

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Alaska Community Action on Toxics, Cook Inlet Keeper, Chickaloon Village Traditional Council, Janet Daniels, Richard Martin and Military Toxics Project (collectively, “Plaintiffs”), and the United States Department of the Army, United States Department of Defense and Donald Rumsfeld in his official capacity as United States Secretary of Defense (collectively, “Defendants”).

WHEREAS, Plaintiffs filed and served a Complaint against Defendants in the United States District Court, District of Alaska at Anchorage, Civ. No. A02-0083 CV (JWS) (“the Litigation”) on April 14, 2002;

WHEREAS, Plaintiffs filed an Amended Complaint for Declaratory and Injunctive Relief in the Litigation on June 26, 2002, alleging that some or all of the Defendants had committed violations of the Clean Water Act, 33 U.S.C. § 1251, et seq. (“CWA”), the Solid Waste Disposal Act, 42 U.S.C. § 6901, et seq. (“SWDA”) and the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq. (“CERCLA”) at Fort Richardson Alaska, an Army installation north of Anchorage, Alaska;

WHEREAS, the Plaintiffs previously agreed to dismiss their Second Cause of Action, which was brought pursuant to the provisions of the SWDA, and the Court dismissed with prejudice that cause of action by order dated August 28, 2003;

WHEREAS, on or about August 15, 2003, the Plaintiffs filed a motion for summary judgment seeking judgment in their favor on their causes of action under the CWA and CERCLA. While said motion was pending, on or about September 19, 2003, the parties agreed stay the litigation in order to negotiate this Agreement;

WHEREAS, Plaintiffs and Defendants wish to enter into this Agreement in order to benefit the environment in and around Fort Richardson Alaska ("FRA") while allowing Defendants to continue certain training at FRA;

WHEREAS, on April 24, 2002, the United States Army Alaska ("USARAK") submitted a National Pollution Discharge Elimination System ("NPDES") permit application for the discharge of munitions constituents into the Eagle River Flats artillery range ("ERF") to the United States Environmental Protection Agency ("EPA"), Region 10;

WHEREAS, USARAK currently is undertaking an active cleanup of white phosphorus at ERF that is anticipated to take approximately two (2) more years;

WHEREAS, in response to Plaintiffs' concerns about the potential use of depleted uranium at ERF, Defendants have inquired of the USAF regarding this potential use;

WHEREAS, Defendants have informed Plaintiffs of the USAF's response that the USAF has not used depleted uranium for training at ERF;

WHEREAS, as part of routine training activities at FRA, propellant bags associated with munitions firing are burned at certain points on the ranges on non-flammable, impervious surfaces;

WHEREAS, the firing restrictions and the terms regarding munitions response contained in paragraphs III.F. and III.H of this Agreement reflect current USARAK procedures;

WHEREAS, Plaintiffs and Defendants have agreed to this Settlement Agreement without any admission of fact or law;

WHEREAS, Plaintiffs and Defendants consider this Agreement to be a fair, adequate and equitable resolution of the claims that were or potentially could have been raised in the

Litigation; and

WHEREAS, Plaintiffs and Defendants believe it is in the interest of the public, the parties and judicial economy to resolve the issues in this action without protracted litigation;

NOW, THEREFORE, PLAINTIFFS AND DEFENDANTS AGREE AS FOLLOWS:

I. Parties Bound.

This Agreement applies to, is binding upon and inures to the benefit of Plaintiffs (and their successors, assigns and designees) and Defendants.

II. Definitions.

Unless otherwise expressly provided, terms used in this Agreement that are defined in the CWA, SWDA, CERCLA or in implementing regulations shall have the meaning assigned to them therein as of the date that this Agreement is executed by all parties or as subsequently amended. For the purposes of this Agreement, the following terms shall have the meaning provided below:

A. "Artillery firing activities" means the firing of munitions.

B. "Army" means the United States Department of the Army. For purposes of this Agreement, USARAK is a subordinate Army command headquartered at FRA, and includes the FRA Army post.

