

**Current Status of EJ Complaint by Safe Skies Clean Water Wisconsin
and Response to September 7th EPA Staff Questions
(September 13, 2022)**

OVERVIEW

On March 23, 2022, Safe Skies Clean Water Wisconsin filed an environmental justice complaint with USEPA. Safe Skies asked USEPA to address the disproportionate impacts on low-income and families of color by the Air Force decision to base a squadron of F-35 fighter jets at Truax Field in Madison, Wisconsin.¹ The complaint identified responsible public entities including the Wisconsin Air National Guard, Dane County Regional Airport, Dane County, City of Madison, Wisconsin Department of Natural Resources, and State of Wisconsin.

The Environmental Impact Statement and Record of Decision published by the Air Force and other public comments submitted to the Air Force clearly state that the greatest environmental impacts of the F-35 fighter jets will fall disproportionately on the low-income and families of color that are forced to live adjacent to the county airport and Truax Field. The Safe Skies EJ complaint describes these impacts including noise, air pollution and PFAS contamination of soil, groundwater, and surface water.

USEPA CLARIFICATION OF EJ POLICY

Since submission of the complaint, EPA staff have made the following determinations:

1. USEPA can only enforce the EJ policy on agencies that receive direct USEPA funding. For the F-35 project, these agencies include the Wisconsin Department of Natural Resources and Madison Metropolitan Sewage District (MMSD).
2. USEPA can only enforce EJ policy for environmental media regulated by the WDNR and MMSD. This includes PFAS contamination caused by Dane County Regional Airport (DCRA) and Wisconsin Air National Guard (WANG) However, noise impacts caused by DCRA and WANG aircraft including that caused by the incoming F-35 fighter jets is not regulated by the WDNR so USEPA cannot enforce EJ policy.
3. While the WDNR is an agency of the State of Wisconsin, USEPA funding of WDNR programs does not require USEPA to enforce EJ policy on the State of Wisconsin or Wisconsin Air National Guard.
4. USEPA cannot enforce the EJ policy on the Wisconsin Air National Guard, Dane County Regional Airport, Dane County, or City of Madison. Enforcement of the EJ policy for the Wisconsin Air National Guard or Wisconsin Air National Guard (WANG) would require a complaint to be filed with the Air Force. Enforcement of the EJ policy for the Dane County Regional Airport (DCRA) would require a complaint to be filed with the Federal Aviation Administration.

¹ [F-35 Jet Foes Submit Environmental Justice Complaint to EPA – March 23, 2022](#)

SAFE SKIES ADDITIONAL SUBMISSIONS TO USEPA

Since submission of the March 23rd EJ complaint, Safe Skies has participated in several meetings with USEPA staff and responded to staff questions. Meetings and correspondence are summarized below:

- March 23, 2022 – Submission of EJ complaint to USEPA.
- April 4, 2022 – Meeting with USEPA staff to review the EJ complaint.
- April 20, 2022 – Safe Skies email to USEPA providing information requested by USEPA staff during our April 4th conference call. This response included 18 references. Due to their large file size, they were uploaded to an [online folder hosted by box.com](#)
- April 21, 2022 – Safe Skies email to USEPA which confirmed for USEPA staff that PFAS contamination of water resources is among the significant concerns raised in our complaint. This includes contamination of groundwater, drinking water and surface waters including the Starkweather Creek and Yahara Chain of Lakes. As you suggest, we also would like to include the Madison Metropolitan Sewerage District in the complaint. Two references were provided to supporting inclusion of MMSD in the EJ complaint. A copy of this email is provided in an [online folder hosted by box.com](#)
- April 28, 2022 – Safe Skies email to inform USEPA staff that the Dane County Airport held a public meeting to discuss the procedures it will use for updating its noise abatement plan in response to the incoming squadron of F-35 fighter jets. This study will determine who is eligible for noise abatement measures such as relocation or insulation. We explained the shortcomings of the planned noise study and how it fails to protect the low-income and families of color living adjacent to the county airport and Truax Field. A copy of this email is provided in an [online folder hosted by box.com](#)
- June 13, 2022 – Safe Skies email providing initial responses to the 7 questions posed by USEPA staff on June 8th. A copy of this email is provided in an [online folder hosted by box.com](#)
- June 14, 2022 – Meeting with USEPA staff to review responses to the 7 questions posed by USEPA staff on June 8th. At this meeting, USEPA clarified that only agencies currently receiving EPA funding would be reviewed for compliance with the environmental justice policy.
- June 29, 2022 – Safe Skies email to EPA staff responding to questions posed during the June 14th meeting. The email provided supporting information including: new article on EPA determination that there is no safe level for PFAS; news article on Wisconsin attorney general lawsuits against two private companies for PFAS violations; news article on Dane County suit against DNR to stop PFAS testing; and, web site with MMSD announcement of PFAS sampling results. A copy of this email is provided in an [online folder hosted by box.com](#)
- July 20, 2022 – Safe Skies email to EPA staff sharing recent news articles including: City of Madison approval of low-income housing with the 65-decibel noise contour for the F-35 fighter jets; and, Wisconsin attorney general lawsuit against 18 companies for PFAS violations. A copy of this email is provided in an [online folder hosted by box.com](#)
- August 25, 2022 – Meeting with EPA staff to review the status of the EJ complaint.
- September 3, 2022 – Safe Skies email to EPA staff sharing a recent news article which explains how the City of Madison, Dane County Airport and Wisconsin Air National Guard have since 2018 failed to begin the investigation and cleanup of PFAS contaminated burn pits adjacent to the county airport and Truax Field. A copy of this email is provided in an [online folder hosted by box.com](#)

