NEW MEXICO
ENVIRONMENTAL LAW CENTER

May 31, 2019

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (1101A)
Washington, D.C. 20460

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Colonel Richard W. Gibbs, Base Commander
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Kirtland Air Force Base
2000 Wyoming Boulevard, SE, Bldg. 20604
Albuquerque, New Mexico 87117

Re: Notice of Imminent and Substantial Endangerment Pursuant to Section 7002 of RCRA
Kirtland Air Force Base – Bulk Fuel Facility

Dear Acting Administrator Wheeler, Attorney General Balderas, Secretary Shanahan, Secretary Wilson, and Colonel Gibbs:

This letter is to provide you with formal notice, on behalf of the Southwest Organizing Project ("SWOP"), New Mexico Voices for Children, New Mexico State Senator Antoinette Sedillo Lopez, New Mexico State Senator Mimi Stewart, New Mexico State Representative G. Andres Romero, and three individual residents of the City of Albuquerque, Lucille Cordova, Reynaluz Juarez, and Dante Smith (the six individuals are, collectively, the "Residents") that an imminent and substantial endangerment to health or the environment, within the meaning of section 7002(a)(1)(B) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(B), may exist due to the release into the environment of solid wastes or hazardous wastes from Kirtland Air Force Base in Albuquerque, New Mexico. The endangerment is the result of the past or present handling, storage, or disposal of petroleum-based fuels from the bulk fuels facility at Kirtland Air Force Base, as more fully described below.

This notice is provided pursuant to section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A). Ninety days after your receipt of this notice, the Plaintiffs may commence a legal

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action in federal district court against the United States Department of Defense ("DOD"), the United States Department of the Air Force ("Air Force"), or both, seeking injunctive and other relief to address the endangerment under section 7002(a)(1)(B) of RCRA, 42 U.S.C. 6972(a)(1)(B).

Beginning in approximately 1951, the Air Force has operated a bulk fuel facility in the western portion of Kirtland Air Force Base. The bulk fuel facility consisted of above-ground storage tanks, a fuel loading rack, a pump house, and associated pipes and valves. Throughout its history, the bulk fuel facility has been used to store aviation gasoline, jet propellant grade 4 (JP-4), jet propellant grade 8 (JP-8), gasoline, and diesel fuel. Storage of aviation gasoline was discontinued in 1975, and storage of JP-4 was discontinued in 1993. Storage of JP-8, gasoline, and diesel fuel continues to the present day. In November 1999, Kirtland Air Force Base personnel discovered that the facility was leaking from an underground fuel line. Consequently, between 2011 and 2012 the Air Force replaced the tanks and other structures at the facility, as required under a Stipulated Final Order issued by the New Mexico Environment Department, No. HWB-09-00 (CO), on September 28, 2009. The Air Force Base has also conducted investigations of groundwater contamination, installed groundwater monitoring wells, implemented soil vapor extraction to remove volatile organic compounds from the vadose zone at the bulk fuels facility, and has been pumping and treating ethylene dibromide in the contaminated regional aquifer under a pilot program.

Petroleum-based fuels such as aviation gasoline, JP-4, JP-8, gasoline, and diesel fuel, contain several toxic constituents, including benzene, ethylbenzene, toluene, xylenes, 1,2,4-trimethylbenzene, and polynuclear aromatic hydrocarbons such as naphthalene. In addition, prior to 1973,[1] most commercial blended gasoline contained tetraethyl lead and ethylene dibromide[2] (EDB) as additives. Tetraethyl lead was added to increase the octane rating of the fuel to prevent engine "knock" or "ping." Ethylene dibromide was added as a lead scavenger to prevent lead by-products from fouling engines.

