24 April 2026

From: [redacted]

To: [redacted]
Attorney, Disclosure Unit
U.S. Office of Special Counsel

Subject: Response to Supplemental Report on Whistleblower Claims

I have reviewed the subject report and offer the comments provided below. Each set of comments provided below corresponds to the Agency response to allegations stated in the supplemental report. The original question raised and the Agency response are highlighted to allow more accurately follow the question raised and corresponding response from the Agency.

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.

Agency response to allegation 1

"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."

Whistleblower rebuttal to Agency response to allegation 1

Agency Exhibit Q (communication plan) is a document prepared by MILCON and there is no supporting documentation of review and approval by the USACE project manager, contracting officer representative, or contracting officer. Exhibit Q documents circumvention of the contractual requirement for notification and approval included in W91278-20-D-0026-0005 Modification P00004. The USACE project manager, contracting officer representative, and contracting officer were not aware of the document included in enclosure Q and the contracting officer representative has not received any request from the points of contact on Exhibit Q or other to approve PFAS RI characterization activities outside of the restricted Site Inspection areas. Subsequent to reviewing Exhibit Q, the PFAS RI contractor was consulted, and the contractor stated they had not received approvals from the COR authorizing work outside of the original Site Inspection areas.

While it is factual that MILCON has allowed soil and groundwater sampling and analysis for the PFAS Remedial Investigation beyond the restricted limits defined in Modification P00004, the allowance to continue the PFAS Remedial Investigation beyond the restricted boundaries was only granted after the Whistleblower complaint and may be attributable to additional motivating factors.

It is agreed that subsequent to the Whistleblower concerns being raised, MILCON has allowed PFAS RI characterization, i.e., soil and groundwater sampling and analysis to be completed outside of the restricted "known areas of PFAS contamination (Site Inspection areas). However, the purpose of W91278-20-D-0026-0005 Modification P00004 was to restrict the PFAS Remedial Investigation sampling and analysis to within the original Site Inspection areas in order to avoid "major cost modifications to the ongoing MILCON effort," Figure 1.

The impact of restricting the PFAS Remedial Investigation contract from following the contractual Scope of Work and completing a CERCLA Remedial Investigation characterization, i.e., defining the full nature and extent of PFAS contamination greater than the Department of Defense PFAS action levels was well known and documented in the contract Scope of Work in Modification P00004. When Modification P00004 was awarded, it was not known if investigation would be allowed outside of the limited Site Inspection areas; however, the provision was included to allow MILCON to provide the COR with direction in writing which the contracting officer representative would provide to the PFAS Remedial Investigation contractor. The approval process to allow the PFAS Remedial Investigation to extend beyond the restricted boundaries in Modification P00004 was confirmed by the contracting officer to be a contractual requirement and an essential condition of Modification P00004. The approval process (i.e., MILCON communication to COR and COR communication to contractor) to extend the Remedial Investigation outside of the restricted MILCON PFAS RI areas was also incorporated into the UFP-QAPP which received USACE, AF, EPA, FDEP, and contractor written approval, Figure 6. The approval process to allow the USACE PFAS Remedial Investigation to conduct soil and groundwater sample collection outside of the restricted MILCON boundaries is consistent in the Modification P00004 Scope of Work and in the project UFP-QAPP; however, the approval process in neither document was complied with. The fact that MILCON ignored this essential conditional requirement for "approval to investigate outside restricted boundaries" and

apparently developed an independent approval process without coordinating with the USACE COR or PM demonstrates" a knowing disregard for the contract modification requirements and may be indicative of the related compliance with federal law and USACE regulations. The risk of not achieving the requirement of full delineation of PFAS contamination is documented in several locations within the contract Scope of Work, Figures 2a-2d In addition, the risk of MILCON not allowing PFAS Remedial Investigation outside of the MILCON-defined boundaries was also documented in the UFP-QAPP. The well known fact that the PFAS Remedial Investigation was being restricted to avoid costly change orders if PFAS contamination were found in "clean" areas was reported in the PFAS RI Contractor Performance Status Management Report, Figure 3.

The official contractual requirement for MILCON approval to conduct PFAS RI characterization activities outside of the restricted Site Inspection areas was written into the revised Modification P00004 Scope of Work (awarded and contractually binding as of 15Feb2023), Figure 1. There are no other contractually approved methods for communicating or directing the PFAS RI contractor than what is stated in Modification P00004.

In addition, USACE Engineering/MILCON personnel ([redacted], Chief EN-G) provided specific directions for the boundary coordinates to incorporate into Modification P00004, Figure 4. An example figure for restricted boundary locations and coordinates is provided as Figure 5. USACE Engineering/MILCON personnel directed the details for the restricted PFAS RI boundaries and exact coordinates to define "known areas of PFAS contamination," and the MILCON contracts identified the areas outside of the PFAS RI restricted boundaries as being "clean."

Figure 1 - W91278-20-D-0026-0005 Modification P00004 Scope of Work, Part I General Requirements, Section 1.0 Scope and Purpose, third paragraph:

The Phase I RI will consist of site characterization efforts to include lateral and vertical extent of PFAS contamination in all impacted media resulting from past aqueous film-forming foam (AFFF) releases and the update or development of a Conceptual Site Model (CSM). For Remedial Investigation (RI) efforts at Tyndall AFB, lateral extent of investigations shall be completed in a progressive manner to accommodate Tyndall rebuild efforts. The initial stage of this progression shall limit the lateral extent of investigation for specific sites to the MILCON approved PFAS site boundaries that are located in Appendix E of this SOW. Changes to the investigative limits will be determined during subsequent stages by receiving official documentation from the authorized MILCON representative and the approval of the COR. Any resources not utilized for this task order will be de-obligated during task order closeout.

Figure 2 Modification P00004 wording acknowledging the impact of MILCON imposed PFAS Remedial Investigation limitations

2a - Section 4.1 Remedial Investigation (a) Site Characterization

a. Site Characterization: In this component, the lateral and vertical extent of PFAS (e.g. PFOS, PFOA, and PFBS) contamination is determined. The site characterization effort shall be conducted by the AE to provide a holistic understanding of the delineation of contamination in environment (e.g. soil, groundwater, surface water, sediment, etc.). Delineation of contamination shall include all applicable media; groundwater, surface water, soil, and sediment. The statement of work and site-specific details for each site at each installation is presented in Appendix A.
* However, some sites at TAFB may not be fully delineated due to MILCON rebuild efforts as stated in section 1.0 of this SOW.

2b - II Part B – Technical Requirements, Section 1.2, General Intent, first paragraph

1.2 General Intent

This task order includes the PFAS RI at HARB and TAFB. All sites within each installation shall be fully delineated both horizontally and vertically, and any un-allocated resources required for delineation at an installation can be moved to other sites within that Installation as needed to achieve the final Phase-I RI requirements. However, some sites at TAFB may not be fully delineated due to MILCON rebuild efforts as stated in section 1.0 of this SOW. Variations in delineation requirements may be approved by the PM/COR and AF RPMs.

