



**DEPARTMENT OF THE ARMY**  
**UNITED STATES ARMY CORPS OF ENGINEERS**  
**REGIONAL ENVIRONMENTAL AND ENERGY OFFICE – NORTHERN**  
**4117 BOOTHBY HILL ROAD**  
**ABERDEEN PROVING GROUND, MD 21005-5159**

November 14, 2016

REPLY TO  
ATTENTION OF

The Honorable Lee Chatfield  
Chair, Local Government Committee  
Michigan House of Representatives  
124 North Capitol Ave.  
P.O. Box 30014  
Lansing, Michigan 48909-7514

Dear Representative Chatfield:

I am writing you regarding Michigan Senate Bill 950, currently pending consideration in the Michigan House of Representatives. I serve as the Department of Defense (DOD) Regional Environmental Coordinator (REC) for Federal Region 5, which includes the State of Michigan. As the DOD REC, my responsibilities include monitoring state legislative initiatives and, as necessary, working with the military services to develop and submit comments when legislative proposals may affect the ability of DOD to perform its national defense mission or to otherwise comply with federal law. Accordingly, I submit the following comments on behalf of DOD and its component Services in Michigan.

SB 950, as passed by the Michigan Senate, would: 1) require the DOD component responsible for a military base to provide an alternative water supply to private residential well owners affected by a drinking water advisory issued by the Michigan Department of Health and Human Services due to the migration of an injurious substance used at the base; 2) require the responsible DOD component to conduct long-term monitoring of the migration and provide an alternative water supply to any additional wells affected; and 3) require the responsible DOD component to reimburse the State or a political subdivision that had provided an alternative water supply to well owners as a result of the migration of a substance from the base.

DOD and Service Component policies already require these measures when circumstances warrant (see, for example, Army Memorandum, dated June 10, 2016, Subject Perfluorinated Compound (PFC) Contamination Assessment (enclosed); <http://www.secnave.navy.mil/eie/pages/pfc-pfas.aspx> (Navy); and <http://www.afcec.af.mil/Home/Environment/Perfluorinated-Compounds/> (Air Force)). However, SB 950 in its current form is not consistent with the waivers of sovereign immunity found in applicable federal environmental statutes; consequently, the provisions of SB 950, would not be enforceable against DOD, if it became Michigan law.

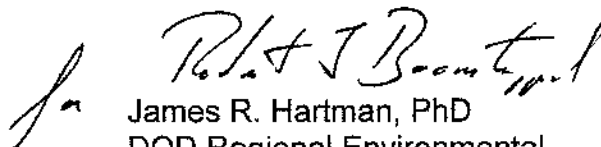
The proposed legislation singles out the DOD and its components for disparate treatment; therefore, it does not fall within the federal waivers of sovereign immunity in pertinent federal environmental law and would not be enforceable against DOD. Such waivers in the Clean Water Act (33 USC section 1323), the Safe Drinking Water Act (42 USC section 300j.-6), the Solid Waste Disposal Act (42 USC section 6961) and the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC section 9620(a)(1) and (a)(4)) all require that the United States be treated in the same manner as any other person or entity. Because the proposed legislation discriminates against DOD, we would not be able to expend funds to comply with it if it became law.

Passage of SB 950 is unnecessary because DOD is undertaking many of the measures contained in SB 950 already. At the former Wurtsmith Air Force Base, for example, the Air Force has committed to providing bottled water and working with landowners to implement long-term alternate water supplies for drinking water wells affected by PFC levels above the U.S. Environmental Protection Agency's Health Advisory. Further, the Air Force has conducted a detailed records review to identify releases, screened drinking water wells downgradient of the base, is conducting field investigations to understand plume locations, and will use the investigation data to assess potential impacts. The Air Force and DOD maintain a strong commitment to the Wurtsmith site and to responding to releases of hazardous substances, pollutants or contaminants from any other DOD facilities into the environment that pose an unacceptable risk to human health.

Thank you for your attention to the DOD's comments on SB 950. The bill contains several areas of concern that cast doubt upon its scope and applicability to the DOD. Regardless of the action taken on SB 950, DOD remains committed to stewardship of the environment in and protecting the safety and health of the people of Michigan.

If you have any questions or would like to discuss this matter, please contact Robert Boonstoppel, Regional Environmental Counsel, at 410-278-6167 or Robert.J.Boonstoppel2@usace.army.mil.