Information we have received from the New Mexico Environment Department and from the Air Force demonstrate that solid wastes[3] – specifically, petroleum-based fuels and their constituents – leaking from the Kirtland Air Force Base bulk fuels facility have entered soil and groundwater at Kirtland Air Force Base, and that they have migrated a considerable distance off Kirtland Air Force Base property. The New Mexico Environment Department estimates that the volume of leaked fuels ranges between 5 million and 24 million gallons. The leaked fuels have formed a plume of contaminants in groundwater, a plume of light non-aqueous phase contaminants at or near the water table, and a more amorphous plume of hydrocarbon vapor in the unsaturated soils – or vadose zone – above the water table.

Groundwater monitoring data collected by the Air Force demonstrates that the plume has migrated to the north-northeast some distance beyond Gibson Boulevard, more than a mile from

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[1] In 1973 the U.S. Environmental Protection Agency required that lead be phased out of most motor fuels, although it is still added to some aviation gasoline. 38 Fed. Reg. 33734 (Dec. 6, 1973).

[2] Ethylene dibromide is also known as 1, 2-dibromoethane.

[3] Section 1004(27) of RCRA defines "solid waste" to include discarded liquids. 42 U.S.C. § 6903(27).

the source. Part of the plume lies beneath a residential neighborhood. Analyses of total petroleum hydrocarbons (gasoline range) partially define a plume that is more than 5,000 feet long and 1,500 feet wide, tapering off to a width of approximately 1,000 feet. Because the plume is composed of petroleum hydrocarbons – which mostly behave as non-aqueous phase liquids – it has tended to float on the water table, approximately 500 feet below the ground surface. Some of the petroleum hydrocarbons have also dissolved into the underlying groundwater. Beginning in 2009, as the City of Albuquerque or the Albuquerque Bernalillo County Water Utility Authority ("Authority") has reduced the pumping of the aquifer, the water table has risen, and the non-aqueous phase plume has been submerged. As a consequence, remediation of groundwater contamination has become much more difficult. The non-aqueous phase petroleum hydrocarbons below the water table will be a persistent source of groundwater contamination for the indefinite future.

The highest levels of vapor-phase volatile organic compounds are located at approximately 100 to 250 feet below the ground surface on the western edge of the former bulk fuels facility, in the area of an old fuel transfer line. The vapor plume has migrated radially from the former bulk fuels facility, mostly towards the southeast and downwards toward the water table. However, vapor monitoring by the Air Force shows that contaminants at significant levels have migrated to the north beyond Kirtland Air Force Base property.

According to the *Quarterly Monitoring Report: October-December 2018* (Mar. 2019) (hereinafter "*Mar. 2019 Monitoring Rept.*") the contaminant plumes contained the following components.

Benzene

The benzene component of the plume in groundwater is approximately 2,000 feet long and 800 to 1,000 feet wide. *Mar. 2019 Monitoring Rept.* Fig. 3-10. The highest concentration of benzene in the plume is 17,000 micrograms per liter (µ/L). *Id.* at 3-7. For comparison, the maximum contaminant level for benzene, established by the U.S. Environmental Protection Agency (EPA) as the health-based primary drinking water standard, is 5 µ/L. 40 C.F.R. § 141.61(a) (2019). The maximum contaminant level goal for benzene is 0.[4] 40 C.F.R. § 141.50(a) (2019). The health-based New Mexico ground water quality standard for benzene, established by the New Mexico Water Quality Control Commission, is 5 µ/L. 20.6.2.3103.A(1)(r) NMAC. Thus, the level of benzene in the contaminant plume migrating from the bulk fuel facility is up to 3,400 times the maximum contaminant level and the State ground water quality standard.

[4] EPA is mandated to set maximum contaminant level goals (MCLGs), and national primary drinking water regulations, which include maximum contaminant levels (MCLs), for drinking water contaminants under section 1412(b)(1) of the Safe Drinking Water Act, 42 U.S.C. § 300g-1(b)(1). In setting *MCLGs*, EPA must consider only the health effects of the contaminant. In setting *MCLs*, EPA must take the costs of regulation into account. Safe Drinking Water Act § 1412(b)(3)(C), 42 U.S.C. § 300g-1(b)(3)(C). Although the MCL is the enforceable regulatory standard, the MCLG is more relevant to establishing that an endangerment to health may exist. EPA sets the MCLG for human carcinogens at 0.

