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**Co-Chair, Great Lakes PFAS Action Network
Need Our Water (NOW) - Oscoda, Michigan**

**Testimony before the United States Senate
Homeland Security and Governmental Affairs Committee**

“Examining Federal Efforts to Address Toxic PFAS Contamination”

December 9, 2021



Testimony of Anthony M. Spaniola

Chairman Peters, Ranking Member Portman, and honorable members of this Committee. Thank you for the opportunity to appear before you today.

My name is Anthony Spaniola. I am Co-Chair of the Great Lakes PFAS Action Network and a founding member of the Need Our Water (NOW) community action group in Oscoda, Michigan.

I am a business attorney in suburban Detroit. My wife and I also own a home on Van Etten Lake in the small northern Michigan community of Oscoda.

Our lake home in Oscoda was gifted to us by my wife's late father, a distinguished Marine Corps veteran of the Korean War who survived some of the fiercest combat in U.S. military history.

Our home in Oscoda has served as a cherished family gathering spot to honor his memory. It is surrounded by the splendor of the Huron National Forest, beautiful inland waterways, Lake Huron and spectacular wildlife.

Our home is also near the former Wurtsmith Air Force Base, a Strategic Air Command facility that closed in 1993. In 2010, Wurtsmith became the first U.S. military installation in the world at which PFAS contamination was publicly reported.¹

Because it is the first, Wurtsmith is a precedent setter for DOD activities at hundreds of other PFAS-impacted military sites across the nation.² It's where DOD developed its PFAS playbook.

Like many other military and host community families, we trusted DOD and initially believed its promise to implement a proactive PFAS game plan.

That trust was seriously misplaced.

More than eleven years into its investigation, the Air Force has no overall plan in place to clean up the PFAS contamination from its Wurtsmith operations and estimates that it could be another two to five years before such a plan is finalized.³

Meanwhile, PFAS continues to flow largely unchecked into miles of public waterways in our community. As a result, our community is subject to five separate public health warnings: (i) for unsafe drinking water;⁴ (ii) for unsafe fish;⁵ (iii) for unsafe venison;⁶ (iv) for unsafe small game and wildlife;⁷ and (v) for unsafe shoreline and surface water foam.⁸

The ongoing PFAS contamination has placed an enormous burden on our community. Our local government has had to go into debt to fund municipal water line extensions that will take years to complete.⁹ Homeowners like me face the choice of paying expensive hookup

fees or drinking bottled, or single-tap filtered, water. Signs warning of unsafe fish,¹⁰ wildlife¹¹ and the foam itself¹² dot our forests and waterways, negatively impacting our tourism industry and, more importantly, the health of low-income individuals for whom nature is their primary source of food.

Instead of attacking these problems, DOD passes the buck. It blames Congress for insufficient funding,¹³ while Congress consistently appropriates more funding than DOD requests.¹⁴ It blames the "CERCLA process" for endless delays, but ignores CERCLA's requirement of immediate interim action to clean up imminent and substantial hazards.¹⁵ It blames insufficient data, while suppressing existing data and ignoring that DOD itself is in charge of data collection.¹⁶

In truth, DOD has broad and unchecked powers to administer its PFAS cleanup program. And it has abused those powers¹⁷ -- in Oscoda and across the nation. Information is tightly controlled by DOD, and too often kept from the public.¹⁸ Decisions impacting local communities are made in private and announced to the public for after-the-fact "input." State regulators are threatened with loss of DOD grant funding -- a tactic known as "weaponizing the grant" -- should they attempt to challenge DOD actions.

The DOD PFAS program is bureaucracy run amok. New Mexico's Attorney General has described it as "corrupt... and un-American."¹⁹ It's forced the City of Dayton, Ohio to sue DOD after exhausting all other possibilities.²⁰ Mr. Chairman, you have accurately described it, in Oscoda, as "unproductive at best."²¹

As a member of a military family, it saddens me deeply to report that DOD is actively harming the people and communities that it is supposed to protect.²² On behalf of the hundreds of communities like mine across the nation, I call on Secretary Austin and current new DOD leadership to implement sweeping and fundamental reforms within the PFAS program. And, I urge this Committee, and others in Congress, to exercise vigorous oversight to assure that Americans across this nation receive the protection that they deserve.²³

Thank you.