C. "Direct affiliation" means, at any time during the pendency of this Agreement or during the three (3) years prior to the Effective Date of this Agreement: (1) being an officer, director, member or employee of any of the Parties; (2) participating in the day-to-day activities of any of the Parties, including by participating in making decisions, approvals, disapprovals, recommendations or the rendering of advice on such day-to-day activities, whether paid or

unpaid (prior service as a technical or scientific expert or consultant for one or more of the Parties shall not necessarily be considered participation in the day-to-day activities of any of the Parties); (3) having a spouse, minor child, general partner or organization in which one is serving as officer, director, trustee, general partner or employee that is included in parts (1) or (2) of this definition; or (4) having any arrangement concerning prospective employment, or negotiating potential employment, with or in any entity that is included in parts (1) or (2) of this definition.

D. "Eagle River Flats" or "ERF" means the area consisting of approximately 2,165 acres within FRA at the mouth of the Eagle River adjacent to Upper Cook Inlet that is and has been used as the primary munitions impact area at FRA, and which is depicted on the map attached to this Agreement as Attachment A.

E. "Fort Richardson Alaska" or "FRA" means the Army post known as Fort Richardson, located north of Anchorage, Alaska.

F. "Major mammal species" means bear, coyote, fox, lynx, moose, wolf and whales.

G. "Munitions" has the meaning set forth in 40 CFR § 260.10 for "military munitions."

H. "Munitions Constituents" means and includes munitions as well as the constituents, residues and/or byproducts of munitions.

I. "National security" means the protection, preservation and securing of operations and strategy in furtherance of the national defense and foreign relations of the United States. National security includes the protection, preservation and securing of classified missions, tactics, units, ordnance or equipment. It also includes the protection, preservation and securing of those missions, tactics, units, ordnance or equipment related to training for imminent deployment to potentially hostile areas of operation, as specifically designated by the USARAK

Senior Mission Commander.

J. "Parties" means, collectively, Plaintiffs and Defendants, as set forth above.

K. "Range Facility Management Support System" or "RFMSS" means the database, maintained by USARAK, containing information concerning munitions firing at FRA training ranges (including ERF); such information includes, for example, the type and number of munitions fired, the date of firing and the range where firing occurred.

L. "United States Army Alaska" or "USARAK" is a subordinate command of the Army under the U. S. Army Pacific ("USARPAC") major Army command.

M. "UXO" means military munitions that: have been primed, fused, armed, or otherwise prepared for action; have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material; and remain unexploded either by malfunction, design, or any other cause.

III. Agreement Obligations.

A. Monitoring studies for potential migration of munitions constituents from ERF.

1. Initial monitoring study and potential additional studies. USARAK shall conduct initial studies to evaluate whether munitions constituents associated with artillery firing activities at ERF are migrating beyond the boundaries of ERF such that munitions constituents may contaminate marine resources or wildlife near ERF. If these initial studies reveal that the munitions constituents have migrated from ERF at levels for which applicable law requires remedial efforts, USARAK shall promptly take steps to comply with those requirements. If these initial studies reveal that the munitions constituents have migrated from ERF but not at levels for which applicable law requires remedial efforts, USARAK, after consultation with

EPA, shall conduct additional monitoring activities for a period of five years regarding the migration of those constituents from ERF. If at the end of this five-year period, the monitoring results show that munitions constituents are migrating from ERF, the Army, in consultation with EPA, shall determine whether to undertake an additional period of monitoring. Any monitoring requested or required by EPA under an NPDES permit or as part of the NPDES permit application process shall not be considered an extension of monitoring or additional monitoring under this paragraph III.A.1.

2. Plaintiffs' participation. USARAK shall provide meaningful opportunities for the Plaintiffs to provide input on the development of the scope and protocol of the monitoring studies discussed in paragraph III.A.1 above.

