



## OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-3500

### SUSTAINMENT

James C. Kenney  
Cabinet Secretary  
New Mexico Environment Department  
1190 Saint Francis Drive,  
P.O. Box 5469  
Santa Fe, NM 87502-5469

Dear Secretary Kenney:

DoD received your letter dated November 10, 2021 concerning Cannon Air Force Base (AFB) in Clovis, New Mexico, and cleanup efforts to address releases of per- and polyfluoroalkyl substances (PFAS). I am responding on behalf of the Secretary of Defense.

DoD is committed to addressing PFAS releases from DoD activities nationwide under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) cleanup law, and sharing cleanup information with community members and environmental regulators in an open and transparent manner. DoD is performing an assessment at 700 installations where DoD may have used or released PFAS, and has obligated over \$1.4 billion to implement PFAS cleanup responses. As part of the CERCLA process, DoD prioritizes and takes quick action to address drinking water when PFAS from DoD activities is found off-base in drinking water above the U.S. Environmental Protection Agency's lifetime Health Advisory levels (HAs) for perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA). DoD also takes action to address PFAS from DoD activities found in groundwater and soil, and works in collaboration with the EPA, other Federal agencies, state agencies, and communities throughout this national process.

The Air Force commenced its CERCLA response at Cannon AFB in 2015 and is currently in the third phase of the CERCLA process, the Remedial Investigation (RI). The RI will identify the nature and extent of identified PFAS in environmental media on and off the installation attributable to Air Force activities. While the RI is on-going, the Air Force is performing a \$16.5 million pilot study as part of a CERCLA removal action, which will compare different actions the Air Force may take in the short term before the RI is complete. The pilot study will involve a groundwater pump and treat system that can be expanded later on to increase the scale of the system. To date, the Air Force has spent over \$32 million at Cannon AFB in its CERCLA response actions to address PFAS.

Your letter includes a commitment to work with DoD on PFAS remediation in New Mexico. We welcome cooperation with NMED as we further investigate and respond to PFAS in New Mexico, including past releases of firefighting foam containing PFAS at Cannon AFB. As you are aware, the Air Force has shared its CERCLA reports and work plans with NMED at Cannon and has invited your comments and inputs in this process.

Your letter does not mention DoD's ongoing CERCLA actions to address PFAS in New Mexico and nationwide. Instead, your letter asks DoD to implement PFAS cleanup under New Mexico's hazardous waste "corrective action" authority. Additionally, your letter urges DoD to end its litigation challenge of NMED's permit issued to Cannon in December 2018 based on your interpretation of a recent letter from the Administrator of the U.S. Environmental Protection Agency (EPA) to the Governor of New Mexico. The EPA Administrator's letter states that EPA will initiate the rulemaking process to specifically identify four PFAS as subject to cleanup authorities under the federal Resource Conservation and Recovery Act (RCRA). In addition, the EPA intends to initiate a rulemaking to propose modifications to these RCRA corrective action regulations that currently limit this cleanup authority to regulatory hazardous wastes. DoD disagrees that any future EPA rulemakings change the rules that apply to a permit issued nearly three years ago, or in any way affects the arguments the United States advanced in its summary judgment briefs in the Cannon AFB litigation regarding the scope of New Mexico's cleanup authority regarding PFAS under applicable law.

Because your letter touches on matters that are the subject of ongoing litigation, please direct any questions concerning the Canon AFB litigation to Andrew Knudsen and John Cane, at the U.S. Department of Justice, who can be reached at 202-353-7466 or 202-305-0999. For non-litigation matters, please feel free to contact me for any follow-up questions. We look forward to a constructive and productive joint effort to address PFAS in New Mexico.

Sincerely,

Richard G. Kidd IV  
Deputy Assistant Secretary of Defense  
(Environment and Energy Resilience)

cc:

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