¹ The 2010 PFAS discovery at Wurtsmith was made by the State of Michigan. However, federal agencies knew that there was PFAS contaminated groundwater at Wurtsmith at least as early as 1999. In an EPA funded study completed that year, an Oregon State doctoral researcher reported PFAS contaminated groundwater at Wurtsmith and two other Air Force bases in Florida and Nevada. According to the study, the Wurtsmith contaminant plume measured more than 500 meters in length. See, Cheryl Moody Bartel, "*Occurrence And Distribution Of Perfluorinated Surfactants In Groundwater Contaminated By Firefighting Activity*," unpublished, 1999. See also, Cheryl A. Moody and Jennifer A. Field, "*Perfluorinated Surfactants And The Environmental Implications Of Their Use In Fire-Fighting Foams*," Environmental Science & Technology, Vol. 34, No. 18, 2000. DOD knew of the hazards of PFAS-based fire fighting foam dating back to the 1970s. See, e.g., Environmental Working Group and Fountain Valley Water Coalition, *Timeline of DOD Internal Studies and Reports*, with downloadable documents, captioned, "*For Decades, the Department of Defense Knew Fire Fighting Foams With PFAS Chemicals Were Dangerous But Continued Their Use*," <https://www.ewg.org/dodpfastimeline/>

² For example, as the National Wildlife Federation has noted, "Wurtsmith...serves as a bellwether for...additional PFAS contaminated military sites across the United States." Jennifer Hill, "*Michigan Tells Deer Hunters: Deer Near Toxic Site Not Safe To Eat; The Source Is A Closed Military Base - But The Air Force Is Slow-Walking Crucial Clean-Up Efforts*," August 11, 2021, at <https://blog.nwf.org/2021/08/michigan-tells-hunters-deer-near-toxic-site-not-safe-to-eat/>

³ Following intervention from our members of Congress, the Air Force is planning to conduct two interim remedial actions for certain portions of the contamination at Wurtsmith and, under the leadership of a new project manager, has just completed a time critical removal action at a hot spot identified several years ago. However, Air Force policy makers have already made clear that the overall remedial plan for Wurtsmith, when finalized, will not comprehensively address the PFAS contamination that the Air Force has caused in Oscoda. DOD has taken the position in Oscoda, and elsewhere, that it will not clean up contamination from any off-Base military fire fighting activities to support local fire departments, even though DOD knew of its fire fighting foam hazards and local fire departments likely did not. There are numerous sites like this in Oscoda, including the community's entire K through 12 public school and athletic complex. See, Keith Matheny, "*Air Force: PFAS Left By Wurtsmith Crews Fighting Off-Base Fires Not Our Problem*," Detroit Free Press, April 12, 2021 at <https://www.freep.com/story/news/local/michigan/2021/04/12/air-force-pfas-wurtsmith-crews-fighting-off-base-fires-oscoda/7164945002/>; See also, Garret Ellison, "'They Brought The Poison.' Air Force Refuses To Own PFAS Around Oscoda," MLive and the Grand Rapids Press, May 26, 2021 at <https://www.mlive.com/public-interest/2021/05/they-brought-the-poison-air-force-refuses-to-own-pfas-around-oscoda.html>

⁴ Drinking water advisories for hundreds of residential well users in Oscoda have been in effect since 2016. See, e.g., Garret Ellison, "*Toxic Water Near Old Michigan Air Force Base Prompts New Scrutiny*," MLive and the Grand Rapids Press, May 20, 2016, at https://www.mlive.com/news/2016/05/wurtsmith_air_force_base_pfcs.html

⁵ The "Do Not Eat" fish advisory has been in effect since 2012 and covers all non-migratory fish in Clark's Marsh and a miles-long stretch of the Au Sable River, adjacent to Wurtsmith. The non-migratory fish in this area are some of the most highly contaminated in the world, and the advisory warns against eating even one such fish. In a report issued in August of 2012, a State of Michigan scientist warned, "Given the long half-lives of [PFAS chemicals] in humans...some residents of Oscoda are likely to have very dangerous levels of PFAS in their blood." Robert Delaney, "*Michigan's Contaminant Induced Health Crisis*," Issue Paper 1, at p. 3, August 16, 2012, available at <https://www.hsgac.senate.gov/imo/media/doc/Delaney%20Attachment%204.pdf>

⁶ The "Do Not Eat" venison advisory has been in effect since 2018. See, e.g., Jennifer Chambers and Beth LeBlanc, "*State: Don't Eat Deer In Part Of Oscoda Due To PFAS Chemical Contamination*," The Detroit News, October 19, 2018 at <https://www.detroitnews.com/story/news/local/michigan/2018/10/19/pfas-behind-do-not-eat-advisory-deer-oscod/1695220002/>

