



City Informs WPAFB and DOD of Intent to File Lawsuit for Contamination of the Wellfield

"Lawsuit Is 'Last Resort' To Protect Water Supply"

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Contact: Toni Bankston, toni.bankston@daytonohio.gov, 937-333-3614

Last week, the City of Dayton issued a formal Notice of Intent to Wright Patterson Air Force Base (WPAFB) and the Department of Defense (DOD), indicating the City's intention to file a lawsuit in the next 60 days in an effort to convince WPAFB and the DOD that action is needed now to address the PFAS (per-and polyfluoroalkyl substances) contamination leaching from its site.

"WPAFB is headquarters to a worldwide logistics system and world-class laboratory research. As the leading acquisition and development center in the U.S. Air Force, WPAFB is a beacon in our community. The City absolutely does not want to file this lawsuit," said Dayton City Manager Shelley Dickstein. "This is a last resort designed to spur action in the next 60 days to protect the region's drinking water and hopefully avoid the need to file the suit."

Dickstein continued, "We've invested more than four years trying get WPAFB and the DOD to agree to take steps to mitigate ongoing contamination coming from the Base into the City's Mad River Wellfield and the aquifer that supplies those wells. And, it's disappointing that WPAFB and the DOD have also declined an agreement, known as a tolling agreement, that would allow continued cooperative work on the contamination problem while extending the time the City has to file a lawsuit under federal law."

The intent of the suit would be to enforce environmental laws and obtain an order compelling WPAFB and the DOD to act to (1) stop the contaminants from entering the City's wellfield, (2) remediate the current contamination, and (3) reimburse the City for its damages and costs incurred to monitor the contamination and reduce impacts on the City's wells and water supply.

Unless the federal parties act quickly to enter into an agreement with the City, an individual or combined lawsuit will be filed under the environmental statutes and the Federal Tort Claims Act (FTCA) no later than May 4, 2021, as required by law.

The City simply feels it has no choice and must take this unappealing action. Despite knowing that the contamination (1) is substantial and located at more than two dozen areas at the Base, and (2) has already migrated into the City's wellfield above U.S. EPA's action level, WPAFB has so far taken no mitigation or treatment steps and insists that it needs an additional 4-6 years or more of study before committing to any type of potential remedy. Because of the inaction, the City was forced to shut down major production wells (now shut down almost 4 years), and forced to develop and implement an expensive, complex pumping program for the remaining wells in order to minimize the threat from these chemicals.

Dayton officials have met with WPAFB numerous times, exchanging sampling data, and

submitting proposed mitigation steps to WPAFB. To assist the City, Ohio EPA issued several notices of violation and orders to WPAFB to take immediate steps to stop the contamination from migrating into the City's wellfield. In addition, Governor Mike DeWine sent two separate letters to the Secretary of Defense in mid- and late-2020 under the National Defense Authorization Act, requesting that DOD enter into a cooperative agreement to remediate the contamination. WPAFB and the DOD have rejected these requests.

While the City's finished water continues to be safe for its residents and customers, the current situation cannot continue without WPAFB action. Several hot spots at the Base are orders of magnitude above all current health advisory levels. "If these hot spots reach groundwater, we risk losing the entire Mad River Wellfield, and the result would be treatment and operational costs in the hundreds of millions of dollars to provide an alternative supply of drinking water," said Michael Powell, Director of the Department of Water. He added, "Taking immediate action now to prevent or drastically reduce further contamination will cost far less for everyone involved."

"We sincerely hope that WPAFB will act swiftly to remedy the contamination or, at minimum, consider entering into a tolling agreement to extend the statute of limitations so that we can continue to work together to fix this problem," Powell said. "Simply, we cannot maintain status quo indefinitely."

City Manager Dickstein noted that the Ohio EPA, WPAFB, and the City's Water Department collaborated to develop a list of interim, cost-effective steps that would significantly reduce sources of ongoing migration. "A tolling agreement would allow us to continue with these discussions and help WPAFB implement these necessary steps," she added. "I would very much like to continue these discussions and avoid litigation."

Ms. Dickstein concluded, "We truly want to avoid bringing suit against our regional partner. They have been great neighbors and partners in so many other aspects, and it's a shame that we are at this point. The City tried to work cooperatively with the Base and the U.S. Air Force for over four years, reaching out to three different Base Commanders after the contamination was discovered. Unfortunately, the response has not changed, leaving the City no choice but to file a lawsuit unless immediate action is taken. The bottom line is, we have no choice but to protect the region's water supply, which impacts the health and safety of almost 2.3 million Ohioans who rely on this aquifer as the sole source for their water."

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