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Testimony of Bonnie Buthker
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U.S. Senate Environment and Public Works Committee

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Good afternoon. My name is Bonnie Buthker and I am the Department of Defense Program Manager for the Ohio Environmental Protection Agency (Ohio EPA). I would like to thank Chairwoman Boxer, Ranking Member Inhofe, and all the members of the Committee for the opportunity to discuss Ohio's concerns regarding state involvement in the investigation and cleanup of federal facilities.

Ohio has several major federal facilities, both active and inactive, including uranium enrichment facilities, military bases, and ammunition production and testing facilities. During the past 14 years, Ohio EPA, working with both the Department of Defense (DoD) and Department of Energy (DoE), has made significant progress in cleaning up active and closed facilities within our state. We have worked in partnership with federal facility staff and stakeholders to establish protective, reasonable, and achievable cleanup goals. At the same time, we have worked to streamline the cleanup process so that limited cleanup funds available are used as efficiently as possible.

Though we have made significant progress in addressing contamination at federal facilities in Ohio, much work remains to be done and recent problems are now slowing progress and diminishing the efficiencies we achieved. The three major issues that I would like to highlight are:

- the Army Corps of Engineer's (Army Corps) desire to investigate all potentially responsible parties before taking necessary response actions at Formerly Used Defense Sites contaminated with military munitions contamination,

- the lack of necessary funding to investigate and remediate explosives and munitions contaminated sites,

- and the problems with the Defense State Memorandum of Agreement (DSMOA) Program.

Army Corps' Desire to Investigate All Potentially Responsible Parties Before Taking Necessary Actions to address Munitions Contamination at Formerly Used Defense Sites

Ohio EPA is concerned with the Army Corps' standing policy that a liability review for sites that contain munitions and explosives of concern must be completed for each site. Ohio EPA agrees that, if there is evidence that a non-military party is partially or fully liable for contamination, the Army Corps should conduct a liability review. However, for sites where the contamination present can only be due to past military activity (such as those with explosives or munitions contamination), Ohio EPA feels that such liability reviews are not warranted, cause major delays, and drain precious financial resources. A prime example of the misapplication of this policy can be illustrated by the Former Erie Army Depot site near Port Clinton, Ohio. This facility was used by the U.S. Army from 1918 through 1967 for the testing and proof firing of various types of live and inert ordnance, including Army artillery, small caliber munitions, mortar shells and rockets. Much of the ordnance was fired into a zone in Lake Erie. Remnants of this material, both exploded and unexploded, continually wash back onto the beach area today.

Because of the hazard associated with the accumulated ordnance, the Army Corps has conducted three removal actions to clear ordnance items from the beach area. In 2006, the Army Corps also proposed to conduct a surface clearance of two former land ranges now used by a private club for hunting, fishing, and trapping. However, this removal action has never been initiated. Although the Army Corps agrees that the ordnance present in these areas poses a safety hazard, they want to determine if a private company may be liable for the costs to address the munitions contamination. Their rationale is that, since the private company tests artillery at the site, the private company may be liable for the costs to remove the live ordnance from these areas. However, the Army Corps has no evidence that the company ever used live explosive rounds during their operation. The company has stated repeatedly that they only use inert projectiles.

Ohio EPA has repeatedly urged the Army Corps to take immediate action to remove these explosive rounds from these areas due to the potential hazard. We feel that there is no basis for conducting the liability investigation, which, by the Army Corps' own admission, could unnecessarily delay this clearance for several <u>years</u>. During this delay in action, hunters will continue to be at risk from the live ordnance which everyone agrees is present in these areas.

Lack of Funding to Investigate and Remediate Explosives and Munitions Contaminated Sites

The second major issue affecting progress at Ohio Federal Facilities is the lack of necessary funding to investigate and cleanup explosives and munitions at contaminated sites. At two of our munitions sites in Ohio, initial investigations have been completed and DoD has scored them as a high priority for funding for additional work to address

this ordnance. However, there is no funding to conduct the additional investigations or to implement necessary clean up actions.

For example, at the former Erie Army Depot, one of the two high priority sites, Ohio EPA has been pushing the Army Corps to determine the extent of the ordnance contamination present, especially if that material may be present in unrestricted areas that are accessible to the public. However, the Army Corps has told Ohio EPA that, until all preliminary investigations are completed at all Formerly Used Defense Sites (FUDS) nationwide, they will not have additional funding for further investigations or cleanup actions at the former Erie Army Depot.