The highest levels of vapor-phase benzene in the vadose zone are in the source area to the northwest of the former bulk fuels facility on Kirtland Air Force Base property. The highest benzene concentration, at approximately 150 feet below the ground surface, is 1,300,000 micrograms per cubic meter ($\mu g/m^3$). *Mar. 2019 Monitoring Rept.* at 2-5.

Benzene is a known human carcinogen. According to the Agency for Toxic Substances and Disease Registry, or ATSDR, benzene exposure is known to cause blood diseases and leukemia. Inhalation of benzene can cause drowsiness, dizziness, headaches, and respiratory irritation. Benzene is also a skin irritant.

Ethylene dibromide

Ethylene dibromide, or EDB, forms the leading edge of the groundwater contaminant plume migrating from the bulk fuel facility. The component of the plume consisting of ethylene dibromide is approximately 5,000 feet long and 500 to 1,500 feet wide. *Mar. 2019 Monitoring Rept.* Fig. 3-7. The highest concentration in the plume is 300 µ/L. *Id.* at 3-6. For comparison, the maximum contaminant level for ethylene dibromide is 0.05 µ/L. 40 C.F.R. § 141.61(c) (2019). The maximum contaminant level goal for ethylene dibromide is 0. 40 C.F.R. §141.50(a) (2019). The health-based New Mexico ground water quality standard for ethylene dibromide is 0.05 µ/L. 20.6.2.3103.A(1)(ee) NMAC. Thus, the ethylene dibromide concentration in the plume is up to 6,000 times the maximum contaminant level and the State water quality standard.

The highest levels of vapor-phase ethylene dibromide in the vadose zone are in the source areato the northwest of the former bulk fuels facility on Kirtland Air Force Base property. The highest ethylene dibromide concentration, at approximately 100 feet below the ground surface, is 17,000 $\mu g/m^3$. *Mar. 2019 Monitoring Rept.* at 2-4.

Ethylene dibromide is a known human carcinogen. According to ATSDR, ingestion of ethylene dibromide can cause abdominal pain, nausea, and drowsiness.

Ethylbenzene

The groundwater contaminant plume also contains ethylbenzene, although the dimensions of this component of the plume have not been estimated. The highest concentration of ethylbenzene in the plume is 2,000 µ/L. *Mar. 2019 Monitoring Rept.* at 3-7. For comparison, the maximum contaminant level for ethylbenzene is 700 µ/L. 40 C.F.R. § 141.61(a) (2019). The health-based New Mexico ground water quality standard for ethylbenzene is also 700 µ/L. 20.6.2.3103.A(1)(z) NMAC. Thus, the ethylbenzene concentration in the plume is nearly three times the maximum contaminant level and the State ground water quality standard.

According to ATSDR, exposure to ethylbenzene may cause irritation to the eyes and throat and dizziness. Exposure to ethylbenzene has been linked to kidney damage and to irreversible damage of the inner ear. The International Agency for Research on Cancer has determined that ethylbenzene is a possible human carcinogen.

Toluene

The toluene component of the groundwater contaminant plume is approximately 1,800 feet long and 400 feet wide. *Mar. 2019 Monitoring Rept.* Fig. 3-13. The highest concentration of toluene in the plume is 20,000 µ/L. *Id.* at 3-7. For comparison, the maximum contaminant level for toluene is 1,000 µ/L. 40 C.F.R. § 141.61(a) (2019). The health-based New Mexico

ground water quality standard for toluene is 1,000 µ/L. 20.6.2.3103.A(1)(t) NMAC. Thus, the toluene concentration in the plume is up to 20 times the maximum contaminant level and the State ground water quality standard.

