

SB

371

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 371
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
 Title Permit Exemption for Munitions Use BRU Administrative Services
 Component Office of the Commissioner
 Sponsor Senate State Affairs
 Requester Senate Resources Component No. 633

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill is intended solely to clarify that the military is not required to obtain a permit under AS 46.03.100 to fire or otherwise use munitions in training activities conducted on active ranges. This bill does not affect any authority that the state may have under other federal or state laws to require the cleanup or remediation of contamination or unexploded ordnance at a military range, whether active or closed, under AS 46.03.100, or to require a disposal permit, such as a closure plan, once a range is no longer in active use. Therefore there is no fiscal impact to the department.

Prepared by: Mary Siroky, Legislative Liaison Phone (907) 465-5355
 Division: Statewide Public Services Date/Time 5/1/02 3:52 PM
 Approved by: Kurt Fredriksson Date 5/1/02
 Agency: Department of Environmental Conservation

ALASKA STATE LEGISLATURE

SENATOR
Gene Therriault
119 N. Cushman Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
FAX (907) 488-4271



While in Juneau
State Capitol
Juneau, Alaska
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Senate
Senate District Q

Senate Bill 371

Permit Exemption for Munitions Use

SPONSOR STATEMENT:

Since the purchase of Alaska by the United States in the middle of the 19th century from the Czar of Russia, the U. S. Military has gone to great effort—and expense—to maintain a strong presence in Alaska. Today, Alaska is home to some of the largest reserves of military land in the United States. The opportunity for advanced training across all branches of the armed forces offered by these reserves has made Alaska home to premiere training exercises, such as Northern Edge, Cope Thunder, and in the near future, national missile defense testing facilities. Senate Bill 371 seeks to ensure that presence continues well into the 21st century.

On April 12, 2002, a variety of individuals and groups sued the U.S. Army, the Department of Defense, and Secretary Rumsfeld in federal court. In their suit, plaintiffs have asked the court to order the Army to stop discharging munitions at the Eagle River Flats (ERF) artillery training range at Ft. Richardson. The ERF range is the only location south of the Alaska Range where soldiers can conduct live fire heavy artillery training. The Army's ability to continue live fire artillery training at ERF is critical to Ft. Richardson's national defense mission. Without the ERF range, Ft. Richardson's future could be at risk.

One of the counts brought by the plaintiffs alleges the Army violated state law by failing to obtain a waste disposal permit under AS 46.03.100 for the firing and other use of munitions on the ERF range. The State of Alaska has never interpreted AS 46.03.100 to require a waste disposal permit for munitions firing on active military ranges. SB 371 makes Alaska's statutes clear in this regard. SB 371 would not affect the State's authority to review and certify National Pollution Discharge Elimination System permits under the Clean Water Act. Nor would SB 371 affect the State's authority to address range clean-up and unexploded ordinance issues that might exist after closure of the active military range.

The future of Alaska's military bases is dependent upon their utilization as training grounds that offer opportunities not presented elsewhere in the United States. SB 371 ensures that the State's own statutes aren't used to threaten the future viability of our bases.

U.S. Army, Alaska Proposed Amendment to SB 356 am
Background Summary

Background: On 12 April 2002, a group of national and local environmental organizations sued the United States Army and the Department of Defense in an attempt to close down Ft. Richardson's only artillery training range, Eagle River Flats (ERF).

- The Army's ability to continue live fire artillery training at ERF is critical to Ft. Richardson's national defense mission. It's a matter of troop readiness: "We must train like we fight." In practice, this means that our soldiers must engage in regular training exercises that include the use of live munitions--e.g., artillery, explosives, high-caliber weaponry, etc.
- ERF is the only location south of the Alaska Range where soldiers can conduct live fire heavy artillery training. Without the ERF range, Ft. Richardson's future could be at risk. And it won't stop there. If the environmental plaintiffs are successful in stopping training at FRA, other military training ranges in Alaska are likely to come under similar attack.

Request for Assistance: The U.S. Army, Alaska needs your help.

- The plaintiffs argue, among other things, that the Federal court should force the Army to close the ERF range because the Army has not obtained an ADEC water and solid waste discharge permit (i.e., an "AS 46.03.100 permit") for the firing of artillery munitions into ERF.
- ADEC has never required a state discharge permit for munitions firing on active military ranges. Traditionally, the AS 46.03.100 permit requirement has applied to activities such as discharges of wastewater from an industrial facility or construction of solid waste landfills.
- Expanding the ADEC permit requirement to cover live-fire military training activities on active military ranges sets an unacceptable precedent. If the effort succeeds, ADEC may well be pressured into attempting to regulate critical aspects of training exercises, such as the type of munitions used, firing locations, firing times and parameters, etc. ADEC is not equipped to do this, and we have no reason to believe that ADEC wishes to assume this role. It's a bad idea all around.

