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### Statement of Senator Dianne Feinstein

#### *"Protect State Air Quality Protections - Strike the Small Engine Provision"*

Mrs. FEINSTEIN. Mr. President, I will make my remarks as if in morning business, but my remarks pertain to the HUD-VA bill, and in particular to the small engine provision of that bill.

If Members will remember, the Senator from Missouri, in the Appropriations Committee, placed an environmental rider into the HUD-VA bill which would prevent California from moving forward with its regulation to regulate off-road engines under 175 horsepower. The State has developed a regulatory scheme to do so because these engines were a substantial part -- 17 percent -- of the mobile source pollution in the State, and it was believed by the California Air Resources Board that regulation of these engines could be achieved and, in fact, could reduce pollutants considerably.

On the floor of the Senate, the Senator from Missouri offered an amendment to his amendment from committee. The new language which changed the amendment, in my view, making it better, by only affecting engines under 50 horsepower. I spoke against his amendment in the Appropriations Committee. I did not press for a vote on the small engine amendment which he offered on the floor largely because I thought we would lose it and that we had a better chance of trying to remove the language from the bill in conference.

The bill has been pre-conferenced. Sadly, we have not been able to remove that language from the bill. I am told today that if I were to submit the amendment we had prepared which would eliminate the Bond amendment in its entirety, I would not be allowed a vote on that amendment. I believe the rationale is because I agreed to go to conference. I had only because I didn't want to lose on the floor and I thought I didn't have the votes.

Since that time, a number of States have realized that their regulatory schemes would also be impacted by this provision. Other States would be affected because the 1990 amendments to the Clean Air Act essentially said that California has the ability to regulate these engines, and other States may then take various components of that regulation and enact them as their own State law if they so choose. Since last week, a number of States have weighed in indicating they have regulatory regimes underway that would be affected and that they are opposed to the Bond amendment. Nonetheless, we are where we are.

I have come to the floor today simply to speak about why I think this is so egregious -- and I do think it is egregious. I believe it is the first major setback from the clean air amendments of 1990, and specifically from the amendments allowing States to regulate air

quality for the protection of their own people. By eliminating this, we are taking important rights away from the States certain rights and diminishing the States' ability to take care of their own people.

As the fire chiefs have said to me in a letter, if they waited for the Federal Government to regulate bedding and upholstery, they would be still be waiting for that regulation. Instead, the States have taken it on their own to make those regulations. The people of California are much safer because of it.

Let there be no doubt. I believe very strongly that this small engine provision should be removed from the bill and that we should restore the States' rights to protect public health under the Clean Air Act.

On the surface, the amendment that was adopted on Wednesday looked like a substantial improvement. At the time I thought it was an improvement simply because it dropped from 175 horsepower to 50 horsepower. However, the amendment still blocks all States from regulating some of the dirtiest engines out there.

The States will lose the ability to reduce pollution from all spark-ignition engines smaller than 50 horsepower. This includes lawn and garden equipment, some forklifts, recreational boats, off-

road motorcycles, and all-terrain vehicles. The original small engine provision would not have affected boats or off-road motorcycles. But the amendment adopted on Wednesday is broad enough to affect a whole new group of engines.

This provision will take four California regulations off the books. My State will lose regulations on lawn and garden equipment, recreational boats, and off-road motorcycles.

I don't know whether the effects on additional engines were intentional or not. We told the Senator from Missouri about them and the language did not change.

But I want to point out another important fact about the amendment adopted on Wednesday. The language requires the U.S. Environmental Protection Agency to propose a new national regulation by December 1, 2004. It does not require the EPA to finalize that regulation, ever. They could propose a regulation and never finalize it. The one promising part of this amendment guarantees nothing. The States need to reduce these emissions now.

I want to remind my colleagues just how dirty these engines are. You will see here that mowing the lawn produces as much pollution as driving a car for 13 hours. I didn't know that before. I didn't know that if you mow your lawn for 1 hour it is like driving the automobile for 13 hours.

This chart shows how long you would have to drive a car to produce as much pollution as when you operate various types of equipment for one hour.

In other words, using a weed trimmer for 1 hour produces as much pollution as driving a car for 8 hours, mowing a lawn for 1 hour produces as much pollution as

driving a car for 13 hours, and operating a forklift for 1 hour produces as much pollution as driving a car for a full 17 hours.

Clearly, this is a problem. In 8 hours a person can drive from Washington to Charleston, SC. Or he can mow the lawn for an hour and produce just as much pollution. The States need to be able to clean up these engines.

The small engine provision is bad for the States and for public health. The compromise from last week did not change the substantive issues.

The small engine provision is still using an appropriations bill to make fundamental changes to the Clean Air Act. It is an environmental rider on the HUD-VA bill. It has had no authorization. It has had no hearing. It does not belong in this bill.

The amendment from Wednesday still takes a longstanding right away from the States. States with serious air pollution need to be able to reduce emissions from these engines. The 1990 amendments to the Clean Air Act guarantee the States the right to do so. This provision overturns that right without even going through the proper channels.

Under the compromise, my State alone will lose the right to regulate over 4 million cars' worth of pollution. That is what is being taken away -- access to 4 million cars' worth of pollution. That means the State is most likely going to have to tighten regulations on stationary sources, which is going to mean more expense to major industries in the State of California. That means job loss in other industries.