2c - II Part B – Technical Requirements, Section 1.2, General Intent, "The AE shall:"

The AE shall:

1) Plan and conduct a Phase I RI (following CERCLA guidance) to delineate the nature and extent of PFAS in surface and subsurface soil, groundwater, surface water, and sediment (all PFAS-impacted media) from AF releases at HARB and TAFB. However, some sites at TAFB may not be fully delineated due to MILCON rebuild efforts as stated in section 1.0 of this SOW.
2) Collect data from AFFF release areas identified for further investigation in this SOW, and

2d - II Part B – Technical Requirements, Section 2.13, Phase I Remedial Investigation CLIN Structure

2.13 Phase I Remedial Investigation CLIN Structure

The SOW includes the tasks required to complete a Phase I RI (in accordance with CERCLA) for each installation at the release area sites included in Appendix A. This task order does not include completing a Risk Assessment or FS. The Phase I RI shall be completed in accordance with the most recent EPA guidance and 40 CFR § 300.430(d), and the additional requirements stated in this SOW. All release areas shall be fully delineated both horizontally and vertically for affected media (soil, groundwater, surface water, sediment) and contaminant migration pathways. However, some sites at TAFB may not be fully delineated due to MILCON rebuild efforts as stated in section 1.0 of this SOW. Details of the actual scope required to fulfill the Phase I RI requirement will be determined in DQO scoping meetings with AF, the USACE, and environmental regulators.

Figure 3 – PFAS Remedial Investigation Contractors Progress, Status, and Management Report, September 2022

IV. Summary of Technical, Cost or Schedule Problems Encountered and Actions Taken to Correct the Problem:

- The following have delayed the development and submittal of the UFP-QAPP:
    - Following a 27 June 2022 coordination call with the project Team and [redacted] (MILCON), Tetra Tech was notified that no soil or groundwater samples were to be collected outside of the PFAS site boundaries established during the Site Inspection. Samples collected outside of the PFAS site boundaries could cause major cost modifications to the ongoing MILCON effort. These sampling limitations were not identified in the SOW; therefore, Tetra Tech requested documented guidance from the USACE to clearly define the revised SOW.

Figure 4 – Excerpt of PFAS Remedial Investigation boundaries restricted by USACE Engineering/MILCON

Figure 5 – Example figure showing PFAS Remedial Investigation boundaries restricted by USACE Engineering/MILCON

Figure 6 – PFAS Remedial Investigation UFP-QAPP, Worksheet #11 (Data Quality Objectives) Step 4 "Define the Boundaries of the Study"

4. **DEFINE THE BOUNDARIES OF THE STUDY:** There are 11 sites (based on Air Force Site ID designations) with 14 site names that will be investigated as part of this Phase I RI at TAFB. These sites are locations where AFFF was determined to have been released or suspected to have been released, and the location of each site is shown on Figures 2 and 3.

   Initial data collection efforts will be limited to the MILCON-approved PFAS RI site boundaries, presented on Figures 2 and 3. Changes to the investigation limits will be determined during subsequent stages of sampling in this project by receiving official documentation from the authorized MILCON representative and with approval from the COR.

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.

Agency response to allegation 2

"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."

Whistleblower rebuttal to Agency response to allegation 2

As stated in Whistleblower Question 2, the UFP-QAPP is not a contract, but it does detail the processes by which data will be gathered to answer the Data Quality Objectives, i.e., complete a PFAS Remedial Investigation and define the nature and extent of PFAS contamination. The UFP-QAPP was finalized after Modification P00004 and does include the process stated in the Modification P00004 Scope of Work for how investigation outside of the PFAS boundaries defined by MILCON will be communicated and contractually authorized, see Figure 6.

The first paragraph oversimplifies and mischaracterizes the process for managing UFP-QAPP work plan deviations, presenting it as a passive, after-the-fact documentation exercise rather than the proactive, contemporaneous approval process required by regulations and contracts. This creates significant contractual and regulatory risk. The statement "A UFP-QAPP is a work plan, not a contract," while technically correct that they are separate documents, this statement is misleading

because the contract SOW incorporates the UFP-QAPP into the contract by reference. This action elevates the QAPP from a simple work plan to a set of binding contractual requirements. A contractor who fails to follow the QAPP, including its procedures for documenting and approving deviations, may be in breach of contract, even if the final report is eventually accepted.

The statement “In general deviations from a work plan may occur... The Phase 1 RI report would then detail any deviations from the work plan” indicates gross procedural Noncompliance and suggests that deviations can simply happen, with documentation occurring much later in the final report. This is not compliant with the UFP-QAPP guidance or CERCLA processes. The only personnel authorized by the contracting officer to enforce the contract requirements and communicate these directions to the contractor is the COR.

The Agency response also states “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...” This is an example of the “ends justify the means fallacy” which creates a logical loophole that excuses poor process. It implies that as long as the final result, i.e. PFAS Remedial Investigation report is achieved, then any means used are acceptable, even ethically questionable ones.

The UFP-QAPP and the CERCLA process require adherence to the process of planning, documenting, and managing the project, not just delivering an acceptable end product. The contractor is held to the QAPP's requirements for process and it is not acceptable for MILCON to circumvent the process and establish an alternate change communication and approval process from what is documented in the contract.

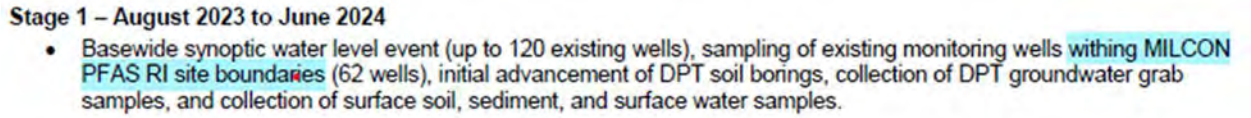
Minor deviations from an approved UFP-QAPP typically involve one-time, non-critical field adjustments that do not impact the overall data quality objectives (DQOs) or the project's regulatory defensibility, e.g., relocating a sampling point, changing sample depth, substituting equivalent equipment, etc. and are managed through an internal documentation process rather than a formal revision. While the deviation for approval to investigate outside the PFAS boundaries defined by MILCON may not rise to the level of a change that requires regulatory notification, it does represent a Noncompliance with the approved UFP-QAPP and DQO process, both of which are contract requirements. This is an issue that must be documented at the time the deviation occurred to create a clear administrative record (e.g., a memo-to-file explaining why the process changed). More importantly, the approval deviation is a point of Noncompliance with contract requirements that were specified by MILCON and USACE Engineering management.

Paragraph two of the allegation 2 response refers to a “weekly fusion meeting;” this term is not familiar. Please provide a copy of the referenced weekly fusion meeting.

It is not disputed that “stage I” activities were in progress at this time; please note that “stage I” activities were restricted to within the restricted MILCON PFAS RI site boundaries, Figure 7 It is not understood how the timeframe for PFAS Remedial Investigation activities outside the MILCON PFAS RI boundaries is only “tangentially related to the referred allegations” since the restriction of

completing the PFAS Remedial Investigation, i.e., full unrestricted delineation and site characterization, is a primary Noncompliance issue raised as part of this investigation.

Figure 7 – PFAS Remedial Investigation UFP-QAPP, Worksheet #14 and #16 - Project Tasks and Schedule


Stage 1 – August 2023 to June 2024

- Basewide synoptic water level event (up to 120 existing wells), sampling of existing monitoring wells withing MILCON PFAS RI site boundaries (62 wells), initial advancement of DPT soil borings, collection of DPT groundwater grab samples, and collection of surface soil, sediment, and surface water samples.

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.

Agency response to allegation 3

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.

