



SUSTAINMENT

ASSISTANT SECRETARY OF DEFENSE

3500 DEFENSE PENTAGON
WASHINGTON, DC 20301-3500

4 August 2020

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS,
ENERGY AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY (ENERGY,
INSTALLATIONS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE
(INSTALLATIONS, ENVIRONMENT AND ENERGY)
DIRECTOR, DEFENSE LOGISTICS AGENCY (INSTALLATION
MANAGEMENT)

SUBJECT: Guidance for Implementing Section 343 of the National Defense Authorization Act for Fiscal Year 2020, Provision of Water Uncontaminated with Perfluorooctanoic Acid and Perfluorooctane Sulfonate for Agricultural Purposes

The Department has reviewed section 343 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 providing the Department of Defense (DoD) the authority to address water sources impacted by DoD releases of perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA). This memorandum provides clarifying guidance regarding implementation of this provision.

Section 343 of the FY 2020 NDAA provides the DoD Components discretionary authority to use Operation and Maintenance funds to provide alternative water or treat DoD impacted surface water or well(s) used for agricultural purposes to create products destined for human consumption. This authority may only be used if PFOS and/or PFOA is in agricultural water above the 2016 Environmental Protection Agency (EPA) Safe Drinking Water Act lifetime Health Advisory levels for PFOS and/or PFOA of 70 parts per trillion, or the PFOS/PFOA levels in the raw agricultural commodities¹ and milk exceeds an applicable Food and Drug Administration (FDA) standard.²

Consistent with DoD's risk-based cleanup program, DoD may exercise this authority to provide alternative water or treat agricultural water based on meeting two criteria. The first criterion is a scientifically supportable determination of a need to take action due to an unacceptable risk to human health or the environment based on the site-specific exposure. Such a determination can be made in one of two ways.

- First, the DoD may assess the health risks from human consumption of food produced using water impacted by PFOS/PFOA, as well as risks to ecological receptors from consuming water impacted by PFOS/PFOA under the federal

¹ "The term 'raw agricultural commodity' means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing." Title 21, United States Code, section 321(r).

² The FDA has not established such a standard at this time. The Department will update this memorandum if the FDA establishes a standard for PFOS and PFOA in raw agricultural commodities and milk.

cleanup law, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The need for a site-specific CERCLA cleanup action would be based on a determination that the release of PFOS/PFOA from DoD activities results in an unacceptable risk to human health or the environment following EPA's regulations and risk assessment policies. Alternatively, if the FDA establishes standards for PFOS and/or PFOA in raw agricultural commodities and milk, DoD can use these scientifically supportable standards in its cleanup process.

- The second criterion is a determination that the PFOS and/or PFOA concentrations, above the EPA or FDA levels, are from DoD activities ("contaminated with such compounds by reason of activities on a military installation"). Both these criteria must be met to determine a need to provide alternative water or treat agricultural water, and should be interpreted consistent with CERCLA and Defense Environmental Restoration Program authorities.

If a DoD Component plans to take action to address agricultural water based on the authority in section 343 of the FY 2020 NDAA, the DoD Component Deputy Assistant Secretary for Environment will forward an explanation in writing stating how the site meets the criteria in this memorandum along with supporting documentation to the Office of the Deputy Assistant Secretary of Defense for Environment (ODASD(Env)) for approval. ODASD(Env) will seek review by the DoD Office of General Counsel for Environment, Energy and Installations before providing a response to the requesting DoD Component.

My point of contact for this matter is Ms. Deborah Morefield, at 703-571-9067 or deborah.a.morefield.civ@mail.mil.



W. Jordan Gillis

cc:
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