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**Washington, D.C. 20036-4505**

**The Special Counsel**

June 1, 2026

The President  
The White House  
Washington, D.C. 20500

Re: OSC File No. DI-24-000713

Dear Mr. President:

I am forwarding to you the reports transmitted to the Office of Special Counsel (OSC) by the Department of the Army (Army), in response to the Special Counsel's referral of disclosures of wrongdoing at the U.S. Army Corps of Engineers (USACE) Mobile District, Mobile, Alabama. OSC has reviewed the disclosure, agency reports, and whistleblower comments and, in accordance with 5 U.S.C. § 1213(e), I have determined that the reports contain the information required by statute and the findings appear reasonable.<sup>1</sup>

The whistleblower, [REDACTED], who consented to the release of his name, is a Project Manager with Programs and Project Management, USACE Installation Restoration Program Support, Interagency and Environmental Branch. [REDACTED] alleged that in violation of federal law and regulation, and agency directives, USACE impermissibly restricted the areas to be investigated in a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Remedial Investigation (RI) at Tyndall Air Force Base (Tyndall AFB) to assess the nature and extent of the contamination of per- and polyfluoroalkyl substances (PFAS).<sup>2</sup> [REDACTED] also alleged that due to the restricted RI, government and contract employees may have unknowingly worked in contaminated areas.

The agency did not substantiate the allegations. The investigation concluded that a contract modification did not impermissibly restrict the phased PFAS RI planned at Tyndall AFB and while employees may have unknowingly worked in contaminated areas, the same level of safety and personal protective equipment (PPE) is required whether working in "clean," "known," or "unknown" areas of contamination. A summary of the agency's findings and whistleblower's comments follows.

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<sup>1</sup> OSC referred the allegations to then-Army Secretary Christine E. Wormuth for investigation pursuant to 5 U.S.C § 1213(c) and (d) who delegated authority to review and sign the agency report to Assistant Secretary of the Army Installations, Energy and Environment Rachel Jacobson. U.S. Army Corps of Engineers Director of the Environmental and Munitions Center of Expertise [REDACTED] was the Investigative Officer.

<sup>2</sup> PFAS are a group of chemicals that include perfluorooctanoic acid and perfluorooctane sulfonate.

### *Agency Report*

In 1997, the U.S. Environmental Protection Agency (EPA) listed Tyndall AFB on the National Priorities List for cleanup under CERCLA. The Air Force (AF) is responsible for all CERCLA work, and in 2013, entered a Federal Facility Agreement (FFA) with the EPA and the Florida Department of Environmental Protection (FDEP) to facilitate cleanup of any contamination. Both USACE and AF contractors conducted a site inspection (SI) of where Aqueous Fire Fighting Foam, which contains PFAS, was released at Tyndall AFB. A September 2018 Final SI Report (Final SI Report) recommended the PFAS RI include 18 of the 32 sites inspected. In October 2018, a category-5 hurricane damaged or destroyed over 400 buildings at Tyndall AFB; Military Construction (MILCON) rebuild work has been ongoing ever since.

### *Allegation of Impermissible Restriction of the RI*

USACE administers the MILCON rebuild contracts, the PFAS RI related contracts, and oversees both the rebuild and RI work. The reports explained that non-PFAS remediation and MILCON rebuild work at Tyndall AFB is concurrent with the PFAS RI and sometimes these areas overlap. The reports stated that the original contract<sup>3</sup> for the PFAS RI at Tyndall AFB never intended to produce a final RI. Rather, the contract's original statement of work (SOW) stated that the PFAS RI would be completed in two phases with each phase having separate contracts. Phase I of the RI, which encompasses Tetra Tech Inc.'s (Tetra Tech) ongoing RI work, will characterize the lateral and vertical extent of PFAS contamination, produce a Phase I Report, and a conceptual site model (CSM). The SOW also states that the Phase I Report and CSM will be used in the Phase II RI which will conduct a baseline risk assessment of human health and ecological risks (BRA), evaluate remediation options, and issue a final RI report. The SOW anticipated additional planning for completing site-specific RI requirements.