Whistleblower rebuttal to Agency response to allegation 3

The agency's response is insufficient and fails to address the fundamental issues of contractual integrity, regulatory compliance, and worker safety. The assertion that the actions taken were appropriate given the available information is directly contradicted by established federal and agency-specific regulations. The response attempts to normalize a high-risk approach that disregards a tiered system of safety protocols and misrepresents site conditions in a major federal contract. The Agency’s claim that safety requirements provide the "same level of protection" across "clean," "known," and "unknown" areas of contamination is demonstrably false and contradicts explicit mandates in OSHA 29 CFR 1910.120 and USACE EM 385-1-1. Furthermore, using incomplete Site Inspection (SI) data to affirmatively declare a site "clean" in a federal contract constitutes a violation of federal contracting and environmental standards.

The Agency admits in its response that a risk register identified the threat of finding contamination outside the SI area, noting it could lead to "costly change orders." Identifying a severe chemical risk but choosing to label the site "clean" in the contract to avoid upfront costs is a catastrophic failure of the Risk Management process mandated by DoDI 6055.01. It deliberately violates DoDI 4715.18 by failing to integrate the known risks of an Emerging Chemical into the MILCON acquisition strategy, transferring the physical risk directly to unprotected contractor employees.

An initial review of the Agency response indicates the following areas of Noncompliance with federal laws, regulations, and policy:

1. Violation of Site Characterization and Contracting Requirements

The agency's designation of areas outside the original Site Inspection (SI) as "clean" in a MILCON contract is a significant misstep that contravenes the principles of both environmental investigation and federal acquisition law. A lack of sampling data outside an SI area does not equate to "clean"; scientifically and legally, it equates to "uncharacterized" or "unknown." By affirmatively labeling uncharacterized areas as "clean" in a binding contract prior to the RI, the Agency bypassed the mandated CERCLA process and provided materially false baseline data to the contractor.

Improper Site Characterization under CERCLA: The agency's reliance on preliminary SI data with an added "buffer" to declare an area "clean" is contrary to the phased and rigorous process mandated by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and its implementing regulation, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. The NCP (40 CFR § 300.430(d)) requires a Remedial Investigation (RI) to "determine the nature and extent of the contamination." A Site Inspection is an initial preliminary step to determine if a site warrants further action; it is not a sufficient basis for certifying an area as free of contamination and it is negligent to do so, especially for a highly mobile and toxic contaminant like PFAS. By circumventing the RI, the agency failed to meet its procedural obligations under CERCLA before exposing construction workers to the site.

Creation of a "Differing Site Condition" and Contract Misrepresentation under FAR: By explicitly stating in the MILCON contract that the area was "clean," the agency exposed the government to significant financial risk and may have misrepresented known conditions. This action directly implicates the Federal Acquisition Regulation (FAR) Clause 52.236-2, Differing Site Conditions. This standard clause protects contractors from subsurface or latent conditions that differ materially from those indicated in the contract. The risk register's acknowledgment that contamination could be found—leading to "costly change orders"—proves the agency was aware of this potential. Knowingly creating this contractual condition, rather than properly delineating the contamination risk, is an irresponsible use of taxpayer funds and a failure of proper acquisition planning under FAR Part 7.

2. Mischaracterization of OSHA and USACE Safety Mandates

The Agency's claim that "all safety requirements... provide the same level of protection whether workers are within 'clean', 'known', or 'unknown' areas of contamination" is factually incorrect and severely undermines worker safety protocols.

By classifying the site as "clean" prior to completing a Remedial Investigation (RI) and defining the actual extent of the PFAS plume, the Agency deprived the MILCON contractor and its workers of their fundamental "Right to Know" regarding workplace hazards, violating strict Hazard Communication protocols.

Because the government designated the area as "clean," the contractor was not triggered to include PFAS hazard awareness in their site-specific training, nor were they prompted to maintain relevant Safety Data Sheets (SDS) or develop targeted hazard mitigation strategies. This systematic failure

directly negates the core Tenet of the HazCom standard: ensuring workers are fully informed of the chemical hazards in their work environment before they break ground. Standard construction PPE (hard hats, safety glasses) used in a "clean" area does not provide the "same level of protection" as the HAZWOPER PPE, specialized decontamination procedures, and air monitoring required in "known" or "unknown" areas. By assuring the contractor the site was clean, the Agency legally absolved the contractor from employing the mandatory HAZWOPER safeguards required for uncharacterized soil, directly jeopardizing worker health.

The Agency's internal risk register proves that encountering PFAS outside the SI area was a "foreseeable" event. By falsely labeling the area "clean" in the contract, the Agency violated Section 06 by preventing the contractor's Industrial Hygienist from performing an accurate baseline exposure assessment and developing the mandatory site-specific hazard controls for toxic environments.

By explicitly defining the areas outside the SI boundary as "clean" in the contract specifications, the Agency legally and operationally deactivated the regulatory triggers for OSHA 1910.120. A contractor cannot and will not implement the extraordinarily expensive and time-consuming HAZWOPER protocols on a site the federal government has formally guaranteed is "clean." Consequently, the Agency's specification directly caused the contractor to deploy unprotected, medically unmonitored workers into potentially hazardous zones under standard construction safety rules.

OSHA 1910.120 - Hazardous Waste Operations and Emergency Response (HAZWOPER): The HAZWOPER requirement does not apply to standard, uncontaminated construction sites (which are governed by OSHA 1926). It only applies to specific operations, such as clean-up operations at uncontrolled hazardous waste sites, or voluntary clean-ups recognized by federal/state bodies. When the government issues a MILCON contract stating the site is "clean," it administratively removes the project from the scope of 1910.120(a). The contractor is legally justified in assuming standard OSHA 1926 construction standards apply. The Agency's designation effectively stripped the site of its hazardous classification, absolving the contractor of any obligation to initiate HAZWOPER protocols before breaking ground. By defining areas outside the MILCON PFAS (SI) boundary "clean" in the MILCON contract, the Agency circumvented the requirement for the MILCON Contractors to implement Site-Specific Safety and Health Plans, specialized training, medical surveillance/monitoring, and other requirements of 29 CFR 1910.120 even if the MILCON contracts included wording requiring compliance with 29 CFR 1910.120 (HAZWOPER).

OSHA 1910.120(c) (HAZWOPER - Site Characterization and Analysis): OSHA mandates that known and unknown site contamination must be thoroughly evaluated before entry to determine specific safety-protective measures. Paragraph 1910.120(c) (2) mandates a preliminary evaluation of a site's characteristics be performed prior to site entry by a qualified person in order to aid in the selection of appropriate employee protection methods prior to site entry.

OSHA 1910.120(c)(5) (Personal Protective Equipment): OSHA requires that when site conditions are "unknown" or characterization is incomplete, a highly conservative level of protection (often Level B) must be utilized.

OSHA 1910.120(e) (Training): Workers in "known" or "unknown" contaminated areas must possess 40-hour HAZWOPER training and medical surveillance. Workers in "clean" construction areas do not. The protections and requirements are vastly different. Contractor workers on "clean" MILCON sites require only standard construction safety gear (hard hats, safety glasses, high-visibility vests). Standard construction gear offers zero protection against dermal or inhalation exposure to contaminated dust or groundwater.

OSHA 1926.65(f)(4): Workers in hazardous or potentially hazardous waste operations must receive baseline medical examinations prior to assignment, periodic exams during the project, and termination exams at the end of employment.

OSHA 1910.120(f) and § 1926.65(f) (HAZWOPER - Medical Surveillance): OSHA mandates that employers must institute a medical surveillance program for employees who are or may be exposed to hazardous substances at or above permissible exposure limits, or who are required to work in areas where site characterization is incomplete ("unknown" areas). If Contractor workers encountered the contamination the Agency suspected was there, they were subjected to chemical exposure without the legally required baseline health exams and continuous biological monitoring.