What we seek: A bill, SB 356 am, is pending in the House Resources Committee and is scheduled for hearing this Friday afternoon. SB 356 deals with ADEC's authority to issue disposal permits under AS 46.03.100. AS 46.03.100 already contains a list of exceptions to the permit requirement (*see* AS 46.03.100(d)). The U.S. Army, Alaska seeks a short, simple amendment to AS 356 am to that would add *discharges resulting from the firing of munitions in training activities conducted on active military ranges* to the list of activities exempted from the AS 46.03.100 permit requirement. A proposed version of the amendment is attached.

Proposed Amendment to SB 356 am

SB 356 am shall be amended to add a new section that reads as follows:

Sec. __. AS 46.03.100(d) is amended to read:

(d) This section does not apply to

(1) disposals subject to regulation under AS 31.05.030(e)(2); [OR]

(2) injection projects permitted under AS 31.05.030(h) [.] or

(3) discharges resulting from the firing or other use of

munitions in training activities conducted on active ranges operated by the United States Department of Defense or a United States military agency.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329


MEMORANDUM

April 29, 2002

SUBJECT: Permit exemption relating to military ranges
(Work Order No. 22-LS1748\A)

TO: Senator Gene Therriault
Attn: Joe Balash

FROM: Terri Lauterbach
Legislative Counsel



Enclosed is the new bill you requested. My instructions were to make no changes in the new language but to add it in the statute where, in my judgment, it best fits.

I have placed the language in its own new subsection because I do not think it relates to other exemptions in AS 46.03.100 and, therefore, belongs by itself as a separate exemption. As you can see in the attached copy of AS 46.03.100, the exemption in AS 46.03.100(c) relates to domestic sewage, the exemptions in AS 46.03.100(d) relate to oil and gas operations, the exemptions in AS 46.03.100(f) relate to various types of drilling and to landscaping, and the exemption in AS 46.03.100(g) relates to certain discharges from vessels. Under the enclosed bill, an exemption relating to discharges on "active ranges" would be in a new subsection, AS 46.03.100(h).

As for the language, I'm not sure what exactly it covers, so I don't know if your intent is being met or not. According to the dictionary I consulted, the word "munitions" is a very broad term that includes anything used for offense or defense. This goes far beyond the bullets one normally associates with firing ranges, and would probably be construed to include testing of biological and chemical weapons, whether in shell form or otherwise. Is that your intent or were you just trying to cover things like the firing of ordinary bullets? The inclusion of the phrase "or other use of" (along with "firing") suggests that more than bullets were intended to be covered, but I'm not sure what.

A second issue about the language is that the phrase "active ranges" is used, not the phrase "active firing ranges." The language seems to leave it up to the Department of Defense and military agencies to designate what an "active range" is. It may, or may not, be what you normally consider to be a "firing range." If you would like to define the phrase further or involve the Department of Environmental Conservation in a process of determining what an "active range" is, let me know.

Senator Gene Therriault
April 29, 2002
Page 2

A third issue about the language is whether it is intended to cover (A) the firing of weapons or (B) the disposal of contaminated land when the ranges are eventually cleaned up, or both (A) and (B). I think, as written, the language probably only applies to the initial weapons use, and any eventual disposal of contaminated land would still need a permit, but I'm not sure. What is your intent?

If you would like to make changes to clarify the language as to any of the above issues, or if I can be of other assistance, just let me know.

TML:med
02-439.med

Enclosure

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs allege as follows:

NATURE OF THE CASE

1. This is a citizens' suit brought pursuant to the provisions of Clean Water Act 33 U.S.C. §1251, *et seq.*, the Solid Waste Disposal Act, 42 U.S.C. §6901, *et seq.*, and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, *et seq.*

JURISDICTION

2. This Court has jurisdiction over the subject matter of the First Count herein pursuant to 33 U.S.C. §1365(a)(1). Defendants have waived sovereign immunity to the First Count pursuant to 33 U.S.C. §§1323(a) and 1365(a)(1).

3. This Court has jurisdiction over the subject matter of the Second Count pursuant to 42 U.S.C. §6972(a)(1)(A). The Defendants have waived sovereign immunity to the Second Count pursuant to 42 U.S.C. §§6961(a) and 6972(a)(1)(A).

4. This Court has jurisdiction over the subject matter of the Third Count pursuant to 42 U.S.C. §9659(a)(1). The Defendants have waived sovereign immunity to the Third Count pursuant to 42 U.S.C. § 9659(a)(1).

