

**TESTIMONY OF LENNY SIEGEL**  
**EXECUTIVE DIRECTOR**  
**CENTER FOR PUBLIC ENVIRONMENTAL OVERSIGHT**  
BEFORE THE SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT  
SENATE COMMITTEE ON ARMED SERVICES  
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**Summary**

“Defense and the environment” is not an either-or proposition. To choose between them is impossible in this real world of serious defense threats and genuine environmental concerns. The real choice is whether we are going to build a new *environmental ethic* into the daily business of defense...— Dick Cheney, 1990<sup>i</sup>

Mr. Chairman, members of the subcommittee, thank you for the opportunity to address the challenge of balancing the competing, yet compatible objectives of military readiness, environmental protection, and community development. My organization, the Center for Public Environmental Oversight, works with the people who live and work on or near current and former military bases and ranges throughout the U.S., from Puerto Rico to Alaska, from Maine to Hawai‘i.

Secretary Cheney’s vision is realistic, but the Department of Defense’s new Readiness and Range Preservation Initiative (RRPI), proposed as Section 316 of the National Defense Authorization Act for Fiscal Year 2004, is a giant step in the wrong direction. Instead of making the Defense Department a leader in “environmental compliance and protection,” the Initiative would give the military special treatment that is not necessary for it to fulfill its mission.

- **The Readiness and Range Preservation Initiative purports to resolve problems that have not been documented.**
- **The Readiness and Range Preservation Initiative appears designed to limit the Defense Department’s obligations in areas unrelated to readiness.**
- **The Readiness and Range Preservation Initiative would endanger public health and the environment.**
- **The Readiness and Range Preservation Initiative is poorly drafted.**
- **The Readiness and Range Preservation Initiative fails to support cooperative efforts of military officials, environmental organizations, and state, tribal, and local governments to address a common enemy, *urban sprawl*.**

- **The environmental challenges to military readiness would be best addressed by one or more continuing, multi-stakeholder dialogues.**

I have been asked today to address the proposed changes to the Clean Air Act, as it applies to State Implementation Plans, and the Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as they apply to munitions and explosive constituents. *I have seen no evidence that these three laws have ever interfered with readiness.* The impact of these laws on training and other readiness activities is purely hypothetical. In fact, even if regulatory agencies or third parties were to challenge training or other readiness activities using these statutes, they already provide the flexibility to balance environmental and military requirements on a site-by-site basis.

Furthermore, these proposals appear to address Defense Department objectives other than readiness. The language dealing with munitions response seems designed to minimize the Department's responsibility for cleaning up not only unexploded ordnance, but explosive constituents such as perchlorate. Even if the language is modified to clearly apply only to active munitions ranges, it would prevent regulatory agencies from addressing contamination that threatens public health and the environment—until it's too late—and it would undermine incentives for pollution prevention on ranges.

Similarly, the language exempting military pollution from Conformity requirements under the Clean Air Act seems more related to the military's plans for base closure and realignment than to readiness. Our population's right to breathe clean air should be a factor in decisions where to base or fly aircraft, and current law provides more than enough flexibility to accommodate public health concerns with military readiness activity.

The subsection of the proposal dealing with munitions and explosive constituents—what the military not so long ago called ordnance and explosive wastes (OEW)—continues an inglorious Pentagon tradition of addressing a significant, complex problem through convoluted definitions that invite litigation while failing to resolve genuine, significant issues. It doesn't help resolve disputes over whether an inactive range is closed. It opens up a loophole in the oversight of open burning/open detonation (OB/OD) facilities on operational ranges. It appears to ignore ordnance and explosive wastes that were never used on operational ranges. According to some legal experts, it still doesn't definitively exclude former ranges from the exemptions the Department says it is seeking only for operational ranges.

While the threat of these laws to military readiness is purely theoretical, the risk to public health and the environment at operational ranges is real. For example, a dozen years ago, Army researchers at Fort Richardson's Eagle River Flats range, in Alaska, concluded that military munitions containing white phosphorous caused high waterfowl mortality. At the Massachusetts Military Reservation, Royal Demolition Explosive (RDX) and perchlorate are poisoning an aquifer that is the sole source of drinking water for hundreds of thousands of people. At the Aberdeen Proving Ground, the public water supply comes, in part, from on-base wells, and those wells are also contaminated with perchlorate. These are hazards that should be addressed at the source, not when they cross arbitrary boundary lines.