OSHA 1926.59 and § 1910.1200 (Hazard Communication): These standards require that employers and site owners inform workers about the identities and hazards of the chemicals they are exposed to (or potentially exposed to) in the workplace.

Multi-Employer Worksite Policy (OSHA Directive CPL 02-00-124): As the host employer and site owner, the government has a duty to communicate known or suspected site hazards to contractors. By relying on incomplete Site Inspection (SI) data to affirmatively declare the soil "clean," the government failed to communicate the recognized risk (noted in its own risk register) that contamination could extend beyond the SI boundaries.

USACE EM 385-1-1, Section 33 (Hazardous Waste Operations) and Section 1.A.14 (Activity Hazard Analysis): USACE policy dictates that contractors develop an AHA and Site Safety and Health Plan (SSHP) based on the hazards identified by the government. If the government declares a site "clean," the contractor will develop an AHA based on standard construction safety (OSHA 1926). They will not implement Section 33 HAZWOPER protocols.

USACE EM 385-1-1, Section 06.A (Hazardous or Toxic Agents and Environments - General): This section requires that exposure to toxic agents (like PFAS) be controlled, and that a competent Industrial Hygienist (IH) or equivalent perform an exposure assessment before work begins.

USACE EM 385-1-1, Section 1.A.14 Activity Hazard Analysis (AHA): Contractors must develop an AHA based on identified site hazards. Because the Agency legally guaranteed the site was "clean," the contractor was forced to develop AHAs based on standard construction risks (OSHA 1926), not Hazardous, Toxic, and Radioactive Waste (HTRW) protocols.

USACE EM 385-1-1, Section 06.B (Hazard Communication Program): Reinforcing OSHA standards, USACE requires a written, site-specific HazCom program for any chemicals employees may be exposed to under normal operations or in foreseeable emergencies.

DoDI 6055.01 (DoD Safety and Occupational Health (SOH) Program): This foundational directive mandates that DoD components protect personnel from occupational illnesses and explicitly requires compliance with OSHA standards. By violating OSHA 1910.120 (as detailed in Sections 2, 4, and 5), the Agency is in direct violation of DoDI 6055.01. Furthermore, DoDI 6055.01 requires the application of Risk Management (RM) to all operations.

DoDI 6055.05 (Occupational and Environmental Health (OEH)): This instruction requires DoD components to anticipate, recognize, evaluate, and control OEH hazards (including chemical hazards like PFAS) and mandates medical surveillance for exposed personnel.

DoDI 4715.18 (Emerging Chemicals (ECs) of Environmental Concern): PFAS is heavily regulated by DoD as an Emerging Chemical. This instruction requires DoD components to proactively integrate EC risk management into acquisition and MILCON planning. By 2022, DoD had long established PFAS as an "Emerging Chemical of Environmental Concern" under DoDI 4715.18. This Instruction specifically requires DoD components to assess and manage the risks of emerging chemicals before they are subject to formal, finalized federal regulations. By maintaining a risk register that identified the potential for contamination (and costly change orders) but choosing to hide this reality behind a "clean" designation in the contract specifications, the Agency intentionally violated the risk management mandates of DoDI 4715.18.

The Agency's response attempting to minimize these discrepancies is technically and legally indefensible. The Agency cannot administratively declare an uninvestigated area "clean" based on incomplete SI data to expedite a MILCON award and avoid risk.

This contracting failure was not merely an administrative oversight; it was the direct proximate cause of severe OSHA and USACE safety violations. By providing a false baseline, the Agency ensured the contractor would not—and could not—implement the HAZWOPER training, medical surveillance, and stringent PPE requirements mandated by federal law for work in uncharacterized, potentially contaminated zones.

3. Disregard of Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS)

The Agency acknowledges that the RI is "progressive" and the lateral extent must be found, yet admits the MILCON contract was finalized before the RI, using "clean" designations while internally maintaining a risk register acknowledging the threat of "costly change orders." Specific areas of apparent violation are as follows:

FAR 36.202 (Specifications): This regulation requires that specifications for construction contracts accurately reflect the actual needs and conditions of the government. Affirmatively declaring an area "clean" based on incomplete SI data fails to provide accurate site specifications.

FAR 52.236-2 (Differing Site Conditions): By explicitly writing into the contract that the areas were "clean," while simultaneously recognizing internally (via the risk register) that contamination could be present outside the SI area, the Agency set the conditions for a Type 1 Differing Site Condition.

Defense Federal Acquisition Regulation Supplement (DFARS)

While the Agency might successfully argue that DFARS 252.223-7006 (Prohibition on Storage/Disposal) did not strictly apply in 2022 due to rigid statutory definitions, DFARS Subpart 223.3 / 252.223-7001 (Hazard Identification) DID STILL APPLY. Furthermore, the Agency is trapped by its own admission: by actively executing a CERCLA Site Inspection (SI) and Remedial Investigation (RI) under the Defense Environmental Restoration Program (DERP) in 2022, the DoD had already formally recognized PFAS as a "pollutant or contaminant" posing a health hazard. They cannot use the lack of an EPA CERCLA designation to dodge their duty to warn the MILCON contractor of a known toxic risk.

DFARS 252.236-7001 (Contract Drawings and Specifications): This mandatory clause in DoD construction contracts requires the government to provide accurate and reliable contract drawings and specifications. The contractor is legally entitled to rely on the accuracy of these government-provided documents to scope their work, price their bid, and establish their safety protocols. By explicitly stating in the MILCON specifications that the areas outside the PFAS Site Inspection (SI) boundary were "clean," while possessing an internal risk register acknowledging the likelihood of contamination and "costly change orders," the Agency provided materially false specifications.

DFARS Subpart 223.70 (Environmental Conservation and Protection): This clause requires DoD contracting officers to ensure that all contracts are performed in accordance with statutory environmental requirements and DoD environmental policies (such as DoDM 4715.20 and CERCLA). The Agency admits to awarding the MILCON contract prior to the completion of the Remedial Investigation (RI), using only preliminary SI data to declare the site clean. This action intentionally circumvented the CERCLA process. By prioritizing MILCON timelines over mandated environmental characterization processes, the Contracting Officer failed their affirmative duty under DFARS 223.70 to ensure the contract aligned with federal environmental conservation and protection laws.

DFARS Subpart 223.3 and 252.223-7001 (Hazardous Material Identification): This clause relies on the definition of "hazardous material" found in FAR 52.223-3, which ties the definition directly to the OSHA Hazard Communication Standard (29 CFR 1910.1200). OSHA's definition of a "health hazard" does not wait for an EPA CERCLA designation. Under OSHA, if a chemical yields statistical evidence that acute or chronic health effects may occur in exposed employees (which the DoD and EPA possessed for PFAS well before 2022), it is a health hazard. Therefore, the duty to identify the hazard to the contractor remained entirely intact.

DERP/CERCLA Conundrum - The Agency's response stated: "The MILCON contracts were awarded after the site inspection (SI) and prior to the RI."

Under CERCLA Section 104 and the DoD's DERP manual, the government has the authority to investigate and remediate not just "hazardous substances," but also "pollutants or contaminants" which may present an imminent and substantial danger to public health or welfare. The DoD issued policies long before 2022 (e.g., DoDI 4715.18, Emerging Chemicals) directing components to investigate PFAS under the CERCLA framework, e.g., Secretary of Defense Memorandum establishing self-regulated action levels for PFAS compounds.

