

September 6, 2018

CSWAB UPDATE:

Department of Defense testifies that it is *not* bound by State regulations for PFAS

House of Representatives
Subcommittee on Environment
Committee on Energy and Commerce
Washington, D.C.

PERFLUORINATED CHEMICALS IN THE ENVIRONMENT: AN UPDATE ON THE RESPONSE TO
CONTAMINATION AND CHALLENGES PRESENTED
THURSDAY, SEPTEMBER 6, 2018 HEARING

Hearing Excerpt:

Ranking Member Frank **Pallone**, Jr. (D-NJ) questions Maureen **Sullivan**, the Deputy Assistant Secretary of Defense for Environment

Minute 47:41

Mr. Pallone: My home state of New Jersey has been studying PFAS contamination in drinking water since 2006, following reports of contamination from a DuPont facility, and monitoring by the state and by EPA has shown widespread contamination across New Jersey. In 2017, New Jersey set an MCL for PFOA at 14 parts per trillion and another MCL for PFNA at 13 parts 916 per trillion.

And those standards were a triumph for science and advocates in New Jersey who worked for years to overcome political opposition and this standard has been important to communities across the state and ensures that drinking water is being treated to remove those chemicals. But I have heard serious concerns that the Department of Defense is not cleaning up contaminated sites in New Jersey to that state standard.

So, Ms. Sullivan, the Department of Defense has conducted testing at and around some military facilities in New Jersey. According to the presentation you made to Congress in March, drinking water contamination has been found around Naval Weapons Station Earle, which is in my district, and Joint Base McGuire-Dix-Lakehurst.

Ms. Sullivan: The Department of Defense, as we are required to by CERCLA in the Defense Environmental Restoration Program statute, is following the CERCLA process. And as part of that process the state levels are rolled in through the risk assessment process.

So as we go through our analysis following the structure of it, these state standards will in fact be rolled in as a consideration as an appropriate and relevant regulation. At the end of that risk assessment process there will be a determination of unacceptable risk that will be reviewed not only by us, but by the state, your state environmental agency and the Environmental Protection Agency to determine what the end remedy solution will be.

But my concern as you can imagine, is that because I am very familiar with the Superfund process is often times DOD or even EPA do not necessarily recommend a more strict standard. You know, they look at it as a factor and you are saying they will, which I appreciate, but they may not adopt the standard.

I just think, I mean they may not insist on that as the remediation alternative that they pick. And the fact that DOD is not bound by these state drinking water standards, you know, to me, shows how important a national drinking water standard is because it may very well be that those state standards are not met. I mean obviously I would urge you to meet them, but you are not going to guarantee that they would be because you are just saying it will be considered.

Ms. Sullivan: Yes, sir. They will be considered as part of the CERCLA process which we are bound to.

Mr. Pallone: Yes. Well, I think, I mean I think that is unfortunate. I think you should be bound by them, and even if you are not that you should, you know, you should adopt them. But I appreciate your candor.

(Minute 51:38 - begins new question)

Video online at the following website – see minute 47:41 to 51:37

<https://democrats-energycommerce.house.gov/committee-activity/hearings/hearing-on-perfluorinated-chemicals-in-the-environment-an-update-on-the>

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), PFASs are not listed as CERCLA hazardous substances but may be addressed as CERCLA pollutants or contaminants (40 CFR 300.5). According to the ITRC, CERCLA investigations are beginning to include PFAS. PFASs have been reported for 14 CERCLA sites during 5-year reviews.

Source: <https://ehsdailyadvisor.blr.com/2018/01/epa-targets-pfas-state-ahead-game/>

When the USEPA determines there may be an imminent and substantial endangerment from a contaminant that is present in or likely to enter a public water supply, under Section 1431 of the SDWA USEPA may issue Emergency Administrative Orders (EAOs) to take any action necessary to protect human health if state and local authorities have not acted (42 U.S.C. §300i). USEPA has issued at least three such EAOs to protect public and private water supply wells contaminated with PFAS (USEPA 2009d; 2014b; 2015a).

Source:

https://pfas-1.itrcweb.org/wp-content/uploads/2017/11/pfas_fact_sheet_regulations_11_13_17.pdf

“In the Superfund program, USEPA Regions evaluate potential ARARs, including state standards, on a site-specific basis to determine whether a specific standard or requirement is an ARAR for response decision and implementation purposes. Determining if a state requirement is promulgated, substantive, and enforceable are some of the factors in evaluating whether a specific standard may constitute an ARAR.”

Source:

https://pfas-1.itrcweb.org/wp-content/uploads/2017/11/pfas_fact_sheet_regulations_11_13_17.pdf

PREPARED BY:

Laura Olah | Executive Director
Citizens for Safe Water Around Badger | www.CSWAB.org
Coordinator | PFAS Community Campaign
Merrimac, WI 53561 | P: 608 643 3124 |
www.facebook.com/cswab.org | www.facebook.com/PFASCommunity
www.twitter.com/CSWAB