3. Technical assistance contribution. To facilitate Plaintiff's understanding of, participation in and comment on the development and results of the initial monitoring study and the potential follow-up studies discussed in paragraph III.A.1 above, the Army shall provide Plaintiffs with technical assistance, at a cost not to exceed \$25,000 per year for a period of five (5) years; provided that, if the monitoring described in paragraph III.A.1 is extended beyond a five (5) year period, the provision of technical assistance to the Plaintiffs under this paragraph III.A.3 shall be extended for five (5) years or the period of additional monitoring described in paragraph III.A.1, whichever is sooner. This technical assistance shall be provided by a qualified technical assistant or assistants ("QTA") who will review the technical issues and study the protocols proposed to be used in the monitoring program. In order to enhance public accountability, the Parties agree that Plaintiffs shall promptly provide copies of all data, study results, review comments and reports generated by or under the direction of the QTA to

Defendants' named representative and that Defendants may make such information available to the public upon request. The QTA shall have, at a minimum, the following qualifications: (a) Ph.D degree or equivalent in environmental studies, toxicology, public health or related subjects (e.g., biology or chemistry) and a minimum of six (6) years of experience in one or more of those fields. The following combination, in the field of expertise for which the QTA will be used, may be an acceptable substitute for a Ph.D. degree: (i) M.S. degree; (ii) graduate level study; and (iii) four (4) additional years of experience; (b) professional level experience and knowledge of laws and regulations under the CWA, CERCLA and RCRA; (c) professional level experience and knowledge in the performance and interpretation of environmental assessments, including risk assessment and analysis; (d) professional level experience in communicating to both technical and lay audiences the results of environmental assessments and related public health issues; and (e) no direct affiliation with any of the parties to the Litigation. From time to time after execution of this Agreement, Plaintiffs may nominate in writing one or more individuals who meet the qualifications. The nomination must specify the nominee's qualifications and compensation rates. QTAs must be agreed upon by both parties. USARAK shall have thirty (30) days from USARAK's receipt of the nomination to object in writing to the nomination. If USARAK does not object in writing within thirty (30) days, the nomination shall be accepted and the individual will be retained. If USARAK objects to a nomination, USARAK and Plaintiffs shall promptly meet and confer in a good faith attempt to resolve the objection. If the objection is not resolved through this informal negotiation process within thirty (30) days from the date of Plaintiffs' receipt of USARAK's objection, or within such time thereafter as is mutually agreed, Plaintiffs may notify Defendants that Plaintiffs desire to submit the matter to

non-binding mediation in accordance with paragraphs V.B and V.C of this Agreement. The mediation shall then proceed in accordance with paragraphs V.B and V.C.

B. Beluga Whale Monitoring. As part of USARAK's efforts to assist in the monitoring and protection of beluga whales within upper Cook Inlet at or in the vicinity of ERF, USARAK shall implement the measures described below:

1. National Marine Fisheries Service ("NMFS") telemetry studies and aerial surveys. USARAK will serve as an integral part of the beluga whale studies being conducted by NMFS in upper Cook Inlet. USARAK's participation in these studies shall include support activities such as assisting NMFS with: (a) equipment operation; (b) capture and processing of beluga whales for radio-telemetry work; (c) aerial survey work; or (d) photographic/video documentation of the fieldwork. In addition, USARAK personnel will facilitate and coordinate all access to FRA needed for the NMFS-led studies in and around ERF and the mouth of Eagle River in order to provide the researchers with needed access to the area while ensuring that all safety measures and precautions are being satisfied. Defendants are under no obligation to perform the activities described in this paragraph III.B.1 in any year that NMFS does not conduct beluga whale studies in upper Cook Inlet.