The Agency cannot claim they were conducting formal CERCLA SI/RI processes for PFAS because it was a dangerous contaminant, while simultaneously arguing to the MILCON contractor that it wasn't hazardous enough to warrant disclosure. The Agency has previously argued that PFAS was not officially designated as a CERCLA "hazardous substance" by the EPA at the time of the 2022 MILCON award, such a defense is technically and legally void regarding the government's duty to disclose known site hazards and protect worker safety.

The government's duty to disclose hazardous materials to the contractor under DFARS 223.3 and FAR 52.223-3 is explicitly tied to the OSHA Hazard Communication Standard (29 CFR 1910.1200), not the EPA's CERCLA list. Long before 2022, both the DoD and the broader scientific community possessed conclusive evidence of the acute and chronic toxicity of PFAS, classifying it as a severe "health hazard" under OSHA definitions. Because it met the OSHA definition of a health hazard, the Agency retained an absolute duty under DFARS and the Multi-Employer Worksite doctrine to disclose the potential presence of this chemical to the MILCON contractor, regardless of its EPA statutory status at the time.

The Agency's approach of defining uninvestigated land as "clean" to facilitate a MILCON award, while knowing an RI was necessary to actually find the contamination's extent, is a breach of good faith contracting. It withheld material risk information from the bidders, preventing them from properly scoping the environmental management and safety costs required for the project.

4. Disregard of the "Superior Knowledge" Doctrine

In federal contracting, if an agency possesses vital information regarding a site hazard (such as an internal risk register noting that PFAS contamination likely extends into a construction footprint) but explicitly withholds that information from the solicitation to keep bid prices low or to expedite the award, they violate the Superior Knowledge Doctrine.

If the USACE possessed an internal Risk Register, Site Inspection (SI) data, and other documentation indicating a likelihood of PFAS contamination beyond the MILCON (SI) boundaries, but explicitly wrote "areas outside the MILCON PFAS areas are clean" into the contract to avoid "costly change orders," they have likely violated the Superior Knowledge Doctrine. The Agency’s actions meet all four elements of the Superior Knowledge doctrine:

(1) Lack of Vital Knowledge - Possessed vital knowledge (PFAS risk) that the contractor did not have,

(2) Government Awareness - Knew the contractor was not knowledgeable of the specific internal risk assessments,

(3) Misleading Specifications - Supplied a specification (the "clean" designation) that actively misled the contractor, and

(4) Failure to Disclose - Failed to disclose internal documents (e.g., Risk Register, RI data, expected extent of PFAS contamination, etc.) that would have allowed for proper safety planning (HAZWOPER) and pricing

For a contractor or whistleblower challenging an agency's assertion that "clean" designations were simply administrative errors, demonstrating that the government possessed superior knowledge of the hazard (e.g., through prior sampling, historical use data, known PFAS conditions at other DOD facilities, internal risk registers, etc.) but withheld it from the bidding contractors is the primary legal mechanism to prove that regulations were disregarded at the expense of worker safety.

This action induced a Type 1 Differing Site Condition (FAR 52.236-2). By prioritizing the avoidance of "costly change orders" and administrative delays over accurate site characterization, the Agency illicitly transferred the financial risk of environmental remediation—and the physical risk of chemical exposure—onto the MILCON contractor.

5. Misapplication of CERCLA/DERP Standards for Site Characterization

The Agency justifies designating the areas as “clean” by stating the contract "utilized the available data from PFAS SI and the MILCON sampling effort." This violates the legal definitions and purposes of the CERCLA process.

40 CFR § 300.420(c) (National Contingency Plan - Site Inspection): Under the NCP, the sole purpose of a Site Inspection (SI) is to determine whether there is a release or potential release and to determine the need for further action. Simply put, the SI answers a Yes or No, is contamination present or is it not. The SI typically only includes 2-3 samples collected from the area of highest potential for release. An SI explicitly does NOT provide any information concerning the lateral and vertical extent of contamination. The SI report draws an arbitrary line around the sample points and refers to this as the SI area, i.e. this is not a boundary.

DoD Manual 4715.20 (Defense Environmental Restoration Program Management): Consistent with CERCLA, DoD policy dictates that defining the extent of contamination is the function of the Remedial Investigation (RI).

A lack of sampling data outside an SI area does not equate to "clean"; scientifically and legally, it equates to "uncharacterized" or "unknown." By affirmatively labeling uncharacterized areas as "clean" in a binding contract prior to the RI, the Agency bypassed the mandated CERCLA process and provided materially false baseline data to the contractor.

5. Contractual Prejudice and Sabotage of OSHA 1910.120 Compliance

The Agency's assertion that the contractor's safety requirements provide the "same level of protection" ignores the fundamental mechanics of federal contracting and occupational health law. A contractor's safety posture is strictly dictated by the site conditions defined by the government in the contract specifications (FAR 36.202).

By affirmatively defining the uninvestigated areas as "clean," the Agency legally exempted the MILCON contractor from the scope of OSHA 29 CFR 1910.120. Consequently, the contractor did not budget for, and was not required to provide, 40-hour HAZWOPER trained personnel, a Certified Industrial Hygienist, an SSHP, or mandatory medical surveillance (1910.120(f)).

The Agency cannot deliberately write a specification that deactivates HAZWOPER requirements to save time and money, and then retroactively claim that standard construction safety protocols offer the "same level of protection" against uncharacterized chemical hazards. By withholding its internal risk assessment, the Agency essentially sabotaged the contractor's ability to comply with OSHA 1910.120, thereby transferring the severe physical risks of chemical exposure directly onto unprotected workers.

Empirical Substantiation of Undisclosed PFAS Contamination at Tyndall AFB

Subsequent to the formal Whistleblower disclosure, the MILCON program authorized the PFAS Remedial Investigation (RI) contractor to collect soil and groundwater samples outside the initially restricted site boundaries. Analytical data derived from these newly authorized sampling points (specifically located in areas previously classified as "clean" within MILCON contract specifications) demonstrates PFAS concentrations significantly exceeding Department of Defense (DoD) action levels and federal regulatory screening criteria. This empirical data validates the Whistleblower's initial assessment: areas communicated to rebuild contractors as "clean" were, in fact, severely contaminated. Figures 8 and 9 illustrate the spatial distribution of the newly verified PFAS contamination.

Because MILCON affirmatively designated these operational areas as "clean," contractors executing excavation, dewatering, and other intrusive ground activities were deprived of accurate hazard communication. Consequently, personnel were likely exposed to hazardous concentrations of PFAS without appropriate personal protective equipment (PPE) or medical monitoring.

Figures 8 and 9 also delineate red boundaries, representing the arbitrary "PFAS RI Site Boundaries" imposed by MILCON management. Contract Modification P00004 expressly restricted the Tyndall AFB PFAS RI contractor to delineating the nature and extent of contamination only within these red boxes, i.e., MILCON known areas of PFAS contamination, also known as Site Inspection Areas. This contractual restriction artificially truncated the scientific investigation, resulting in a defective site characterization that actively concealed the true extent of the contamination from subsequent construction contractors. Citations of federal regulations and USACE health and safety requirements are provided in previous sections.

Figure 8 – Tyndall AFB PFAS Contamination Distribution example

Figure 9 – Tyndall AFB PFAS Contamination Distribution example

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?

Agency response to allegation 4

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.

Whistleblower rebuttal to Agency response to allegation 4

The Agency's response to allegation 4 is a textbook example of deflection and obfuscation. It completely fails to answer the whistleblower's direct question: were the actual construction workers informed about PFAS hazards and mitigation?

