



DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

July 11, 2025

Catherine A. McMullen
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, N.W. Suite 300
Washington, D.C. 20310-0101

SUBJECT: Whistleblower Investigation - Alleged violations of law, rule, or regulation and a substantial and specific danger to public health and safety at Tyndall Air Force Base, Florida (OSC File Number DI-24-000713)

Ms. McMullen,

This responds to your office's e-mail request of May 30, 2025, for supplemental information on this matter. Information in response to your six questions is provided below.

Question 1: According to the whistleblower, the Remedial Investigation (RI) has been extended beyond the original specific sites that were the MILCON-approved PFAS site boundaries, which were included in Appendix E of the revised-Statement of Work (SOW), Modification 4, for additional sampling and data collection. However, the whistleblower stated that the approval process for extending the RI beyond the original sites, also included in the revised-SOW, has not been followed, and as such, the Contracting Officer Representative (COR) has not received the required notice of the extensions. Nor has the COR provided the approvals for the extensions pursuant to the revised-SOW. Therefore, we request information on the approval process to extend the RI, including clarification on who has been in contact with the contractor regarding the extensions and related work, and who has approved the extensions? Also, please provide the number of extensions approved thus far, describing where they are located and the additional work that has occurred.

Response: Allegation 1 stated "In violation of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), its regulations, and Department of Defense (DoD) and Environmental Protection Agency (EPA) directives, U.S. Army Corps of Engineers (USACE) employees impermissibly restricted the areas to be investigated in a Remedial Investigation (RI) at Tyndall Air Force Base (AFB) that is assessing the nature and extent of Per- and polyfluoroalkyl substance (PFAS) contamination, which include Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS). Regarding Allegation 1, the Investigating Officer (IO) found that this allegation **was not substantiated** because areas

were *not* impermissibly restricted from the investigation and no violation of law or policy had occurred. This question 1 indicating that the investigation has progressed beyond the “original boundaries” from the whistleblower, confirms the IOs finding in relation to allegation 1.

Please reference Exhibit Q (described as Exhibit AF1, *Communication Plan*, in the Table of Exhibits) of the Army Narrative for OSC File No DI-24-000713 for details pertaining to the communication plan. This exhibit details communication pathways for sampling both within and outside of military construction (MILCON) zones, between USACE and Air Force (AF) personnel, working on both the PFAS RI and the MILCON work. Questions regarding who has been in contact with the contractor, who approved extensions, and the number, location, and progress of extensions since the conclusion of the IO’s investigation are only tangentially related to the referred allegations and beyond the scope of this investigation.

Question 2: The report states that regulators for the U.S. Environmental Protection Agency (EPA) and the Florida Department of Environmental Protection approved the progressive RI effort being used to accommodate the MILCON rebuild at Tyndal [sic] Air Force Base (TAFB) by signing the Uniform Federal Policy Quality Assurance Project Plan (UFP-QAPP), which details the progressive, iterative RI sampling process in three specific stages. However, the UFP-QAPP does not appear to be a contract. Therefore, please explain whether and to what extent the Air Force, U.S. Army Corp of Engineers, and the contractor conducting the RI must adhere to the UFP-QAPP. Also, explain whether any “step-out DPT sampling” occurred as described in Stage 1 of the UFP-QAPP and where (i.e., whether it occurred beyond the specific sites to the MILCON-approved PFAS site boundaries), and whether Stage 2 has begun and, if so, how Stage 2 has progressed, including whether any additional delineation has occurred from the Stage 1 sampling plan.

Response: A UFP-QAPP is a work plan, not a contract. The contract requires the progressive investigation whereas a work plan details how the contract requirements will be implemented. In general deviations from a work plan may occur depending on the nature of the site and how the RI progresses. The Phase 1 RI report would then detail any deviations from the work plan. Tyndall AFB, USACE, and the contractor will be held to the requirements of the UFP-QAPP to the extent that EPA and FDEP would concur with the final RI report as required in the Federal Facility Agreement (FFA).

The cleanup activities at Tyndall AFB are guided by the FFA between AF, EPA, and Florida Department of Environmental Protection (FDEP). The FFA lists the remedial investigation/feasibility study (RI/FS) as a primary document; it further details that any EPA or FDEP issues on primary documents must be addressed. Based on interviews, site access requests, and the IO’s review of presentation slides from one weekly fusion meeting, Stage 1 sampling was in progress during the timeframe of the investigation. Questions assessing whether any “step-out DPT sampling” occurred, or if Stage 2 has occurred, and how far it has progressed are only tangentially related to the referred allegations and beyond the scope of this investigation.

Question 3: According to the whistleblower, the MILCON contract for the rebuild at TAFB states that all areas outside the MILCON PFAS boundaries, (i.e., areas beyond the original Site Inspection), were clean and did not require sampling or controls, and that the risk register, which

was used to prepare the contract, states that a risk of finding contamination outside the original Site Inspection could result in costly change orders if contamination is found. However, if the agencies intended the RI effort to be a progressive, iterative process to accommodate the MILCON rebuild, please explain why the MILCON rebuild contract and risk register state that all areas outside of the MILCON PFAS boundaries (i.e., the original Site Inspection) are clean; also explain what affect, if any, this has had upon the RI or the safety requirements for MILCON contractor employees.

