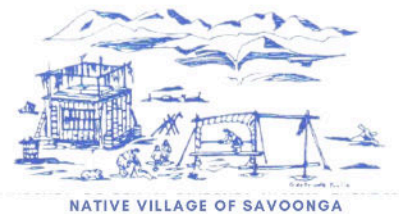


The Suqitughneq River and Qeniipagilghaat
Mountain Range at the Northeast Cape on
Sivuqaq



Complaint to the U.N. Special Rapporteur on toxics and human rights concerning toxic military contamination on Sivuqaq Island

12 March 2025





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March 12, 2025

Dr. Marcos A. Orellana

U.N. Special Rapporteur on toxics and human rights

Hand Delivered and by email to: *hrc-sr-toxicshr@un.org*

Dear Dr. Orellana,

We write to you, in your capacity as the U.N. Special Rapporteur (“SR”) on toxics and human rights tasked with examining the human rights implications of hazardous substances and wastes across their life cycle, regarding an environmental and human rights crisis involving pervasive human exposure to hazardous materials and toxic substances on Sivuqaq, an island in the Bering Sea (commonly known as St. Lawrence Island). There, 1,600 Siberian Yupik residents across two villages, including many who were displaced from their community, have been chronically exposed to dangerous quantities of contaminants. These include polychlorinated biphenyls (“PCBs”), pesticides, solvents, heavy metals and waste petroleum products that emanate from two formerly used defense sites (“FUDS”) that the U.S. Air Force constructed on the island in the 1950s and ultimately abandoned, leaving debris and toxic chemicals.

The United States government tasked its Department of Defense’s Army Corps of Engineers (“ACE”) with characterizing the FUDS and conducting a cleanup that protects human health and the environment pursuant to U.S. law, the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 6901, et seq. ACE claims the cleanup has been completed.

However, as further detailed in the accompanying Complaint, ACE neither adequately investigated the nature and extent of contamination, nor remediated it sufficiently to protect the health and safety of Sivuqaq residents or the environment. Instead, it conducted a superficial remediation of Sivuqaq sites at the Northeast Cape (“NEC”) and Gambell FUDS that left behind significant wastes, including hazardous wastes from abandoned buildings, radar stations, heavy equipment, generating facilities, and fuel containers; residual contamination from massive fuels spills; and other sources. Abandoned or buried on the island, these toxicants continue to contaminate the land and waters of Sivuqaq, endangering residents’ health, and resulting in health concerns never seen before on Sivuqaq, including high rates of cancer.

The inadequate remediation of Sivuqaq FUDS cannot protect the local population without meaningfully redressing all past and ongoing harm from waste discharges onto local lands and into local watersheds, which endanger drinking water sources and subsistence foods. Pursuant to your recently renewed mandate under Human Rights Council Resolution A/HRC/RES/54/10, we seek your urgent intervention to actualize local residents' human rights to: free, prior and informed consent; cultural integrity, lands, and natural resources; life, health, and personal integrity and dignity; clean food and subsistence; a healthy and sustainable environment; information and science; and an effective remedy and access to justice, as further explicated below.

Alaska Community Action on Toxics respectfully requests that you:

- (a) Issue Special Procedures Communications to the U.S. Department of Defense, the U.S. Environmental Protection Agency, and the Alaska Department of Environmental Conservation in the form of letters of allegation;
- (b) Prepare a report and conduct an in-depth investigation into these entities' violations of Sivuqaq residents' human rights;
- (c) Issue a press release to shed light on the toxic exposure crisis motivating these interventions; and
- (d) Visit Sivuqaq to better understand the ongoing crisis that threatens the Yupik people's way of life, environment, and bodily health for present and future generations.

Respectfully submitted,

Alaska Community Action on Toxics (ACAT)

by and with

U.C. Berkeley Environmental Law Clinic

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I. INTRODUCTION

This Complaint concerns the inadequate and incomplete site characterization and remediation of toxic military waste left by the United States government on the Bering Sea Island of Sivuqaq (also known as St. Lawrence Island). There are two native villages there, Gambell and Savoonga. There was also a thriving community at the Northeast Cape (“NEC” or “NE Cape”), and Savoonga residents, in particular, travelled to NEC to fish, camp, and engage in cultural rituals before the military arrived.