Instead, the Agency attempts to shift all legal and safety liability onto the MILCON contractors by citing boilerplate safety clauses (Specification 01 35 26) and claiming that raw environmental data was "available" to them. This response creates a fatal contradiction with the Agency's stance in Agency response to allegation 3: The government cannot explicitly define a site as "clean" in the contract specifications (Agency response to allegation 3), and then retroactively claim the contractor should have used raw environmental reports to design a hazard program for "unknowns."

This approach violates the OSHA Multi-Employer Worksite Directive, the Hazard Communication Standard, USACE EM 385-1-1, and fundamental FAR/DFARS contracting principles.

1. Hazard Communication (OSHA 1910.1200 & Multi-Employer Worksite)

The Agency's Claim: The Agency claims that because previous environmental reports and data were "provided" or "available" to contractors, the burden of Hazard Communication was satisfied.

OSHA 29 CFR § 1910.1200 (Hazard Communication Standard): Providing raw, voluminous environmental data does not satisfy the legal requirement for Hazard Communication. HazCom requires the affirmative identification of chemical hazards and explicit communication of those hazards, including the provision of Safety Data Sheets (SDS) and specific training on mitigation.

OSHA Directive CPL 02-00-124 (Multi-Employer Worksite Policy): As the "Host Employer" and "Creating Employer" of the site conditions, the federal government has a non-delegable duty to explicitly inform the contractor of known or suspected site hazards.

The Agency is using document dumping to feign compliance. If the Agency explicitly designated the work zones as "clean" (as admitted in Agency response to allegation 3), the contractor had no regulatory trigger to scour historical SI reports to implement a PFAS HazCom program. The government actively misled the contractor, thereby preventing the hazard information from ever reaching the trade workers on the ground.

2. FAR, DFARS, and Contracting: Contradictory Specifications & Superior Knowledge

The Agency's Claim: The data was available for contractors to use "in designing the required safety programs."

FAR 36.202 (Specifications) & DFARS 252.236-7001 (Contract Drawings and Specifications): Bidders are legally bound and legally entitled to base their bids and safety programs on the explicit specifications provided by the government. Because the government explicitly specified the site was "clean," any contractor who designed a safety program for an "unknown" or "contaminated" site (e.g., pricing in HAZWOPER CIHs, Tyvek, training, etc.) would have been outbid by contractors bidding to the baseline "clean" specification.

FAR 52.236-3 (Site Investigation and Conditions Affecting the Work): While contractors must investigate the site, they are not expected to perform independent environmental baseline testing or second-guess the government's explicit "clean" designation.

The Agency is attempting to use the Superior Knowledge Doctrine in reverse. They are claiming, "We gave you a contract that said it was clean, but if you read the hundreds of pages of attached historical data, you should have figured out we were wrong and protected yourselves." This is a bad-faith contracting practice that violates the implied warranty of specifications.

The Agency asserts that because historical environmental data was "available" or "provided," the contractor was responsible for designing a safety program for PFAS "unknowns." This violates the implied warranty of design adequacy, contradicts FAR 36.202 (Specifications), and demonstrates a severe failure in the Contracting Officer's duties under FAR 52.236-13 (Accident Prevention). The government cannot explicitly contract for a "clean" site (as admitted in allegation 3) and then legally

expect the contractor to independently deduce site hazards from uncontextualized raw data. The government cannot issue a contract with an explicit specification that a site is "clean," but simultaneously bury raw sampling data in the appendices and expect the contractor to override the government's own "clean" specification to establish a HAZWOPER safety program. The contractor is legally protected in relying on the primary contract specification ("clean"), rendering the Agency's defense legally void.

3. Gross Mischaracterization of OSHA 1910.120 Training Requirements

The Agency's Claim: The Agency cites "Specification 01 35 26, Section 1.6.3.2," which requires weekly safety meetings for trade workers, implying this satisfies safety training for PFAS exposure.

OSHA 29 CFR § 1910.120(e) (HAZWOPER Training): Weekly toolbox talks (safety meetings) are standard OSHA 1926 construction requirements used to discuss slip/trip/fall hazards, crane lifts, heat stress, etc. They do not and cannot replace the mandatory 40-hour HAZWOPER classroom training and 3-days of supervised field experience required for workers operating in "unknown" or contaminated sites.

OSHA 29 CFR § 1910.120(i) (Informational Programs): HAZWOPER requires a specific site program to inform employees, contractors, and subcontractors of the nature, level, and degree of exposure likely as a result of participation in hazardous waste operations.

Equating a standard weekly 15-minute toolbox talk (Spec 01 35 26) with the rigorous, legally mandated 40-hour toxicological and tactical training required for hazardous waste sites (OSHA 1910.120) is a severe misrepresentation of federal safety law.

4. USACE EM 385-1-1: Failure of Government Oversight

The Agency's Claim: Engineer Manual 385-1-1 directs contractors to have an established safety program.

USACE EM 385-1-1, Section 01.A.14 and 01.A.15 (Activity Hazard Analysis - AHA): EM 385-1-1 does not just tell contractors to have a safety program; it requires the Government (i.e., USACE) to review, accept, and sign the contractor's Activity Hazard Analyses (AHAs) before work begins.

USACE EM 385-1-1, Section 33 (Hazardous Waste Operations): If the site possessed "unknowns" regarding PFAS, Section 33 mandated the creation of a Site Safety and Health Plan (SSHP).

The Agency acts as if safety is a "fire and forget" contractor responsibility. If the potential for PFAS exposure existed, USACE was legally required by its own manual to reject any contractor AHA that did not explicitly list PFAS as a hazard and detail specific mitigation steps (e.g., wet methods for dust control, specialized PPE, decon zones). If USACE accepted standard AHAs for dirt-moving that lacked PFAS controls, the government violated its own EM 385-1-1 oversight mandates.

5. EPA / CERCLA Violations: Misrepresenting the SI/RI Purpose

The Agency's Claim: The Agency states they used SI data and additional sampling to "reduce the unknowns."

EPA NCP (40 CFR § 300.430) / CERCLA: As established, an SI determines if a release occurred; the RI determines the extent. "Reducing unknowns" is not a recognized CERCLA phase for declaring a site safe for unprotected construction workers.

The Agency acknowledges the Army report's finding that exposure exists when the "full nature and extent... has not been delineated." Yet, they proceeded with MILCON construction before the RI (which delineates the extent) was complete. They knowingly put workers into a gap between the SI and the RI, exposing them to the exact "unknowns" the EPA CERCLA process is designed to eliminate before ground disturbance occurs.

The Agency completely failed to answer whether workers were informed of the PFAS risks. Instead, the Agency admitted to relying on standard construction safety clauses (Spec 01 35 26) while ignoring the stringent requirements of OSHA 1910.120 and USACE EM 385-1-1 Section 33. The government cannot falsely specify a site as "clean," accept baseline construction safety plans that lack PFAS mitigation, and then blame the contractor for failing to decipher raw environmental reports to protect their workers from an undisclosed hazard.

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?