According to ATSDR, ingestion of toluene adversely affects liver and kidney function. Inhalation of toluene results in adverse neurological effects in humans. Exposure to low to moderate levels can cause tiredness, confusion, weakness, drunken-type actions, memory loss, nausea, loss of appetite, and hearing and color vision loss. Toluene has been linked to birth defects in children of exposed mothers.

Xylenes

The plume of groundwater contaminants contains xylenes, although the dimensions of the xylene component of the plume have not been estimated. The highest concentration of xylene in the plume is 5,700 µ/L. *Mar. 2019 Monitoring Rept.* at 3-7. For comparison, the maximum contaminant level for xylenes is 10,000 µ/L. 40 C.F.R. § 141.61(a) (2019). The health-based New Mexico ground water quality standard for xylenes is 620 µ/L. 20.6.2.3103.A(1)(aa) NMAC. Thus, although the concentration of xylene in the plume is below the maximum contaminant level, it is more than 9 times the State ground water quality standard.

According to the ATSDR, human exposure to xylenes can cause headaches, lack of muscle coordination, dizziness, confusion, irritation to the skin, eyes, nose, and throat, and lung problems.

1,2,4-Trimethylbenzene

The groundwater plume also contains 1,2,4-trimethylbenzene. The highest concentration of 1,2,4-trimethylbenzene in the plume is 220 µ/L. *Mar. 2019 Monitoring Rept.* at 3-7. The EPA tap water limit for 1,2,4-trimethylbenzene is 15 µ/L. Thus, the concentration of 1,2,4-trimethylbenzene in the plume is nearly 15 times EPA limit.

According to EPA, dermal exposure to 1,2,4-trimethylbenzene can cause skin irritation in humans. Short-term inhalation can cause lung irritation, headaches, fatigue, and drowsiness, and long-term inhalation may cause nervousness, tension, and bronchitis.

Naphthalene

The plume of groundwater contaminants also contains naphthalene, a polynuclear aromatic hydrocarbon. The highest concentration of naphthalene in the plume is 220 µ/L. *Mar. 2019 Monitoring Rept.* at 3-7. The health-based New Mexico ground water quality standard for naphthalene is 30 µ/L. 20.6.2.3103.A(1)(jj) NMAC. Thus, the concentration of naphthalene in the plume is more than 7 times the State ground water quality standard.

Naphthalene is a possible human carcinogen. According to EPA, exposure of humans to naphthalene vapors causes nausea, vomiting, and abdominal pain. It may also cause liver damage. According to the ATSDR, inhalation or ingestion of naphthalene can result in hemolytic anemia, particularly in infants.

The Albuquerque Bernalillo County Water Authority operates five drinking water production wells in the Ridgecrest well field. Two of these wells, Ridgecrest 3 and Ridgecrest 5,

are approximately two miles to the northeast of the bulk fuels facility, and they are less than a mile from the leading edge of the ethylene dibromide plume.

As of this date, although twenty years have passed since the Air Force acknowledged the release of petroleum-based fuels, the Air Force is still in the process of fully delineating the plume of groundwater contamination, and a final remedy has neither been evaluated nor implemented. On March 31, 2014, the Air Force submitted to the New Mexico Environment Department a RCRA Facility Investigation Report addressing the vadose zone, and a second RCRA Facility Investigation Report addressing groundwater, both dated March 2014. On August 27, 2014, however, the Air Force retracted the two reports. The Air Force submitted a new RCRA Facility Investigation Report on January 20, 2017, but the Environment Department concluded, in a letter dated August 3, 2017, that the report was seriously deficient, identifying three major issues. The Environment Department sent a subsequent "notice of deficiency" letter to the Air Force on November 16, 2017. On August 29, 2018, the Air Force submitted to the Environment Department a Phase 1 RCRA Facility Investigation Report for the Bulk Fuels Facility. It has yet to be approved by the Environment Department. As of this date, there is no written work plan for completing the investigation or implementing cleanup of the groundwater contamination, and there is no written schedule or enforceable milestone deadlines for doing so.[5] In short, there are no enforceable cleanup requirements in place.

