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COMMUNITY GROUPS SUE AIR FORCE OVER KIRTLAND JET FUEL CLEANUP

ALBUQUERQUE, N.M. – Today, New Mexico Voices for Children, the Southwest Organizing Project (SWOP), New Mexico State Senator Mimi Stewart, New Mexico State Senator Antoinette Sedillo Lopez, New Mexico State Representative G. Andrés Romero, and three residents of the impacted area filed a Complaint for Injunctive Relief in federal court against the U.S. Air Force and the U.S. Department of Defense.

The Complaint alleges that the Air Force has failed adequately to respond to the decades-long leak of gasoline and jet fuel from the Bulk Fuels Facility at Kirtland Air Force Base near Albuquerque. The lawsuit asserts that the leaking fuel presents an “imminent and substantial endangerment to health or the environment” due to the high levels of benzene and ethylene dibromide (EDB) – both human carcinogens – as well as other contaminants in soil and groundwater.

“We are taking this action because the federal government has failed to develop and implement adequate solutions to this problem,” said State Senator Mimi Stewart. “The response to this spill has moved far too slowly for far too long. Environmental clean-ups at other sites in NM are subject to rigorous, enforceable requirements. Let’s use those requirements for the Kirtland plume, instead of taking another 20 years to study the issue.

“Children have been born, grown up, and become adults while the Air Force has been dragging its feet and interminably delaying cleanup. We owe it to the next generation of children to make sure the Air Force delays no longer,” said Kenneth J. Martinez, Chair of the Board of Directors for New Mexico Voices for Children.

The lawsuit was filed under the Resource Conservation and Recovery Act (RCRA), a federal law that regulates hazardous wastes and requires the cleanup of hazardous chemicals. RCRA is one of the federal environmental laws that allow individuals and organizations to sue parties responsible for pollution, including the federal government, in order to get relief.

“After more than 20 years, the Air Force still has not fully characterized the nature of the plume and we still have no enforceable cleanup plan with meaningful schedules or deadlines,” said Charles de Saillan, Staff Attorney at the New Mexico Environmental Law Center, which represents the plaintiffs.

The Law Center sent a Notice of Intent to Sue to the Air Force on May 31, 2019. This prompted the Air Force to begin discussions with the Law Center and its clients, in response to which the Law Center drafted a consent decree in September for review by the Air Force. They have not responded substantively to that proposed decree.

“The consent decree would be a negotiated settlement agreement, but it would be enforceable in federal court,” said de Saillan. “It would establish a cleanup schedule with clear deadlines for completion of investigation and all cleanup work. If the deadlines were missed without good reason, penalties would accrue. It would also provide more opportunity for public involvement in the cleanup process. We need to hold the Air Force accountable to the communities that surround their bases.”

The Air Force discovered the jet fuel leak at the Kirtland air base Bulk Fuels Facility in 1999, although it likely had been leaking for decades before that. The New Mexico Environment Department has estimated the spill as between 5 million and 24 million gallons. The Albuquerque Bernalillo County Water Utility Authority (ABCWUA) operates five drinking water production wells in the Ridgecrest well field. Because of the threat to their wells, the ABCWUA has reduced pumping these high-quality wells to help prevent pulling the plume towards the well field.

The spill can be viewed as having three components:

- A plume of ethylene dibromide (EDB), a fuel additive, which moved though groundwater nearly a mile off the Air Force Base property to the north and northeast. EDB tends to move rapidly in groundwater, and it forms the leading edge of the plume. EDB is a known human carcinogen. Recent installation and operation of groundwater extraction wells has partially arrested the migration of this plume.
- A primary liquid-phase contaminant plume, which consists of jet fuel (JP-4 and JP-8), gasoline, and diesel fuel. In addition to the EDB, the liquid-phase plume also contains high levels of benzene (a known carcinogen), toluene (linked to birth defects), xylenes, and naphthalene (linked to hemolytic anemia in infants). This plume will be a continuing source of groundwater contamination until it is cleaned up.
- Vapor contamination in the “vadose zone” (between ground level and the water table), which also poses a significant cleanup challenge and health risk as the vapor rises to the surface.

An earlier group of plaintiffs, some the same as today, sent the Air Force a Notice of Intent to Sue in November 2015. The Air Force began discussions with the plaintiffs and the Law Center on cleaning up the soil and groundwater contamination more effectively and quickly. However, after the Trump administration took office, the Air Force abruptly ended discussions.

“The Air Force’s lack of urgency with the Kirtland leak is sadly reflected in the Air Force’s response to the per- and polyfluoroalkyl substances (PFAS) contamination at Cannon Air Force Base near Clovis and Holloman Air Force Base near Alamogordo,” said de Saillan. “This contamination has made groundwater around those bases undrinkable and has forced one large dairy out of business. The N.M. Environment Department filed a lawsuit against the Air Force in these PFAS cases because, much like at Kirtland, the Air Force has delayed cleanup.”

The New Mexico Environmental Law Center is a nonprofit, public interest law firm that provides free and low-cost legal services to frontline communities on environmental matters throughout New Mexico.

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Read the [Complaint](#) (February 3, 2020) and the [Notice Letter](#) (May 31, 2019)