The Chevron Ruling Shake Up: US Air Force Avoids PFAS Water Clean Up

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The overturning of the “Chevron Doctrine” is already making waves. The US Air Force is refusing to comply with an EPA clean-up order, claiming federal regulators lack authority.

In brief, here is the timeline of events:

+ May 26, 2024—EPA issues an emergency order pursuant to the Safe Drinking Water Act (SDWA) calling for a water treatment plan for the Tucson International Airport Area Superfund Site.
+ June 11, 2024—Air Force requested that the EPA pause the order and hold a meeting with the agency.
+ June 28, 2024—Decision published in *Loper Bright Enterprises, et al. v. Gina Raimondo, Secretary of Commerce, et al.*, 144 S. Ct. 2244 (2024). The Supreme Court's ruling in *Loper Bright* reversed the judicial deference doctrine in *Chevron*.
+ June 26, 2024—Explained it would not pause the order but held a meeting.
+ July 11, 2024—EPA issued a letter to the Air Force affirming the order, but provided a 30-day extension for the Air Force and Air National Guard to submit the water treatment plan.
+ July 18, 2024—Air Force sends the letter to the EPA arguing that the order cannot stand as the EPA will not have the benefit of the *Chevron* deference based on the *Loper Bright* ruling.

The letter from the Air Force (subscription required) argues there is no imminent and substantial endangerment to human health, and Arizona and the City of Tucson have comprehensively acted to protect human health.

The Air Force says that in *Trinity Am. Corp. v. EPA*, 150 F.3d 389 (4th Cir. 1998), an EPA order was sustained because there was substantial evidence that the defendant had dumped toxic waste into water that the neighbors were drinking. It also argues that there was substantial evidence that the state failed to act. Specifically, the Air Force states: "[w]hile there is certainly ample evidence of PFAS contamination in the TIAASS aquifers and these aquifers appear to be a 'public water system,' there is no 'imminent and substantial endangerment' to human health because there is no 'imminent likelihood' that the public may consume contaminated water." Further, the Air Force posits that the TARP-treated water meets all drinking water standards and details the various efforts taken by the State of Arizona and the City of Tucson.

Additionally, the Air Force notes that the mandated 90-day deadline to develop and submit a regional aquifer solution for PFAS is not possible.

As this is a developing issue following a new Supreme Court decision, MG+M will continue to follow the decision's impact.

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