Figure 1. *The Island of Sivuqaq*

In the 1950s, the U.S. Air Force (“USAF”) established facilities at two Sivuqaq locations, one at NEC and the other adjacent to the village of Gambell, as Cold War listening posts. The Indigenous Yupik welcomed them on condition that the military not despoil the island. The military sites were eventually abandoned, becoming “formerly used defense sites” (“FUDS”), leaving hazardous and toxic wastes behind, and endangering the health of the residents.

The health harms of exposure to military contamination have devastated the Yupik on Sivuqaq. In a 2000 letter to the U.S. Environmental Protection Agency (“EPA”) Administrator seeking additional remediation, the Native Village of Savoonga described a health crisis:

- “[A] lot of our people are dying of cancer, liver dysfunction, and kidney dysfunction. Since there have been contaminants spilled, it has affected our people’s immune system[s]”
- “We have been told not to eat the fish from the water streams at the Northeast Cape site.”
- “[O]ur people are dying in unrealistic numbers.”¹

The people of Sivuqaq are suffering from diseases their ancestors never faced. As a consequence of military operations on the island and their legacy of toxic waste—including those contaminants in Table 1 below—the Yupik now face an epidemic of cancer and other

¹ Letter from Native Village of Savoonga to the EPA Administrator, Aug. 8, 2000, requesting that the Sivuqaq FUDS be added to the National Priorities List, p. 2.

illnesses. These include “heart disease, birth defects, low birth weight babies, miscarriages, still births, strokes, diabetes, thyroid disease, mental health harms.”²

Table 1. Health Impacts of Sivuqaq Contaminants

Contaminant	Human Health Effects
Arsenic (inorganic)	Cancer, cardiovascular disease and diabetes. ³
Asbestos (all forms)	Chronic respiratory diseases (including asbestosis, a fibrosis of the lungs), cancer (lung, larynx, ovarian, mesothelioma). ⁴
DRO Diesel Exhaust GRO Hydrocarbons (Gasoline)	Cancer (contains benzene); respiratory system damage; (contains fine particulate matter (“PM2.5”), irritant to the respiratory tract). Lungs readily absorb GRO hydrocarbons. Skin contact causes irritation, dermatitis; prolonged contact causes burns. ⁵
Lead	Particularly harmful to children: causes developmental delays, learning disabilities, impaired cognitive function, damage to multiple organs (brain, kidney, liver, bones and reproductive ones). ⁶
Mercury	Neurological damage, cognitive decline, kidney and heart damage, developmental problems in fetuses and children. ⁷
Mirex (Insecticide and pesticide)	Liver damage, anemia, and potentially fatal arrhythmia (irregular heartbeat), which can harm the nervous system and cause depression, anxiety, and memory loss. Disrupts reproductive and immune systems. ⁸

² David O. Carpenter, et al., *Polychlorinated Biphenyls In Serum of the Siberian Yupik People from St. Lawrence Island, Alaska*, Int’l J. of Circumpolar Health, June 17, 2005, at 323, <https://www.akaction.org/publications/polychlorinated-biphenyls-in-serum-of-the-siberian-yupik-people-from-st-lawrence-island-alaska/>.

³ Arsenic Key Facts, World Health Org. (“WHO”), Dec. 7, 2022, <https://www.who.int/news-room/fact-sheets/detail/arsenic#:~:text=Arseenic%20is%20highly%20toxic%20in,cause%20cancer%20and%20skin%20lesions.>

⁴ Asbestos Key Facts, WHO, Sept. 22, 2024, <https://www.who.int/news-room/fact-sheets/detail/asbestos>.

⁵ Medical Management Guidelines for Gasoline, Agency for Toxic Substances and Disease Registry, Oct. 21, 2014, <https://wwwn.cdc.gov/TSP/MMG/MMGDetails.aspx?mmgid=465&toxid=83>.