Section 2018 of the Defense Department initiative would make air pollution from certain military activities invisible to the agencies responsible for protecting our air. Four of the five exemptions in the proposed law would be permanent. It could potentially expose tens of millions of Americans to unhealthy levels of air pollution. State and local air quality officials would be forced to allow ongoing exposure to dirty air or to restrict private economic activity to compensate for unchecked military pollution. Furthermore, because the list of routine activities excluded from "military readiness activities" does not include power plants, it's conceivable that the Defense Department expects to shoehorn these polluting activities into the proposed readiness exemptions.

Despite the military's sweeping efforts to rewrite the nation's foundational environmental laws to suit its convenience, environmental and community groups, as well as state and local governments, are willing to work with Congress, the military, and other government agencies to counter "encroachment"—that is, the impact of community development on military readiness activities. I believe that encroachment is interfering with the armed services' ability to train, test, fly aircraft patrols, and conduct other readiness activities. Contrary to the official Pentagon message, military officers and officials in the field suggest that the threat comes from urban sprawl, not laws designed to protect human health. In my home state of California, a wide range of stakeholder groups supported legislation, proposed by the Navy on behalf of the armed services, to require local jurisdictions to consider military readiness in their planning activities. That law, S.B. 1468, is now on the books, but it is not being implemented yet, because the Pentagon has not yet figured out how to provide a small amount of funding. I've heard estimates that it would cost only \$500,000 a year.

Environmental groups, community organizations, and others in California and many other states stand ready to implement cooperative initiatives that promote smart growth, to create or sustain livable communities, to protect the environment, and to enhance the sustainability of military operations. *I call upon the Defense Department to focus on the real problem, development that encroaches upon military bases and ranges, rather than use readiness concerns to undermine the health of the people and natural resources that it is sworn to protect. Furthermore, I call on the military to work with other stakeholders, in a continuing dialogue, to resolve conflicts among readiness, community development, and the environment.*

## **I. THE READINESS AND RANGE PRESERVATION INITIATIVE PURPORTS TO RESOLVE PROBLEMS THAT HAVE NOT BEEN DOCUMENTED.**

In my visits to military facilities across the country, I have been convinced that encroachment is hampering, and is likely to further restrict, the U.S. armed forces' ability to train, test, and fly aircraft. But I have never seen, nor have I heard of any limitations on military readiness activities caused by the Clean Air Act, the Resource Conservation and Recovery Act (RCRA), or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

### **RCRA/CERCLA**

Department of Defense officials warn that a lawsuit brought by Alaska Community Action on Toxics and others against the Army, at Ft. Richardson, Alaska, could set a precedent constraining munitions training throughout the United States. I've read that complaint, and I've consulted legal experts and Alaska regulators. The only element of that lawsuit that in any way might impact training is a plea that the Army seek a permit, not under RCRA but the Clean Water Act.

I am familiar with one location where environmental regulators have issued a cease-fire order, Camp Edwards on the Massachusetts Military Reservation (MMR). When it was shown that explosive constituents were poisoning the sole-source aquifer that provides drinking water to hundreds of thousands of Cape Cod residents and visitors, U.S. EPA issued an order halting the use of high-explosive weapons on that range. Though RCRA has played a small role at MMR, the order restricting training invokes the Safe Drinking Water Act.

Even if, through some unprecedented regulatory action or third-party litigation, these laws were to threaten military readiness activities, the President has the clear authority to issue an exemption. In fact, Presidents Clinton and George W. Bush have repeatedly invoked the RCRA Section 6961(a) exemption at Nevada's Groom Lake range. And there wasn't a threat to readiness at Groom Lake. The proposed application of RCRA at this site dealt with the management of toxic wastes, not military munitions.

Finally, some might argue that the requirement to conduct cleanup on operational military ranges in itself might, in some unprecedented circumstances, threaten readiness, if munitions and explosive constituents are considered a hazardous waste. However, both RCRA Corrective Action and CERCLA provide decision-makers with the flexibility to consider a wide range of factors in setting cleanup goals and selecting remedies. Dozens of military airfields, for example, are un-

dergoing remediation with minimal interference to flight operations. Moreover, the Air Force routinely clears unexploded ordnance from its ranges, and the Marine Corps does the same at its Twenty-Nine Palms, California training facility, because they believe ordnance clearance actually supports readiness by sustaining and extending the life of training ranges. Even at Camp Edwards, National Guardsmen continue to train despite the ongoing EPA-directed environmental response.

