Pentagon Fights EPA On Pollution Cleanup

By Lyndsey Layton
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The Defense Department, the nation's biggest polluter, is resisting orders from the Environmental Protection Agency to clean up Fort Meade and two other military bases where the EPA says dumped chemicals pose "imminent and substantial" dangers to public health and the environment.

The Pentagon has also declined to sign agreements required by law that cover 12 other military sites on the Superfund list of the most polluted places in the country. The contracts would spell out a remediation plan, set schedules, and allow the EPA to oversee the work and assess penalties if milestones are missed.

The actions are part of a standoff between the Pentagon and environmental regulators that has been building during the Bush administration, leaving the EPA in a legal limbo as it addresses growing concerns about contaminants on military bases that are seeping into drinking water aquifers and soil.

Under executive branch policy, the EPA will not sue the Pentagon, as it would a private polluter. Although the law gives final say to EPA Administrator Stephen L. Johnson in cleanup disputes with other federal agencies, the Pentagon refuses to recognize that provision. Military officials wrote to the Justice Department last month to challenge EPA's authority to issue the orders and asked the Office of Management and Budget to intervene.

Experts in environmental law said the Pentagon's stand is unprecedented.

"This is stunning," said Rena Steinzor, who helped write the Superfund laws as a congressional staffer and now teaches at the University of Maryland Law School and is president of the nonprofit Center for Progressive Reform. "The idea that they would refuse to sign a final order -- that is the height of amazing nerve."

Pentagon officials say they are voluntarily cleaning up the three sites named in the EPA's "final orders" - - Fort Meade in Maryland, Tyndall Air Force Base in Florida and McGuire Air Force Base in New Jersey.

Fort Meade borders residential areas in fast-growing Anne Arundel County; Tyndall and McGuire are in less-populated regions. At all three sites, the military has released toxic chemicals -- some known to cause cancer and other serious health problems -- into the soil and groundwater.

But the EPA has been dissatisfied with the extent and progress of the Pentagon's voluntary efforts.

"Final orders" are the EPA's most potent enforcement tool. If a polluter does not comply, the agency usually can go to court to force compliance and impose fines up to $28,000 a day for each violation.
Cleanup agreements drafted by the EPA for the 12 other sites contain "extensive provisions" that the Pentagon finds unacceptable, officials said.

Congress established the Superfund program in 1980 to clean up the country's most contaminated places, and of the 1,255 sites on the list the Pentagon owns 129 -- the most of any entity. Other federal agencies with properties on the list include NASA and the Energy Department, but they have signed EPA cleanup agreements without protest.

The law was amended in 1986 to stipulate that polluting government agencies should be treated the same as any private entity. During the 2000 presidential campaign, George W. Bush pledged to direct all federal facilities to comply with environmental laws and "make them accountable."

In dealing with cleanup efforts, some military branches have been more cooperative than others. The Navy has signed cleanup agreements for all of its Superfund sites, whereas the Air Force has not signed one in 14 years.

But Superfund sites are only one aspect of the Pentagon's environmental problems. It has about 25,000 contaminated properties in all 50 states, and it will cost billions and take decades to clean them up. The Pentagon has a tremendous financial stake in not only how the sites are cleaned but also in which chemicals the government characterizes as toxic.

Rep. John D. Dingell (D-Mich.), chairman of the House Energy and Commerce Committee, is investigating the Pentagon's compliance with environmental regulation. He said it is evading the law through political maneuvers.

"I find it troubling, not only that the Department of Defense is in flagrant violation of final orders issued by the EPA, but that DOD is now attempting to circumvent the law and Congress' intent by calling on the Department of Justice and the Office of Management and the Budget to intervene," he said in a statement. "The EPA is the expert agency charged by Congress with enforcing our environmental laws, and the Administration needs to allow them to do their job to protect the public health and safety."

EPA spokeswoman Roxanne Smith said final orders were issued because the agency is worried about drinking water and soil contamination at Fort Meade, Tyndall and McGuire. "Under DOD's management, some of these sites have languished for years, with limited or no cleanup underway," she said.

Other examples of Pentagon resistance to the EPA include its successful effort this year to get greater influence in the process the agency uses to analyze the risks of industrial chemicals. Congressional Democrats, environmental groups and the Government Accountability Office have criticized the change.

The Pentagon has also fought EPA efforts to set new pollution standards on two toxic chemicals widely found on military sites: perchlorate, found in propellant for rockets and missiles, and trichloroethylene (TCE), a degreaser for metal parts.

TCE is the most widespread water contaminant in the country, seeping into aquifers across California, New York, Texas, Florida and elsewhere.

More than 1,000 military sites are contaminated with TCE.

In the late 1990s, EPA scientists found TCE to be much more toxic than earlier believed. In 2001, the
EPA prepared tougher new drinking-water standards for TCE to limit human exposure, but the Pentagon challenged those standards and took its case to the White House. The process ground to a halt; seven years later, the EPA still has not issued new TCE limits.

Since Bush took office, one military site has been added to the Superfund list -- the Navy bombing range at Vieques Island, off Puerto Rico.

The site was added after the Puerto Rican governor exercised a federal statute to force its placement on the list.

Maryland has been pushing the EPA to add Fort Detrick in Frederick County to the Superfund list. This month, the state sent a forceful letter to the EPA, suggesting it would follow Puerto Rico's strategy. On Thursday, the EPA informed Maryland that in September it will recommend Fort Detrick be added.

Shari T. Wilson, Maryland's secretary of the environment, said the state needs the Superfund designation because of the Army's erratic efforts to clean up Fort Detrick, which for decades served as the service's center for development of chemical and biological weapons. She said the state wants an independent agency that is focused on public health to oversee the effort and hold the Pentagon accountable.

In 1992, the state found chemical contamination in private wells just outside Fort Detrick. Under a voluntary agreement with the state, the Army removed chemical-soaked earth and rusting drums filled with toxins, set up monitoring wells and connected nearby residents to the city water supply.

Two years later, TCE was detected in a spring outside the base -- the first time it was noticed beyond the facility's boundaries. State officials say that the presence of TCE in the aquifer is a serious concern but that they do not think the contamination poses an immediate health threat.

For nearly 10 years, Maryland has asked the Pentagon to analyze the extent and spread of groundwater contamination, a study that will happen as a matter of course if it is added to the Superfund list.

"It's frustrating," Wilson said. "We need to move ahead and take the steps necessary to ensure for the public the groundwater is protected."
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