Consequently, the reports did not substantiate that USACE impermissibly restricted the RI. The reports concluded that the original SOW contained a phased RI and iterative approach that was further explained in contract Modification 4. In summary, pursuant to Modification 4 the RI will be completed progressively to accommodate the MILCON rebuild. Some sites in the RI might not be fully characterized because the RI will be initially limited to certain MILCON-approved PFAS RI sites. Sampling beyond these initial sites will occur in subsequent stages. The reports concluded that both the EPA and FDEP approved this progressive/staged RI approach in a Uniform Federal Policy Quality Assurance Project Plan (UFP-QAPP), which the reports described as a work plan.<sup>4</sup>

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<sup>3</sup> The reports noted that the contract was for a Phase I PFAS RI at the Homestead Air Reserve Base in Florida, and Phase I of the PFAS RI for Tyndall AFB was an option that was exercised thereunder.

<sup>4</sup> The UFP-QAPP divides Phase I RI sampling into three stages and defines the iterative sampling process in each stage that will laterally and vertically expand sampling beyond the initial RI sites; it also outlines the approval process Tetra Tech will use to request expanding RI sampling beyond the initial sites through these stages.

The reports explained that deviations from the UFP-QAPP may occur depending on the nature of the site and progression of the RI. However, AF, USACE, and Tetra Tech will be responsible for any deviations that are not addressed, because, under the FFA, the EPA and FDEP must approve the final RI to be completed in Phase II of the RI under a separate contract. The reports also stated that confirmatory sampling will occur after the MILCON rebuild work to prepare the CSM. The reports stated that CERCLA regulations allow parties to tailor the scope and timing of RI work based on the nature and complexity of the situation, *see* 40 C.F.R. § 300.430 (a)(2), and the Defense Environmental Restoration Program Manual 4715.20 recognizes that construction at, or near, environmental restoration sites may occur. However, the manual does not state how the parties should coordinate or complete either the construction or restoration work. *See id.* at Enclosure 3, Section 6. Thus, the reports concluded that Modification 4 did not materially change the intent of the original PFAS RI contract as it relates to completing the RI required under CERCLA.

#### *Allegation Regarding Potential Employee Exposure*

The reports acknowledged that employees may have unknowingly worked in contaminated areas but concluded that the MILCON rebuild work and the PFAS RI work required the same level of safety and PPE whether employees were in “clean”, “known”, or “unknown” areas of contamination. The investigation discovered that the MILCON rebuild contracts were awarded sometime in 2021, after the 2018 Final SI Report but before the PFAS RI contract was awarded in September 2021. These contracts stated, “that all areas outside of the MILCON PFAS boundaries (i.e., the original SI) are clean.” The reports concluded that this statement was based on the information available at that time in the SI but regardless of where employees worked, the same level of safety and PPE was required for both the MILCON rebuild and PFAS RI work.<sup>5</sup>

Notably, the reports concluded that the applicable Occupational Safety and Health Administration (OSHA) safety and PPE requirements are listed in 29 C.F.R. Part 1926 (Safety and Health Regulations for Construction) and 29 C.F.R. Part 1910 (Occupational Safety and Health Standards), which, in sum, state that employers may define the appropriate level of safety and protection using published literature or Safety Data Sheets as a guide. The investigation found that while the EPA has designated PFAS as a hazardous substance, it has not designated PFAS as hazardous waste under the Resource Conservation and Recovery Act (RCRA), so RCRA safety and PPE requirements do not apply.<sup>6</sup> Similarly, OSHA has not designated PFAS as a health

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<sup>5</sup> MILCON rebuild contracts contain Unified Facilities Guide Specifications (Specifications) that require PPE based on the nature of the work, which minimally includes safety glasses, head protection, long pants, and appropriate safety footwear. Similar PPE requirements for the PFAS RI work are in USACE Manual, EM 385-1-1 Safety and Health Requirements (EM 385-1-1), the Tyndall PFAS RI Site Safety and Health Plan (Site Safety Plan), and OSHA regulations.

<sup>6</sup> *See* Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances 89 Fed. Reg. 39124 (May 8, 2024) (final rule) (neither listing nor proposing PFAS as hazardous waste under RCRA).