⁶ Lead Key Facts, WHO, Sept. 27, 2024, <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health>; Health risks of heavy metals from long-range transboundary air pollution- Copenhagen, WHO Reg’l Off. for Europe, 2007, <https://pesquisa.bvsalud.org/portal/resource/pt/who-107872>.

⁷ Mercury Key Facts, WHO, Oct. 24, 2024, <https://www.who.int/news-room/fact-sheets/detail/mercury-and-health#:~:text=Exposure%20to%20mercury%20%E2%80%93%20even%20small,%2C%20kidneys%2C%20skin%20and%20eyes>; Health risks of heavy metals from long-range transboundary air pollution- Copenhagen, WHO Reg’l Off. for Europe, 2007, <https://pesquisa.bvsalud.org/portal/resource/pt/who-107872>.

⁸ *Health Effects Assessment for Mirex*, Env’t Prot. Agency (“EPA”), Nat’l Serv. Ctr. for Env’t Publ’ns (“NSCEP”), Aug. 1987, available at <https://semspub.epa.gov/work/05/238521.pdf>.

PBDEs ⁹	Endocrine disruption, neurodevelopmental toxicity, reproductive system disruption. ¹⁰
PCBs ¹¹	Neuropsychological and neurobehavioral deficits, dementia, immune system dysfunction, cardiovascular diseases, liver and other cancers. ¹² Bioaccumulation: fertility issues and reproductive system harm that can be passed to offspring. ¹³
PFAS ¹⁴	Decreased fertility, pregnancy complications, developmental delays, increased cancer risk, immune system suppression, hormone disruption, elevated cholesterol, and obesity risk. ¹⁵

The Native Village of Gambell, Native Village of Savoonga and Alaska Community Action on Toxics (“ACAT”), assisted by the UC Berkeley Environmental Law Clinic (“ELC”), presents this Complaint to respectfully request that the Special Rapporteur on toxics and human rights: (a) issue Special Procedures Communications to the U.S Department of Defense (“DoD”), the U.S. Army Corps of Engineers (“ACE”), the U.S. EPA, and the Alaska Department of Environmental Conservation (“ADEC”), in the form of letters of allegation; (b) prepare a report on these entities’ violations of the health and environmental human rights of the Indigenous population of Sivuqaq; and (c) issue a press release and hold a press conference to raise public awareness of the toxic exposure crisis motivating these interventions.

There are three major sources of hazardous contamination on Sivuqaq: (1) toxic pollution from the period the Northeast Cape and Gambell military sites were operational, which compromised the environment, wildlife, fish and the Yupik people’s health and well-being; (2) toxic pollution that remained after the military’s departure due to inadequate remediation, and continues to sicken the Yupik people; and (3) persistent organic pollutants from long-range transport unrelated to military operations.¹⁶

⁹ Polybrominated diphenyl ethers.

¹⁰ Vishal Singh, et al., *Effects of Polybrominated Diphenyl Ethers on Hormonal and Reproductive Health in E-Waste-Exposed Population: A Systematic Review*, Int’l J. of Env’t Rsch. and Pub. Health, June 25, 2022, available at <https://doi.org/10.3390/ijerph19137820>.

¹¹ Polychlorinated biphenyls.

¹² Renee Jordan-Ward, et al., *Elevated mercury and PCB concentrations in Dolly Varden (Salvelinus malma) collected near a formerly used defense site on Sivuqaq, Alaska*, Sci. of the Total En’t, Vol. 826, June 20, 2022, 154067 at 9, available at <https://www.sciencedirect.com/science/article/pii/S0048969722011597>; Carpenter, *supra* note 2, at p. 324.

¹³ Luigi Montano, et al., *Polychlorinated Biphenyls (PCBs) in the Environment: Occupational and Exposure Events, Effects on Human Health and Fertility*, Multidisciplinary Digit. Publ’g Inst. (“MDPI”) Toxics, July 1, 2022, available at <https://pubmed.ncbi.nlm.nih.gov/35878270/>.

¹⁴ Per- and polyfluoroalkyl substances.

