



Focus on Cannon and Holloman Air Force Bases

SANTA FE - Three State Legislators, Senator Mimi Stewart, Senator Antoinette Sedillo Lopez, and Representative Andrés Romero have asked the United States District Court for permission to file an Amici Curiae - “Friends of the Court” - Brief in a lawsuit involving toxic pollutants from

two Air Force bases.

The Brief would support the legal action by the New Mexico Attorney General and the New Mexico Environment Department to compel the United States Air Force to conduct prompt investigation and cleanup of toxic pollutants at Cannon Air Force Base near Clovis, and Holloman Air Force Base near Alamogordo.

The soil, groundwater, and surface water at the two bases is contaminated with a class of chemicals known as per- and polyfluoroalkyl substances. PFAS have been used in many industries since the 1940s and contamination typically results from releases at manufacturing and industrial facilities and industrial waste sites, and from their use in fire-fighting chemicals at fire and crash training areas, such as at Air Force bases across the country. There is substantial scientific evidence that PFAS pose significant human health and ecological risks, such as developmental problems, low birth weight, decreased fertility, hormone disruption, immune system damage, and increased cancer risk.

Although the U. S. Environmental Protection Agency has not set enforceable regulatory drinking water standards for PFAS, the New Mexico Water Quality Control Commission has listed several of the most common types of PFAS - including those at issue in this case - as “toxic pollutants” under the N. M. Water Quality Regulations.

New Mexico brought this action under the provisions of two statutes, one Federal and one State, designed to address the problem of hazardous waste disposal and cleanup. The Federal statute is the Resource Conservation and Recovery Act, signed into law in 1976. The State statute is the N. M. Hazardous Waste Act, enacted in 1983. Both statutes contain “imminent hazard” provisions, which provide for court orders to mitigate an endangerment to the public health or the environment.

The *Amici* are addressing two of the issues raised by the Air Force in its September 17 Motion to Dismiss. The Air Force’s first argument is based on the “sovereign immunity” of the Federal government, which says the U. S. cannot be sued without its consent. However, the U. S. has explicitly waived its sovereign immunity from the New Mexico lawsuit in two federal statutes.

The Air Force’s second argument is based on a provision in another federal law, the

Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as Superfund. That law precludes a lawsuit that challenges an ongoing Superfund cleanup. The purpose of this provision is to expedite Superfund cleanups. However, in this case, the Air Force is not currently engaged in an ongoing cleanup. It has effectively placed the cleanup “on hold” for years. The Air Force is seeking to use this provision to delay cleanup, contrary to congressional intent.

New Mexico Environmental Law Center Staff Attorney Charles de Saillan expressed his view with a touch of humor when he said,
“We want to support the Attorney General and the Environment Department in their commendable efforts to hold the Air Force accountable for polluting the state’s groundwater. It is very unfortunate that the Air Force would attempt to avoid its cleanup obligations under New Mexico law by invoking a legal doctrine - sovereign immunity of the United States government - that derives from the ancient English common law maxim that ‘the King can do no wrong.’ As Mark Twain once put it through one of his characters, ‘All kings is mostly rapscallions.’”