⁷ The "Do Not Eat" small game and semi-aquatic wildlife advisory has been in effect since 2019 for the Clark's Marsh area adjacent to Wurtsmith, where, according to the State of Michigan, the "aquatic food web is contaminated beyond what has been seen at many other sites in the Great Lakes region, including sites of known PFOS contamination." See, Keith Matheny, "Restrictions Expanded Near Former Wurtsmith Air Base After PFAS Found In Most Wildlife," Detroit Free Press, May 29, 2020 at <https://www.freep.com/story/news/local/michigan/2020/05/28/study-pfas-wildlife-wurtsmith-base-oscod-clark-marsh/5269495002/>

⁸ The advisory to avoid contact with surface water and shoreline foam has been in effect since 2019. See, e.g., Garret Ellison, "'Avoid' PFAS Foam, New Michigan Signs Warn," MLive and the Grand Rapids Press, May 23, 2019, at <https://www.mlive.com/news/2019/05/signs-warn-people-to-avoid-pfas-foam.html>. PFAS has been found in surface water and shoreline foam on Van Etten Lake in Oscoda at levels as high as approximately 165,000 parts per trillion.

⁹ Oscoda Township is borrowing between two and three million dollars to fund certain phases of its planned water line extensions. The Township previously obtained non-DOD federal and state grants for portions of its initial extensions, but has been told that those grants are no longer available. It will likely take seven to ten years, and additional funding, to complete all phases. The City of Dayton, Ohio also reports that it has had to take out "millions of dollars in loans" to monitor PFAS contamination from Wright-Patterson Air Force Base. See, Ismail Turay Jr., "Why Dayton Says It Had To File \$300 Million Lawsuit Against Wright-Patterson Over Water Contamination," Dayton Daily News, June 6, 2021 at https://www.stripes.com/branches/air_force/2021-06-06/Why-Dayton-says-it-had-to-file-300-million-lawsuit-against-Wright-Patterson-over-water-contamination-1646322.html

¹⁰ A 2019 photo of a "Do Not Eat" fish sign near Clark's Marsh is attached as Exhibit 1.

¹¹ A 2019 photo of a "Do Not Eat" venison sign near Clark's Marsh is attached as Exhibit 2. The "Do Not Eat" area depicted in the sign was recently reduced from a 5-mile radius to approximately 3.5 miles.

¹² A representative photo of shoreline and surface water foam from Van Etten Lake in Oscoda are attached as Exhibit 3.

¹³ In public and private meetings in Oscoda, Air Force officials have regularly blamed delays on a lack of funding from Congress. See, e.g., December 12, 2018 letter from Senator Gary Peters to then-Air Force Secretary Heather Wilson, attached as Exhibit 4, responding to an Air Force official's claim that "the reason why PFAS remediation at the former Wurtsmith Air Force Base was not completed, and would take decades, is because Congress has not adequately appropriated funds."

¹⁴ For example, in his December 12, 2018 letter (Exhibit 4), Senator Peters noted that the Air Force received "\$80 million above the budget request for Environmental Restoration" in Fiscal Year 2019, and that this additional funding "was provided by Congress, as specifically described in the defense appropriations report, 'to address costs associated with remediating contamination by perfluorinated chemicals.'" As Deputy Assistant Secretary of Defense Richard Kidd noted in his May 26, 2021 testimony before the House Appropriations Subcommittee on Defense, "Congress has generously added funding to the DoD Component Environmental Restoration accounts, increasing our President Budget requests for the DoD Environmental Restoration Accounts by more than \$1B since 2018 alone. This has allowed us to address impacts from hazardous substances or pollutant or contaminants, such as chemicals of emerging concern, including PFAS." See, <https://docs.house.gov/meetings/AP/AP02/20210526/112668/HHRG-117-AP02-Wstate-KiddR-20210526.pdf>

¹⁵ As Dayton, Ohio's Water Department director has stated, "We don't need additional studies. There are things that can be done now to help to mitigate (the PFAS) and slow it down, even if you are going to do additional studies." See, Ismail Turay Jr., "*Why Dayton Says It Had To File \$300 Million Lawsuit Against Wright-Patterson Over Water Contamination*," Dayton Daily News, June 6, 2021 at https://www.stripes.com/branches/air_force/2021-06-06/Why-Dayton-says-it-had-to-file-300-million-lawsuit-against-Wright-Patterson-over-water-contamination-1646322.html. While delaying action on clean up in favor of additional studies, DOD has actually lobbied EPA for *weaker* PFAS regulations. See, Eric Lipton and Julie Turkewitz, "*Pentagon Pushes For Weaker Standards On Chemicals Contaminating Drinking Water*," The New York Times, March 14, 2019, at <https://www.nytimes.com/2019/03/14/us/politics/chemical-standards-water-epa-pentagon.html>