2. Monitoring of the health and behavior of beluga whales in and around ERF during periods of frequent whale use. USARAK Environmental Department personnel shall conduct field-monitoring to observe the apparent health, behavior and movement of beluga whales in and around the ERF. The scope and protocols for the field monitoring shall be developed by USARAK in consultation with NMFS. The Plaintiffs and the Cook Inlet Marine Mammal Council will be afforded meaningful opportunities to provide input on the development

of the scope and protocols for such field monitoring. Photographic and video-graphic documentation obtained during the monitoring observations shall be made available to Plaintiffs and other interested parties upon request. The Plaintiffs may make use of the technical assistance contribution discussed in paragraph III.A.3 above in order to assist the Plaintiffs' understanding of, participation in and comment on the development and the results of the beluga field monitoring. If plaintiffs choose to use the technical assistance contribution for assistance with the beluga field monitoring, plaintiffs must first comply with the QTA selection procedures set forth in Paragraph III.A.3 above. However, for a QTA who will assist plaintiffs with beluga field monitoring, the following minimum qualifications shall be apply in lieu of the minimum qualifications set forth in paragraph III.A.3 above: (a) Ph.D degree or equivalent in wildlife biology, with expertise in marine mammals, and a minimum of six (6) years of experience in that field. The following combination, in wildlife biology with emphasis in marine mammals, may be an acceptable substitute for a Ph.D. degree: (i) M.S. degree; (ii) graduate level study; and (iii) four (4) additional years of experience; (b) professional level experience in communicating to both technical and lay audiences the results of wildlife monitoring studies; and (c) no direct affiliation with any of the parties to the Litigation.

3. Monitoring for beluga whale presence in ERF before, during and following firing activities. In addition to the monitoring described paragraph III.B.2 above, in the event that USARAK conducts artillery firing activities at ERF between July and October, USARAK Environmental Department personnel shall, during the months of July, August, September and October, conduct specific surveillance activities immediately before, during and following all ERF artillery firing activities to help ensure that beluga whales are not harmed by the artillery

firing activities. Surveillance operations shall be conducted from established observation points. This obligation shall be in addition to, and shall not alter, the year-round USARAK and Army requirements that training units immediately cease fire if major mammal species are observed in the target area.

4. Defendants' obligations under this Section III.B of this Agreement shall continue: (a) for a period of ten (10) years after the Effective Date of this Agreement; (b) until NMFS ceases its current telemetry studies and aerial surveys of beluga whales within the upper Cook Inlet; or (c) until USARAK discontinues artillery firing activities at ERF, whichever occurs first.

C. Analysis of use alternatives for ERF. Upon the completion of the active white phosphorous remediation and prior to the lifting of existing firing restrictions for ERF, USARAK shall undertake an environmental review of its use of the ERF range in accordance with the policies and guidance set forth in the National Environmental Policy Act, 42 USC §§ 4321 to 4370f, Council for Environmental Quality regulations, 40 CFR Parts 1500-1517, and Army regulations for environmental analysis of Army actions, 32 CFR Part 651. This review will include an assessment of potential alternatives to the way USARAK currently uses ERF to determine whether any aspects of that use can be modified to further minimize environmental impacts while continuing to satisfy training needs and requirements.

D. Provision of munitions data, off-range UXO impact list, and munitions constituents documentation to Plaintiffs. The Parties acknowledge that FRA has made available to Plaintiffs historical information regarding munitions that have been fired at FRA, including ERF.

1. Munitions data and off-range UXO impact list. USARAK shall provide to

Plaintiffs, on a quarterly basis and in electronic format, all unclassified munitions-related data set forth in USARAK's RFMSS database for FRA. USARAK shall also provide, on a quarterly basis, a list of UXO that fall outside of the ERF impact area.

2. Munitions constituents documentation. USARAK shall also provide, within ninety (90) days of the Effective Date of this Agreement, available documentation setting forth the unclassified chemical constituents of munitions and any propellants associated with munitions firing currently used during artillery firing activities at ERF. USARAK shall provide unclassified chemical constituent information on additional types of munitions and any propellants associated with munitions firing that are used during artillery firing activities at ERF in the future within one hundred twenty (120) days after starting to use those munitions or any such propellants associated with munitions firing.

3. Placement of Information On Internet. In order to promote easy public access to the information referred to in sub-paragraphs III.D.1 and III.D.2, USARAK shall maintain that information on a publicly accessible internet website.