Response: The MILCON contracts were awarded after the site inspection (SI) and prior to the RI. The contract was based upon information available at the time. The designation “that all areas outside of the MILCON PFAS boundaries (i.e., the original Site Inspection) are clean” utilized the available data from PFAS SI and the MILCON sampling effort, with an added buffer. RIs are progressive whether specially stated or not, the responsible party is required to find the lateral and vertical extent of the contamination. If that is not done in the first action, another will be required. As explained in the Army’s Report, all safety requirements for both the MILCON and PFAS RI contracts regarding safety are similar and provide the same level of protection whether workers are within "clean", "known", or "unknown" areas of contamination.

Question 4: The report states that “... the potential to be unknowingly exposed to contamination exists as a matter of understanding ... at any contaminated site when the full nature and extent of the contamination has not been delineated, including those areas at Tyndall AFB that are not affected by MILCON activities,” please explain whether, and how, the potential unknown exposure to PFAS contamination was communicated to construction workers (i.e., MILCON contractor or subcontractor employees) conducting the MILCON rebuild at TAFB, and whether these employees were told how they could mitigate the potential for exposure. For example, did MILCON construction employees receive any safety orientation or training, or attend any weekly safety meetings that discussed the risk of potential exposure to PFAS contamination and how to mitigate or prevent that potential exposure?

Response: To reduce the unknowns of PFAS contamination locations, USACE MILCON executed a sampling effort within and outside the PFAS SI defined areas. While not specifically stated as a purpose, this data was also available to the MILCON contractors for their use in designing the required safety programs. In addition to the MILCON-performed sampling activities, all contractors were provided reports and data from all previous environmental investigations to utilize in project planning and development of safety programs. Occupational Safety and Health Administration (OSHA) standards, Engineer Manual 385-1-1, and the MILCON contract specifications direct all the selected contractors to have an established safety program that includes required hazard communications procedures. An example noted in the Army Report includes Specification 01 35 26, Section 1.6.3.2, which requires the contractor to conduct safety meetings for all trade workers, at least weekly. As stated in the Army Report, all safety requirements for both the MILCON and PFAS RI contracts regarding safety are similar and provide the same level of protection, whether workers are within "clean", "known", or "unknown" areas of contamination.

Question 5: The report lists a number of practices from the Site Safety and Health Plan for the PFAS RI contractor (i.e., Tetra Tech) that will protect workers from exposure to “constituents of

concern” (such as PFAS) via ingestion or skin contact; did MILCON communicate to the contractors working on the rebuild at TAFB any or all of these practices, and if so, have any of the MILCON rebuild contractors or subcontractors and their employees (i.e., construction workers) been following these practices from the Site Safety and Health Plan during the rebuild?

Response: OSHA regulations, Engineer Manual 385-1-1, and the MILCON specifications all require the contractor to have an established safety program with hazard communication procedures. The regulations and contract documents also require minimum safety and personal protective equipment requirements for fieldwork to include short sleeve shirt, long pants, and leather or other protective work shoes or boots. As stated in the Army Report, all safety requirements for both the MILCON and PFAS RI contracts regarding safety are similar and provide the same level of protection whether workers are within "clean", "known", or "unknown" areas of contamination. The MILCON safety office has a dedicated safety officer supporting the rebuild program who reviews the construction activity hazard analysis and safety submittals (See Exhibit GG, described as Exhibit DA7, in the Table of Exhibits). A safety audit of the contractors to ensure they were following their procedures is beyond the scope of this investigation

Question 6: According to the whistleblower, the PFAS RI data collected thus far shows that PFOA/PFOS groundwater contamination extends beyond the 500-foot buffer zone around the Site Inspection areas and that the EPA has now defined maximum contaminant levels (MCLs) for PFOA/PFOS. Given the above, please explain what measures have been taken to mitigate or prevent construction workers’ exposure to potentially contaminated groundwater during excavation or dewatering activities. Also, now that the EPA has established MCLs has the waste management or safety guidelines been changed or updated?

Response: The lateral and vertical extent of groundwater contamination would not affect the safety guidelines for construction workers. As stated in the Army Report, all safety requirements for both the MILCON and PFAS RI contracts regarding safety are similar and provide the same level of protection whether workers are within "clean", "known", or "unknown" areas of contamination. Maximum contaminant levels (MCLs) are standards that are set by the EPA for drinking water quality. An MCL is the legal threshold limit on the amount of a substance that is allowed in public water systems under the Safe Drinking Water Act (SDWA). The establishment of MCLs for several PFAS does not have an effect on waste designation or OSHA standards, so no change would be necessary.

Please advise if you need any other information to complete your review.

FEDORKO.JOSEPH.A
NDREW.1041209590
JOSEPH A. FEDORKO
Associate Deputy General Counsel

Digitally signed by
FEDORKO.JOSEPH.ANDREW.1041
209590
Date: 2025.07.11 14:17:15 -04'00'