Given these facts, DOD, and its service the Air Force, are liable for injunctive relief in an action brought by SWOP, New Mexico Voices for Children, and the Residents to address the petroleum fuel contamination at, and migrating from, Kirtland Air Force Base under section 7002(a)(1)(B) of RCRA. That section provides that "any person may commence a civil action on his own behalf":

> (B) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past or present transporter, past or present owner or operator of a treatment, storage, or disposal facility, who has contributed to or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

42 U.S.C. § 6972(a)(1)(B).

First, SWOP, New Mexico Voices for Children, and the Residents have the authority to bring an action under RCRA. SWOP is a not-for-profit corporation organized under the laws of the State of New Mexico and a "person" within the meaning of sections 1004(15) and 7002(a) of

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[5] The Air Force has submitted to the Environment Department work plans for several discrete and limited tasks. But the work plans have no meaningful deadlines. For example, the *Work Plan for the Bulk Fuels Facility Expansion of Dissolved-Phase Plume Groundwater Treatment System Design, Solid Waste Management Unit ST-106/SS-111* (Revision 2 Jan. 2017) states at p. 4-1 that the project schedule is provided in Appendix C. The nine items listed in Appendix C either had already been completed, are ongoing monitoring and maintenance activities, or are subject to a "schedule" so vague as to be meaningless (e.g., installation of extraction well in "summer 2017"). The *Work Plan for Vadose Zone Coring, Vapor Monitoring, and Water Supply Sampling, Bulk Fuels Facility, Solid Waste Management Unit ST-106/SS-111* (Revision 1 Dec. 2017) states at p. 4-1 that the project schedule is provided in Appendix H. Appendix H of the document is empty.

RCRA, 42 U.S.C. §§ 6903(15), 6972(a). New Mexico Voices for Children is likewise a not-for-profit corporation organized under the laws of the State of New Mexico and a "person" within the meaning of sections 1004(15) and 7002(a) of RCRA, 42 U.S.C. §§ 6903(15), 6972(a). State Senator Antoinette Sedillo Lopez, State Senator Mimi Stewart, State Representative G. Andres Romero, Reynaluz Juarez, Lucille Cordova, and Dante Smith are each natural persons and "persons" within the meaning of sections 1004(15) and 7002(a) of RCRA, 42 U.S.C. §§ 6903(15), 6972(a).

Second, the prospective plaintiffs all have standing to bring an action in federal court under section 7002(a)(1)(B) of RCRA. SWOP has standing to bring such an action because: 1) SWOP is a not-for-profit corporation organized for charitable purposes including, among other purposes, to empower disenfranchised people in New Mexico to realize racial and gender equality and social and economic justice; 2) among its core principles is that all people have the right to healthy, sustainable environments in which to live, work, and play; 3) it has worked on environmental pollution issues in the past, including its "Breathe In New Mexico" campaign; 4) some of its members reside in homes that are located on property above or near the plume of groundwater contaminants; 5) some of its members own residential property that may have declined in value due to the proximity of the plume of groundwater contaminants; and 6) some of its members own or reside in homes within Distribution Zone 3 which is served in part by the Ridgecrest 3 and Ridgecrest 5 municipal supply wells and obtain their drinking water from the Authority.

New Mexico Voices for Children has standing to bring such an action because: 1) it is a not-for-profit, non-partisan, state-wide organization dedicated to carefully assessing and vigorously advancing the health and well-being of children, youth, families, and communities in New Mexico through, among other things, advocacy; 2) among the purposes for which New Mexico Voices for Children was created are to develop and implement actions that support and promote the rights of children to grow in a healthful, secure, affirming, and interdependent environment and to enable children to develop to their full individual potential; 3) it has engaged in judicial advocacy on behalf of children in the past; 4) New Mexico children reside in homes that are located on property above or near the plume of groundwater contaminants; and 5) New Mexico children reside in homes within Distribution Zone 3 which is served in part by the Ridgecrest 3 and Ridgecrest 5 municipal supply wells and obtain their drinking water from the Authority.

