

ENTERED

# METRO & NM

ALBUQUERQUE JOURNAL | SATURDAY, JUNE 1, 2019 | PAGE A7

## Air Force facing lawsuit over Kirtland cleanup

### Legislators, community groups file notice to sue

Copyright © 2019 Albuquerque Journal

BY SCOTT TURNER  
JOURNAL STAFF WRITER

Two organizations, three legislators and three individuals are threatening to sue the Air Force and the Department of Defense over the cleanup of jet fuel contamination at Kirtland Air Force Base.

The SouthWest Organizing Project, New Mexico Voices for Children, state

Sens. Antoinette Sedillo Lopez and Mimi Stewart, state Rep. G. Andres Romero and three residents of the impacted area on Friday sent a notice of intent to sue to the U.S. Air Force and the U.S. Department of Defense, asserting the Air Force has created an "imminent and substantial endangerment to health or the environment" resulting from the bulk fuel spill at Kirtland Air Force Base.

The notice was sent under the Resource Conservation and Recovery Act, a federal law that regulates hazardous wastes and requires the cleanup of hazardous chemical

constituents.

"It is disappointing to see Kirtland Air Force Base fail to work with state regulators, environmental organizations and the public to ensure that our drinking water is safe," Sedillo Lopez said in a news release. "I urge the leadership to take our concerns very seriously."

Charles de Saillan, staff attorney at the New Mexico Environmental Law Center, claimed there wasn't an "enforceable cleanup plan with meaningful schedules or deadlines.

"We want to see the Air Force pro-

See AIR FORCE >> A8



Rep.  
G. Andres  
Romero



Sen.  
Antoinette  
Sedillo  
Lopez



Sen.  
Mimi  
Stewart

KAFB4811



# Air Force facing lawsuit over Kirtland fuel cleanup

From PAGE A7

ceed under a consent decree or other court order or enforceable agreement that establishes a schedule with clear deadlines. If the deadlines are missed without good reason, penalties should accrue," he said.

Kirtland Air Force Base spokeswoman Eva Blaylock said base officials would not comment on the intent to sue. She said the Department of Justice leads the work on all federal notices of intent filed in federal court.

Deputy Assistant Secretary of the Air Force Mark Correll told the Albuquerque Bernalillo County Water Utility Authority in April the Air Force remained committed "to make sure no one in this city or on Kirtland Air Force Base will drink water that is EDB (ethylene dibromide) contaminated."

He said, however, efforts to rid the groundwater of jet fuel contamination at Kirtland Air Force Base would continue for years to come.

The leak was discovered in 1999 after jet

fuel was found on the surface near a base fueling facility. It was eventually found that holes had worn in underground pipes used to carry jet fuel from delivery tankers to storage tanks and that millions of gallons had been slowly leaking, undetected, for decades.

Correll said the pump-and-treat system put into place north of Ridgecrest Drive has stopped and started to collapse the 7,000-foot plume caused by the contamination. He said 86% of the mass of EDB has been removed from the target area north of Ridgecrest. He said other corrective measures would be determined in the Corrective Measures Evaluation, which he hoped would start next year.

Environment Secretary James Kenney said in his department's draft of a strategic plan addressing the cleanup that the Air Force has made strides in cleaning up the fuel spill but that the work is far from complete. Under the draft plan, work would continue along with more modeling and monitoring. The state also is requiring

the Air Force to submit more data related to the soil vapor contamination.

U.S. Rep. Deb Haaland, D-N.M., who represents the area affected by the contamination, said she was not aware of the intent to sue. But she has questioned former Air Force Secretary Heather Wilson about the cleanup and said she has heard from several residents concerned about the contamination.

"It's an ongoing issue that so many people are very concerned about," Haaland said. "So many of us are working diligently to make sure this issue is addressed. Community leaders don't feel they are getting honest reporting from the folks who are doing the cleanup. I think there needs to be a lot more transparency, and we've been working on that."

De Saillan agreed there needed to be "more opportunity for public involvement in the cleanup process."

The Resource Conservation and Recovery Act is one of the federal environmental laws that allow individuals and organiza-

tions to sue parties responsible for pollution, including the federal government, in order to get relief.

"Laws exist in the U.S. for people to take action when they feel that the government is failing to protect human health and resources," says Douglas Meiklejohn, New Mexico Environmental Law Center Executive Director.

The Air Force and Department of Defense have 90 days to respond to the notice, after which the community members may start legal action against the Air Force, the Department of Defense, or both, seeking injunctive relief — an order from the court for cleanup of the plume and its toxic chemicals.