Agency response to allegation 5

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

Whistleblower rebuttal to Agency response to allegation 5

The Agency’s response to Question 5 is a blatant admission of regulatory Noncompliance presented under the guise of a defense. The whistleblower explicitly asked if the stringent, chemical-specific safety practices (to prevent ingestion and skin contact of PFAS) used by the RI contractor (Tetra Tech) were shared with and followed by the MILCON construction workers. However, the Agency completely avoided the question. Instead, it doubled down on the demonstrably false claim that "short sleeve shirts, long pants, and leather... boots" provide the "same level of protection" as a HAZWOPER Site Safety and Health Plan (SSHP). The Agency then abdicated its legal oversight responsibilities by claiming a safety audit was "beyond the scope" of the investigation. This response documents blatant disregard of OSHA training, medical surveillance, PPE, decontamination, etc. standards, as well as USACE EM 385-1-1 oversight mandates, and FAR Accident Prevention clauses.

The Agency's response to allegation 5 is technically invalid and legally indefensible. Standard construction attire (short sleeves and leather boots) offers zero protection against the dermal absorption or ingestion of PFAS and objectively violates OSHA 1910.120(g) and USACE EM 385-1-1 chemical PPE requirements. Furthermore, by refusing to audit whether MILCON workers are actually protected from these specific exposure routes, the Agency has openly abdicated its mandatory oversight and accident prevention duties under FAR 52.236-13. The Agency cannot legally acknowledge that the RI contractor requires an SSHP to prevent ingestion/skin contact of PFAS, while simultaneously defending a MILCON safety posture that ignores those exact same exposure pathways.

1. The "Short Sleeve" Absurdity: Violations of OSHA PPE and USACE Standards

The Agency's Claim: The Agency explicitly states that the minimum safety requirement is a "short sleeve shirt, long pants, and leather or other protective work shoes," and reiterates that this provides the "same level of protection" in known or unknown contaminated areas as the RI contractor's SSHP.

OSHA 29 CFR § 1910.120(g) (HAZWOPER - Personal Protective Equipment): OSHA mandates that PPE must be selected to protect employees from the specific hazards and routes of exposure they are likely to encounter. PFAS poses severe dermal absorption and ingestion risks. Standard leather boots are porous and absorb contaminated water/mud. Short sleeves leave the arms entirely exposed to contaminated dust and soil. Tetra Tech's SSHP required site contaminant conditions to be documented and a commensurate level of PPE used by PFAS RI investigators. The Agency's claim that exposed skin and porous leather offer the "same protection" against a chemical contaminant as PPE specified by the PFAS RI health and safety manager to protect against specific site hazards and contamination is a gross disregard of industrial hygiene science and OSHA law.

USACE EM 385-1-1, Section 05.G (Personal Protective and Safety Equipment - Clothing): While Section 05.G allows short sleeves for standard construction, it strictly dictates that when workers are exposed to hazardous substances, appropriate chemical-protective clothing must be provided. By allowing short sleeves in an area the Agency previously admitted had "unknowns" regarding PFAS, the Agency violated its own protective clothing mandates.

2. Failure to Control Ingestion and Cross-Contamination Hazards

The Agency's Claim: The Agency ignores the whistleblower's specific mention of protecting workers from "ingestion or skin contact."

OSHA 29 CFR § 1910.120(k) (Decontamination): A HAZWOPER SSHP requires strict decontamination procedures. Workers must remove contaminated PPE and wash exposed skin before leaving the site to prevent tracking toxic chemicals into their personal vehicles and homes. MILCON workers in "short sleeves and leather boots" have no decon protocols; they wear their contaminated boots and dusty clothes home, exposing their families.

OSHA 29 CFR § 1910.120(n) (Sanitation at Temporary Workplaces): To prevent ingestion, OSHA prohibits eating, drinking, or chewing tobacco in contaminated or "unknown" zones. HAZWOPER sites establish strict Contamination Reduction Zones (CRZ) and clean break areas. By treating the MILCON site as "clean" construction, the Agency allowed construction workers to eat and drink in potentially PFAS-contaminated dust, directly violating federal sanitation controls for hazardous waste sites.

3. Complicity in Defective Safety Plans (USACE EM 385-1-1 Noncompliance)

The Agency attempts to shield itself by stating the MILCON safety office has a "dedicated safety officer" who "reviews the construction AHA and safety submittals."

USACE EM 385-1-1, Section 1.A.14 and 1.A.15 (Activity Hazard Analysis): The government does not merely "review" AHAs; the government is legally required to accept them as compliant with all safety standards and known or potential hazards (including PFAS) before work begins.

The Agency presents the Safety Officer's signature as evidence of due diligence; however, this approval serves as inculpatory evidence of the government's active complicity in accepting a deficient safety plan that failed to meet USACE requirements. If the DoD/USACE possessed Tetra Tech's SSHP, which detailed the specific practices needed to mitigate PFAS ingestion and dermal contact but the USACE Safety Officer subsequently signed and accepted a MILCON AHA that only required "short sleeves and leather boots" for the same or adjacent uncharacterized footprint, the Safety Officer may have failed in their affirmative duty to protect the workforce, if MILCON had been forthcoming in presenting the high potential for PFAS contamination at Tyndall AFB.

4. Abdication of FAR Oversight and Contractual Duty

The Agency's Claim: "A safety audit of the contractors to ensure they were following their procedures is beyond the scope of this investigation."

FAR 52.236-13 (Accident Prevention): This mandatory construction clause requires the contractor to provide a safe work environment, but it explicitly grants the Contracting Officer (KO) the authority and the duty to inspect the site and enforce compliance. If the KO or their designated representative (the Safety Officer) becomes aware of noncompliance or a hazard to workers, FAR 52.236-13(d) requires them to stop work until it is corrected.

The whistleblower brought forward a credible, specific allegation that MILCON workers were not being protected from a known chemical hazard (PFAS) in the same manner as the RI workers. For the Agency to claim that verifying contractor safety compliance is "beyond the scope of this investigation" is a staggering abdication of their responsibilities under the FAR. Investigating severe, ongoing safety disparities on a federal project is the primary scope of the Contracting Officer and the Safety Office.

5. Violation of Multi-Employer Worksite Hazard Communication

OSHA 29 CFR § 1910.1200 (Hazard Communication) & OSHA Directive CPL 02-00-124: As the controlling employer of the Tyndall AFB site, the USACE possessed superior knowledge of the specific mitigation practices (Tetra Tech's SSHP) required to safely handle soil and groundwater.

The USACE was legally obligated to cross-communicate these specific hazards and necessary controls to the MILCON contractors. By failing to explicitly answer "yes" to the whistleblower's question ("did MILCON communicate... these practices?"), the Agency tacitly admits it hid the safety data. The RI contractor was given the data to protect their workers; the MILCON contractor was left in the dark, allowing their workers to work in and with contaminated soil and groundwater in short sleeves.

6. Tyndall PFAS RI Site-Specific Health and Safety Plan vs Tyndall MILCON Rebuild Health and Safety Requirements

The Tyndall AFB PFAS RI Site-Specific Health and Safety Plan and Tyndall MILCON Rebuild health and safety requirements for construction contractors were reviewed for content and compliance with 29 CFR 1910.120 and USACE EM 385-1-1 requirements. The Agency's claim that the health and safety controls for the PFAS RI and MILCON contracts is invalid. The safety controls are not the same; they are not even comparable.

Fundamentally Different Purpose: The PFAS RI SSHASP is a HAZWOPER-compliant plan designed to protect and prevent workers from inhaling, ingesting, or absorbing a toxic chemical (PFAS). The MILCON requirement is an Accident Prevention Plan (APP) designed to prevent physical injuries. Even though the MILCON contract appears to mention OSHA HAZWOPER compliance, this requirement is negated by the MILCON claim that all areas outside the MILCON PFAS areas are "clean."

