



Above the Law

Military Exemptions and Our Health

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For the past three years, the Department of Defense (DOD) has requested unnecessary and dangerous blanket exemptions from the Resource Conservation and Recovery Act (RCRA - hazardous waste law), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA - Superfund toxic cleanup law), and the Clean Air Act (CAA). Military neighbors, states, public health officials, editorial boards, and environmental organizations have all opposed these sweeping new exemption proposals, pointing out that no government agency should be above the law. DOD cannot provide even one example of a situation in which these laws have affected military training. Despite these facts, the Pentagon has publicly declared its intention to continue seeking these exemptions. The health of millions of people who live near DOD facilities is at risk.

The Department of Defense (DOD) manages tens of millions of acres of land and water across the United States, including 8,000 firing ranges on 500 different facilities. Past operations produced over 29,500 toxic hot spots on 11,000 current and former military properties covering every state and territory. DOD produces more hazardous waste each year than the five largest U.S. chemical companies combined, and is responsible for 80% of the most contaminated and dangerous federal facilities in the country. At least 126 DOD facilities will cost over \$90 million each in environmental restoration expenses. DOD is responsible for over 10% of the 1,240 most polluted and hazardous sites in the U.S. (those listed on the EPA's National Priority List).

Military munitions and firing ranges are particular sources of environmental contamination and human health damage. DOD claims over 8,000 operational ranges covering 25 million acres at 500 different facilities (an area equal to the size of Connecticut, Delaware, Hawaii, Massachusetts, New Hampshire, and New Jersey combined). Many current and former DOD ranges sit atop or near sources of drinking water, residential neighborhoods, and hunting and fishing grounds. The extent of DOD's ranges may be greater than many believe. For example, DOD has not informed the public which areas of three large bases in California (China Lake Naval Weapons Station, Edwards Air Force Base, and Vandenberg Air Force Base) known to have significant perchlorate contamination it considers "operational ranges." The entirety of Eglin Air Force Base in Florida (724 square miles of land) is considered to be a range.

The scope of DOD's exemptions would be unprecedented.

Residential communities, schools, hospitals, and businesses in virtually every state and territory could be affected. Over 8,000 military ranges including 25 million acres would become almost completely exempt from RCRA and CERCLA. Broad categories of military activities would be allowed to emit unlimited amounts of air pollution in areas already struggling with unhealthy air under the CAA exemption. DOD's RCRA and CERCLA exemptions would include toxic munitions chemicals, heavy metals, chemical weapons, and depleted uranium munitions. Because DOD itself defines range boundaries and can designate new ranges at any time, the scope of the RCRA/CERCLA exemption would be effectively unlimited.

DOD's environmental history warns against exemptions.

Past environmental mismanagement of military ranges has produced contamination that will cost between \$25 billion and \$200 billion to address. Facing pressure from states, tribes, and affected communities to protect public health around its ranges, the Pentagon is instead seeking exemptions from public health laws. Congress should reject DOD's blatant attempt to avoid responsibility.

- Toxic munitions constituents poisoned the only drinking water aquifer serving half a million residents of Cape Cod, Massachusetts. Burning of propellants was linked to increased lung cancer in people living near the base. DOD refused to thoroughly investigate munitions contamination at the facility until ordered to do so by EPA, and fought against investigation and cleanup orders.
- Perchlorate – a constituent of munitions – has contaminated groundwater or surface water at a minimum of 40 DOD facilities, and entered drinking water sources off-base in at least two cases. DOD has refused to conduct a comprehensive testing program for perchlorate.
- The Aberdeen Proving Ground in Maryland covers 80,000 acres of land and water, is littered with five million rounds of toxic unexploded ordnance, and is listed as one of the most contaminated and dangerous sites of any kind in the country. Munitions constituents have already entered public drinking water sources off the base. Neighbors were recently forced to sue the facility under CERCLA for illegally withholding public information about environmental contamination.
- The Army sought to walk away from 150,000 pounds of expended depleted uranium shells and fragments at the former Jefferson Proving Ground in Indiana without performing any cleanup or ongoing environmental monitoring to protect community health.

DOD's exemptions would strip states, tribes and communities of public health protections.

States and tribes could never require DOD to address the source of toxic munitions pollution on its “operational” ranges under RCRA and CERCLA, even if that contamination is an immediate threat to public health off the range. Communities would lose their ability under RCRA to petition federal courts to require investigation and cleanup of toxic munitions contamination that threatens their health. DOD representatives admitted to state officials that preempting state authorities is “not a matter of readiness, but of control.” The Pentagon simply wants to be above the law.

RCRA, CERCLA, and the CAA have not hurt military readiness

DOD representatives admitted to state officials that the proposals to preempt state authorities are “not a matter of readiness, but of control.” State representatives who met with DOD in December 2003 reported that DOD acknowledged that states can exercise their authorities in ways that do not harm readiness, and that DOD's concern “was not really a readiness issue, but a desire to maintain DOD exclusive control over its ranges.” DOD also admitted that “there have been no instances in which RCRA or CERCLA have adversely impacted readiness.” DOD has been unable to provide a single example of Clean Air Act requirements harming military readiness.

For More Information

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