Sincerely,

  
James R. Hartman, PhD  
DOD Regional Environmental  
Coordinator

Enclosure

cc:  
Senator Jim Stamas



DEPARTMENT OF THE ARMY  
ASSISTANT SECRETARY OF THE ARMY  
INSTALLATIONS, ENERGY AND ENVIRONMENT  
110 ARMY PENTAGON  
WASHINGTON DC 20310-0110  
JUN 10 2015

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MEMORANDUM FOR

COMMANDER, ARMY MATERIEL COMMAND  
DIRECTOR, NATIONAL GUARD BUREAU  
CHIEF, U.S. ARMY RESERVE  
ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT  
COMMANDER, INSTALLATION MANAGEMENT COMMAND

SUBJECT: Perfluorinated Compound (PFC) Contamination Assessment

1. References:

- a. Department of Defense Instruction (DoDI) 4715.18, Emerging Contaminants, 11 Jun 09
- b. Army Regulation 200-1, Environmental Protection and Enhancement, 13 Dec 07
- c. Department of Defense Manual 4715.20, Defense Environmental Restoration Program (DERP) Management, 9 Mar 12
- d. DoDI 4715.08, Remediation of Environmental Contamination Outside the United States, 1 Nov 13
- e. DoDI 4715.06 Environmental Compliance in the United States, 4 May 15

2. Background:

a. PFCs are a suite of Emerging Contaminants of concern based on the potential human health risks to sensitive populations. The Army has reviewed available data regarding potential exposures to PFCs and believes it is appropriate to take action where PFCs may have impacted on and off installation drinking water supplies.

b. Many products contain PFCs. Commonly used PFC-containing products in the Army are Aqueous Film Forming Foam (AFFF) used for firefighting, and chemical fume suppressants. The Environmental Protection Agency (EPA) recently issued a lifetime Health Advisory (HA) level of 0.07 micrograms per liter ( $\mu\text{g/L}$ ) for perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA), and when both are found together, the HA level remains at 0.07  $\mu\text{g/L}$  with both values added together. Some states and foreign countries hosting Army installations have similar or equivalent health based guidelines.

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SUBJECT: Perfluorinated Compound (PFC) Contamination Assessment

3. This policy directs the following:

a. Water systems – The Army will sample for PFOS and PFOA in Army-owned or operated water systems located on Army installations that have not previously sampled for PFOS and PFOA. There is no limitation on the number of users served by the water system (e.g. single well systems) for sampling. This sampling is to be completed as soon as possible, but no later than the end of calendar year (CY) 2016. Notification will be provided to the Assistant Chief of Staff for Installation Management (ACSIM) if testing cannot be completed before the end of CY16. Additionally, Commands will assess if Army installations are receiving water from non-Army public water systems known to have exceeded the PFOS and PFOA HA levels. The Commands will report to ACSIM, as soon as possible, which non-Army PFC-impacted public water systems are supplying water to Army installations.

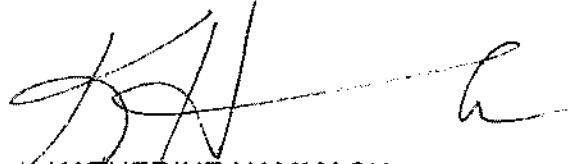
b. Water samples will be analyzed using an EPA approved method by an accredited laboratory. If concentrations of PFOS and PFOA above EPA HA levels (0.07 µg/L PFOS plus PFOA) or established health-based host nation values are identified and confirmed, users must be notified and interim actions such as supplying alternative drinking water or using different source water are authorized until the levels can be reduced below the HA. Installations shall not establish an alternate action level where a HA or other promulgated standard does not exist, or impose a more stringent level. Initial sampling will be funded using non-DERP accounts.

c. Proposed interim actions and risk communication activities described in 3b must be coordinated with and approved by the installation's land holding Army Command.

d. Army cleanup programs – The Army will research and identify locations where PFOS and PFOA are known or suspected to have been released on Army installations. The Army will assess and investigate releases and implement necessary response actions using the authority provided in References 1a-1e and other applicable DERP policies and guidance. Priority will be given to assessing known or suspected releases on Army installations where an Army-owned or operated water system has confirmed PFOS and PFOA levels above the HA, or where Army installations are within 20 miles of non-Army public water systems known to have exceeded the PFOS and PFOA HA levels. The Army will evaluate whether a release from these installations is contributing to the PFOS and PFOA levels in those water systems' source water.

e. ACSIM will provide implementing guidance to address necessary actions required by this policy.

4. My point of contact for this action is John Tesner, Director for Restoration, 703-697-1987, john.e.tesner.civ@mail.mil.



KATHERINE HAMMACK

CF:

U.S. Army Medical Command (ATTN: Public Health Directorate)