### **Clean Air Act**

As for the Clean Air Act, I've never even heard of *inaccurate* examples of that law getting in the way of readiness. Remember, aircraft emissions are not directly regulated. Unlike power plants, for example, private and military airfields don't obtain permits for pollution from aircraft. Still, should the conformity provisions unexpectedly pose a threat to readiness, Section 118 of the Clean Air Act provides the President with the authority to exempt Defense activities from the law upon a finding of "paramount national interest." But that's not all. The general conformity regulations allow the Defense Department to override clean air requirements in national emergencies such as war and terrorists attacks. And on top of that, the Defense Department may conduct "routine movement" of ships and aircraft, activities already exempt from Clean Air permitting requirements, without regard for their impact on Implementation Plans under the law.

When the Defense Department proposed these same Clean Air Act exemptions last year, the nation's non-partisan associations of state and local air pollution control officials declared the amendments unnecessary. They pointed out that the Clean Air Act already provides the Defense Department ample flexibility to carry out its mission, and importantly, that "the significant adverse air quality impacts that could result from such exemptions could unnecessarily place the health of our nation's citizens at risk." (I have attached a copy of that letter.)

## **II. THE READINESS AND RANGE PRESERVATION INITIATIVE APPEARS DESIGNED TO LIMIT THE DEFENSE DEPARTMENT'S OBLIGATIONS IN AREAS UNRELATED TO READINESS.**

So why then, is the Defense Department investing in the passage of these provisions of the Readiness and Range Preservation Initiative? I believe it is hoping to use the growing concern over encroachment to buy relief from some of its more long-term environmental challenges.

### **RCRA/CERCLA**

As a growing number of Members of Congress are recognizing, millions of acres of our land are contaminated with ordnance and explosive wastes. People are finding old bomb and shells in new subdivisions in Texas and North Carolina. Parklands and wildlife refuges, from California to Indiana to Maryland and New York, are literally minefields of unexploded ordnance. Last year the Defense Department estimated the cost of cleaning up or restricting access to former ranges—“closed, transferred, and transferring” ranges in the regulatory vernacular—at \$15 billion. I think we’re all hoping that the inventory of such sites, due for report to Congress this spring, will provide an accurate accounting of the sites, their acreage, and their projected response costs.

Legal experts, including a bi-partisan group of 33 state Attorneys General, challenged the Defense Department’s 2002 proposal, stating that the proposed exemption of operational ranges from hazardous waste laws would carry over to ranges when they were closed. That is, the RRPI proposal could undermine the already contested oversight authority of regulators at former ranges.

Defense officials assert otherwise, and this year they added a clause that *seems* to restrict the restriction on oversight to responses on operational ranges only. However, the new language submitted by the Defense Department does not do the job. It’s hard to comprehend the convoluted language in the Defense proposals, but here’s how it falls short.

- The new language refers only to one subparagraph in the RCRA section of the legislation.
- The proposed language still exempts from oversight certain munitions and explosive constituents—used in research and development, for example—that were never on operational ranges.
- The military can avoid environmental response at closed ranges on active installations simply by continuing to consider them “inactive,” a subset of operational ranges. This is not a hypothetical suggestion. In 2000 a U.S. EPA survey suggested that many inactive ranges across the country should be assessed and probably classified as closed:

The Redstone Arsenal in Huntsville, Alabama, is a facility that contains 23 ranges, 22 of which are inactive. This facility provides several good examples of ranges that have been inactive for years, but which have not been officially closed by DoD. For example, the Inactive Mustard Gas Demilitarization Site/Range at the Redstone Arsenal was last used in the mid- to late-1940s and is currently forested and partially underwater. Given current environmental conditions, nearby populations, and today’s more stringent regulatory framework, it is highly unlikely the facility will be used for mustard gas demilitarization again.<sup>ii</sup>

Even if these loopholes were fixed, the RRPI proposal would still prevent regulatory agencies from doing their job—protecting public health and the environment—on operational ranges. Rarely has anyone proposed requiring the widespread clearance of munitions or explosive constituents from active ranges. Even at Ft. Richardson, the plaintiffs are merely seeking a remedial investigation and feasibility study under CERCLA, steps that are unlikely to lead to full-scale ordnance clearance as long as the range remains active. Yet there are instances—I provide examples below—where regulators should act.