EPA REQUEST FOR ADDITIONAL QUESTIONS

Following the August 25th meeting, EPA staff posed the following questions in its September 7th email:

In order for ECRCO to move forward on our jurisdictional review of your complaint, ECRCO ask that you supply us with additional follow-up information by COB on Friday, September 23, 2022. They include:

1. Wisconsin DNR's remediation plans for the other "less diverse" communities that have had significant advancements, and the demographic and/or ethnic make-up of those communities.
2. Wisconsin DNR's remediation plan for the Dane County Regional Airport/Truax Air Field, with supporting citations from Wisconsin State law and regulations detailing the process for a remediation plan.
3. Citations from State law and regulations that describe the obligations of Wisconsin DNR with respect to the implementation and continuing development of the remediation plan, in light of ongoing or continuous violations.
4. The status of Wisconsin DNR's monitoring & testing efforts as they relate to the PFAS remediation at the Dane County Regional Airport/Truax Air Field.
5. Response to the question: Is it possible that the ongoing litigation faced by Wisconsin DNR is impeding in their ability to develop & implement a remediation plan and/or conduct public participation meetings? (Professor Schroeck was going to opine on this question.)
6. Baseline requirements of the Madison Metropolitan Sewer District (MMSD) for public participation (e.g. reporting requirements, public notification meetings). How is MMSD not meeting their baseline requirements for public participation?
7. What remedies are you (as the complainants of this Title VI complaint) seeking from ECRCO with respect to Wisconsin DNR and MMSD?

SAFE SKIES RESPONSES

1. *Wisconsin DNR's remediation plans for the other "less diverse" communities that have had significant advancements, and the demographic and/or ethnic make-up of those communities.*

In 2018, the DNR determined that the City of Madison, Dane County Airport and Wisconsin Air National Guard were responsible parties for the PFAS contamination on the groundwater and surface water at the county airport in Madison. This contamination is unique because the greatest exposure occurs to the low-income and families of color that are forced to live adjacent to the county airport and who use Starkweather Creek and the Yahara chain of lakes for subsistence fishing. Elsewhere in Wisconsin, the DNR has provided far greater opportunity for public involvement and has acted more aggressively to assure timely investigation and cleanup of PFAS contamination.

With regards to public information, Safe Skies provided a copy of the [DNR web site for PFAS contamination in the Marinette and Peshtigo area](#). This shows the DNR had schedule at least 17 public listening sessions to inform the general public of the status of the investigation and cleanup of the PFAS contamination. For the Madison contamination, the DNR has held no public meetings to inform the general public, much less the low-income and families of color most impacted by the contamination.

With regards to comparison of the speed of enforcement and cleanup, for the Tyco Fire Products contamination in Marinette/Peshtigo, the company publicly acknowledged their responsibility for the contamination in 2017, and in just four years proposed a groundwater extraction and treatment system

to remove contamination from affected wells and tainted soil. At a meeting of the Dane County Airport Commission, county attorney Amy Tutwiler said it would take 13 years before we would see any remediation in place at the county airport.²

In the June 29, 2022 Safe Skies email response to EPA questions, we provided a State of Wisconsin news release where the Wisconsin attorney general had filed a lawsuit against Johnson Controls and Tyco Fire Products. According to the complaint, JCI and Tyco violated the state spills law when they failed to notify the DNR of a PFAS discharge and failed to remediate PFAS contamination at and around the Fire Technology Center in Marinette, Wisconsin.³ The DNR and Wisconsin attorney general have filed no lawsuits against the City of Madison, Dane County Airport for Wisconsin Air National Guard for similar violation of the spills law and failure to remediate PFAS contamination.