5. By letter dated June 15, 2001, the Plaintiffs gave notice of their intent to commence this action as required by 33 U.S.C. § 1365(b)(1) and 42 U.S.C. §§ 6972(b)(1) and 9659(d)(1). Shortly following the Defendants' receipt of said letter, the Plaintiffs and Defendants commenced negotiations aimed at reaching a settlement of the claims asserted herein.

At the request of the Defendants, Plaintiffs agreed that they would not commence this action

until such time as the Plaintiffs and Defendants ceased their negotiations. By letter dated about April 10, 2002, the Defendants terminated said negotiations. Plaintiffs commenced this action as soon as possible thereafter.

FIRST COUNT

VIOLATIONS OF CLEAN WATER ACT

6. Each of the Plaintiffs is a "citizen" as said term is defined in 33 U.S.C. § 1365(g), in that they are persons having an interest which is or may be adversely affected by the actions of the Defendants described in this First Count. Each of the Plaintiffs likewise has one or more interests that are or may be adversely affected by the actions or inactions of the Defendants described in the Second and Third Counts below.

7. This First Count is brought against Defendants, United States Department of the Army and the United States Department of Defense only.

8. Defendants, United States Department of the Army and United States Department of Defense, maintain jurisdiction and/or control over an installation consisting of approximately 60,000 acres known as Fort Richardson, located north of Anchorage, Alaska. Fort Richardson lies within this district.

9. Beginning at a time currently unknown to the Plaintiffs and continuing to the present, the Army has and/or continues to and/or plans to discharge munitions, and the constituents and/or by-products and/or residues of munitions, in to and on various lands and waters on and/or in the vicinity of Fort Richardson.

10. The Army has and/or continues to and/or plans to discharge munitions, and the constituents and/or by-products and/or residues of munitions, into waters and/or on to lands on or

in the vicinity of Fort Richardson, using cannons, rifles, artillery and/or other sources.

11. The waters into which the Army has and continues to discharge munitions include the waters of the Eagle River, Eagle River Flats and/or Knik Arm.

12. The Army has not applied for, nor has it been issued, a permit from the United States Environmental Protection Agency ("EPA") authorizing the discharge of munitions into waters as described in this First Count.

13. The Army therefore has violated, continues to violate and/or threatens to violate 33 U.S.C. §§1311(a) and 1323(a), as well as 40 C.F.R. §122.21.

14. The waters of the Eagle River on and in the vicinity of Fort Richardson violate the water quality standards established by 18 Alaska Administrative Code 070.20(b). The Army's actions described in this First Count have caused and/or contributed, and continue to cause and/or contribute, to this violation of water quality standards in the Eagle River. The Army's actions therefore have violated and continue to violate 18 Alaska Administrative Code 070.10 and 33 U.S.C. §1323(a).

15. The Army's actions described in this First Count have polluted and/or added to the pollution of the land and/or waters on and/or in the vicinity of Fort Richardson. Said lands and/or waters include lands and/or waters in, on and/or under the Eagle River, Eagle River Flats, and/or the Knik Arm. The Army's actions therefore have violated and continue to violate Alaska Statutes 46.03.710 and 33 U.S.C. §1323(a).

16. The Army's actions described in this First Count have resulted in the disposal of solid and/or liquid waste material into the waters and/or on to land on or in the vicinity of Fort Richardson. The Army does not have, nor has it applied for, a permit, from the Alaska

Department of Environmental Quality authorizing said discharge into waters and/or on to land. The Army's actions therefore have violated and continue to violate Alaska Statutes 46.03.100(a) and 33 U.S.C. §1323(a).

SECOND COUNT

VIOLATIONS OF SOLID WASTE DISPOSAL ACT

17. This Second Count is brought against Defendants, United States Department of the Army and the United States Department of Defense only.

18. As described in the First Count above, the Army has violated and continues to violate Alaska Statutes §§46.03.710 and 46.03.100(a).

19. The Army's violations of Alaska Statutes §§46.03.710 and 46.03.100(a) constitute a violation of 42 U.S.C. §6961(a).

THIRD COUNT

VIOLATIONS OF CERCLA

20. This Third Count is brought against all of the Defendants named above.

21. In 1994, due to a high level of pollution, the Environmental Protection Agency placed Fort Richardson on the National Priorities List, a list of the nation's most polluted facilities that are to be given priority for cleanup.

22. Shortly thereafter, the EPA, the State of Alaska, and the Army entered into an "interagency agreement" (as that term is used in 42 U.S.C. §9620(e)) entitled "Federal Facility Agreement Under CERCLA Section 120 Administrative Docket Number 1092-05-02-120" (hereinafter the "FFA") regarding Fort Richardson.

23. Live, unexploded ordnance exists in, on, and/or under the lands and/or water on or

in the vicinity of Fort Richardson, including without limitation the lands and/or waters of the Eagle River, Eagle River Flats and/or the Knik Arm, as well as the land and/or waters in an area referred to by the Army as the OB/OD pad. Unexploded ordnance may also exist in, on, and/or under other lands and/or waters on or in the vicinity of Fort Richardson.