¹⁵ EPA, *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, Nov. 26, 2024, available at <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas>.

¹⁶ The Arctic acts as a “sink” for such contamination due to climatic conditions and ocean currents. Toxicants then bioaccumulate in fish and marine mammals, exposing people who eat them, particularly Indigenous people who rely on traditional foods like arctic seafood and mammals for protein. Because Sivuqaq is non-industrialized and sparsely populated, pollution from local non-military sources, including small fuel spills and consumer product disposal, are likely minor.

The gravamen of this Complaint is the second among these toxic pollution sources: inadequate cleanup of the hazardous materials abandoned and buried in the military’s wake. Because ACE did an inadequate job at the crucial investigatory stage (“site characterization”), it did not delineate the full nature and extent of military contamination. This violated the Yupik peoples’ Right to Know, among other rights. Since all subsequent remedial decision-making was based on ACE’s defective site characterization, the cleanup was badly flawed and did not include remediation efforts that are effective in the Arctic. There is ample peer-reviewed scientific evidence of ongoing toxic pollution from insufficient remediation that continues to jeopardize the community’s health, and that can be distinguished from both pre-cleanup military contamination and long-range pollutant transport.

For example, a 2022 peer-reviewed study tested Dolly Varden trout, a Sivuqaq subsistence-food fish, taken from the Suqi River over a three-year period, downstream from the NEC FUDS.¹⁷ It found that “[a]ll fish sampled near the FUD site exceeded the EPA’s PCB guidelines for cancer risk for unrestricted human consumption.”¹⁸ The data also “suggest that the NEC FUD site remains a point source of Hg [mercury] and PCB pollution.” Fish near the NEC FUDS “may pose a health risk for Sivuqaq residents.”¹⁹ (Emphasis added.)



Figure 2. *Dolly Varden Trout (Salvelinus malma)*²⁰

The Siberian Yupik have suffered gravely and continue to suffer from military contamination. They have pressed for decades for a more comprehensive, health-protective cleanup, but their voices have been ignored, violating the human rights detailed below. ACE’s failure to remediate military contamination properly also violates U.S. law, because the remedy is not “protective of human health and the environment,” as required by the relevant federal statute.²¹

¹⁷ Jordan-Ward, et al., *supra* note 12.

¹⁸ *Id.* p. 1-2.

¹⁹ *Id.* p. 2.

²⁰ Alaska Dep’t of Fish and Game, Dolly Varden Species Profile, <https://www.adfg.alaska.gov/index.cfm%3Fadfg=dollyvarden.main> (last visited Mar. 5, 2025).

²¹ The Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) provides that cleanups must be protective of human health and the environment. 42 U.S.C. § 9621. *See* Section II. A. below, Legal Background, for further discussion.

A. The Siberian Yupik Peoples of Sivuqaq

The Siberian Yupik have lived and thrived on Sivuqaq for millennia, enjoying a subsistence way of life that was until recently free from contact with the outside world and modern diseases. Sivuqaq's geographic isolation in the Bering Sea (roughly 40 miles from Russia), its harsh climate, and its scarce resources have shaped its residents' unique culture and language.²²

Yupik identity on Sivuqaq is deeply rooted in a traditional subsistence way of life,²³ which centers on communal cooperation and the complete utilization of every resource—both as a practical necessity and a spiritual mandate. To this day, the community subsists on fish and gathered food like eggs and berries.²⁴ Marine mammals—including bowhead whales, walrus, seals and other species — are a major source of protein.²⁵ Yupik cooperative hunting practices form an unbroken way to preserve and transmit their culture, connecting to their ancestors' ways of life.²⁶

B. Military Operations on Sivuqaq

In the early 1950s, at the height of the Cold War, the U.S. Air Force approached the residents of Sivuqaq seeking to build military “listening posts,” targeting the Soviet Union. The Sivuqaq Tribes agreed, but with conditions. As reflected in a letter from the Council of Savoonga to the Alaska Native Service dated April 7, 1951,²⁷ the Indigenous people specified four essential terms:

Item 1. The natives be permitted to travel along the coast by boat around the east end of the island to the hunting and fishing camping areas.