I cannot see how building cleaner engines should cost jobs to individuals at one company when every other company has said they

will be able to build the engines without job loss. Because Briggs & Stratton does not like one California regulation, every State in the Union is going to permanently lose the right to reduce pollution from these engines. States with serious pollution problems need to be able to reduce these emissions or risk harming public health and losing transportation funds.

This provision affects every single State, not just California. For example, I understand that New York has already adopted the California regulation affecting recreational boat motors. New York will lose that regulation because of this provision.

Eight southeastern States -- Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee -- have all written a letter opposing this provision. The letter clearly states that any compromise that does not fully restore the State's rights is unacceptable to those States.

Mr. President, I ask unanimous consent that the November 10 letter from the Southeastern States Air Resources Managers be printed in the Record following my remarks.

Thirdly, States still need flexibility to improve air quality. One size-fits-all solutions just do not work. We should not force every State to rely on national regulations. National regulations move too slowly and are often just not strong enough for States with a lot of pollution.

We have heard a lot about unfunded mandates lately in the Senate. We have given the States a duty to protect public health. The small engine provision does not change the States' responsibility but it takes away a mechanism by which they might comply with this mandate. This provision, in a

sense, creates another unfunded mandate.

The amended provision still creates a very bad precedent. I don't think one company should be allowed to overturn States' rights under the Clean Air Act, especially when that company said on their annual report to the Securities and Exchange Commission on September 11, 2003, that the disputed regulation would not "have a material effect on their financial condition or results of operations, given that California represents a relatively small percentage of Briggs & Stratton's engine sales and increased costs will be passed on to California consumers."

This is their 10-K, their report to the Securities and Exchange Commission, from just 2 months ago. Where does the truth really lie? If California is just a small part of the company's market and the company will just pass on the costs, why does Briggs and Stratton object to the California regulation and insist on changing the Clean Air Act? It makes no sense.

I believe people will pay the necessary costs for cleaner engines. I believe that people will pay for cleaner lawnmowers when they learn that you have to drive your car for 13 hours to produce as much pollution as your lawn mower does in 1 hour.

Every company and every industry needs to do their part to protect public health. Briggs & Stratton should be no different. We should not allow them to pass the buck to other industries.

Once again I will quote from a letter from Allen Lloyd, the Chairman of the California Air Resources Board, about this provision. According to Mr. Lloyd,

"...the aggregate impact of the 50 hp [horsepower] preemption will be 70 tons per day of smog by 2010, the

date by which California's various offroad regulations would have been fully effective. This tonnage impact is over and above Federal regulations for the same emission sources and reflects California's more health-protective rules. For context, 70 tons per day is equivalent to adding 2.4 million cars to California roadways..."

So when the conference committee includes this provision in their conference report, they are effectively adding 70 tons of pollutants to California's air each day. The California Air Resources Board has also said that this provision could well result in the death of more than 300 people per year in California alone.

California already has seven nonattainment areas, more than any other State. My State has the worst air quality in the country, and now this provision is taking away the State's right to regulate some of the dirtiest engines available. It is a strike at the core of States' rights under the Clean Air Act.

The small engine provision also threatens our economy. California has to reduce emissions from these engines to comply with air quality requirements under the Clean Air Act. Taking away the State's right to reduce emissions threatens our State Implementation Plan, with serious economic consequences.

Violating the State's plan will jeopardize \$1 billion in transportation funds per year in Southern California alone. The South Coast could lose those funds next summer. The South Coast has the worst air quality in the nation and can not afford to lose \$1 billion per year in transportation funds.

Statewide, this provision threatens \$2.4 billion in transportation funds. And this is just in California.

So this has huge ramifications for

my State and every other State facing serious pollution. They will all be in a serious situation in the future when the time comes and they find their hands are tied because one company did not want to build cleaner engines.

It has become clear that the supporters of the small engine provision have confused two very different ideas. Just because a group is concerned about the California regulation on lawn and garden equipment does not mean they support the small engine provision.

The California Association of Fire Chiefs has expressed important safety concerns about a specific regulation. But the chiefs have also clearly said they oppose the small engine provision because of its affect on States' rights. The Fire Chiefs understand the importance of state leadership on these issues. To quote the chiefs' November 11 letter in reference to the small engine provision:

"We were never asked to comment on this matter, but for the record, we do not support legislation that would interfere with a state's ability to protect its own citizens."

Mr. President, I ask unanimous consent that the Fire Chiefs' letter from November 11 be printed in the Record following my remarks.

Mr. President, I do not quite know what to do. I would very much like to have a vote on this matter. I have tried to importune the conferees. I am told the Governor of California, Mr. Schwarzenegger, now inducted as Governor, has indicated his support for the removal of this amendment. It

is my understanding that a whole panoply of States oppose this provision.

It is clear to me this is a bad thing. It is clear to me this is going to set back the cause of clean air. It is clear to me this is going to impact youngsters and the elderly with asthma and other lung diseases. It is clear to me that it is going to impact our transportation dollars. It is clear to me that by 2010, because of one company,

California is going to have deal with 70 additional tons of smog per day. None of this needs to happen.

I regret that I cannot send an amendment to the desk. I regret I am not being allowed a vote on the amendment. But this is the wrong thing to do.

I yield the floor, Mr. President.