Dear Members of Congress:

We, the undersigned Attorneys General, write to express our concern with proposed legislation that would exempt the Department of Defense (DOD) from provisions of three environmental laws essential to the well being of our citizens, the Clean Air Act, the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). DOD asserts that these proposed exemptions are necessary to maintain military preparedness. We strongly support all efforts to keep the men and women of our armed forces at a high degree of military readiness. We do not believe, however, that the requested exemptions are necessary. To date, DOD has not cited a single instance in which any of these laws has adversely impacted readiness. In the unlikely event of such a conflict, each of these laws has an existing exemption process that is adequate to resolve any adverse impacts on military readiness. As the chief law enforcement officers of our states, we think that these amendments will seriously impair our ability to protect the health of our citizens and the environment. Accordingly, we urge you to oppose these amendments to RCRA, CERCLA, and the Clean Air Act.

The proposed amendments to RCRA and CERCLA would severely constrain the ability of states and the Environmental Protection Agency to require the investigation or cleanup of munitions-related contamination, including groundwater contamination, at DOD’s “operational ranges” across the country – an area of approximately 24 million acres. The Clean Air Act amendments would impede efforts to attain and maintain the health-based National Ambient Air Quality Standards.

As far as we are aware, DOD has never requested a single exemption from the requirements of RCRA, CERCLA, or the Clean Air Act based on conflicts with military readiness requirements. Further, in April of 2004, DOD testified before two subcommittees of the House Committee on Energy and Commerce that there had been no instances in which RCRA or CERCLA had impacted military readiness. There simply is no problem here that requires a legislative solution.
Nor are problems likely to occur in the future. The substantial flexibility in the RCRA and CERCLA cleanup programs means that regulators can work with DOD officials to prevent significant conflicts between military readiness activities and CERCLA or RCRA investigation and cleanup requirements. For decades, States and EPA have utilized this flexibility under RCRA in responsibly regulating activities bearing on national security at DOD and Department of Energy sites.

If there ever were an instance of unavoidable conflict between cleanup requirements and military readiness, RCRA and CERCLA both currently allow DOD to seek an individual exemption from such requirements on the basis of national security. The Clean Air Act is even more flexible, allowing the President to exempt entire classes of activities. EPA’s Clean Air Act regulations provide further exemptions at the administrative level, without the need to invoke a Presidential exemption. In March 2003, then Deputy Secretary of Defense Paul Wolfowitz, while noting that the military can comply with the law in the vast majority of cases, specifically directed the military service Secretaries to give greater consideration to using the environmental laws’ existing exemption provisions in “exceptional cases” that may present conflicts. As noted above, as far as we are aware, no such exemptions have been sought.

Given that DOD has conceded that the Clean Air Act, RCRA and CERCLA have not impacted military readiness to date, and given the long history of cooperation between regulators and DOD to flexibly enforce these laws to avoid conflicts, we believe that DOD’s proposed amendments to the Clean Air Act, RCRA and CERCLA are unnecessary. Further, these amendments will impair the ability of states and EPA to protect the public and the environment. We urge you to reject DOD’s proposal to amend these laws.

Thank you for your consideration.

Sincerely,

Mark Shurtleff     Bill Lockyer
Attorney General Utah   Attorney General California

Terry Goddard     Lawrence Wasden
Attorney General Arizona   Attorney General Idaho

Mike Beebe     John Suthers
Attorney General Arkansas   Attorney General Colorado

Richard Blumenthal     Robert Spagnoletti
Attorney General Connecticut   Attorney General District of Columbia

Mark Bennett     Lisa Madigan
Attorney General Hawaii   Attorney General Illinois
Tom Miller     Greg Stumbo  
Attorney General Iowa  Attorney General Kentucky

G. Steven Rowe     J. Joseph Curran, Jr.  
Attorney General Maine  Attorney General Maryland

Tom Reilly     Mike Hatch  
Attorney General Massachusetts  Attorney General Minnesota

Jim Hood     Jeremiah W. Nixon  
Attorney General Mississippi  Attorney General Missouri

Mike McGrath     George J. Chanos  
Attorney General Montana  Attorney General Nevada

Kelly Ayotte     Zulima V. Farber  
Attorney General New Hampshire  Attorney General New Jersey

Patricia Madrid     Eliot Spitzer  
Attorney General New Mexico  Attorney General New York

Roy Cooper     W. A. Drew Edmondson  
Attorney General North Carolina  Attorney General Oklahoma

Hardy Myers     Patrick Lynch  
Attorney General Oregon  Attorney General Rhode Island

Henry McMaster     Larry Long  
Attorney General South Carolina  Attorney General South Dakota

William H. Sorrell     Rob McKenna  
Attorney General Vermont  Attorney General Washington

Peggy Lautenschlager     Pat Crank  
Attorney General Wisconsin  Attorney General Wyoming