¹⁶ In a related example, DOD worked behind the scenes with other federal officials to suppress and delay the release of a 2018 draft PFAS health study by the federal Agency for Toxic Substances and Disease Registry (ATSDR), which recommended lower PFAS drinking water safety levels. In an internal email obtained by Politico, a federal official wrote, "The impact to EPA and [the Defense Department] is going to be extremely painful. We (DoD and EPA) cannot seem to get ATSDR to realize the potential public relations nightmare this is going to be." See, Annie Snider, "*White House, EPA Headed Off Chemical Pollution Study*," Politico, May 14, 2018 at: <https://www.politico.com/story/2018/05/14/emails-white-house-interfered-with-science-study-536950>

¹⁷ See, e.g., "*Letter From The Editor: The Air Force Left An Environmental Bomb In Oscoda; It's Attitude Since Is Another Form Of Pollution*," MLive and the Grand Rapids Press, June 3,

2021, at <https://www.mlive.com/news/2021/06/letter-from-the-editor-the-air-force-left-an-environmental-bomb-in-oscodas-attitude-since-is-another-form-of-pollution.html>

¹⁸ At a Wurtsmith Base Closure Team meeting a few years ago, a local official asked the Air Force about pertinent clean up documents that the Air Force had destroyed. In response, the Air Force banned that local official, and every other official in the community, from ever attending a Base Closure Team meeting again. DOD indicates that this exclusionary policy is one that it has adopted nationwide. The incident at Wurtsmith is reported by Pulitzer Prize winning journalist Sara Ganim in her critically acclaimed film documentary, "*No Defense: The U.S. Military's War On Water*." See, www.nodefensedoc.com for viewing links.

¹⁹ See, Michael Gerstein, "*New Mexico AG: Suit Against Air Force is 'Corruption Case,'*" Santa Fe New Mexican, November 24, 2019, https://www.santafenewmexican.com/news/local_news/new-mexico-ag-suit-against-air-force-is-corruption-case/article_d7b3061d-5734-5b64-8b48-dc69979fb8df.html

²⁰ See, Ismail Turay Jr., "*Why Dayton Says It Had To File \$300 Million Lawsuit Against Wright-Patterson Over Water Contamination*," Dayton Daily News, June 6, 2021 at https://www.stripes.com/branches/air_force/2021-06-06/Why-Dayton-says-it-had-to-file-300-million-lawsuit-against-Wright-Patterson-over-water-contamination-1646322.html

²¹ See, Senator Gary Peters, January 31, 2019 letter to then-Air Force Secretary Heather Wilson, attached as Exhibit 5.

²² The scope of my testimony does not permit an in-depth discussion of the military's mistreatment of service members, their families and veterans whom DOD knowingly exposed to high levels of toxic PFAS chemicals. Their stories are told, in part, in the film documentary, "*No Defense: The U.S. Military's War On Water*." See, www.nodefensedoc.com for viewing links. For additional personal stories from service members, families, veterans and impacted host community residents around the world who have been harmed by DOD PFAS contamination, see the *No Defense PFAS Diaries* at <https://www.youtube.com/channel/UCjl3ipbpDfjBLb9v7XSTPqQ>

²³ This is a matter of broad national significance. DOD is the largest known PFAS polluter in the United States, with over 700 known or suspected contaminated sites, many of which contain levels of PFAS among the highest in the nation: See, Environmental Working Group, Interactive Map, "*704 Military Sites With Known And Suspected Discharges of PFAS*," <https://www.ewg.org/interactive-maps/2020-military-pfas-sites/map>. "Many of the nation's highest levels of groundwater contamination with PFAS...have been found at military sites." Hayes and Andrews, "*The 100 U.S. Military Sites With The Worst PFAS Contamination*," EWG News and Analysis, October 3, 2019, <https://www.ewg.org/news-and-analysis/2019/10/100-us-military-sites-worst-pfas-contamination>.

EXHIBIT 1

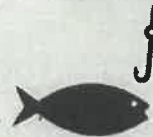
Do Not Eat Fish From Clark's Marsh

The Michigan Department of
Community Health has found
unsafe levels of
perfluorinated chemicals (PFCs)
in fish from this area.



Eating fish from Clark's Marsh
could harm your health.

Catching and releasing fish
is fine. Touching the fish or
water will not harm you.



