



SUSTAINMENT

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-3500

12/22/21

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, NATIONAL GUARD BUREAU (JOINT STAFF, J8)
DIRECTOR, DEFENSE LOGISTICS AGENCY (INSTALLATION
MANAGEMENT)

SUBJECT: Department of Defense Guidance on Using State Per- and Polyfluoroalkyl
Substances Drinking Water Standards in Comprehensive Environmental Response,
Compensation, and Liability Act Removal Actions

The Department of Defense (DoD) is committed to protecting the health and safety of its personnel, their families, and the communities in which they serve. DoD's priority is to quickly address risks to human health from drinking water impacted by DoD per- and polyfluoroalkyl substances (PFAS) releases. This memorandum provides clarifying guidance on what triggers the need for removal actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and how DoD should address properly promulgated State PFAS drinking water standards as part of a CERCLA removal action. This guidance is applicable to CERCLA removal actions conducted by the DoD Components and the National Guard Bureau to address PFAS with an established U.S. Environmental Protection Agency (EPA) Health Advisory or U.S. EPA toxicity value under CERCLA, such as perfluorooctane sulfonate (PFOS), perfluorooctanoic acid (PFOA), and perfluorobutane sulfonic acid (PFBS).

DoD conducts cleanup under CERCLA and the Defense Environmental Restoration Program (DERP) statute¹. Per Executive Order 12580, DoD is the lead agency when implementing CERCLA removal and remedial actions on DoD facilities, or where the "sole source" of an off-site release is from a DoD facility. DoD conducts removal actions for pollutants or contaminants, such as PFOS, PFOA, and PFBS, as part of the CERCLA process, and in this drinking water context, when there is an immediate need for action to address a substantial threat to public health. If a removal action does not provide a final response action, the site will continue to the CERCLA remedial cleanup process.

Consistent with the U.S. EPA's *Interim Recommendations to Address Groundwater Contaminated with PFOA and PFOS*², DoD may initiate a removal action where DoD is responsible for a confirmed release with PFOS/PFOA concentrations above the EPA lifetime Health Advisory (HA) levels in drinking water (i.e., groundwater currently used for drinking

¹ Chapter 160 of Title 10, United States Code (U.S.C.)

² U.S. EPA *Interim Recommendations to Address Groundwater Contaminated with Perfluorooctanoic Acid and Perfluorooctanesulfonate*, Office of Land and Emergency Management Directive No. 9283.1-47 (December 19, 2019) ("where groundwater is currently being used for drinking water, EPA expects that responsible parties will address levels of PFOA and/or PFOS over 70 ppt.")

water). Removal actions may extend to drinking water wells that are currently below the EPA PFOS/PFOA HA levels when site specific hydrogeological conditions are expected to result in an exceedance of that level without a removal action.

The CERCLA process identifies how State drinking water standards are evaluated to determine if they should be used in setting final cleanup standards in a remedial action for a specific site.³ In particular, a State drinking water standard may qualify as an “Applicable or Relevant and Appropriate Requirement” (ARAR) for remedial action in accordance with CERCLA § 121(d)(2)(A). While DoD is not required to attain ARARs as part of a removal action, the National Oil and Hazardous Substances Pollution Contingency Plan at Section 300.415(j) of Title 40, Code of Federal Regulations (CFR) identifies that EPA Superfund-financed removal actions shall, to the extent practicable considering the exigencies of the situation, attain ARARs. DoD is adopting this approach for its DoD-funded removal actions which it believes is consistent with existing National Defense Authorization Act provisions. As a matter of policy, once initiation of a removal action is triggered as set out above, and DoD as the lead agency identifies a properly promulgated, consistently implemented State PFAS drinking water standard as an ARAR for the specific removal action, DoD may use the State PFAS drinking water standard when determining the cleanup level to be attained at the completion of the removal action.

Therefore, as described in this memorandum, when the DoD Components conduct removal actions to address PFAS, they may include:

- Sampling public and private drinking water wells and determining if DoD is the source of PFAS impacts;
- Comparing results to the EPA PFOS and PFOA HA levels;
- Identifying drinking water wells that are currently below the EPA PFOS/PFOA HA levels, but site specific hydrogeological conditions are expected to result in an exceedance of that level without a removal action;
- Identifying if there are properly promulgated, consistently implemented State PFAS drinking water standards that would be considered ARARs; and
- Initiating removal actions (e.g., providing alternative drinking water) as described above.

The point of contact for this matter is Ms. Alexandria Long, Office of the Deputy Assistant Secretary of Defense for Environment and Energy Resilience, at 703-571-9061 or alexandria.d.long.civ@mail.mil.

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³ Section 9621((d) of Title 42, U.S.C., and Sections 300.400(g), 300.430(e), and 300.515(d) of Title 40, CFR.