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March 27, 2020

Mr. Ramon Ortiz
NGB/ A4AM
3501 Fetchet Avenue
Joint Base Andrews, MD 20762-5157
[usaf.jbanafw.ngb-a4.mbx.a4a-nepa-comments@mail.mil]

Re: United States Air Force F-35A Operational Beddown National Guard
Environmental Impact Statement

Dear Mr. Ortiz:

This law firm has been retained by Safe Skies Clean Water Wisconsin (“Safe Skies”), a group of individuals and organizations in the Madison, Wisconsin area who are opposed to the siting of the proposed F-35A beddown in Madison, Wisconsin. The group’s concerns include existing soil and water contamination at the proposed site, noise, air pollution, evaluation of alternative missions, and environmental justice.

The Air Force released the final Environmental Impact Statement (“EIS”) on February 28th and we understand that it expects to release the record of decision soon. We also understand the comment period on the EIS has closed; however, we have identified numerous flaws which demonstrate that the *final EIS does not meet the requirements of the National Environmental Policy Act*.

For example, the final EIS acknowledges existing soil and water contamination in and around Truax Field, where the beddown would be located, and generally acknowledges that construction activities – including 4.9 acres of soil disturbance – may mobilize some of these contaminants. However, the final EIS does not take a hard look at the contamination issue, either in understating the scope of the problem or in the response to it. *See* 32 C.F.R. § 989.31 (requiring environmental document to analyze potential pollution that may result from the proposed action, alternatives, and pollution prevention measures). At most, the final EIS broadly describes future processes that may be utilized to identify and address contamination, but it does not state whether they would be effective. If this description of processes was intended to describe potential mitigation, it did not satisfy 32 C.F.R. § 989.22. For these and other reasons,

the final EIS has failed to adequately explain the environmental impacts of choosing Truax Field as the beddown site.

The contamination issue at Truax Field is not insignificant. Highly concerning levels of PFAS chemicals have been documented not just at Truax Field, but in Starkweather Creek, which drains Truax Field, and in fish utilizing the creek. The Wisconsin Department of Natural Resources (“WDNR”) issued responsible party letters to the Wisconsin Air National Guard (“WANG”) in April 2018 and October 2019 relating to its discharge of hazardous substances, including per- and polyfluoroalkyl substances (“PFAS”), at Truax Field. The WDNR subsequently issued WANG a Notice of Violation of Wisconsin’s spill and environmental remediation laws in October 2019 because WANG did not comply with the April 2018 letter.

Since the final EIS was released, the WDNR has issued WANG yet another letter (attached), stating that as of March 13, 2020, WANG continues to ignore even its commitments and legal obligations to initiate a site investigation workplan. The presence and levels of PFAS are significant enough to warrant not just WDNR enforcement, but private party action such as a suit under the Resource Conservation and Recovery Act to abate an imminent and substantial endangerment to health or the environment, 42 U.S.C. § 6972.

This is also a highly controversial environmental issue, as demonstrated by the numerous comments, petitions¹ and editorials² the PFAS contamination at Truax has generated. As an environmentally controversial issue, the Air Force and WANG should seek additional public comments, based on a fully informed description of the contamination problem and proposed remediation. 32 C.F.R. § 989.19(e) (allowing additional comment at any time during the EIS process where, *inter alia*, “there is substantial environmental controversy concerning the proposed action”).

In addition, the final EIS acknowledges that the Truax Field site would produce significant environmental justice impacts. Yet the EIS likely understates those impacts, because the Air Force failed to provide those who would actually feel them with

¹ Chris Hubbach, F-35 Opposition Group Petitions Air Force Secretary to Send Jets Elsewhere, Wis. State Journal, Mar. 24, 2020 (describing petition with over 2,000 signatures), *available at* https://madison.com/wsj/news/local/environment/f--opposition-group-petitions-air-force-secretary-to-send/article_6d735f56-820c-5947-9bca-fa58ca6b5113.html.

² E.g., Maria Powell, Superfund Will Not Protect Our Waterways—Or Us—From the Military’s Toxic Pollution, The Cap Times, Mar. 11, 2020, *available at* https://madison.com/ct/opinion/column/maria-powell-superfund-will-not-protect-our-waterways-or-us/article_5e020421-5fb4-54b1-980e-0fc955c1463b.html.

sufficient opportunity for participation in the EIS process. The Air Force was required to make "special efforts to ensure that these...populations are brought into the review process." 32 C.F.R. § 989.19(c)(3). Specifically, this may require "adaptive or innovative approaches to overcome" barriers such as "the scheduling of meetings at times and in places that are not convenient to working families." *Environmental Justice: Guidance under the National Environmental Policy Act*, Council on Environmental Quality, December 10, 1997. By its own admissions in the final EIS (pp. A6-14, A6-17), the Air Force made no such targeted efforts, and further required mobility-limited, impacted residents to drive 8 miles just to attend the meeting that the general public was afforded. It thus did not adequately apprise itself of the disproportionate noise and pollution impacts of the project on children and minority populations.

