



DEPARTMENT OF THE ARMY
DEPARTMENT OF DEFENSE REGION IV ENVIRONMENTAL COORDINATOR
REGIONAL ENVIRONMENTAL AND ENERGY OFFICE-SOUTH
60 FORSYTH STREET, SW, SUITE 10M15
ATLANTA, GA 30303

June 6, 2019

Tim J. Bahr
Acting Director
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, FL 32399

Dear Mr. Bahr:

Subject: Florida Department of Environmental Protection (FDEP) Requirements for Addressing Per- and Polyfluoroalkyl Substances

I am writing in response to your letter dated January 23, 2019. In that letter you stated your intent to clarify the State's requirements and expectations for addressing per- and Polyfluoroalkyl Substances (PFAS) at Department of Defense (DoD) installations in Florida. Specifically, you made reference to certain provisions within Chapter 62-780 of Florida's Administrative Code in support of FDEP's request that site rehabilitation efforts at military sites include provisional alternative groundwater and soil cleanup target levels for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), derived pursuant to rules 62-780.150 and 62-780.650. DoD remains committed to working collaboratively with FDEP, and affected communities, on its cleanup responsibilities, and we would like to brief FDEP on the status of our PFOS and PFOA cleanups in Florida, and the progress being made. We believe our proactive PFOS and PFOA cleanup efforts under federal law will address your concerns.

The DoD follows the federal cleanup law, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), in its cleanup investigations and response actions. CERCLA provides a consistent approach across the nation for cleanup, which includes robust state agency and public participation. Concerning PFOA and PFOS, the DoD addresses on-base and off-base migration of its releases to ensure protection of human health. The Defense Environmental Restoration Program (DERP), at 10 U.S. Code §§2701-2711, provides various authorities to DoD to perform and fund cleanup activities, and requires those actions to be carried out in accordance with CERCLA. Consistent with the CERCLA waiver of sovereign immunity and DERP, DoD follows the CERCLA statutory and regulatory requirements to implement its cleanup program.

The first step in the federal cleanup process is to identify the source of a known or suspected release. As of July 2018, DoD has identified 21 installations in Florida where DoD stored or used aqueous film-forming foams containing PFOS or PFOA, and where there was a suspected release of those chemicals into the environment. DoD then determined whether there is exposure through drinking water and, if so, prioritized response at those sites based on exposure levels. DoD prioritizes sites for cleanup actions using the well-established CERCLA risk-based process. This longstanding site prioritization process is based on "worst first," meaning DoD will prioritize sites consistent with the level of potential risk to human health. DoD uses the toxicological information (i.e., Reference Dose) from the U.S. EPA drinking water Lifetime Health Advisory for PFOS and PFOA, and incorporates it into the CERCLA risk assessment process.

While DoD's priority is to quickly address unacceptable levels of PFOS/PFOA in drinking water from DoD activities, the Reference Dose can also be used to calculate unacceptable risk levels in soil.

Once the need for remedial action is established by a risk assessment, state and federal cleanup standards are evaluated as "Applicable or Relevant and Appropriate Requirements" (ARARs) under section 121(d)(2) of CERCLA and its implementing regulations. While ARARs are evaluated on a site-specific basis, in general a State standard must be (1) properly promulgated, (2) more stringent than Federal standards, (3) legally applicable or relevant and appropriate as detailed in the CERCLA regulations, and (4) timely identified. See 40 CFR § 300.400(g)(4) and *U.S. v. Akzo Coating*, 949 F.2d 1409, 1440 (6th Cir. 1991). According to EPA's CERCLA regulations and case law, "promulgated" as used in CERCLA section 121(d) refers to "laws imposed by State legislative bodies and regulations developed by State agencies that are of general applicability and are legally enforceable."

So consistent with the statements above, the DoD would, as part of a site-specific CERCLA remedial investigation for PFOA and PFOS, determine whether any groundwater and soil cleanup standards in Florida law or regulations qualify as ARARs. We appreciate you referencing Chapter 62-780 of the Florida Administrative Code, and in particular sections 62-780.150 and 62-0780.650 of these State regulations. While it is difficult to generalize an ARAR analysis outside of the required site-specific cleanup context, we have concerns that these sections, or the alternative groundwater cleanup target levels for PFOS and PFOA developed by the University of Florida, would qualify as ARARs. Section 62-780.150, entitled "Applicability", and Section 62-780.650, entitled "Risk Assessment", appear to be properly promulgated, however, neither contains a substantive level or degree of cleanup for PFOS or PFOA as required in CERCLA regulations and the definitions of "applicable requirement" and "relevant and appropriate requirement" at 40 CFR 300.5. Additionally, both sections generally reference alternative cleanup target levels where site-specific exposures are considered in a risk assessment, in place of default cleanup target levels. Because CERCLA regulations require a site-specific risk assessment, along with identifying a specific risk number, DoD follows these CERCLA requirements at the risk assessment stage that precedes the ARARs analysis. See 40 CFR 300.430(d) and (e). The alternative cleanup target levels generally referenced in these two sections, are necessarily site-specific, and not of general applicability. Therefore, any alternative cleanup target levels developed, including the University of Florida ones for PFOS and PFOA, are not Florida regulations, and would likely not be considered "properly promulgated." DoD will, however, fully evaluate any Florida law or regulation identified by FDEP in its site-specific remedial investigations for PFOS and PFOA, and discuss potential ARARs fully at that time, consistent with section 121(d) of CERCLA.

Because the CERCLA risk assessment process for PFOS and PFOA uses the same risk parameters (e.g., Hazard Index of 1) referenced in Section 62-780.650, *we believe the risk-based cleanup levels under either CERCLA or Florida's Chapter 62-780 will be of equivalent protectiveness.* We therefore request the opportunity to provide a briefing to update you on the PFOS and PFOA cleanups that DoD is conducting in Florida.

DoD has proactively taken significant action to reduce the risks to human health from PFOS and PFOA around the country, and remains committed to working with FDEP as it concerns military site rehabilitation efforts. As DoD continues to move through the CERCLA process, DoD will continue to work in collaboration with FDEP and any affected communities, and share information in an open and transparent manner. Please contact me to arrange a briefing from DoD on PFOS and PFOA cleanup actions in Florida. I can be contacted at 404-562-5146, or susan.p.gibson2@usace.army.mil.

Sincerely,

A handwritten signature in black ink that reads "Susan P. Gibson". The signature is written in a cursive, flowing style.

Susan P. Gibson
DoD Regional Environmental Coordinator, R4
U.S. Army Regional Environmental and
Energy Office-Southern

CF:

Mr. Alan Roberts, USAF Regional Environmental Coordinator
Mr. Brock Durig, U.S. Navy Regional Environmental Coordinator
Ms. Erin Adams, U.S. Marine Corps Regional Environmental Coordinator