hundreds of government and private defense contractor sites around the country.

The states have been and remain committed to working with the Department of Defense to resolve issues on a case-by-case, site-by-site fashion under the existing framework of regulatory authority. In the decades since the major federal environmental laws were passed, states have exercised their regulatory authority over military facilities responsibly. This fact is supported by the absence of efforts by the Department to seek exemptions. There is simply no evidence that state officials lack sensitivity to issues of military readiness. For these reasons, Congress should avoid passing laws that preempt the states' ability to protect our citizens. Instead, the Department should work with the states to develop ways to address its readiness concerns within the context of the environmental laws as they currently exist.

If the Senate decides to consider these proposed amendments, we urge you to follow the normal legislative process for this legislation. The committees with jurisdiction over the environmental statutes should be provided the opportunity to hold public hearings and craft solutions to the complex issues raised by proposals to modify our system of environmental laws.

Thank you and I am available to answer any questions.