

# New Mexico petitions U.S. Court of Appeals over PFAS water contamination by Department of Defense

By NMED • FEB 1, 2021

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Today, the New Mexico Environment Department (NMED) and the New Mexico Attorney General (NMAG) filed a writ of mandamus (<https://www.env.nm.gov/wp-content/uploads/2021/02/Writ-of-Mandamus-PFAS.pdf>) requesting that the Fourth Circuit Court vacate its decision to transfer New Mexico's PFAS litigation into multi-district litigation in South Carolina and remand the matter back to the District of New Mexico. The State argues the action was an unconstitutional violation of New Mexico's sovereignty and will result in extreme delays in the case's movement, putting public health and the environment at further risk.

NMED and the NMAG assert that the PFAS contamination caused by the U.S. Department of Defense (DOD) at Cannon and Holloman Air Force Bases will continue to present an imminent and substantial endangerment to public health and the environment unless the DOD takes immediate action. The multi-district litigation is likely to take many years – time that New Mexico does not have to address this imminent public health threat.

"What is at stake is the health and livelihood of New Mexico families – families that just want the Defense Department to do the right thing and get PFAS out of their lives and communities for good," said NMED Cabinet Secretary James Kenney. "Until the Department of Defense makes PFAS – not New Mexicans – the enemy, the Environment Department will not rest in our pursuit of resolving this matter."

"New Mexicans affected by this dangerous pollution deserve to have their day in court in New Mexico, where this case will get the immediate and proper attention it deserves," said Attorney General Hector Balderas. "We will continue to fight to ensure that our families and our environment are protected, and that the United States government is held accountable for this harm."



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If the petition is granted by the U.S. Court of Appeals in South Carolina, the case would be transferred to the U.S. District of New Mexico this calendar year, where the State's motion to force the DOD to start cleaning up the pollution could move forward. In the interim, NMED, with the assistance of the Attorney General, will continue to advocate on behalf of New Mexicans to ensure the DOD is held accountable for PFAS contamination in our state. This includes spending state resources to delineate the extent of the contamination using state funds while the Department of Defense continues to refuse to take action.

PFAS are a group of manmade chemicals used in a variety of products, including food packaging, nonstick pans and aqueous film forming foams (AFFF) used to extinguish fuel-based fires. Growing concerns about PFAS contamination are driven by evidence that exposure to some PFAS chemicals can lead to adverse health effects such as increased cholesterol, reproductive problems and cancer. The U.S. Environmental Protection Agency (U.S. EPA) has not yet established a drinking water standard for any of the PFAS chemicals, but has established a Lifetime Health Advisory level for two chemicals in the PFAS family – PFOA and PFOS – at 70 parts per trillion. According to the U.S. EPA, someone who

drinks water exceeding 70 parts per trillion of PFOA and PFOS over a lifetime may suffer adverse health effects.


More information about how NMED is addressing PFAS throughout the state was announced on Jan. 18, 2021 and is available here (<https://www.env.nm.gov/wp-content/uploads/2021/01/2021-01-18-Two-new-PFAS-efforts-underway.pdf>).

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