



FLORIDA DEPARTMENT OF Environmental Protection

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June 25, 2019

Timothy Kinsella, Captain
U.S. Navy Commanding Officer
Department of the Navy
Naval Air Station Pensacola
150 Hase Road. Suite-A
Pensacola, FL 32508-1051

Re: Perfluoroalkyl substances (PFAS), Department requirements/expectations for addressing PFAS at Saufley Field, Response to Navy letter of May 16, 2019, Escambia County, Florida

Dear Captain Kinsella:

The Department has reviewed your response letter of May 19, 2019, addressing the Department's determination that PFAS contamination, specifically perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), constitutes pollution and that the requirements of Chapter 62-780, Florida Administrative Code (F.A.C.), are applicable. Your response also addresses the Department's request for analytical data that has been collected from sampling both on the Saufley Field base property and from off-base private drinking water wells located in the vicinity of Saufley Field.

Your letter specifies that the Department of the Navy (Navy) follows the CERCLA process in investigating and responding to contamination issues pursuant to authorities granted to it under the Defense Environmental Restoration Program (DERP) and that the investigation of PFAS contamination is following CERCLA requirements. More specifically it conveys that the investigation and remediation of PFAS at Saufley Field will be conducted following the CERCLA process.

Your letter further asserts that CERCLA requires compliance with substantive cleanup requirements rather than procedural and that the state's requirement for initial notice of contamination beyond property boundaries in section 376.30702(2), Florida Statutes, appears to be a procedural requirement not applicable to a CERCLA cleanup. The Department respectfully disagrees with this assessment. CERCLA requires federal facilities to comply with procedural and substantive requirements. See 42 U.S.C. §9620(a)(1). Further, it requires that state and local officials have the opportunity to participate in the planning and selection of the remedial action, including the review of all applicable data as it becomes available and the development of studies, reports and

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action plans. See 42 U.S.C. §9620(f). Additionally, state laws concerning removal and remedial action, including state laws regarding enforcement, apply at federal facilities. See 42 U.S.C. §9620(a)(4). Moreover, the DERP requires the Department of Defense to coordinate with state environmental agencies related to their authorities. As such, this notice requirement is not one unfamiliar to the Navy. Please see the enclosed initial notice of contamination the Navy conducted under CERCLA for the former Corry Station Skeet Range. In similar fashion, the Department looks forward to the Navy's timely submittal of the state's initial notice requirement for Saufley Field.

Your letter states that the Navy intends to adhere to your commitment to affected homeowners and that you will protect their names and addresses from public disclosure, to the extent legally permitted. You correctly state that when documents regarding the sampling and analysis of off-base private drinking water wells are provided to the Department, that information would be publicly available on request under Florida's Sunshine Laws. However, in the event disclosure of the information is exempted under federal statute, Florida may be bound to adhere to the requirements of the federal statute in accordance with the Supremacy Clause of the United States Constitution. If such applicable federal statute exists, the information can be safely provided to the Department where it will be kept confidential (*State ex rel. Cummer v. Pace*, 159 So.679 (Fla.1935)). Together, the Department and the Navy will be able to implement a procedure whereby the information remains safe from public disclosure, so long as the information remains exempt under federal law. If you believe the requested information is exempt from public disclosure due to federal law, please provide us with a citation to the relevant statute and your basis for why it applies to the information requested.

While the Department respects concerns that private property owners may be adversely impacted by public disclosure of the presence of PFOA and PFOS in their wells, the Department maintains that its obligations to protect human health and the environment through abatement of water pollution to the State of Florida's groundwater resource (Article II, Section 7, Florida Constitution) would take precedence. References to Florida's Statutes regarding the Department's duty to prevent pollution and when releases do occur to require the timely assessment and remediation of such were provided in our April 19, 2019 letter.

The Navy suggests an alternative approach that would give the Department the ability to reach and notify affected homeowners. The suggested approach involves the Navy mailing letters drafted by the Department to each property owner, allowing them to contact the Department directly and provide the analytical results from the testing of their private drinking water wells if they choose to do so. The Department does not find this proposal to be workable. If the Navy refuses to provide the names and address of the affected private well owners, the Department may consider providing a General Notice mailer to all potentially affected property owners within the known area.

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Your letter also responded in the negative to the Department's request for a management plan or strategy, including a list of actions to be conducted, reports to be prepared and a schedule for task completion. You stated that the Navy's CERCLA process will generate documentation that will address these issues. As an example, you state that there is no need for a Site Assessment Report (SAR) as a draft Preliminary Assessment has been completed under CERCLA. Please note, a Preliminary Assessment report has not been provided to the Department and is normally only used to establish where the contaminants of concern may have been stored, used, discharged or disposed of through facility operational reports and facility personnel interviews. Further, it is not equivalent to a SAR conducted pursuant to the Department's Chapter 62-780, F.A.C. The CERCLA document equivalent to the Department's SAR would be a Remedial Investigation Report, which also has not been provided to the Department. The Department looks forward to reviewing and providing input on the CERCLA documents to be generated as required under 42 U.S.C. §9620(f). However, we still request a schedule be provided so the Department can plan accordingly, and to ensure that response actions will be taken in a timely manner.

The Department looks forward to working with the Navy in tackling this issue. Please do not hesitate to call or contact me at (850) 245-8930 or Teresa.Booeshaghi@floridadep.gov if you have questions or need of clarification regarding this letter.

Sincerely,



Teresa Booeshaghi, Assistant Director
Division of Waste Management

cc: Robert Fisher, NAVFAC-SE (Robert.R.Fisher@navy.mil)
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