In the July 20, 2022 Safe Skies email response to EPA questions, we provided a news article explaining how the Wisconsin attorney general had filed lawsuits against 18 companies over their PFAS contamination, but did not include the City of Madison, Dane County Airport or Wisconsin Air National Guard.⁴

The [EPA online software EJ Screen](#) was used to compare the racial makeup of the area surrounding the county airport with Marinette/Peshtigo. The percent non-white population near the county airport ranges from 23 to 58%. The percent non-white population in the Marinette/Peshtigo area ranges from 0 to 9%.

In the Safe Skies June 13, 2022 Responses to June 8, 2022 Questions from USEPA Staff on Environmental Justice Complaint, Safe Skies provided Table 1 with a summary of the racial makeup and percent of population in poverty for the 2020 census tracts surrounding the Dane County Airport and Truax Field. This table is repeated below.

Table 1 - 2020 Census Tract Racial Composition and Poverty Rates

2020 Census Tract	Non-White (%)	Hispanic (%)	Black (%)	Asian (%)	Poverty (%)
23.01	50.1	11.3	26.8	7.6	28.1
25	48.6	21.5	19.5	5.9	24.6
30.2	46.5	17.6	20.3	4.4	22.8
24.02	41.8	10.1	18.1	9.9	23.5
26.03	41.7	14.3	14.7	10.1	7.9
26.02	40	18.6	11.5	6.2	23.5
26.01	33	12.2	13.4	3.7	14.4
Madison, WI	22.5	7.2	6.6	9.1	16.4
Dane County	15.1	6.5	5.5	6.3	9.6
USA	23.7	18.5	13.4	5.9	11.4

² S. Klafka, Wisconsin State Journal, Letter to Editor, [A lawsuit needed to get local officials to act on PFAS](#), June 4, 2021.

³ Wisconsin Department of Justice, [AG Kaul Files Lawsuit Against Johnson Controls, Inc. and Tyco Fire Products for PFAS Violations](#), Mar 13 2022.

⁴ Wisconsin State Journal, [Wisconsin AG sues 18 companies over PFAS contamination](#), Todd Richmond, Associated Press, July 21, 2022.

2. *Wisconsin DNR's remediation plan for the Dane County Regional Airport/Truax Air Field, with supporting citations from Wisconsin State law and regulations detailing the process for a remediation plan.*

DNR staff have not been accessible and responsive to requests for information. We believe that EPA staff should contact the DNR to determine the supporting citations since DNR would be more responsible to EPA requests and questions.

Nevertheless, in the April 20, 2022 Safe Skies email to EPA staff, we provided a copy of the responsible party letter sent from the DNR to the Wisconsin Air National Guard for its PFAS contamination which explained the applicable Wisconsin State law and regulations. This stated:

Based on the information that has been submitted to the DNR regarding this site, we believe you are responsible for investigating and restoring the environment at the above-described site under Section 292.11, Wisconsin Statutes, known as the hazardous substances spill law. This letter describes the legal responsibilities of a person who is responsible under section 292.11, Wis. Stats., explains what you need to do to investigate and clean up the contamination.

3. *Citations from State law and regulations that describe the obligations of Wisconsin DNR with respect to the implementation and continuing development of the remediation plan, in light of ongoing or continuous violations.*

As with Question 2, DNR staff have not been accessible and responsive to requests for information. We believe that EPA staff should contact the DNR to determine the supporting citations since DNR would be more responsible to EPA requests and questions.

4. *The status of Wisconsin DNR's monitoring & testing efforts as they relate to the PFAS remediation at the Dane County Regional Airport/Truax Air Field.*

In the June 29, 2022 Safe Skies email to EPA staff, we provided copies of the web sites published by the DNR to track its action on the existing PFAS contamination and construction projects at the county airport and Truax Field. These were taken from the DNR Bureau for Remediation and Redevelopment Tracking System on the Web (BOTW). Documents posted to these sites show the DNR continues to approve construction while not taking enforcement action on the existing PFAS contamination. at the Dane County Regional Airport/Truax Air Field.⁵

The most recent activity is for the BRRTS Site 02-13-581254 WANG-115TH FIGHTER WING is a Site Investigation Workplan posed June 26, 2022. The file of this report is corrupt so we are trying to obtain an original version.

As with any technical report, the devil is in the details. Its existence is not proof of meaningful progress towards a complete investigation and remediation of the PFAS contamination in Madison. It is not clear if

⁵ The [Bureau for Remediation and Redevelopment Tracking System](#) (BRRTS) on the Web (BOTW) is DNR's comprehensive online database that provides information on contaminated properties and other cleanup and redevelopment activities in Wisconsin.

the investigation procedures have been updated to incorporate the EPA determination that there is no safe level for PFAS exposure rather than former DNR guidance for drinking and surface water.