The key point here, however, is that the Defense Department has proposed the new, restrictive definition of when munitions and explosive constituents become hazardous wastes because it is attempting to eliminate potential cleanup requirements, not to enable our nation's armed forces to conduct essential readiness activities. This applies not only to ordnance itself, but to the energetic chemicals known as “munitions constituents” in the Defense proposals.

### **Clean Air Act**

In the Department of Defense's sectional analysis of Section 2018, it finally provided a clue as to what it felt is “broke” and needs fixing. It wrote, “Under the requirements of current law, it is becoming increasingly difficult to base military aircraft near developed areas.” That is, as it moves toward a new round of base realignment and closure (BRAC), the Defense Department doesn't want the impact of air squadron transfer to be a factor in its decisions. This was the issue in the mid-1990s, when the Navy shifted attack aircraft squadrons to the Lemoore Naval Air Station, in California's polluted Central Valley. Though the aircraft, additional mobile ground equipment, and increased employee vehicular traffic were not subject to air permits, they were all evaluated as part of the base's conformity with the Implementation Plan. The new basing arrangement was approved only after the Navy obtained emission reduction credits from a nearby, closing installation, Castle Air Force Base.

Long-term changes in the deployment of military aircraft are an important issue, but they are not directly a readiness issue. They should be debated in the context of BRAC or military construction, not authorized in an initiative that the Pentagon asserts is designed to shield military readiness activities from encroachment.

### **III. THE READINESS AND RANGE PRESERVATION INITIATIVE WOULD ENDANGER PUBLIC HEALTH AND THE ENVIRONMENT.**

In RRPI, the Department of Defense proposes to roll back key statutes that form the foundation of America's bi-partisan framework of environmental protection. The requirements that the Department seeks to relax are not merely technicalities or check-off boxes. They target identifiable hazards to public health, public safety, and our natural ecosystems.

Like many other institutions, the Department of Defense has a legacy of environmental mismanagement. According to the *Defense Environmental Restoration Program Annual Report to Congress for Fiscal Year 2001*, the military's 126 most costly sites, contaminated with toxic substances as well as munitions, will cost well over \$28,000,000,000 to address. We, as taxpayers, will be paying the bill on that legacy for decades to come. Over the past two decades, however, it has made important strides forward. Congress has appropriated funds for environmental security. Individuals within the Department have shown genuine leadership. And regulatory oversight has brought along those who have not seen environmental protection as a priority.

The laws and programs that bring cleanup not only deal with legacy wastes; they encourage the prevention of future problems. Under pressure from outside, elements of the military are integrating pollution prevention and environmental management into their operations, as Secretary Cheney suggested in 1990.

Environmental regulation is necessary, not only to encourage reluctant officials to do their jobs properly, but to see that competent, motivated military leaders can obtain funding for their projects. Environmental compliance projects at the Defense Department, such as improvements in RCRA-governed treatment, storage, and disposal, are funded not simply on need, but according to the level of external regulatory requirements that they address.

#### **RCRA/CERCLA**

While the threat to readiness from these environmental laws is theoretical, the impact of munitions and explosive constituents on the environment is real. Under the Defense Department's proposals, regulatory agencies would be unable to insist on access controls to keep the public off military ranges—to prevent incidents such as the death of a Mississippi teenager near Camp Shelby in 2000. Under its proposal, states would no longer be able to regulate the operation of open burning/open detonation pits located on operational ranges, such as Ft. Carson, in Colorado.

It appears that communities would be unable to question proposed OB/OD permits, as the neighbors of the Makua Military Reservation, Hawai'i did a decade ago.