4. Defendants' obligations under paragraphs III.D.1, III.D.2 and III.D.3 above shall continue for a period of ten (10) years after the Effective Date of this Agreement or until USARAK discontinues artillery firing activities at ERF, whichever is sooner.

E. Provision of munitions data and munitions constituents documentation to EPA. Within ninety (90) days of the Effective Date of this Agreement, USARAK shall provide to EPA Region 10: (i) all unclassified munitions-related data set forth in USARAK's RFMSS database pertaining to ERF; and (ii) available documentation setting forth the unclassified chemical constituents of munitions and any propellants associated with munitions firing currently used

during artillery firing activities at ERF. It is the Parties' understanding that EPA may choose to use this information in EPA's review of USARAK's ERF NPDES permit application.

F. Firing restrictions.

1. USARAK shall adhere to the following prohibitions on the use of ERF: (a) absent authorization or regulatory approval from the Department of Interior or other applicable federal regulatory authority, USARAK shall not engage in artillery firing activities at ERF during periods of spring and fall waterfowl migration, as determined by the USARAK Biologist in consultation with the United States Fish and Wildlife Service; (b) USARAK shall not discharge radiological warfare agents, hazardous chemical warfare agents, biological warfare agents or depleted uranium into ERF; and (c) USARAK shall adhere to USARAK and Army requirements that no wildlife will be purposefully killed, injured or targeted, and that training units immediately cease fire if major mammal species are present in the target area.

2. In addition, through the end of the active white phosphorous cleanup, USARAK shall adhere to the following prohibitions on the use of ERF: (a) USARAK shall not engage in artillery firing activities at ERF during ERF cleanup and monitoring operations when cleanup and monitoring equipment or personnel are actively deployed on ERF; and (b) USARAK shall not fire mortar rounds or artillery rounds when the ice cover on water bodies within ERF is less thick than specified in the restrictions set forth in the procedures established in the 1991 Environmental Assessment and associated FONSI concerning the use of ERF. Said limitations will be periodically reviewed to ensure that these firing restrictions are sufficient to ensure that firing activities do not adversely impact ERF cleanup and monitoring efforts.

USARAK shall not lessen the restrictions discussed in this paragraph III.F.2 without providing

prior written notice to Plaintiffs.

G. Use of munitions with reduced environmental impact. Within six (6) months of the Effective Date of this Agreement, USARAK shall informally review existing information readily accessible within the Department of Defense regarding the availability of munitions with lower environmental impacts within the Army's munitions inventory and whether it is feasible to use such munitions for ERF training operations, and provide such information to Plaintiffs. USARAK shall update the information at least every three (3) years. If EPA issues a NPDES permit for the discharge of munitions-related constituents at ERF, USARAK shall time its information updates to coincide with the NPDES permit renewals, and shall release the information to the Plaintiffs and other members of the public before the beginning of the public comment period regarding the NPDES permit renewal. If USARAK determines that munitions with lower environmental impacts can reasonably be used to satisfy training requirements at ERF and that such munitions are available within the Army's munitions inventory, USARAK shall request as many such munitions as feasible for training operations on ERF, consistent with training needs. Defendants' obligations under this paragraph III.G shall continue for a period of ten (10) years after the Effective Date of this Agreement or until USARAK discontinues artillery firing activities at ERF, whichever occurs first.

H. Munitions Response. USARAK shall comply with all applicable laws regarding cleanup or clearance action(s) for munitions at ranges at FRA if those ranges are permanently closed. USARAK shall promptly clean up and/or clear any known UXO that falls outside of the ERF impact area, adhering to the requirements set forth in 40 C.F.R. 266 Subpart M. USARAK agrees to mark and treat UXO that falls inside the ERF impact area when such activity is

necessary to facilitate ERF white phosphorous cleanup efforts and can be accomplished with reasonable safety. USARAK shall record the location of all known UXO that falls either inside or outside the ERF impact area. Such records shall include the type of munitions constituting the UXO, the date the UXO lands and is discovered, and shall describe any actions the Army takes in clearing the UXO. Defendants' obligations under this paragraph III.H shall continue for a period of ten (10) years after the Effective Date of this agreement or until USARAK discontinues artillery firing activities at ERF, whichever is sooner.