24. This unexploded ordnance constitutes and contains "hazardous substances" and/or "pollutants or contaminants" as those terms are defined in 42 U.S.C. §§9601(17) and 9601(33). The Army, however, has taken, and continues to take, the position that this unexploded ordnance neither constitutes nor contains "hazardous substances" and/or "pollutants or contaminants" as those terms are defined in 42 U.S.C. §§9601(17) and 9601(33).

25. The Army has never commenced, nor has it performed, a remedial investigation or feasibility study (RI/FS) regarding unexploded ordnance or the constituents of such ordnance on Fort Richardson.

26. The Army's failure to commence or perform such an RI/FS violates and continues to violate 42 U.S.C. §9620(e)(i) as well as paragraphs 8.8 and 8.9 and Attachment 1 of the FFA (including without limitation section 3.1 of Attachment 1).

27. The Army has never adopted a plan for remediation of the unexploded ordnance described above; nor has the Army commenced or performed remediation of such ordnance. The Army therefore has violated and continues to violate 42 U.S.C. §§9620(e)(2)-(e)(4) as well as ¶8.10 and Attachment 1 to the FFA.

REQUEST FOR RELIEF

Plaintiffs respectfully request the following relief:

28. Declare that the Army's discharge of munitions into waters as described in the

First Count herein has violated and continues to violate 33 U.S.C. §§1311(a) and/or 1323(a).

29. Order the Army to stop discharging munitions into the waters of the Eagle River, Eagle River Flats and/or the Knik Arm until such time as the Army obtains a permit authorizing the discharge from the EPA.

30. Declare that the Army's actions described in the First and Second Counts herein have violated and/or continue to violate 18 A.A.C. §070.10, Alaska Statutes §§46.03.710 and 46.03.100(a), and/or 33 U.S.C. §1323(a) and/or 42 U.S.C. §6961(a).

31. Issue appropriate injunctive relief prohibiting the Army from continuing to conduct the activities described in the First and Second Counts herein in violation of 18 A.A.C. §070.10, AS §§46.03.710 and 46.03.100(a) and/or 33 U.S.C. §1323(a) and/or 42 U.S.C. §6961(a).

32. Declare that the unexploded ordnance in, on, and/or under the lands and waters on Fort Richardson constitutes and contains "hazardous substances" and/or "pollutants or contaminants" as those terms are defined in CERCLA, 42 U.S.C. §§9601(17) and 9601(33).

33. Order the Army to commence and fully perform an RI/FS regarding unexploded ordnance on Fort Richardson.

34. Order the Army to pay the Plaintiffs' costs and attorneys fees as provided by statute, including 33 U.S.C. §1365(d) and 42 U.S. §§ 6972(e) and 9659(f).

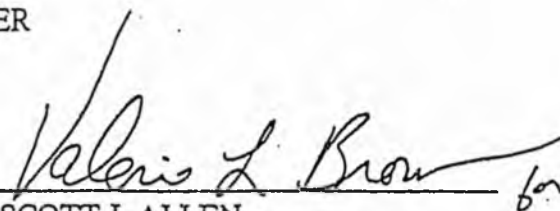
35. Order the Army to pay appropriate civil penalties as provided by 33 U.S.C. § 1319(d), 42 U.S. C. § 6928(g), 42 U.S.C. §§ 9609(a)(1)(E), 9609(b)(5), 9622(l), and/or 9659(c).

36. Issue other and further relief as the court deems just and proper.

Dated: April 12, 2002

COX & MOYER

By:

 for

SCOTT J. ALLEN
Attorneys for Plaintiffs

Fort Rich Complaint.wpd

Rec'd cert mail 4/15/02

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CLERK'S OFFICE
02 APR 15 AM 11 05

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Alaska Community Action On Toxics,
Cook Inlet Keeper, The Chickaloon
Village Traditional Council, Janet
Daniels, Richard Martin, and The
Military Toxics Project,

SUMMONS IN A CIVIL ACTION

v.
United States Department Of The Army,
United States Department Of Defense,
and Donald Rumsfeld In His Official
Capacity As United States Secretary
Of Defense.

CASE NUMBER:

A 0 2 - 0 0 8 3 CV

TO: (Name & Address of Delendant)
Donald Rumsfeld
United States Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)
Valerie L. Brown Scott J. Allen
Trustees For Alaska Cox & Moyer
1026 W. 4th Ave., Ste. 201 703 Market St., Ste. 1800
Anchorage, AK 99501 San Francisco, CA 94103-2128

an answer to the complaint which is herewith served upon you, within 60 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court
within a reasonable period of time after service.