Pentagon lawyers hypothesize that a Ft. Richardson lawsuit could hamper readiness, but they don't explain why Alaskan communities are concerned. In the early 1990s, the Army itself concluded that white phosphorous from munitions on the Fort's Eagle River Flats artillery range was killing substantial numbers of waterfowl. Though that problem was successfully addressed, cooperatively by Alaska state regulators and the Army, under CERCLA, RRPI would remove that regulatory authority. (I have attached an Army article documenting this history.) In fact, as a result of that effort, the Army no longer uses munitions containing white phosphorous at Eagle River Flats, and it limits when it trains with high explosives to avoid the re-suspension of residual white phosphorous wastes.

Perhaps the most pernicious aspect of this particular language is the Defense Department's proposal to exempt contamination from the nation's hazardous waste laws until it has migrated across the boundary line of the range upon which it has been deposited. Please note that explosives and propellants are toxic chemical compounds. Some of the nation's most contaminated public and private properties—on EPA's "Superfund" list—are Army Ammunition Plants and facilities that have produced, tested, and demilitarized military rockets.

There is growing evidence that most current and former military munitions ranges, not just production sites, are polluted with explosive chemicals such as TNT, RDX, and perchlorate. As I mentioned earlier, EPA restricted military exercises involving the use of high explosives at Camp Edwards, Massachusetts Military Reservation, under other statutes, because RDX and perchlorate have poisoned Cape Cod's drinking water supplies. Similarly, two distinct communities adjacent to the Aberdeen Proving Ground, in Maryland, have learned recently that their drinking water is contaminated with perchlorate emanating from that installation. (I have attached articles about MMR and Aberdeen.)

Since the military has found perchlorate on typical infantry ranges, not just rocket and ordnance plants, further investigation may show some level of contamination at hundreds of locations. The Defense Department has conducted a nationwide survey that likely shows widespread use of ordnance containing perchlorate, but it has not shared the results of that survey with other parties. All those sites should be investigated and perhaps sampled, but I fear that Defense De-

partment lawyers will argue, if the proposed RRPI language is enacted, that there is no legal requirement.

RRPI would prevent state and federal regulators from using RCRA and CERCLA—the laws that govern routine characterization and remediation of contamination—to address such sites until the pollutants have migrated off base. In fact, even after the plumes have crossed facility boundary lines, source areas, under RRPI, would remain off limits to the regulatory agencies. Furthermore, since a federal health standard for perchlorate seems years away, it appears that the RRPI proposal would directly undermine public health by making it difficult, if not impossible for states to utilize their own, health-based standards on any property covered by the legislation. Ironically, if this proposal is enacted, the military might even argue that regulators have no authority to protect military personnel and their families from contaminated water supplies that never leave their bases.

Furthermore, it's unlikely that this happened by accident. In preparing my testimony, I compared the Defense Department's RRPI language with the EPA's Military Munitions Rule, the current legal authority on the subject. As you may recall, EPA promulgated the Munitions Rule in 1997, as directed by Congress in the Federal Facilities Compliance Act of 1992, to determine when munitions become a hazardous waste. Defense Department lawyers drew from the Munitions Rule, which does not cover munitions constituents, in developing the RRPI language, so they must have made conscious decisions to include munitions constituents among the classes of items to be excluded from the hazardous waste laws. It appears that the Department is looking for one more way to absolve itself of its massive projected liability—reportedly billions of dollars nationally—for the characterization and remediation of perchlorate and other energetic contamination, at the expense of public health.

### **Clean Air Act**

The case against the Clean Air Act modifications is much more simple. Emissions from military aircraft and other readiness activities would be exempt from the most significant regulatory tool for addressing them, potentially exposing tens of millions of people to dirty air. That is, military pollutants would infiltrate our lungs and be visible in our skies, but they would disappear from the bi-partisan regulatory framework we have built to protect ourselves.

The Clean Air Act exemptions in this bill are not simply unjustified, they represent sweeping and unprecedented permission for military air pollution—unlike other sources of air pollution

from industry, government, or even the public—to escape regulation under the Clean Air Act. Air pollution from military readiness activities would be allowed to cause or contribute to violations of health-based air quality standards for smog, soot, and carbon monoxide; to increase the frequency or severity of such violations; or to delay timely attainment of the standards or interim milestones. Worse, to cover up the harm caused by these exemptions, the bill actually *defines* dirty air to be clean.

Under this legislation, states and local communities would lose their ability to influence new military basing plans, such as those forthcoming under the 2005 BRAC round, based upon their air pollution impact. Unable to influence the growth of military operations, they might be forced to restrict private growth—or place the public at risk of even more exposure to unhealthy air.