For more information,
call MDCH at
1-800-648-6942 or
visit www.michigan.gov/eatsafefish.

Michigan Department
of Community Health
MDCH

EXHIBIT 2



HEALTH ADVISORY

Do not eat deer from the advisory area. High amounts of PFAS may be found in deer and could be harmful to your health.

Map Legend

- | | | | |
|---|---------------|---|------------|
|  | Clark's Marsh |  | Town Range |
|  | Advisory Area |  | USFS Land |
|  | Sections |  | State Land |

For more information, call MDHHS at 800-648-6942 or visit Michigan.gov/PFASresponse.



EXHIBIT 3



EXHIBIT 4

GARY C. PETERS
MICHIGAN

U.S. SENATE OFFICE BUILDING, SUITE 724
WASHINGTON, DC 20510
(202) 224-6271

United States Senate

December 12, 2018

The Honorable Heather Wilson
Secretary of the Air Force
1160 Air Force Pentagon
Washington, DC 20330-1160

Secretary Wilson,

I am writing in response to comments made by a representative of the Air Force at a community meeting in Oscoda, Michigan, on December 4, 2018, hosted by Michigan District Health Department No. 2.

A representative speaking on behalf of the BRAC Program Management Division, Air Force Civil Engineering Center, stated that the reason why PFAS remediation at the former Wurtsmith Air Force Base was not completed, and would take decades, is because Congress has not adequately appropriated funds. The representative then requested that the congressional staff attending the meeting take that back to their offices.

As you know, Congress has appropriated over \$350 million each year in Fiscal Year 2018 and Fiscal Year 2019 to the Air Force for Environmental Restoration. This includes \$46 million appropriated to the Air Force in Fiscal Year 2018 specifically for BRAC related environmental programs.

In Fiscal Year 2019, the Air Force received \$80 million above the budget request for Environmental Restoration. This addition was provided by Congress specifically, as described in the defense appropriations report, "to address costs associated with remediating contamination caused by perfluorinated chemicals."

I have worked with my colleagues to advocate for this increased funding to address PFAS contamination and I am concerned that Air Force personnel responsible for coordinating and providing information related to environmental remediation would leave the public with the incorrect and improper impression that Congress has not taken action on this issue.

If the Air Force requires additional funding for PFAS related environmental restoration, I strongly urge you to include such a request in the Fiscal Year 2020 budget request or the Air Force unfunded requirements list and to include such a request in your testimony before the Senate Armed Services Committee during next year's Air Force posture hearing.

Sincerely,



Gary C. Peters
United States Senator

United States Senate

January 31, 2019

The Honorable Heather Wilson
Secretary of the Air Force
1160 Air Force Pentagon
Washington, DC 20330-1160

Secretary Wilson:

I am writing to express my significant concern that the United States Air Force is not working in good faith with the State of Michigan regarding environmental contamination surrounding the former Wurtsmith Air Force Base in Iosco County, Michigan.

You and I have discussed the issue of PFAS contamination on multiple occasions. Earlier this month I met with Assistant Secretary for Installations, Environment, and Energy John Henderson and was assured that the Air Force would be proactive in its approach, consistent with federal law rather than waiting for an interagency approach or judicial process to mandate remedial action.

I have since reviewed a December 7, 2018, letter sent from the Air Force Civil Engineer Center to the Michigan Department of Environmental Quality's Water Resources Division in response to an October notice of violation Michigan issued to the Air Force. I wish to underscore the seriousness of the violation – the PFAS levels for surface water in Clark's Marsh measured 42,000 parts per trillion. This is shockingly higher than not just state standards but also the lifetime health advisory limits established by the Environmental Protection Agency.

Yet the Air Force has opted to claim sovereign immunity from state environmental quality regulations and water resources protection laws. This aggressive and defensive posture amidst the ongoing dispute resolution process with the state is unproductive at best, and it concerns me that so little has been accomplished since PFAS was confirmed at Wurtsmith in 2010.

As you know, Congress has waived sovereign immunity for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act, The Clean Water Act and the Safe Drinking Water Act. The Air Force's refusal to meet the State of Michigan's water quality standards only serves to reinforce my sense that Congress must move swiftly to direct the Environmental Protection Agency to establish enforceable and protective federal standards.

I invite you and Assistant Secretary Henderson to travel to Michigan and meet with the community in Iosco County impacted by the contamination at the former Wurtsmith Air Force Base as well as with officials from the Michigan Department of Environmental Quality to ensure unity of effort on addressing PFAS contamination.

Sincerely,



Gary C. Peters
United States Senator