Vastly Different Protections: A MILCON worker in standard construction attire ("short sleeve shirt, long pants, and leather... boots") has zero protection against the chemical exposure pathways identified in the PFAS RI SSHASP. The SSHASP explicitly requires chemical-resistant gloves and coveralls because it anticipates direct contact with contaminated soil and water.

Legally Incompatible: A contractor following the MILCON APP would be in direct violation of OSHA 1910.120 if they were working on a site with the known or suspected PFAS contamination, as described in the PFAS RI SSHASP. The mandatory training, medical surveillance, and decontamination protocols would all be absent for MILCON contract workers.

The SSHASP for the PFAS RI contractor outlines a rigorous, chemical-focused safety system that is profoundly different from, and far more protective than, the APP required for the MILCON Tyndall AFB rebuild project. The Agency's statement to the contrary is incorrect.

Notification to Mobile District Management

The Mobile District Deputy Commander acknowledged receipt of a comprehensive verbal and written report regarding severe safety concerns at Tyndall AFB. The Whistleblower identified that MILCON contract execution is improperly designating areas outside known PFAS boundaries as "clean," presenting a significant risk of chemical exposure and endangering the health and safety of USACE and contractor personnel.

To mitigate this imminent risk, the Whistleblower recommended updating the site characterization terminology to "unknown or uncharacterized." Despite his overarching command responsibility for safety under AR 385-10 and EM 385-1-1, the Deputy Commander confirmed that these concerns were not escalated to higher leadership, the Contracting Officer, or the Mobile District Safety and Occupational Health (SOH) Office, citing a lack of jurisdictional responsibility.

Similar reports detailing this substantial and specific danger to public health were submitted to the Chief of Project Management (PM-Ic) and the Chief of Engineering (EN-G); however, no corrective measures or investigations were initiated, contrary to government oversight obligations outlined in FAR 52.236-13 and federal whistleblower protection statutes.

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?

Agency response to allegation 6

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.

Whistleblower rebuttal to Agency response to allegation 6

The Agency's response to allegation 6 is scientifically negligent and legally invalid. The Agency makes two primary, false assertions: 1) that the physical extent of contaminated groundwater does not dictate the safety guidelines, and 2) that EPA MCLs have no bearing on waste management or site operations.

By ignoring Remedial Investigation (RI) data showing the PFAS plume extends into the MILCON footprint, the Agency is actively concealing a Type 1 Differing Site Condition. Furthermore, the Agency completely ignores the severe regulatory implications of dewatering contaminated groundwater, violating EPA/Clean Water Act discharge rules, USACE EM 385-1-1, and OSHA HAZWOPER standards.

The Agency's response to allegation 6 constitutes an admission of contract mismanagement and environmental negligence. The assertion that the spatial expansion of a contaminant plume "would not affect safety guidelines" violates the core principles of OSHA 1910.120 site characterization, as well as USACE Safety Manual EM 385-1-1 requirements.

Furthermore, the Agency's attempt to dismiss the relevance of EPA MCLs deliberately ignores the severe regulatory requirements surrounding construction dewatering. Pumping PFAS-contaminated groundwater out of an excavation and discharging it requires strict environmental controls under the Clean Water Act and DoD policy. By ignoring the new RI data, refusing to declare a Differing Site Condition under FAR 52.236-2, and refusing to mandate updated PPE for dermal groundwater

exposure, the Agency is knowingly subjecting unprotected workers to chemical hazards and exposing the government to massive environmental liability for illicit wastewater discharge.

1. The "Extent of Contamination Does Not Affect Safety" Fallacy

The Agency's Claim: "The lateral and vertical extent of groundwater contamination would not affect the safety guidelines for construction workers... all safety requirements... provide the same level of protection."

OSHA 29 CFR § 1910.120(c) (HAZWOPER - Site Characterization and Analysis): Site characterization is a continuous process. OSHA mandates that as new information becomes available (e.g., PFAS RI data showing the lateral and vertical extent of PFAS contamination is larger than expected), the site safety plan must be updated to reflect the newly identified hazards. The lateral and vertical extent of the soil and groundwater contamination is the exact metric that determines whether a worker is in a "clean" zone (OSHA 1926) or a "hazardous" zone (OSHA 1910.120); not an arbitrary statement included in a contract.

OSHA 29 CFR § 1910.120(g) (Personal Protective Equipment): If the vertical extent of the contamination means construction workers will be standing in, excavating, or dewatering PFAS-contaminated soil or groundwater, specifying standard construction boots is negligent. Workers require PPE that is commensurate with the hazard they are working in.

Claiming the physical location of the toxic chemical doesn't change the safety posture is absurd. If PFAS contamination extends into an excavation or dewatering zone, then those areas are part of the HAZWOPER site(s). The Agency is restating its false claim from allegation 3 and allegation 5 to avoid admitting they failed to update the safety posture when the RI data revealed the true hazard.

2. Evasion of EPA and DoD Waste Management / Dewatering Regulations

The Agency's Claim: MCLs are only for drinking water under the SDWA, and their establishment "does not have an effect on waste designation... so no change would be necessary."

EPA CERCLA and ARARs (40 CFR § 300.430(e)(2)(i)(B)): While the Agency is technically correct that MCLs originate in the Safe Drinking Water Act, they are deliberately obfuscating how CERCLA works. Under CERCLA (which governs the RI), when an MCL is published, it legally becomes an Applicable or Relevant and Appropriate Requirement (ARAR). This means the DoD must use the MCL as the baseline for evaluating groundwater hazard and cleanup, profoundly impacting how that water is managed if brought to the surface.

Clean Water Act (CWA) / National Pollutant Discharge Elimination System (NPDES): The whistleblower explicitly asked about dewatering activities. When a MILCON contractor pumps contaminated groundwater out of an excavation, it becomes a regulated wastewater discharge. You cannot pump PFAS-contaminated water onto the ground or into a storm drain if it exceeds regulatory limits. By claiming "no change is necessary," the Agency is tacitly authorizing the illegal discharge of contaminated groundwater.

USACE EM 385-1-1, Section 06.B (Hazard Communication) & Section 33: Once groundwater is pumped from the ground, it is a "chemical in the workplace." The contractor must have an environmental management plan to contain, test, and filter/dispose of the water, and workers must be protected from dermal contact and ingestion during the pumping operations.

The Agency intentionally narrowed its definition of MCLs to "drinking water" to avoid discussing the massive environmental and financial liability of pumping millions of gallons of PFAS-contaminated groundwater during MILCON dewatering operations during the Tyndall AFB rebuild.

3. FAR and DFARS Violations: Ignoring New Site Data

FAR 52.236-2 (Differing Site Conditions): The USACE explicitly defined the MILCON area as "clean" (as established in allegation 3). The RI data now proves that assertion was false; the contamination extends extensively beyond the 500-foot buffer. This is the absolute definition of a Type 1 Differing Site Condition (subsurface or latent physical conditions at the site differing materially from those indicated in the contract).

FAR 43.204 (Administration of Change Orders) & Superior Knowledge Doctrine: Because the USACE is conducting the RI, it possesses "Superior Knowledge" of the new plume boundaries. The Contracting Officer has an affirmative legal duty to issue a modification/change order to the MILCON contractor notifying them of the contaminated groundwater so the contractor can update their safety plans and price the cost of HAZWOPER compliance and contaminated water management.

FAR 52.236-13 (Accident Prevention): By possessing data that shows workers are excavating into contaminated soil or groundwater, but failing to force a change in the safety guidelines (as admitted in their response), the USACE is actively violating its duty to administer the accident prevention clause.