As of April, Correll said the Air Force had spent \$125 million toward the cleanup. He said funding was not an issue with the project. Correll said 615 million gallons of groundwater had been treated so far, and he said more than 4,800 tons of soil had been removed from the source area.

# LOCAL & REGION

## Coalition to sue Kirtland over jet fuel cleanup

Notice is part of effort to implement firm deadlines to remedy spill

By Steve Terrell  
sterrell@sfnwmexican.com

A coalition of state lawmakers, nonprofit groups and private citizens filed notice Friday that they intend to sue the U.S. Air Force in an effort to get firm deadlines for cleaning up a jet fuel leak near Albuquerque's Kirtland Air Force Base.

The state Environment Department has estimated between 5 million and 24 million gallons

was spilled. The Albuquerque Bernalillo County Water Authority operates two drinking water production wells less than a mile from the leading edge of a plume from the fuel leak, which is believed to have been seeping into the ground for decades.

"It has been at least 20 years since the Air Force discovered the spill, and we still have no enforceable cleanup plan with meaningful schedules or deadlines," Charles de Saillan, a staff lawyer at the Environmental Law Center, said in a news release.

State Sens. Antoinette Sedillo Lopez and Mimi Stewart and state Rep. G. Andres Romero — all

Albuquerque Democrats — along with the Southwest Organizing Project, New Mexico Voices for Children and three people who live near the military base say they will sue under a federal law that requires cleanup of hazardous wastes.

They will be represented by the New Mexico Environmental Law Center, which the release says was involved in a previous effort to negotiate a clean-up plan.

After an earlier group filed notice in November 2015, the statement says, "The Air Force began discussions with the plaintiffs and the Law Center on cleaning up the soil and groundwater contamina-

tion more effectively and quickly. However, after the [Donald] Trump administration came in, the Air Force abruptly ended discussions."

In the release, de Saillan said he wants the Air Force placed under a consent decree or some other kind enforceable agreement that establishes clear deadlines. "If the deadlines are missed without good reason, penalties should accrue," he said. "The Air Force needs to be held accountable."

Air Force officials have said they are committed to cleaning up the contamination. An Air Force

Please see story on Page A-6

## Coalition to sue Kirtland

*Continued from Page A-7*

spokeswoman contacted Friday did not respond to a request for comment on the newly filed notice.

The Air Force has spent \$125 million cleaning up soil and water around the site. More than 585 million gallons of water have been extracted, treated to less-than-detectable concentrations of contamination and either used to water a golf course or injected back into the aquifer.

More than 4,200 tons of contaminated soil also was removed and vapor was pulled from the soil for over a decade.

The Air Force and Department of Defense have 90 days to respond to the notice. After that, the parties can seek a court order.

While the leak was discovered in 1999, it might have been leaking since the 1950s.

According to the news release, ethylene dibromide, a fuel additive, forms the leading edge of one plume.

While the effects on people haven't been well-documented, the U.S. Environmental Protection Agency says animal studies indicate that chronic exposure may result in toxic effects to the liver, kidney and reproductive organs.

The good news is that recent installation and operation of groundwater extraction wells has partially arrested the migration of this plume.

Another plume that consists of jet fuel, gasoline and diesel fuel contains high levels of benzene, a known carcinogen; toluene, which is linked to birth defects; and naphthalene, which is linked to hemolytic anemia in infants.

*Material from the Associated Press was used in this report.*

Albuquerque Journal

## **Editorial: Kirtland Lawsuit 20 Years, Millions of Gallons Late**

*By Albuquerque Journal Editorial Board*  
Friday, June 7, 2019

Suing the military-industrial complex over a leak that spewed millions of gallons of jet fuel into the ground seems like a pretty righteous cause at first blush.

But a closer look at the intent to sue recently announced by the SouthWest Organizing Project, New Mexico Voices for Children and three New Mexico Democrats actually smacks more of political posturing than any nobler motivation.

It may have been appropriate 20, 10 – maybe even five – years ago. But today? Not so much.

First, the history. When the leak at Kirtland Air Force Base was first discovered, we were panicking about Y2K and watching the Denver Broncos bask in the glow of a second-straight Super Bowl win. It was 1999. Two decades ago.

At the time, investigators didn't know how long faulty pipes had been spilling jet fuel into the ground. It might have been decades. Despite signs that the leak posed serious public health and environmental threats, the Air Force and thus KAFB failed to marshal their forces and muster up a solution.

Frustration mounted as base leaders downplayed and delayed addressing the leak, year after year. By 2010, a Journal report cited an estimate that the volume was nearly 8 million gallons, "Exxon Valdez-scale numbers," as a May 4 article put it, contaminating a massive area of ground water.