Item 2. The St. Lawrence Island natives be permitted to travel by dog-team over specific trails to hunting and trapping area[s], and in case of storms in proposed area natives will use usual shelters.

Item 3. People other than St. Lawrence Island natives refrain from kill[ing] fox, fowl, reindeer, seal, and will not molest seal rookeries which are found [in the] proposed area.

Item 4. **Any refuse or garbage will not be dumped in streams or near the beach within the proposed area.** As this will prove detrimental to the seal breeding grounds. Seal areas are cape Ketnughuk, cape Saevee, and Tuppisaghak river. (Emphasis added.)

²² Letter from the Native Village of Savoonga to the EPA Administrator, *supra* note 1, at p. 1.

²³ Pamela K. Miller, et al., *Community-based participatory research projects and policy engagement to protect environmental health on St Lawrence Island, Alaska*, Int'l J. Circumpolar Health, Aug. 5, 2013, available at <https://pubmed.ncbi.nlm.nih.gov/23977641/>.

²⁴ *Inupiaq and Yupik People of Alaska*, Alaska Geographic Soc'y, *Sivuqaq, Home of the Siberian Yupik* (2001), at 43.

²⁵ Anthropology of East Europe Review, *Whaling Products as an Element of Indigenous Diet in Chukotka*, Vol. 21, No. 1, 2003, available at <https://scholarworks.iu.edu/journals/index.php/aeer/article/view/371>.

²⁶ *Études/Inuit/Studies*, The Archaeology and Ethnohistory of Walrus Ritual around Bering Strait, 41(1-2):73, Jan. 2017, available at https://www.researchgate.net/publication/334335784_The_Archaeology_and_Ethnohistory_of_Walrus_Ritual_around_Bering_StraitL'archeologie_et_l'ethnohistoire_du_rituel_des_morses_autour_du_detroit_de_Bering.

²⁷ Letter from the Council of Savoonga to the Area Director of the Alaska Native Service in Juneau, Alaska (Apr. 7, 1951), available at Agreement with NVS 1951.

This agreement was also reflected in Public Land Order No. 790, published in the Federal Register.²⁸ The import of the agreement was clear: the military must not despoil the island; must protect the resources critical to Indigenous Yupik inhabitants' sustenance; and must leave the island in the condition they found it, which ensured their health and well-being.

C. The Gambell and Northeast Cape (“NEC”) Military Installations

In 1950, the USAF built a base camp near Gambell at the foot of Sevuokuk Mountain, and a radar site on the mountaintop.²⁹ It leased roughly 2,500 acres in Gambell,³⁰ and constructed numerous buildings, including a power facility, a military motor pool building, a radar power station, housing units,³¹ and two landfills.³² The village of Gambell was adjacent to the military installation, and the Yupik people continue to live there today.³³

Researchers have noted that the geography of Gambell placed it at particular risk of chemical contamination: “The FUDS and community of Gambell [are] situated on a highly permeable cobble spit, meaning any spilled or released contaminants could quickly migrate to the underlying permafrost.”³⁴ Permafrost consists of soil, rocks, and sand held together by ice. Contaminants contained in permafrost are mobilized as the ice melts.³⁵

In 1952, the military established a second defense site, an “Aircraft Control and Warning Station,” at the NEC. A “White Alice Communication System” was added in 1954.³⁶ The site occupied 4,800 acres, including twenty-five (25) industrial buildings, a movie theater, a bowling alley, an airstrip, and associated support facilities.³⁷

The NEC is one of the island's most beautiful, favored locations. It holds deep cultural and spiritual significance for the native Yupik.³⁸ It was home³⁹ to a thriving full-time village of between thirty and forty homes, located on the tundra by a pristine beach.⁴⁰ Military installations

²⁸ 17 Fed. Reg. 733 (Jan. 16, 1952).

