

Steve Erickson

Attached, please find Whidbey Environmental Action Network's Comments on the draft PFAS remediation and investigation guidance.

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*Dedicated to the preservation and restoration of the native biological diversity
of Whidbey Island and the Pacific Northwest*

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TO: Washington State Parks and Recreation Commission
FROM: Steve Erickson, Litigation Coordinator
RE: Draft PFAS guidance for investigating & remediating PFAS contamination in Washington state

Please consider these comments on the draft guidance for PFAS contamination and remediation.

Section 2.2 should be expanded to address state regulatory authority regarding federal actors. This is warranted because US military installations are some of the worst PFAS contamination sources in Washington. The MTCA specifically includes federal agencies in the definition of "person" (RCW 70A.305.020(24)) and "potentially liable person" (§020(26)). Key aspects of state authority to discuss include when, where, and the extent of state authority:

- Over federally owned land that is contaminated.
- Over aquifers directly underlying federally owned land. Are these waters of the state with consequent state jurisdiction?
- Over non-federal lands where underlying aquifers are contaminated from sources on federal land.
- Over waters of the state being polluted from military sources.

Including this discussion and Ecology's conclusions regarding this subject is important. At the most recent Restoration Advisory Board (RAB) meeting for NAS Whidbey I was informed that the US military response to PFAS contamination has now been centralized at the Dept. of Defense and the military will continue to use the old inadequate EPA advisory contaminant level of 70 ppt until EPA issues its final Safe Drinking Water Act rule, currently expected in late August. However, the timeline presented by consultant's at the RAB meeting would delay actual remediation until the early-mid 2030s.

The investigation performed by NAS Whidbey to date has been inadequate to delineate the area currently contaminated and determine movement of this pollution. Given the extremely sluggish response to date by the military, the applicability of Ecology's authority under the MTCA (§305(030)(1)) to require military agency investigation and remediation needs to be explicitly clarified. The MTCA requires Ecology to "issue orders or agreed orders requiring potentially liable persons to provide the remedial action" (§305(050)(1)). Ecology needs to

determine under what conditions it can and must use this authority in situations stemming from military caused pollution.

In conclusion, we urge Ecology to clarify its authority regarding PFA pollution caused by the US military and then to use that authority.