



State of New Mexico

Michelle Lujan Grisham
Governor

August 2, 2019

Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: U.S. Air Force PFAS Contamination in New Mexico

Dear Administrator Wheeler,

I am in receipt of a letter dated July 19, 2019 affirming your agency's decision to not assist New Mexico in holding the U.S. Air Force accountable for violating federal and state law related to PFAS contamination of our land and water. The U.S. Environmental Protection Agency's (EPA) decision to not do everything under its current enforcement authorities – whether judicial or administrative – is inconsistent with its mission to protect public health and the environment. Further, it is a demonstrative example of EPA's failure to uphold compliance with federal environmental laws.

On March 5, 2019, the New Mexico Environment Department (NMED) under the leadership of Secretary James Kenney, initiated a legal action against the U.S. Air Force for violating the State's Hazardous Waste Act. Also, on March 5, 2019, Secretary Kenney sent the U.S. Air Force a letter providing notice that the State of New Mexico intended to pursue claims under the federal Resource Conservation and Recovery Act (RCRA) following the requisite 90-day notice period. You and then Regional Administrator, Anne Idsal, were also sent this letter. On July 24, 2019, a preliminary injunction and amended complaint to include federal RCRA claims were filed in District Court.

Further, you personally committed to Senator Tom Udall on April 3, 2019 during the Senate Appropriations hearing to assist NMED with legal and technical assistance in a confidential manner. None of the activities listed in the July 19, 2019 letter from your General Counsel and Assistant Administrator directly fulfill your commitment to support NMED in a legal or technical manner. Providing factsheets and offering webinars are not meaningful legal and technical assistance in pursuit of state and federal claims that would compel the U.S. Air Force to take responsibility for delineating the PFAS plume, remediating it and protecting our communities.

I stand by Secretary Kenney's assertion in the enclosed letter to Acting EPA Regional Administrator David Gray that a better outcome for environmental enforcement is when EPA is a true collaborative partner. Secretary Kenney is committed to ensuring that New Mexico maintains a robust RCRA program for the citizens of New Mexico pursuant to federal law and primacy agreements with EPA. In turn, I expect EPA will reciprocate by providing any and all necessary support to NMED regarding RCRA enforcement and this specific matter.

I look forward to you fulfilling your commitment to New Mexicans.

Sincerely,



Michelle Lujan Grisham
Governor
State of New Mexico

Enclosure

Cc: The Honorable Tom Udall
The Honorable Martin Heinrich
The Honorable Ben Ray Lujan
The Honorable Debra Haaland
The Honorable Xochitl Torres Small
James C. Kenney, Cabinet Secretary, New Mexico Environment Department