While I recognize the military's prerogative to override community concerns when absolutely necessary for paramount national security interest or national emergencies, I believe it is imperative that clean air and other natural resource concerns remain a factor in decisions on the long-term basing of military aircraft.

#### **IV. THE READINESS AND RANGE PRESERVATION INITIATIVE IS POORLY DRAFTED.**

Earlier I warned that the proposed RRPI language leaves ambiguous the Department's intent to restrict the changes in the law to operational ranges. I challenge any mere mortal—that is, someone who is not a lawyer specializing in hazardous waste law—to sort through the maze of paragraphs and clauses in this section.

That language is confusing because a federal agency has once again resorted to the modification of definitions instead of directly addressing a problem. I have repeatedly suggested that the Department, regulators, and representatives of the affected public cooperatively describe the unique features of munitions-related waste, and once they determine what must be done to protect both the public and response personnel from explosive hazards, that they together propose statutory or regulatory solutions. This language not only fails to identify and resolve key issues, but it invites, through its web of interlocking definitions, years of litigation.

The Clean Air Act amendment suffers from its own complexities, but I wish to call your attention to a simple, fixable problem with the wording. In defining routine installation support

functions not subject to the proposed statutory changes, the definition of “military readiness activities” excludes schools, housing, recreational facilities, etc., but it does not specifically exclude from readiness activities the installation function that has generated the most heat in interagency debates over air pollution: electrical power plants. If indeed the Defense Department is not using readiness to address yet another problem, it should have no problem adding such facilities to the exclusion in the definition.

**V. THE READINESS AND RANGE PRESERVATION INITIATIVE FAILS TO SUPPORT COOPERATIVE EFFORTS OF MILITARY OFFICIALS, ENVIRONMENTAL ORGANIZATIONS, AND STATE, TRIBAL, AND LOCAL GOVERNMENTS TO ADDRESS A COMMON ENEMY, *URBAN SPRAWL*.**

I first learned about encroachment a few years ago when I was invited to address Air Force Explosive Ordnance Disposal (EOD) specialists, from throughout the country, at Luke Air Force Base, in Arizona. I had been invited, by the way, to explain the public’s concern about ordnance and explosive wastes on military ranges. My driver, an EOD Sergeant, pointed out, one-by-one, the new residential developments that stretched across the desert toward the base. A few more, he said, and the jets wouldn’t be able to fly.

Across the country, from Ft. Stewart, Georgia to Nellis Air Force Base, Nevada, to the Navy SEALs’ Camp La Posta mountain training base in the southern California desert, development or proposals for development are threatening the armed forces ability to fly planes, maneuver, and conduct other readiness activities. Unchecked urban growth, not environmental protection, is the problem. At some locations, such as Beale Air Force Base, community leaders have already made the link. In February, I took part in a community meeting in Marysville, California, in which local officials and residents of the semi-rural communities adjacent to the base opposed the construction of a new city on the base’s fenceline, both because it would undermine their lifestyles *and* because it would encroach upon the Air Force’s operations.

Last year environmental and community organizations supported the buffer zone provisions of RRPI, and they stand prepared to support additional measures designed to resolve encroachment problems constructively. Some states have passed, or are considering legislation designed to integrate readiness into local planning activities. For example, my own state of California, on the front lines of the encroachment battle, enacted S.B. 1468 last year. This legislation, proposed by the armed services, drew widespread support and no visible opposition.

Admiral J.L. Betancourt, Commander of the Navy Region Southwest, wrote Governor Gray Davis urging him to sign the bill. He explained, “We applaud this as an effort to finally recognize that long-term operations of military installations must involve a partnership between state and local agencies and the military. In addition to providing critical protection for military installations at a time of unprecedented growth in California, S. B. 1468 provides needed consideration of designated air space and military training routes.” (I have attached the entire letter.)

This initiative from the field deals not with hypothetical problems, such as those addressed by the RCRA/CERCLA and Clean Air language in RRPI, but genuine threats to military operations. For example, developers are proposing to build 14,000 housing units just north of Camp Pendleton, in southern California. One section of this proposed development, with 1,400 housing units and over 1.2 million square feet of commercial space, would border the base’s northern boundary and appears to underlie special use airspace. It is my understanding that the Marines oppose this development because it threatens readiness, and environmental groups oppose because it represents the worst in urban sprawl.