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hazard, so OSHA has not set any immediately dangerous to life or health values, permissible exposure levels, or published exposure levels for PFAS; thus, OSHA's safety and PPE requirements attendant to these values/levels do not apply.<sup>7</sup>

The reports also conclude that while the EPA set Maximum Contaminant Levels (MCLs) for PFAS, which is the maximum permissible level of a contaminant allowed to be present in public drinking water under the Safe Drinking Water Act, MCLs do not affect PFAS's designation under RCRA or OSHA standards. Therefore, the MCLs did not change the required safety or PPE. The reports also noted that the Site Safety Plan identified that potential exposure via incidental ingestion may exist, but dermal exposure is very unlikely, and as such, the minimum required PPE and basic hygiene practices (e.g., washing face and hands before leaving the site) are the principal methods of preventing exposures. The reports concluded that similar hygiene practices were required for construction work generally pursuant to the Specifications, EM 385-1-1, and OSHA.

#### *Agency Corrective Action*

While the allegations were not substantiated the investigation found that the whistleblower's disclosure may have been avoidable if the USACE teams performing the construction and environmental work at Tyndall AFB had followed USACE Daily Tasking Order 21-04-26 *Commanding General's Per and Polyfluoroalkyl Substances (PFAS) Work Acceptance Requirements* (2021) (DTO). According to the reports, the DTO outlined an internal review and approval process of any requested or proposed additional work or changes to the work, but Modification 4 to the PFAS RI contract was neither reviewed nor approved pursuant to the DTO. The reports concluded that had this occurred, an independent technical review would have identified any concerns regarding Modification 4. The reports stated that failing to follow the DTO was not unique to Tyndall AFB and that corrective action would have been recommended; however, during the investigation USACE issued a revised DTO that highlighted its applicability to all USACE activity including environmental work and military construction. USACE emphasized that the required review/approval process applies to a broad range of documents during acquisition, planning, and reporting. See *USACE Per and Polyfluoroalkyl Substances (PFAS) Work Acceptance Requirements* (2024).

#### *Whistleblower's Comments*

In his comments, ██████████ disagreed with the findings and conclusions. He asserted that MILCON rebuild personnel applied the language of Modification 4 to restrict the PFAS RI sampling and analysis to the initial SI sites to avoid major and costly modifications to the ongoing MILCON rebuild if PFAS contamination were found outside of the SI sites listed in

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<sup>7</sup> See 29 C.F.R. Part 1910.6 (containing no NIOSH Recommendations for Occupational Health Standards for PFAS), and 29 C.F.R. Part 1910, subparts G and Z (containing no permissible exposure levels, or published exposure levels for PFAS).

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Modification 4. However, [REDACTED] acknowledged that the PFAS RI work (i.e., expansion of soil and groundwater sampling and analysis) has occurred beyond the initial limited sites in Modification 4. Nonetheless, he emphasizes this occurred only after OSC's referral for investigation. He also criticized the reports as conflating OSHA standards as well as oversimplifying and/or mischaracterizing complex contracting and approval processes.

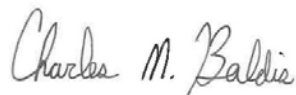
### *Conclusion*

While the agency did not substantiate the allegations, the whistleblower's disclosure usefully highlighted the need for stricter adherence to internal PFAS review processes when MILCON and environmental restoration activities overlap, prompting USACE to revise and broaden the applicability of its DTO. I thank the Army and USACE for its cooperation and the corrective action on the DTO.

I also thank the whistleblower for bringing these important issues to OSC. In accordance with 5 U.S.C. § 1213(e) I have determined that the reports contain the information required by statute and the findings appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter, the agency reports, and whistleblower comments to the Chairmen and Ranking Members of the Senate and House Committees on the Armed Services. OSC has also placed redacted copies of these documents and the redacted referral letter in our public file, which is available at [www.osc.gov](http://www.osc.gov). This matter is now closed.

Respectfully,



Charles N. Baldis  
*Chief Counsel*

Enclosures