²⁹ Alaska Dep't of Env't Conservation (“ADEC”), *Northeast Cape and Gambell Formerly Used Defense Sites*, Alaska Div. of Spill Prevention and Response (Feb. 16, 2023) available at <https://dec.alaska.gov/spar/csp/sites/st-lawrence/>.

³⁰ ACE, *Decision Document, Gambell Formerly Used Defense Site, F10AK0696, St. Lawrence Island, Alaska* (June 2005) (“2005 Gambell DD”), available at https://dec.alaska.gov/media/3o0dlkwy/2005_gambell-fuds-decision-document_searchable_reduced.pdf, at p. 10.

³¹ *Id.* pp. 30, 39, 43.

³² *Id.* p. 41.

³³ *Id.* p. 18, 21.

³⁴ Carpenter, et al., *supra* note 2, at 334, 335.

³⁵ Nat'l Inst. of Env't Health Sci. (“NIEHS”), *Grantees in Alaska on Front Lines of Climate Change and Health Issues*, Env'l Factor (Sept. 2023) available at <https://factor.niehs.nih.gov/2023/9/feature/3-climate-change-health-indicator>.

³⁶ *Northeast Cape and Gambell Formerly Used Defense Sites*, *supra* note 29.

³⁷ *Id.*

³⁸ Interviews conducted by ACAT intern with Savoonga residents, Aug. 2024.

³⁹ As stated by the Human Rights Committee, the notion of “home” must be “understood within the context of the special relationship indigenous peoples have with their territories” and their ways of life, including their subsistence activities. U.N. Hum. Rts. Comm. (“HRC”), *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication, No. 2552/2015* (Sept. 21, 2022) Para 8.2, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F132%2FD%2F2552%2F2015&Lang=en.

⁴⁰ Interviews conducted by ACAT intern with Savoonga residents, Aug. 2024.

displaced about 130 residents from the NEC to Savoonga,⁴¹ about 60 aerial miles away.⁴² According to interviews with residents, the NEC’s once-abundant Suqi and Tapi rivers sustained year-round residents with clean drinking water and fish.⁴³

Tragically, however, in 1969 the Suqi River ecosystem was effectively destroyed by a major military oil spill. A massive above-ground fuel oil storage tank “was reportedly ruptured by snow clearing equipment,” releasing approximately 185,000 gallons of oil.⁴⁴

An elder with deep ties to the NEC recalled fishing for Dolly Varden trout⁴⁵ in the Suqi River, which had the most abundant fishing on Sivuqaq until the oil spill. He says the oil turned the Dolly Varden “completely black,” and the fish and plants in and around the Suqi all died. As a result, he and others were no longer able to rely on Suqi River fish for subsistence.⁴⁶ Food insecurity in NEC was such that some residents had to scavenge for food in the USAF dumps.⁴⁷

The Suqi ecosystem has shown signs of recovery in recent years, with Dolly Varden returning for the first time in decades, albeit not in the numbers that were once there. However, researchers in 2023 concluded that “[t]he Suqi River is still severely polluted, and the contamination prevents the safe consumption of traditional foods, practicing of cultural activities, and recovery of fish populations. Seal haul-outs at the mouth of the river also have not recovered.”⁴⁸ Sivuqaq residents no longer collect drinking water at NEC, nor can they collect edible plants, berries or medicinal plants.

D. The Military Abandons the Sivuqaq FUDS

When operations in Gambell ceased in 1956,⁴⁹ the military abandoned and buried significant amounts of materials from the main base and the mountaintop radar station.⁵⁰

Similarly, when operations at the NEC ceased in 1972, the military abandoned the FUDS, including large amounts of building materials, heavy equipment, and generating facilities to avoid the expense of off-island disposal.⁵¹ It also left extensive environmental contamination, including above- and below-ground storage tanks and associated piping, electrical equipment, transformers, hundreds of 55-gallon drums of waste liquids, metal debris, paint and solvents.⁵²

⁴¹ Pamela K. Miller, Protecting the health of future generations in the arctic through community-based participatory research and action, *Health and the Environment*, January 22, 2023, at 271, *available at* <https://www.akaction.org/wp-content/uploads/Miller-2023-Protecting-the-health-of-future-generations.pdf>.