At the Ravenna Army Ammunition Plant, the second of the two high priority sites, Ohio EPA has pushed for a permanent remedial action to address a site where munitions were dumped into a ravine and now are impacting a stream that contains a state endangered species. In 2007, a white phosphorus round exploded, and we are concerned that additional rounds may also explode. However, the Army has stated that it may take several years to receive funding to address this site.

Because of the issues raised by the ordnance problems at these two sites, Ohio EPA urges Congress to ensure adequate funding for DoD to address priority sites, instead of using funding to complete initial investigations on sites that may be less of a priority.

Defense State Memorandum of Agreement (DSMOA)

The third major issue involves the problems with the DSMOA Program. The DSMOA program provides funding for state involvement in the investigation and remediation of current and former DoD facilities. As you know, state involvement is crucial to the success of any federal facility cleanup program. Ohio EPA is mainly concerned about two interpretations affecting this program: the interpretation that DSMOA funding cannot be used to support state participation in work groups involving DoD policy development, and the interpretation that state enforcement of environmental laws may impact receiving funding under DSMOA.

Interpretation about reimbursement for time spent participating on work groups involved with Department of Defense (DoD) policy development and guidance. Ohio EPA has been forced to significantly curtail involvement in important work groups. When our participation in workgroups was funded under the DSMOA, we were involved with several different policy and guidance initiatives including those with the DSMOA, the Formerly Used Defense Sites program, and the Munitions Response Prioritization Protocol. Participation benefited both Ohio and DoD in several ways. It helped to ensure that Ohio EPA's concerns about DoD's policies were addressed before they were finalized. It also allowed Ohio EPA to raise real examples to DoD to help ensure that their policy and guidance would be applicable to actual DoD sites, thereby improving those policies. Lastly, it fostered state support and understanding for the DoD program and policies. These are the same benefits that Ohio EPA has had with DoE because of DoE's funding of state participation on their national policy committees.

However, since the DoD no longer provides funding for state participation on their committees, Ohio and other states have scaled back our involvement with these national workgroups.

Interpretation that State Enforcement actions may jeopardize states receiving funding under DSMOA. The Army Corps has not threatened to withhold state DSMOA funding if Ohio EPA took an enforcement action against a DoD site. However, because other states have been impacted by this policy, Ohio EPA feels that language should be added to clarify that entering into a DSMOA does not change or waive any enforcement authority the state has under state or federal law. It should also clarify that, when emergency situations that pose imminent risks to public health or welfare exist, states may have to take enforcement action prior to exhausting the DSMOA dispute resolution process. This would prevent DoD from withholding funding as a punishment for states that take necessary actions to protect their citizens.

To correct these two problems with the DSMOA, Ohio EPA supports the amendments to 10 USC 2701 (d) proposed by the Environmental Council of States to correct the issues with DSMOA. I've attached copies of the proposed language to my testimony for your consideration. These amendments will clarify that DoD can provide funding to states to participate in policy development. The proposed language will also ensure that DoD cannot condition DSMOA funding based on the manner in which a state exercises its enforcement authority.

Conclusion

Effective cleanup of federal facilities is critical to the health and welfare of the citizens living in the communities near these sites, as well as the environmental health of the sites. State oversight is a key component of the federal facility program. Our citizens look to the state to ensure that the contamination from past DoD and DoE activities is addressed in a protective, expedited manner. We ask Congress to remove the barriers to effective state oversight, and to provide sufficient funding to meet critical or high priority needs at these sites.

Thank you for this opportunity to offer testimony. I would be pleased to answer any questions you may have.

Attachments

Amendments to 10 USC 2701 (d) proposed by the Environmental Council of States to correct the issues with DSMOA:

(d) Services of Other Entities.

(1) In general. --Subject to paragraph (3), the Secretary may enter into agreements on a reimbursable or other basis with any other federal agency, any state or local government agency, any association representing states**,** any Indian tribe, or any nonprofit conservation organization to obtain the services of the agency, state or local government agency, association representing states, Indian tribe, or organization to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contamination resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction**,** the transfer of property after cleanup, as well as discussion of policy and technical issues under this section**.**

New (4) State enforcement authority. --DoD cannot condition DSMOA funding based on the manner in which a state exercises its enforcement authority, or its willingness to enter into dispute resolution prior to exercising that enforcement authority.