S.B. 1468 would provide the military, environmental organizations, and local planning agencies with the tools to question the proposed development, as well as other California development proposals likely to impact readiness. But S.B. 1468, as designed by its military proponents, does not come into force unless the Defense Department provides a small amount of funds to support the additional local planning required—it’s the whole issue of unfunded mandates. As I understand it, \$500,000 this year in federal funds could leverage influence over development plans involving investments that are several orders of magnitude higher!

Similarly, in Nevada, another developer proposes a new city, including parks, schools, and 30,000 homes in the flight corridor through which Air Force planes laden with ordnance depart from Nellis Air Force Base. Again, both the Air Force and environmental groups oppose the proposal. I believe Defense Department support for considering readiness in local planning activities would encourage Nevada to adopt a program of its own, and that would encourage developers to invest in plans for development in more suitable locations.

If Congress really wants to fight encroachment where it counts, legislation and appropriations to support S.B. 1468 and similar initiatives in other states—already in place or under consideration in Arizona, Texas, and Florida, for example—would go much further than RRPI.

**VI. THE ENVIRONMENTAL CHALLENGES TO MILITARY READINESS WOULD BE BEST ADDRESSED BY ONE OR MORE CONTINUING, MULTI-STAKEHOLDER DIALOGUES.**

While I have seen no evidence that the Defense Department's proposals to modify the Clean Air Act, RCRA, and CERCLA would enhance readiness, I believe that there are numerous existing or potential community development and environmental protection challenges to training, aircraft use, and other military readiness activities. Many of these challenges are beyond the scope of RRPI. But our country will need to address them, whether or not Congress enacts the proposed legislation. If you ask the armed services, environmental regulators, land management agencies, environmental and community organizations, tribes, and local governments who should design the solutions, you're asking for a political brawl.

However, if you ask those parties to sit down in the same room to devise common strategies, everyone will be surprised by the opportunities for win-win solutions. This is the experience of the Army-sponsored National Dialogue on Military Munitions, which developed the Principles for Sustainable Range Use/Management in the late 1990's. Participants in that Dialogue, from the Department of Defense and its critics, will affirm its success. Even before the Dialogue issued its final report, the Department used its work as the basis for two directives. I have appended my article on that Dialogue, published in the Winter, 2003 *Journal of Policy Analysis and Management*, to my testimony.

Congress could help resolve the encroachment debate by asking the Defense Department to establish a new dialogue or dialogues to establish constructive communication channels among stakeholder groups. I envision such a body establishing models for conducting sampling for explosive contaminants on active military munitions ranges, or it might develop standard approaches for keeping trespassers out of operational range areas. Such a group could look into the Army's concerns, at Ft. Irwin and perhaps elsewhere, about the impact of new particulate standards on future training. And it could build national models for evaluating the impact of sprawl on readiness that discourage developers from investing in unsuitable projects.

In calling for such a dialogue, Congress could establish guidelines that would make it easier for the Defense Department to create formal environmental advisory groups, under the Federal

Advisory Committee Act, without triggering some of the burdensome bureaucratic requirements designed to facilitate advice on acquisition and military technical issues.

In conclusion, the Clean Air Act and munitions sections of RRPI would do nothing to enhance readiness; they appear designed to deal with the Pentagon's concerns over cleanup and base realignment; and they would subject the public and the environment to more unhealthy contamination. Instead of taking on environmental organizations, the communities who live near military installations, and state regulatory agencies, Congress and the Department of Defense should encourage problem-solving dialogue and join these groups in fighting a common enemy, urban sprawl.

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<sup>i</sup> Dr. James Arnold Miller, "Moving Toward a Comprehensive and Long-Term Department of Defense Environmental Strategy: The Report of the Forum on Our Nation's Defense and the Environment," Department of Defense, Office of the Deputy Assistant Secretary of Defense (Environment), September 6-7, 1990, p. 8.

<sup>ii</sup> *Used or Fired Munitions and Unexploded Ordnance at Closed, Transferred, and Transferring Military Ranges: Report and Analysis of EPA Survey Results*, U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, EPA-505-R-00-01, September 2000, p. 11.