As with Question 2, DNR staff have not been accessible and responsive to requests for information. We believe that EPA staff should contact the DNR directly to determine the status of monitoring and testing efforts.

5. *Response to the question: Is it possible that the ongoing litigation faced by Wisconsin DNR is impeding in their ability to develop & implement a remediation plan and/or conduct public participation meetings? (Professor Schroeck was going to opine on this question.)*

Since citing responsible parties for PFAS contamination, the DNR has held numerous public meetings in the Marinette/Peshigo area. There is no reason to believe that litigation against the DNR prohibits the agency from informing the public of the status of the investigation and cleanup of the PFAS contamination by the City of Madison, Dane County Airport and Wisconsin Air National Guard in Madison. Test results should be public information. The investigation plan or the deadline for preparing an investigation plan should be public information. Current information on the health effects and safe exposure levels of PFAS in drinking water, surface waters and fish should be public information.

If the DNR held public meetings, it would inform the public so they would be empowered to contact their government representatives at responsible parties in Madison to encourage expedited compliance with state laws for investigation and cleanup of the PFAS contamination. If the DNR held public meetings, it would inform and empower the low-income and families of color who receive the greatest exposure to the PFAS contamination.

6. *Baseline requirements of the Madison Metropolitan Sewer District (MMSD) for public participation (e.g. reporting requirements, public notification meetings). How is MMSD not meeting their baseline requirements for public participation?*

The MMSD hosts a web site where it posts information on district related subjects, upcoming meeting agenda, and meeting minutes.⁶ The most recent meeting of the Commission of the Madison Metropolitan Sewerage District was held on August 25, 2022. This meeting took place virtually via Zoom. The web site was updated in 2022. The last web site update related to PFAS was posted on September 30, 2021.

The MMSD now has a web site dedicated to its activities related to PFAS contamination.⁷ The latest post on this web site is dated September 30, 2021. The web site compares sampling results with the DNR proposed standards for PFOS and PFOA in surface water. There is no discussion of the EPA determination that there is no safe level of PFAS.

The MMSD was contacted to determine their baseline requirements for public participation but no response was received by the time this response was due to EPA.

⁶ <https://www.madsewer.org/>

⁷ <https://madsewerpfasinitiative.org/>

7. What remedies are you (as the complainants of this Title VI complaint) seeking from ECRCO with respect to Wisconsin DNR and MMSD?

Recommendations for USEPA Action to Protect the EJ Community

1. USEPA should require the WDNR to take enforcement action and obtain a lawsuit against the responsible parties in Madison including DCRA, WANG the City of Madison. This would be similar to lawsuits filed by the Wisconsin attorney general against responsible parties elsewhere in Wisconsin
2. USEPA should require the WDNR to implement a public informational program including regularly scheduled meetings to inform the public, including the low-income and families of color living adjacent to the county airport and Truax Field, of the status of the investigation and cleanup of the PFAS contamination in Madison.
3. USEPA should require the WDNR to implement a public informational program to educate area anglers, including those in the surrounding EJ community, about the hazards of eating fish contaminated with PFAS.
4. USEPA should require WDNR to implement a program to exchange fish contaminated with PFAS in Starkweather Creek and Yahara chain of lakes with uncontaminated fish. A similar program has been implemented in New Jersey.⁸
5. USEPA should ask the WDNR to update its PFAS standards for groundwater and surface water to reflect the most recent USEPA determination that no level of PFAS is safe.
6. USEPA should ask the WDNR to stop construction of new WANG facilities at Truax Field until the PFAS contamination in Madison has been fully investigated and remediated.
7. USEPA should declare the PFAS contamination in Madison as a Superfund site. This would provide a legal mechanism to force the investigation and cleanup of the PFAS contamination in area soil, groundwater, Starkweather Creek and Yahara chain of lakes.
8. USEPA should ask the WDNR to estimate the criteria and hazardous air pollutant emissions from the operations at DCRA and WANG, conduct modeling analyses to estimate the impacts on the adjacent EJ communities, and determine compliance with state and federal air quality standards. These analyses were not conducted by the Air Force in its EIS for the F-35 fighter jets, even though Safe Skies made this request in comments on the draft EIS. The WDNR has the staff and skills to estimate air pollution emissions, use computer modeling to estimate the downwind concentrations in adjacent EJ neighborhoods, and compare the modeling results with federal national ambient air quality standards, and state hazardous air pollutant standards. In its own comments on the draft EIS, the WDNR did not address air pollution impacts of the F-35 fighter jets.

⁸ Aquaculture North America, [Fish-exchange program rids consumers' plates of pollution-contaminated fish](#), Quentin Dodd, July 12, 2016.