State Senator Antoinette Sedillo Lopez has standing to bring such an action because: 1) she resides in the City of Albuquerque; 2) she represents New Mexico Senate District 16 which includes Kirtland Air Force Base and also includes part of the residential neighborhood north of Kirtland Air Force Base that overlies the plume of groundwater contaminants; and 3) she obtains his drinking water from the Authority.

State Senator Mimi Stewart has standing to bring such an action because: 1) she resides in the City of Albuquerque; 2) she represents New Mexico Senate District 17 which includes part of the residential neighborhood north of Kirtland Air Force Base that overlies the plume of groundwater contaminants and also includes the Ridgecrest 3 and Ridgecrest 5 municipal supply wells; and 3) she obtains her drinking water from the Authority.

State Representative G. Andres Romero has standing to bring such an action because: 1) he resides in the City of Albuquerque; 2) he represents New Mexico State House District 10 which includes part of the residential neighborhood adjacent to Kirtland Air Force Base that overlies the plume of groundwater contaminants and also includes the Ridgecrest 3 and Ridgecrest 5 municipal supply wells; and 3) he obtains drinking water from the Authority.

Lucille Cordova has standing to bring such an action because: 1) she owns and reside in a home that is located on property near the plume of groundwater contaminants, 2) she owns residential property that may have declined in value due to the proximity of the plume of groundwater contaminants; and 3) she owns and reside in a home within Distribution Zone 3 which is served in part by the Ridgecrest 3 and Ridgecrest 5 municipal supply wells and obtains her drinking water from the Authority.

Reynaluz Juarez has standing to bring such an action because: 1) she resides in a home that is close to the plume of groundwater contaminants, and 2) she resides in a home within Distribution Zone 3 which is served in part by the Ridgecrest 3 and Ridgecrest 5 municipal supply wells and obtains her drinking water from the Authority

Dante Smith has standing to bring such an action because: 1) he resides in a home that is close to the plume of groundwater contaminants; 2) he resides in a home within Distribution Zone 3 which is served in part by the Ridgecrest 3 and Ridgecrest 5 municipal supply wells and obtains his drinking water from the Authority; and 3) he works as a volunteer at the Cesar Chavez Community Center, which is located over the plume of groundwater contaminants.

Third, DOD and the Air Force are liable for the endangerment under RCRA. DOD and the Air Force is each a "person" within the meaning of sections 1004(15) and 7002(a)(1)(B) of RCRA, 42 U.S.C. §§ 6903(15), 6972(a)(1)(B). DOD and the Air Force is each the "owner" and the "operator" of the bulk fuel facility at Kirtland Air Force Base within the meaning of section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B). DOD and the Air Force have each engaged in and contributed to the "handling," "storage," and "disposal" of petroleum based fuels, including at various times aviation gasoline, JP-4, JP-8, gasoline, and diesel fuel, at the bulk fuels storage facility at Kirtland Air Force Base, within the meaning of sections 1004(3), 1004(33), and 7002(a)(1)(B) of RCRA, 42 U.S.C. §§ 6903(3), 6903(33), 6972(a)(1)(B). Moreover, Congress has clearly and unambiguously waived the sovereign immunity of the United States – including DOD and the Air Force – in section 6001(a) of RCRA, 42 U.S.C. § 6961(a).

Fourth, the federal district court would have jurisdiction over this action under 28 U.S.C. §§ 1331 (federal question) and 1346 (United States as a defendant), and 42 U.S.C. § 7002(a).