MICHAEL HALL

APR 12 2002

CLERK

DATE

CMC 58ALC
(BY) DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUMMONS IN A CIVIL ACTION

Alaska Community Action On Toxics,
Cook Inlet Keeper, The Chickaloon
Village Traditional Council, Janet
Daniels, Richard Martin, and The
Military Toxics Project,

v.

United States Department Of The Army,
United States Department Of Defense,
and Donald Rumsfeld In His Official
Capacity As United States Secretary
Of Defense.

CASE NUMBER:

A 0 2 - 0 0 8 3 CV

TO: (Name & Address of Defendant)

Timothy M. Connelly, Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 23986, L'Enfant Plaza Station
Washington, DC 20026

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)
Valerie L. Brown
Trustees For Alaska
1026 W. 4th Ave., Ste. 201
Anchorage, AK 99501
Scott J. Allen
Cox & Moyer
703 Market St., Ste. 1800
San Francisco, CA 94103-2128

an answer to the complaint which is herewith served upon you, within 60 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court
within a reasonable period of time after service.

MICHAEL HALL

APR 12 2002

CLERK

DATE

C.M.L.
(BY) DEPUTY CLERK

SEAL

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Alaska Community Action On Toxics,
Cook Inlet Keeper, The Chickaloon
Village Traditional Council, Janet
Daniels, Richard Martin, and The
Military Toxics Project,

SUMMONS IN A CIVIL ACTION

v.

United States Department Of The Army,
United States Department Of Defense,
and Donald Rumsfeld In His Official
Capacity As United States Secretary
Of Defense.

CASE NUMBER:

A 0 2 - 0 0 8 3 CV

T.O: (Name & Address of Delendant)

United States Dept. of the Army
Office of the Chief of Public Affairs
1500 Army Pentagon
Washington, DC 20310-1500

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Valerie L. Brown
Trustees For Alaska
1026 W. 4th Ave., Ste. 201
Anchorage, AK 99501

Scott J. Allen
Cox & Moyer
703 Market St., Ste. 1800
San Francisco, CA 94103-2128

an answer to the complaint which is herewith served upon you, within 60 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court
within a reasonable period of time after service.

MICHAEL HALL

APR 12 2002

CLERK

DATE

CPM SEARCHED
(BY) DEPUTY CLERK

Subject: RE: Military & Environment SB 371

Date: Tue, 30 Apr 2002 12:13:37 -0800

From: "Grant Writer" <starplan@gci.net>

To: <Senator_Kim_Elton@legis.state.ak.us>, <Senator_Robin_Taylor@legis.state.ak.us>, <Senator_Georgianna_Lincoln@legis.state.ak.us>, <Senator_Rick_Halford@legis.state.ak.us>, <Senator_John_Torgerson@legis.state.ak.us>, <Senator_Ben_Stevens@legis.state.ak.us>, <Senatorgary_Wilken@legis.state.ak.us>

CC: <terryh@bbna.com>, <tangansan@BBNC.NET>, <jterrell@beesc.com>, "Godden, Ron" <rgodden@beesc.com>, <jstonebraker@beesc.com>, "Roy Matsuno" <ugashik@gci.net>, <Matsuno.Fred@epamail.epa.gov>, <hattieutvenv@starband.net>

Greetings Senators of Alaska:

My Name is Lucy Goode, and I am responding to the SB 371 Bill that will come before you all for review tomorrow on whether to take action to give the Military Exemptions from environmental statues in the State of Alaska.

I was raised in Rural Alaska from a fishing community called Egegik, which is located in the Bristol Bay Region. I have served my community as the Tribal Council President of Egegik, Ak and recently moved to the Chugiak Area. I now write grants for the Ugashik Traditional Village Council and received this email on the SB 371. I hope that you will do the job that we voted and entrusted you all with for the Good of our Great State and our Alaskans citizens and vote against this Bill to allow the Military to be exempt from environmental statue.

Government Agencies especially Military should have to abide by the laws which govern and protect our people and the environment with no special favors and follow the environmental statues, the same as everyone else. There have been to many chemical spills and Hazardous dumps in our State by the Military already and there has been damage to the environment and people from this negligent action.

I do not see how Military Readiness will be threatened by this Action. They need to be held responsible for their actions as the rest of the country is. Please let me know what your decision to do on this bill will be. Thank you for your consideration in this serious Issue.

Sincerely, Lucy Goode

Subject: SB 371

Date: Tue, 30 Apr 2002 12:42:11 -0800

From: "Patti Saunders" <psaunders@arc-anchorage.org>

To: <Senator_John_Torgerson@legis.state.ak.us>

2/

Dear Sen. Torgerson:

I believe it is wrong to allow the military to avoid cleaning up the messes it has made. The Eagle River Flats is a good example of land poisoned by military practice exercises that will not get cleaned up if this bill passes . . . and that means, at the very least, birds will keep dying . . . and who knows what in the future.