I. Government-to-Government Consultations with Upper Cook Inlet Tribes. Within sixty (60) days of the Effective Date of this Agreement, FRA shall commence Government-to-Government consultations with upper Cook Inlet tribes and, as appropriate, other interested parties regarding the ERF NPDES permit process. [Plaintiffs to provide a list of Upper Cook Inlet Tribe representatives to be contacted]

J. NPDES Permit. USARAK agrees to undertake all actions required by regulatory authorities to obtain an NPDES permit that comports with section 402 of the Clean Water Act, 33 U.S.C. § 1342 and related provisions, and to update such permit as required by law.

K. Propellant Burning. USARAK shall notify Plaintiffs in writing of any changes to training procedures regarding the burning of propellant bags associated with munitions firing at FRA.

IV. Dismissal of Claims and Releases.

A. The Parties agree that this Agreement represents a good faith compromise of all matters addressed in this Agreement. Upon execution of this Agreement, Plaintiffs and Defendants shall file the stipulation and proposed order attached hereto as Attachment B

providing that the suit shall be dismissed with prejudice pursuant to Fed. R. Civ. P. 41, subject to the provisions of this Settlement Agreement. This Agreement shall be null and void if the Court does not dismiss the Litigation in accordance with the terms set forth in the stipulation and proposed order attached hereto as Attachment B.

B. Plaintiffs hereby release, discharge and covenant not to assert (by way of commencement or refiling of any action, the joinder of any or all of the Defendants in an existing action, or in any other fashion) any and all claims, causes of action, suits or demands of any kind in law or in equity that Plaintiffs may have had, may now have or hereafter may have against any or all of the Defendants that could have been asserted in the Litigation or any other civil or administrative action by Plaintiffs based upon the facts existing at the time Plaintiffs enter into this Agreement regarding environmental issues related to the operation of, and training practices at, FRA, including ERF. Notwithstanding the foregoing, Plaintiffs reserve the right to submit comments to the EPA regarding, and to oppose the issuance of, the NPDES permit that USARAK seeks from the EPA, and Plaintiffs reserve the right to assert a challenge to said permit, if issued, before any appropriate administrative body or court. **V. Dispute Resolution.**

The parties agree that efforts shall be made to resolve any future dispute arising out of this Agreement (the "Dispute") in an amicable manner, in accordance with the procedures specified below.

A. Negotiation. In the event of a disagreement between Plaintiffs and Defendants concerning the interpretation or performance of any aspect of this Agreement, the dissatisfied party shall provide the other party with written notice of the Dispute and a request for informal negotiations within thirty (30) days of the disputed event. The parties shall meet and confer in a

good faith effort to attempt to resolve the Dispute within thirty (30) days of the written notice or such time thereafter as is mutually agreed.

B. Mediation and Petition for Judicial Resolution. If the parties are unable to resolve the Dispute informally, then the parties shall endeavor to settle the Dispute by non-binding mediation. Within fourteen (14) days after the close of the informal negotiation period, each party shall provide the other with the names of at least three (3) individuals qualified by experience and background to serve as a neutral mediator, along with a brief summary of each individual's qualifications. The recommended individuals shall not be members of or otherwise affiliated with the party that recommends them. Within fourteen (14) days after delivery of the written recommendations, representatives of each party shall confer in person or by telephone to select the individual who will serve as a neutral mediator. Prior service as mediator under this Agreement shall not disqualify an individual from subsequent service. The parties shall extend their best reasonable efforts to select a mutually acceptable neutral mediator and to resolve the Dispute through the mediation process. Reasonable and customary costs of the mediator shall be paid by USARAK unless: (1) the costs of the mediator(s) in any calendar year exceed \$5000, in which case Plaintiffs and USARAK shall split equally the costs that exceed \$5000; or (2) the mediator or the Court determines that Plaintiffs' position in the mediation was frivolous, in which case Plaintiffs shall pay the reasonable and customary costs of the mediator. Each party shall bear its own costs and attorney fees for the mediation. If a Dispute remains unresolved after completion of the Dispute Resolution process in this paragraph V.B., then either Plaintiffs or Defendants may petition the Court to resolve the Dispute, except that disputes under paragraph VI.B. shall not be subject to such petition for judicial resolution. The Court shall