It was 2015 by the time the Air Force installed a pump-and-treat system to keep contamination from spreading to drinking wells. The Air Force wins no prizes for speed here. But now it's 2019. Wells have been monitoring contaminants, and four extraction pumps have pulled out hundreds of millions of gallons of water to be purified. They can only extract so fast or they risk pulling other contaminants farther off base.

Yet it's only now that two advocacy groups, state Sens. Antoinette Sedillo Lopez and Mimi Stewart and state Rep. G. Andres Romero want to join neighbors in a lawsuit? According to an article in the Saturday Journal, New Mexico Environmental Law Center staff attorney Charles De Saillan complained there was no "enforceable cleanup plan with meaningful schedules or deadlines."

That critique no longer holds true.

U.S. Rep. Deb Haaland – who represents the area affected by contamination but is not a party to the case – said she would like to see more transparency. Fine, and she's the perfect person to

demand more information from Kirtland leadership, as did her predecessors, including now-Gov. Michelle Lujan Grisham.

But the Air Force is finally well into cleanup efforts. It's hard to see what could possibly be gained from a lawsuit at this point – apart from billable hours for lawyers, and, of course, always redeemable political points.

# Residents deserve enforceable KAFB plume cleanup

*Journal editorial on possible lawsuit was disappointingly misinformed*

BY SEN. MIMI STEWART  
ALBUQUERQUE DEMOCRAT

On May 31, the N.M. Environmental Law Center sent a letter to the Air Force and the Defense Department notifying them that its clients might file a lawsuit to compel cleanup of the bulk fuel spill at Kirtland Air Force Base. The letter was sent on my behalf, and that of two other legislators, the Southwest Organizing Project, N.M. Voices for Children, and three individuals who live and work in the International District of Albuquerque.

On June 7, the Journal ran an editorial, "Kirtland Lawsuit 20 Years, Millions of Gallons Late," which was critical of our action. The Journal editorial is disappointingly misinformed.

The editorial was right about one thing: the long history of Air Force inaction. The Air Force first discovered

the leak at its fuel storage facility in 1999, although it likely had evidence of a serious problem years earlier. The facility leaked an estimated 5 million to 24 million gallons of jet fuel, gasoline and diesel fuel. The resulting plume of groundwater contamination contains ethylene dibromide (EDB) and benzene, both carcinogens, among other toxic constituents. The Air Force dragged its feet for years while the plume migrated through groundwater nearly a mile toward the Ridgecrest wells, which contribute to Albuquerque's drinking water supply. Only in late 2015 did the Air Force install extraction wells to begin removing and treating contaminated groundwater.

The Air Force has made some limited progress in the last four years. The editorial points out that hundreds of millions of gallons of water were extracted and treated in 2018 — 217 million gallons in 2018 according to the Air Force. But it is useful to point out another statistic: the Air Force reports that it extracted 24,553 milligrams of EDB from that water in 2018, which is

barely enough to fill a shot glass.

Aside from the EDB plume, the large mass of spilled fuel remains in groundwater and will be a continuing source of contamination until it is cleaned up. After 20 years, the Air Force still has not begun to address this cleanup.

The editorial claims as "no longer true" our criticism that there is no enforceable cleanup plan with meaningful schedules or deadlines. But our criticism is as true now as it was when the leak was first discovered. The only plan we have seen is the Environment Department's 2019 Strategic Plan which, though informative, is seven pages, has no schedules or deadlines and is certainly not enforceable.

By contrast, environmental cleanup at other sites in New Mexico is subject to rigorous, enforceable cleanup requirements: e.g. Sandia National Laboratories, proceeding under a 2004 consent order issued by the Environment Department; Los Alamos National Laboratory, likewise

proceeded under a 2005 consent order, although progress slowed after the order was weakened in 2016; Sperton Technologies site in NW Albuquerque, conducted under a 2000 consent decree filed in federal court; and the BNSF Railway Superfund site in the South Valley, also conducted under a federal consent decree, entered in 2005. Each of these documents contains detailed technical requirements and a schedule with specific deadlines. Each document is enforceable and imposes penalties if the deadlines are not met. Nothing even remotely similar exists for cleanup at Kirtland.

The editorial also suggests that the notice letter was partly motivated to generate "billable hours for lawyers." The N.M. Environmental Law Center is a nonprofit, public interest law firm. It is not billing hours or charging any legal fees for its work on this matter.

Our constituents live over this plume. They deserve a specific, detailed cleanup plan with enforceable timelines instead of a 20-year science experiment.