Fifth, the petroleum-based fuels that have leaked from the bulk fuels facility at Kirtland Air Force Base are subject to section 7002(a)(1)(B) of RCRA. Petroleum-based fuels that have leaked or otherwise been released into the environment are "solid waste" within the meaning of sections 1004(27) and 7002(a)(1)(B) of RCRA, 42 U.S.C. §§ 6903(27), 6972(a)(1)(B). *E.g.*, *Albany Bank & Trust Co. v. ExxonMobil Corp.*, 310 F.3d 969, 973-74 (7th Cir. 2002); *Zands v. Nelson*, 779 F. Supp. 1254, 1261-64 (S.D. Cal. 1991). Further, RCRA defines the term "hazardous waste" broadly to mean:

> [A] solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—
>
> (A) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
>
> (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

42 U.S.C. § 6903(5). Petroleum-based fuels that have leaked or otherwise been released into the environment – because they contain toxic and hazardous constituents such as benzene, ethylbenzene, toluene, xylenes, 1,2,4-trimethylbenzene, naphthalene and other polynuclear aromatic hydrocarbons, tetraethyl lead, and ethylene dibromide – are also "hazardous waste" within the meaning of sections 1004(5) and 7002(a)(1)(B) of RCRA, 42 U.S.C. §§ 6903(5), 6972(a)(1)(B).[6]

Sixth, the petroleum-based fuels that have leaked or otherwise been released from the bulk fuels facility at Kirtland Air Force Base endanger human health and the environment.[7] An endangerment to health does not necessarily mean that actual harm has occurred, but only that a risk of harm is present. *E.g.*, *Interfaith Cmty Org. v. Honeywell Int'l, Inc.*, 399 F.3d 248, 258 (3d Cir. 2005). The actual harm need not occur for many years. S. Rep. No. 98-284, at 59 (1983); *Cox v. City of Dallas*, 256 F.3d 281, 299 (5th Cir. 2001). The court need not wait until contaminants have entered City of Albuquerque drinking water wells before ordering injunctive relief. Moreover, an endangerment to the environment can be demonstrated by soil or groundwater contamination. Soil and groundwater are part of the "environment" within the meaning of section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B). *See, e.g., Raymond K. Hoxsie Real Estate Trust v. Exxon Educ. Found.*, 81 F. Supp. 2d 359, 367 (D.R.I. 2000).

Consequently, SWOP, New Mexico Voices for Children, and the Residents contend that DOD and the Air Force have engaged in or contributed to the handling, storage, and disposal of solid wastes and hazardous wastes – specifically petroleum-based fuels that have leaked from the bulk fuels facility at Kirtland Air Force Base – that may present an imminent and substantial endangerment to health and the environment within the meaning of section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B).

The names, addresses, and telephone numbers of SWOP, New Mexico Voices for Children, and the Residents (plaintiffs) in this matter are as follows:

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[6] Significantly, the broad *statutory* definition of "hazardous waste" applies to actions under section 7002(a)(1)(B) of RCRA, as opposed to the somewhat narrower *regulatory* definition of "hazardous waste" found at 40 C.F.R. § 261.3(a) (2019). *See* 40 C.F.R. § 261.1(b)(2) (2019); *see also Military Toxics Project v. EPA*, 146 F.3d 948, 951 (D.C. Cir. 1998).

[7] Because section 7002(a)(1)(B) is written in the disjunctive – "health *or* the environment" – it is necessary for a plaintiff to demonstrate an endangerment only to one or the other. *See United States v. Conservation Chem. Co.*, 619 F. Supp. 162, 175, 192 (W.D. Mo. 1985) (interpreting the analogous provision of 42 U.S.C. § 6906(a)). In this matter, there is an endangerment to both.

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If you have any questions regarding this notice, please contact me at (505) 989-9022 or cdesaillan@nmelc.org. We would be happy to meet with representatives of the Air Force or the U.S. Department of Justice to discuss this matter, at their earliest convenience. Please let me know if you wish to schedule such a meeting.

Yours truly,

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