Safe Skies has many other concerns not identified herein, but respectfully submits that the serious and evolving issue of PFAS contamination in soil and groundwater at Truax Field and the failure to make special efforts to engage those who would feel potential environmental justice impacts each warrants a more thorough analysis and disclosure to the public, ideally in a supplemental EIS, prior to a final decision being made.

Without preparation of a supplemental EIS and a more thorough evaluation of the issues described in this letter, Truax Field should not be selected at a final site for the beddown of an F-35 fighter jet squadron.

Thank you for your consideration.

Sincerely,

PINES BACH LLP



Christa O. Westerberg
Aaron G. Dumas

cc: Joane K. Mathews, BG, Wisconsin National Guard, Interim Adjutant General
The Honorable Barbara Barrett, Secretary, United States Air Force



March 13, 2020

Col. Kevin Philpot
Vice Wing Commander
Wisconsin Air National Guard
2400 Wright Street
Madison, WI 53708

Subject: Response Action Requirements – Wisconsin Air National Guard-Truax Field, BRRTs #02-13-581254

Dear Col. Philpot:

On February 3, 2020, the Wisconsin Department of Natural Resources (DNR) met with representatives from the Wisconsin Air National Guard (WANG), Dane County, Dane County Airport and the City of Madison to discuss the results of investigation into PFAS contamination at Truax Field (Truax) and Starkweather Creek and the status of additional required work. **The following information is being provided per your request at the February 3, 2020 meeting.** At this meeting, you requested clarification regarding requirements for environmental investigation and remediation for the per and polyfluoroalkyl substances (PFAS) contamination at Truax.

Data collected by WANG and submitted to the DNR shows there have been discharges of PFAS to the environment at the WANG base located at Truax Field. Due to the discharges of a hazardous substance and the presence of environmental pollution, WANG is required under Wis. Stat. ch. 292 to conduct a site investigation, and as needed, implement interim and remedial actions to minimize the effects to the environment. On November 18, 2019, DNR staff met with representatives of WANG regarding WANG's responsibility under Wis. Stat. ch. 292. During that meeting, DNR staff explained the need for WANG to take immediate actions to address the environmental impacts from the PFAS discharge and resultant environmental pollution. At that meeting WANG agreed:

“that within 60 days, WANG would retain a consultant to prepare a workplan. The workplan should include soil, sediment, surface water and groundwater investigations as well as incorporate immediate actions to address PFAS impacted groundwater leaving the site to the west and southeast.”

A full summary of the meeting and actions to be taken by WANG was sent to Major General Dunbar on December 2, 2019.

DNR has not received notification from WANG that it has retained a qualified environmental consultant, nor has DNR received a workplan. Due to the ongoing discharges and impacts from environmental pollution from the WANG facility, WANG is out of compliance with state law and the DNR expects the following:

- By May 4, 2020 WANG will submit a site investigation workplan to the DNR for determining the degree and extent of PFAS contamination from WANG.
- By August 17, 2020, WANG will submit to the DNR the results of the site investigation and plan for proposed interim remedial actions to stop the ongoing contaminant discharge of PFAS contamination from the WANG facility.
- By November 30, 2020, WANG will have in place and operating the DNR-approved response actions to eliminate the discharge of PFAS contaminants and environmental pollution to the Starkweather Creek watershed from the contaminated groundwater known to exist beneath Truax. This includes mitigating and treating stormwater runoff and groundwater migration into surface waters and off-site of the Truax property.

These actions shall comply with the requirements of Wis. Stat. ch. 292 and shall be conducted in accordance with the provisions of Wis. Admin. Code chs. NR 700-754. This work shall be completed by a Wis. Admin. Code ch. NR 712 qualified environmental consultant.

I hope this clarifies WANG responsibilities in this matter. If you have further questions, please contact DNR project manager Michael Schmoller at 608-275-3303.

Sincerely,

A handwritten signature in black ink that reads "Christine Haag". The signature is written in a cursive, flowing style.

Christine Haag
Director, Remediation & Redevelopment Program

Cc: Beth Bier – AD/8
Darsi Foss – AD/8
Mike Schmoller – SCR
Steve Martin – SCR
Phil Bower – LS/8