Please vote against this bill. It is bad for Alaska and Alaskans.

Patti Saunders
psaunders@arc-anchorage.org
7023 Henderson Lp.
Anchorage, AK 99507

Subject: sb371

Date: Tue, 30 Apr 2002 13:24:52 -0800

From: Brian Hirsch <hirsch@earthsys.org>

To: Senator_John_Torgerson@legis.state.ak.us

Dear Senator Torgerson:

I oppose SB 371, and I believe you should, too. The military does not need exemptions from environmental laws that protect human health and natural resources in Alaska. If there is any entity that can afford to comply with environmental regulations, and who have the track record that demonstrates that they need to be held to such standards as the rest of us, it is the US military. Nearly 85% of the public supports holding the military accountable to environmental laws. Please vote with the majority of the people on this bill.

Thank you,

Brian Hirsch, Ph.D.
Homer, Alaska

Subject: RE: Military & Environment SB 371

Date: Tue, 30 Apr 2002 13:36:02 -0800

From: "Godden, Ron" <rgodden@beesc.com>

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Greetings:

My Name is Ron Godden, and I am responding to the SB 371 Bill. I do not recommend the legislature take any action, what so ever, to give the military exemptions from environmental statues in the State of Alaska.

I served 21 years in the military and have been in Alaska since 1974. I am a civil and environmental engineer and am not a member of any green organization. Nor, do I support any such organizations or causes. I believe we can live, build, and work in Alaska and be responsible for protecting the environment.

I have observed first hand the activities of the military. After my military service, I worked for ADEC for 7 years and further observed the military's efforts to ignore both state and federal regulations. Back in the 90's, the EPA was asked by congress: Who are your largest group of offenders? EPA's response was the federal government and the military. Congress wrote a law, which specifically required the federal facilities be responsible for all environmental laws. The law provided for criminal penalties for individuals and civil penalties for organizations. This law has been responsible for the military's compliance with both state and federal regulations. To exempt the military from environmental statues in Alaska is not in the best interest of the state and the environment.

All government agencies, especially the military, should have to abide by the laws which govern and protect our people and the environment and follow the environmental statues, the same as everyone else. There have been to many instances in Alaska where the military has damaged the environment and people from their negligent action. Every military base and many former bases are superfund sites and will never be cleaned up. To allow the military to further damage the environment is simply foolhardy and should not be tolerated.

I do not understand how military readiness will be threatened by requiring the military to abide by our environmental statues and regulations. The military has to obey federal laws and until congress exempts them, they need to be held responsible for their action and abide by the laws of the State of Alaska. Please let me know what your decision to do on this bill will be. Thank you for your consideration in this serious Issue.

Sincerely

Ronald E. Godden,
23254 Northwoods Dr.
Chugiak, Alaska 99567

Testimony of Janet Daniels, Chickaloon Village Traditional Council spokesperson

**Senate Resources Committee Hearing.
On SB 371**

Good afternoon and thank you for the opportunity to testify on Senate Bill 371. My name is Janet Daniels. I am a member of the Chickaloon Tribe and the designated spokesperson for the Traditional Council on matters relating to military contamination.

It is my understanding that SB 371 asks exemption from certain State environmental statutes for the military. It is the position of the Chickaloon Tribe that the military should be held accountable for compliance with environmental law in the same manner as any other organization or business.

We do not wish to interfere with national security, but would like to protect the health of the same citizens the military is sworn to defend. For thousands of years, the native peoples of Alaska have fished and hunted the land. Scientists are now finding elevated levels of contaminants in subsistence foods all over Alaska. Cancer rates are rising all over the state. Those numbers cannot all be related to lifestyle. The entire population of the State of Alaska is at increased risk for disease and death due to contaminants that migrate north from all over the world. Any reduction in laws protecting the health of the people of Alaska would only add to that risk.

Environmental laws were designed to protect the health of citizens while allowing businesses and organizations to carry on their operations. In no way do environmental laws threaten military readiness. The federal government has the power to exempt installations on a case-by-case basis. What greater protection could the military ask?



Aleutian/Pribilof Islands Association, Inc.

201 E. 3rd Avenue
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April 30, 2002

Dear Senator John Torgerson,

I work for the Aleutian/Pribilof Islands Association, Inc. (A/PIA), a non-profit Native consortium that works for the tribes of the Aleutian/Pribilof Region. My role with A/PIA is the Federal Sites Restoration Coordinator for the tribes of our Region.

