

Activists Resist DOD Bid To Block EPA Policy Changes During Cleanups

Environmentalists are pushing back against Defense Department (DOD) efforts to prevent EPA from revising remedial requirements midway through cleanups and are seeking a role in talks between the two agencies as they weigh how to address DOD concerns that new EPA risk assessments and policy interpretations are driving stricter cleanups.

“We are sympathetic to the desire to have a consistent set of regulatory requirements from U.S. EPA or other regulatory agencies. However, twenty-six years after the establishment of the Defense Environmental Restoration Program, we expect some natural evolution in cleanup regulation as new problems are discovered and the scientific knowledge of the impacts of pollutants changes,” according to an April 14 letter to top EPA and DOD officials from 55 activists representing communities surrounding military facilities.

The groups urge EPA and DOD to discuss concerns over cleanup issues “transparently with participation from affected communities, tribes and states,” and say they support a California congressman’s suggestion of creating a forum where regulators, the military and affected communities could seek ways to make cleanups faster, more efficient and more protective. EPA has not responded to the letter, but DOD has told activists it wants to talk about the issue, one activist says. EPA and DOD spokeswomen did not respond by press time to questions on the correspondence.

The activists’ push-back follows calls by Army Assistant Secretary for Installations, Energy & Environment Katherine Hammack’s March 7 urging House appropriators to block EPA’s recent attempts to change regulatory requirements at some military sites, charging the changes slow cleanups, prevent property transfers and may not be “good for the environment.” EPA officials in email to staff about the letter note the recent Army complaints to lawmakers over “changing regulations’ due to emerging science.”

In particular, the Army is concerned about sites where EPA is seeking to apply stricter cleanup requirements to address residual pesticides in the ground following the destruction of buildings where chemicals to prevent termite damage had been applied. Hammack and other top military environmental officials met with EPA waste chief Mathy Stanislaus March 8 to discuss the issue of changing cleanup standards, especially the “handful” of pesticide residue sites.

The dispute over residual pesticide cleanup has arisen at least three Army sites in Kansas. While the Resource Conservation & Recovery Act (RCRA) generally exempts such pesticides from corrective action requirements if they were applied in accordance with their “intended use,” Stanislaus last year said cleanup at these types of sites is now required because the buildings around which the pesticides were applied were slated for demolition — so the chemical’s intended use is no longer applicable. But military officials charged in part that EPA is changing its interpretation of its policies without a formal rulemaking.

The activist says the key difference between regulators and the military on the pesticide issue appears to be over who is responsible for remediating the pesticides — the military or the entity that acquires the property. This source believes some EPA regions previously may have allowed the military to transfer property without cleaning up the pesticide residue and now the Army “wants to whipsaw other regions into accepting the same practices, using the consistency argument and a questionable legal argument that the hazardous substances were legally applied” and therefore not subject to waste cleanup requirements.

During the March 7 hearing before the House Appropriations military construction subcommittee where Hammack raised her concerns, Rep. Kevin Yoder (R-KS) called on military officials to delineate how Congress should address changing EPA requirements. Yoder said new policy interpretations and revised risk assessments, which in some cases are forcing more-rigorous and costly cleanups on military bases, are important matters that Congress should examine.

But Rep. Sam Farr (D-CA) — whose district includes Fort Ord, a former military base with unexploded ordnance and other complicated cleanup issues — cautioned the committee about the difficulty in rewriting regulations. He advocated instead for creating a team in which regulators, the regulated parties and other stakeholders meet and agree on what needs to be cleaned up.

In addition to Hammack’s remarks about concerns over EPA-proposed changes to both ongoing and completed cleanups, Air Force environment chief Terry Yonkers also expressed fear at the hearing that a final risk assessment for trichloroethylene (TCE), released by EPA last fall, could significantly affect the cost of cleanups for the Air Force.

But the activist doubts the new TCE risk value will force the reopening of many remedies, although the source says conflicts may arise over adopting a more stringent TCE standard at sites where a remedial decision is still pending.