



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 950 (as enacted)
Sponsor: Senator Jim Stamas
Senate Committee: Natural Resources
House Committee: Natural Resources

PUBLIC ACT 545 of 2016

Date Completed: 4-3-17

RATIONALE

The Wurtsmith Air Force Base, located in Oscoda County, was decommissioned in 1993. Since that time, Federal and State officials have worked to remediate the property with regard to a number of chemicals that were used at the base and later found to have infiltrated water supplies. In recent years, perfluorinated chemicals (PFCs), a component of firefighting foams used at the base beginning in 1970, were detected on the property as well as in the groundwater of the surrounding land. In 2012, the State issued an advisory warning people not to eat nonmigratory fish caught in nearby bodies of water. Concern increased in 2015, when elevated PFC levels were identified in two dozen residential wells in the area. More recently, it was found that the number of homes on well water in the area, urged to switch to the municipal system or find alternative drinking water, had risen from 60 to more than 300, and was continuing to grow.¹

Although the impact on human health of exposure to PFCs is not well known at this time, some residents of the area surrounding the Air Force Base have experienced symptoms and illnesses that some people believe could be connected to drinking contaminated water. While none of the well water samples taken near the base exceeded a standard set by the U.S. Environmental Protection Agency (EPA) for short-term PFC exposure, the PFC levels in the samples were higher than those detected in samples taken from the local municipal water system, which draws from Lake Huron. In light of the potentially harmful effects of PFCs, the local health department issued an advisory early in 2016 to residents whose wells were contaminated or at risk of contamination, urging them to use alternative water sources for drinking and cooking.

To address this situation, and others of the same nature that might arise in the future, it was suggested that State law should require the State or Federal government to supply an alternative water supply to users of a water source that has been affected by a harmful substance, and reimburse a State agency or local government for providing an alternative water supply, if the State or Federal government owns or owned property on which the harmful substance was used.

CONTENT

The bill amended the Safe Drinking Water Act to require the State or Federal government, if it owns or owned real property where a "substance of concern" was used, and other conditions are met, to do the following:

- Provide an alternative water supply to users of an "impacted water source" in the vicinity of that property.**
- Conduct long-term monitoring to delineate the migration of the substance of concern.**

¹ "DEQ: We don't yet know full extent of Wurtsmith Air Base contamination", *Detroit Free Press*, 11-13-2016.

- **Provide an alternative water supply to the users of additional impacted water sources identified by the monitoring.**
- **Reimburse a State agency or political subdivision that has provided an alternative water supply to users of an impacted water source.**

Specifically, if the State or Federal government is or was the owner or operator of real property at the time a substance of concern was used on the property, the State or Federal government must provide an alternative water supply to the users of an "impacted water source" in the vicinity of the real property if all of the following conditions are met:

- The Michigan Department of Health and Human Services (DHHS) has issued a public health advisory for drinking water covering the geographic area in the vicinity of the real property.
- The substance of concern that is the subject of the advisory is a substance that is or was used on the real property.
- The State or Federal government acknowledges that the substance has migrated from the real property and is present in groundwater that provides water to the impacted water source.

Under these conditions, the State or Federal government also must conduct long-term monitoring to delineate the extent of the migration and give the results to the DHHS. If the monitoring identifies additional impacted water sources containing the substance of concern, the State or Federal government must provide an alternative water supply for the users of those additional impacted water sources.

If a State agency or a political subdivision, including a local health department, has provided an alternative water supply to the users of an impacted water source and the conditions described above are met, the State or Federal government that is or was the property owner must reimburse the State agency or political subdivision for the cost of providing the alternative water supply.

The bill defines "alternative water supply" as a long-term supply of potable water for drinking and other household purposes, such as connection to a community supply, that meets State drinking water standards and is not an impacted water source.

"Impacted water source" means a public water supply or a residential well that is subject to a public health advisory for drinking water.

"Public health advisory for drinking water" means an advisory issued by the DHHS that cautions against using water for drinking or other household purposes because of the presence of a substance of concern.

"Substance of concern" means a substance that the DHHS has determined is or may be injurious to human health or safety.

The bill took effect on January 6, 2017.

MCL 325.1019a

BACKGROUND

The term "perfluorinated chemicals" is used by some scientists to refer to a group of toxic chemicals that includes perfluorooctanoic acid (PFOA) and perfluorooctyl sulfonate (PFOS). The Environmental Protection Agency has issued drinking water health advisories for these substances, and they are among the contaminants that water systems are required to monitor. According to the EPA, "Studies indicate that PFOA and PFOS can cause reproductive and developmental, liver and kidney, and immunological effects in laboratory animals. Both chemicals have caused tumors in animal studies. The most consistent findings from human epidemiology studies are increased cholesterol

levels among exposed populations, with more limited findings related to low infant birth weights, effects on the immune system, cancer for PFOA, and thyroid hormone disruption for PFOS."²

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Potentially harmful substances from the Wurtsmith Air Force Base are known to have contaminated numerous area wells, prompting the State to issue a drinking water advisory. While the high PFC levels to date have not exceeded the EPA's threshold for danger to humans, the uncertainty regarding the effects of PFC exposure warrants the use of other water sources for the present. The Federal government should be held accountable for its actions, and accept the responsibility of supplying safe water, as well as reimbursing the State and local units that already have provided an alternative water supply.

Although the water contamination near the base provided the impetus for this legislation, the remedies in the bill are not limited to that situation. It is entirely possible that a similar problem could occur in the future, or it might be discovered that water supplies already have been contaminated by the use of a harmful substance on nearby land owned by the Federal government or the State. In such a case, if the Federal government or the State acknowledges that a substance of concern has migrated from that land to groundwater, and the DHHS issues a public health advisory for drinking water, then the requirements to provide an alternative water supply, perform long-term monitoring, and provide reimbursement will apply.

Response: According to communication from the Department of the Air Force, it is not authorized to comply with the bill ("Act 545"). The Federal government is not subject to state or local laws unless Congress has waived its sovereign immunity. Although Congress has done so under the Comprehensive Environmental Response, Compensation and Liability Act and the Safe Drinking Water Act, the state or local law must apply equally to all people and entities. "Act 545 does not meet this principle because only the federal and state governments are subject to its provisions. Accordingly, the Air Force is not authorized to comply with Act 545 for this and other reasons."³

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on Federal, State, and local governments. The extent to which the State or Federal government, as a result of the bill, will monitor residential wells, provide drinking water to local owners of wells, or reimburse the State or local units for the costs of providing alternative water supplies to those owners, cannot be determined at this time.

Fiscal Analyst: Bruce Baker

² "Basic Information about Per- and Polyfluoroalkyl Substances (PFASs)", U.S. Environmental Protection.

³ Stephen G. Termaath, GS-15, Department of the Air Force, 3-17-17.