I am very concerned about the proposal for the military to be given an exemption from environmental cleanup laws and regulations! I am shocked that it is even being considered. This is a move backwards that jeopardizes all progress we have made in getting the U.S. government and DoD organizations to cleanup the mess left behind at so many sites in Alaska, and, of concern to us, particularly the over 60 federal sites in our Aleutian/Pribilof Region.

We are concerned about the health impacts from military contaminants to our traditional foods - the salmon, halibut, pollock, cod, birds, ducks, geese, mussels, sea lions, seals, and other resources upon which our way of life depends. We are disgusted that so many federal sites in our region remain untouched by any cleanup efforts. We are frustrated at the slow pace of cleanup. We feel angry that our lands have been mistreated, abused, blown up, and dumped upon with very little respect for the people or wildlife living there. Why give the military exemption status when they have such a terrible record of abuse of the land and still haven't cleaned up the mess remaining behind?

There are many sites contaminated by spilled or leaked petroleum products, PCBs, heavy metals, unexploded ordnance (on Attu, Kiska, and other islands in our Region), fuel tanks and drums, radionuclides (as is the case on Amchitka Island and possible other unknown sites), military equipment and debris, among other things. In addition, much of this debris is unsightly, and is a safety hazard to people and wildlife. DoD has not met any of our criteria for site restoration of most

federal sites in our region as presented in our draft Tribal Policy for Restoration of Federal Sites in the Aleutian/Pribilof Region.

The Aleuts have waited over 60 years - 60 YEARS! - for DoD and the Government to clean up many of these military sites, and waited many years for cleanup of many of the military Cold War era sites. Making the military exempt from environmental laws will likely result in many of these sites never being cleaned up in our lifetime, or in our children's.

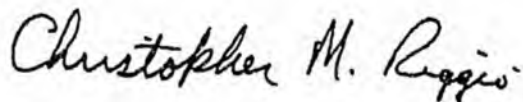
Military readiness is NOT being adversely affected by environmental cleanup requirements. Using the September 11th tragedy and possible impact of environmental requirements on military readiness are poor excuses for avoiding military and U.S. Government environmental obligations to the people they protect and work for. Let us not be fooled by the military taking advantage of the September 11th tragedy and the current administration's position on environmental issues to return to the old dark days when the military was exempt and our communities and environment suffered; there are reasons for these laws and regulations which protect us, the people.

PLEASE HONOR THE LAND AND THE PEOPLE WHO LIVE HERE BY NOT SUPPORTING ANY MILITARY EXEMPTION FROM ENVIRONMENTAL CLEANUP LAWS!

Please feel free to contact me at 907-245-1967 if you wish to discuss my concerns farther, or e-mail me at christ@apiai.com.

Thank you for your time.

Respectfully,



Christopher M. Riggio, PE
Federal Sites Restoration Coordinator

**Alaska Community Action on Toxics
505 West Northern Lights Blvd., Suite 205
Anchorage, Alaska 99503**

**Testimony of Pamela Miller, Director, Alaska Community Action on Toxics
SB 371
Senate Resources Committee Hearing
April 30, 2002**

Good afternoon Chairman Torgerson and Members of the Committee. Thank you for the opportunity to provide comments on Senate Bill 371. My name is Pamela Miller, Director of Alaska Community Action on Toxics (ACAT). Alaska Community Action on Toxics is a non-profit environmental health research and advocacy organization based in Anchorage. ACAT is currently a co-plaintiff, along with the Chickaloon Village Traditional Council, Cook Inlet Keeper, and Military Toxics Project, in the litigation designed to bring the Army into compliance with existing state and federal laws at Fort Richardson's Eagle River Flats. Our litigation apparently compelled the military to request this Legislature to exempt "the use of munitions in certain areas from a waste disposal permit requirement of the Department of Environmental Conservation."

For the record, I will provide some background on the reasoning and history behind our litigation. Due to a high level of environmental pollution, the Environmental Protection Agency placed Fort Richardson on the National Priorities (Superfund) List of polluted sites in 1994. I have participated for four years as a member of the Fort Richardson Restoration Advisory Board (RAB), a citizens' advisory committee that meets on a quarterly basis. Throughout this time as a RAB member, I have consistently expressed my concern that the Army has failed to address the public health and safety hazards of the unexploded munitions in and around Eagle River Flats. ACAT provided formal public comments during the development of the Army's proposed cleanup plan as required under CERCLA (Superfund law). We viewed litigation as a last resort after the Army failed to address our legitimate concerns.