retain jurisdiction over this case for the sole purpose of resolving those disputes over which Plaintiffs or Defendants may petition the Court. Notwithstanding any other provision of this Agreement, however, Plaintiffs and Defendants expressly preserve, and do not waive or limit, any and all defenses relating to such litigation. Contempt of court is not an available remedy under this Agreement.

C. Confidentiality of Negotiations and Mediation. All informal negotiations, mediations and related communications and proceedings conducted pursuant to paragraphs A and B of this Section V are confidential and shall be treated as compromise and settlement negotiations for the purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law and by the court's Order Regarding Confidentiality of Settlement Discussions, which was entered in the Litigation on October 14, 2003.

VI. Force Majeure.

A. The possibility exists that circumstances outside the reasonable control of the Army and/or FRA could delay compliance with the timetables contained in this Agreement. Such situations include, but are not limited to, sufficient funds not being appropriated as requested or appropriated funds not being available for expenditure. Should a delay occur due to the circumstances described in this paragraph VI .A, any resulting failure to meet the deadlines or other terms set forth in this Agreement shall not constitute a failure to comply with those deadlines or other terms, and any deadlines so affected shall be extended one day for each day of the delay. The Army or FRA will provide Plaintiffs with reasonable notice in the event that the Army invokes this term of this Agreement. Any dispute regarding invocation of this provision shall be resolved in accordance with the Dispute Resolution provisions of Section V above.

B. In addition, the Army, acting only through the USARAK Senior Mission Commander, may determine that the Army must delay or forego compliance with obligations in this Agreement in order to ensure national security. The Army shall provide Plaintiffs with reasonable notice, consistent with the need for national security, in the event that the Army makes such a determination. It is understood that this provision may be invoked only at the discretion of USARAK Senior Mission Commander and may only be invoked at any time that the USARAK Senior Mission Commander determines that it is necessary to ensure national security. Should a delay occur due to the Army's invocation of this term, any resulting failure to meet the deadlines or other terms set forth in this Agreement shall not constitute a failure to comply with those deadlines or other terms, and the Army shall comply with its obligations under this Agreement as soon as practicable after the USARAK Senior Mission Commander determines that the need to withhold compliance in order to ensure national security has passed. Should the Army determine that the Army must forego compliance with any deadlines or other terms set forth in this Agreement in order to ensure national security, Defendants shall not be required to comply with those deadlines or other terms. Any dispute regarding invocation of this provision shall be resolved in accordance with the Dispute Resolution provisions of Section V above. Consistent with Section V above, Plaintiffs may not petition the Court regarding disputes under this paragraph VI.B and the Court shall not retain any jurisdiction for the purpose of resolving such disputes. If Plaintiffs and Defendants are unable to resolve a dispute under this paragraph VI.B through non-binding mediation, then the dispute shall not be subject to judicial review and Defendants' invocation of this paragraph shall prevail. **VII. Preservation of**

Discretion.

Except as expressly provided herein, nothing in this Agreement shall be construed to limit or modify the discretion accorded the United States by any laws, including the CWA, SWDA, CERCLA, RCRA, or any other environmental statutes, or any principles of administrative law.

VIII. Effective Date.

This Agreement shall become effective upon its execution by the parties. Unless stated otherwise in this Agreement, the Army's obligations to comply with this Agreement shall terminate either ten (10) years after the Effective Date of this Agreement or when USARAK discontinues artillery firing activities at ERF, whichever occurs first.