The plaintiffs filed a Notice of Intent to Sue on June 15, 2001, citing violations by the Army of the federal Clean Water Act; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); the Federal Facility Agreement for Fort Richardson; and the Solid Waste Disposal Act. In August, the plaintiffs sent a letter to the Department of Defense proposing settlement terms. At the request of the Defendants and after September 11, settlement discussions commenced with all parties trying in good faith to negotiate a mutually agreeable settlement. Plaintiffs expressed a willingness to forego injunctive relief while the military obtained permits necessary for legal operation of bombing operations on Eagle River Flats. From September 2001 to April 10, 2002, parties communicated and tried to reach agreeable settlement terms.

The major points of the negotiation for the plaintiffs were: 1) compliance with the federal Clean Water Act; 2) cleanup of unexploded ordnance as required under CERCLA (Superfund law). The plaintiffs did not file a complaint or seek injunctive relief during

this time. We believed that the Defense Department was serious about trying to settle and held off filing the lawsuit with the hope that settlement could be reached. During negotiations, plaintiffs offered to forego injunctive relief for a reasonable period and suggested two years as a sufficient time for the military to remedy its operations without a permit. The military demanded that plaintiffs forego the right to request injunctive relief forever. On April 10, the military informed plaintiffs that it was terminating settlement discussions. The need for the military to obtain a state permit under AS 46.03.100 was not discussed during settlement talks. On April 12, 2002, the plaintiffs filed a complaint to protect our legal position. The plaintiffs have not filed a motion for preliminary injunctive relief. Filing of the complaint does not preclude settlement. The Defense Department has not indicated any willingness to reinstate settlement discussions that it terminated.

The Army's past and present discharge of munitions into the Eagle River Flats releases harmful chemicals such as RDX, 2,4-DNT, heavy metals, and other high explosive and propellant compounds. The presence of such toxic chemicals and the safety hazards of unexploded ordnance present a substantial danger to wildlife and people—this has been demonstrated at other military bases around the country such as the Massachusetts Military Reservation, Jefferson Proving Ground, and Makua Military Reservation. Some of these chemicals are known carcinogens (cancer-causing). These munitions are "toxic time bombs" that threaten human health and wildlife. Army documents reveal that hunters and other persons enter the Eagle River Flats impact area because no physical barriers prevent access. After thousands of waterfowl deaths, the Army began to remediate white phosphorus contamination from their use of incendiary weapons on Eagle River Flats (the Army also implemented a nationwide ban on the use of white phosphorus), but they have failed to address the larger problem of continuing pollution from the more than 10,000 unexploded bombs and other munitions. Not only did the Army create one of the most polluted sites in the country, but also they have stated their refusal to take responsibility in cleaning up a serious health and safety hazard. Our litigation seeks cleanup of the unexploded munitions within the estuary at Eagle River Flats and proper permits for discharge of additional munitions.

Unexploded ordnance may also exist in, on, and/or under lands and waters outside the current boundaries of Fort Richardson, including the waters of Knik Arm. For example, the Army historically used approximately 2 million acres in the vicinity of Fort Richardson (the Fort currently consists of about 60,000 acres) for military training, including munitions training. Much of those 2 million acres are likely to contain unexploded ordnance. The Army has never made a systematic effort to identify areas likely to contain unexploded ordnance (UXO) or to remediate the dangers posed by the presence of UXO.

While we support U.S. military efforts to protect national security, an exemption from existing state law is not necessary to accomplish this goal. This exemption would undermine the state's authority to administer pollution control laws and endanger state program certification. The Department of Defense is also seeking sweeping exemptions from important federal laws designed to protect public health and the environment,

including the Clean Air Act, Resource Conservation and Recovery Act, Superfund (CERCLA), the Endangered Species Act, the Migratory Bird Treaty Act, and Marine Mammal Protection Act.

No federal agency should be given special exemptions from state or federal laws that businesses and individuals must follow. No agency should be above the law. The Defense Department is seeking to exempt their activities from laws long supported by Alaskans and the larger American public, including laws that protect air quality, water quality, and the health of people living around our military facilities. If our decision-makers grant military exemptions, this will only undermine our national security. Americans depend on the democratic process of public involvement and oversight that is ensured by many of these laws. The Department of Defense cannot compromise the health and safety of its own citizens without compromising national security. The President already has the authority to waive environmental rules for national security. President Bush stated during his campaign that the Defense Department is one of the nation's biggest toxic polluters and that the agency should not be exempted from environmental standards.

A national poll of voters (by Zogby America Polling/Market Research) in all demographic groups, including Republicans and those who voted for President Bush, soundly rejected the argument that environmental laws interfere with our ability to maintain military readiness and protect national security. Seventy-eight percent of the people agreed with the statement that "no government agency should be above the law—including the laws that protect the environment around military facilities and the health of the people who live nearby. U.S. laws already provide the flexibility needed to balance environmental protection and military readiness by allowing exemptions on a case-by-case basis in the interest of national security." The Defense Department can readily achieve its military readiness objectives while complying with state and federal laws.