IX. Effect of Agreement.

This Agreement shall not constitute an admission of any fact, wrongdoing, misconduct, or liability on the part of the Defendants, their officers or any person affiliated with them. The provisions, terms and conditions of this Agreement shall not be admissible in any judicial or administrative proceeding, except at the request of the Defendants in defense of a claim that was or could have been asserted in the Litigation. A determination that the Defendants are in compliance with this Agreement shall constitute a complete defense to the assertion by any of the Plaintiffs of any claims that were or could have been brought in the Litigation, requiring dismissal of the claims.

X. Notice.

Any notice required or made with respect to this Agreement shall be in writing and shall be effective upon receipt. Any notice or other documents required pursuant to this Agreement shall be sent to the following contact persons:

For Plaintiffs:

Alaska Community Action on Toxics (ACAT)
Attn: Pamela Miller, Director
505 West Northern Lights Boulevard Suite 205
Anchorage, Alaska 99503
pkmiller@akaction.net

Scott J. Allen
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For Defendants:

Robert M. Lewis
Senior Trial Attorney
U.S. Army Environmental Law Division
Suite 400, 901 N. Stuart St.
Arlington, VA 22203

Staff Judge Advocate
Headquarters, U.S. Army Alaska
600 Richardson Drive #5700
Fort Richardson, AK 99505-5700

Chief, Environmental Defense Section
U.S. Department of Justice
Environment & Natural Resources Division
P.O. Box 23986
Washington, D.C. 20026-3986

Mark A. Nitczynski
U.S. Department of Justice
Environment & Natural Resources Division/EDS
999 18th Street
Suite 945, North Tower
Denver, CO 80202

Upon written notice to the other parties, any party may designate a successor contact person for any matter relating to this Agreement.

XI. Representative Authority.

Each undersigned representative of the parties certifies that he or she is fully authorized by the party to enter into this Agreement and to bind such party to comply with the terms and conditions of this Agreement.

XII. Mutual Drafting.

It is expressly understood and agreed that this Agreement was jointly drafted by the Parties. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement.

XIII. Counterparts.

This Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

XIV. Compliance With Other Laws.

Plaintiffs recognize that the Army's performance under this Agreement is subject to fiscal and procurement laws and regulations of the United States which include, but are not limited to, the Anti-Deficiency Act, 31 U.S.C. § 1341, et seq., and nothing in this Agreement shall be interpreted as or constitute a commitment or requirement that the Defendants obligate or pay funds in contravention of the Anti-Deficiency Act. In addition, nothing in this Agreement shall be interpreted as or constitute a commitment or requirement that the Defendants take actions in contravention of the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706, the CWA,

SWDA, RCRA, CERCLA or any other law or regulation, either substantive or procedural.

XV. Applicable Law.

This Agreement shall be governed and construed under the laws of the United States.

XVI. Third-Party Beneficiaries.

Nothing in this Agreement shall be construed to make any person or entity not executing this Agreement a third-party beneficiary to this Agreement.

XVII. Consent to Form and Substance.

The parties consent to the form and substance of this Agreement.

XVIII. Integration Clause.

This Agreement constitutes the final, complete and exclusive agreement and understanding between Plaintiffs and Defendants with respect to the matters addressed in this Agreement. There are no representations, agreements or understandings relating to this settlement other than those expressly contained in this Agreement.

XIX. Changes in Law

If, subsequent to the execution of this Agreement, any change in the law goes into effect that increases, reduces or otherwise alters the Defendants' obligations concerning matters addressed in this Agreement, then the Agreement shall be amended to conform to such changes. Any dispute regarding invocation or the applicability of this provision shall be resolved in accordance with the Dispute Resolution provisions of Section V above.

XX. Modifications.

The Parties may agree, in a written document signed by all of the Parties, to modify this Agreement.

XXI. General Reservation of Rights.

Except as set forth in this Agreement, the parties reserve and do not waive any and all other legal rights and remedies.

WHEREFORE, after having reviewed the terms and conditions of this Agreement, Plaintiffs and the United States on behalf of the Defendants hereby consent and agree to the terms and conditions of this Agreement.

DATE: _____

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ATTORNEY FOR PLAINTIFFS

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