⁴² *Northeast Cape and Gambell Formerly Used Defense Sites*, *supra* note 29.

⁴³ ACAT conducted interviews with Sivuqaq residents in July and August of 2024. To protect their privacy, they are not named. ACAT will facilitate further interviews should the SR seek further information.

⁴⁴ Ronald J. Scudato, et al., *Contaminants at Arctic formerly used defense sites*, *J. of Local and Glob. Health Sci.* (Nov. 28, 2012), at p. 8.

⁴⁵ *See* Figure 2, *supra*.

⁴⁶ This included the seal that would feed on the Dolly Varden. Interview of an elder by an ACAT intern, Aug. 2024.

⁴⁷ *Id.*

⁴⁸ Miller, *supra* note 41, at 271.

⁴⁹ *Northeast Cape and Gambell Formerly Used Defense Sites*, *supra* note 29.

⁵⁰ 2005 Gambell DD, *supra* note 30, at p. 13.

⁵¹ ACE, *Decision Document: Hazardous, Toxic, and Radioactive Waste (HTRW) Project #F10AK096903, Northeast Cape Formerly Used Defense Site (FUDS), St. Lawrence Island, Alaska* (Jan. 2009) (“2009 NEC DD”), at p. 15.

⁵² Scudato, *supra* note 44, p. 4.



Figure 3. *Annie Alowa (1924-1999) was a respected Yupik elder and community health aide who died of cancer. She documented the health impacts of military contamination on her people, inspiring their activism in seeking a comprehensive cleanup. Here, she posed in front of abandoned military debris in the 1990s.*⁵³

Rather than removing all hazardous materials, as the Yupik expected under the 1951 Agreement, ACE conducted only superficial remediation. At the NEC, it posted signs around some areas warning residents of the dangerous chemicals there. However, in what became emblematic of the military's disregard for Indigenous culture, the signs were not written in the local Yupik dialect. Uninformed of the dangers, many Sivuqaq residents used abandoned materials for home construction and repair that contained asbestos, lead and PCBs or were otherwise contaminated by hazardous materials.⁵⁴

II. FACTS

A. Legal Background

The Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”),⁵⁵ is the primary law governing cleanup of hazardous waste sites in the United States. It imposes on polluting parties a non-discretionary duty to select remedial actions that

⁵³ See video of an interview of Annie Alowa, available at <https://www.akaction.org/about/>.

⁵⁴ Interview with Savoonga residents, July 2024; Miller, *supra* note 41.

⁵⁵ 42 U.S.C. §§ 9601, et seq.

protect human health and the environment.⁵⁶ CERCLA remediation involves four key steps,⁵⁷ the last one being the “Decision Document,”⁵⁸ which delineates reasons for selecting the preferred remedial alternative based on data developed in the previous steps.⁵⁹

CERCLA established the National Priorities List (“NPL”), also known as “Superfund,” a listing of the most urgent sites for cleanup.⁶⁰ NPL designation comes with significant benefits, primarily prioritized funding and EPA oversight of remediation; EPA generally does not participate in non-NPL cleanups.⁶¹ To become listed, sites must satisfy a scoring calculation called the Hazard Ranking System (“HRS”).⁶² Sites with a score greater than 28.5 are eligible for the NPL but are not automatically added; listing is discretionary.⁶³ If a site has a qualifying score, EPA inquires if there are cleanup alternatives other than NPL listing.⁶⁴ If so, they are pursued. If not, and the state concurs, a site will then be proposed for listing.

Irrespective of NPL listing, CERCLA specifies that if the remedy leaves residual contamination behind, the responsible party must review the remedy “no less often than each 5 years after the initiation of such remedial action, to assure that human health and the environment are being protected by the remedial action being implemented.”⁶⁵ CERCLA also requires that corrective action be identified, implemented, and reported to Congress.⁶⁶

In addition to CERCLA, the military employs the Defense Environmental Restoration Program (“DERP”) to clean up some wastes at former military sites. DERP is particularly germane to cleanup of petroleum products, which are statutorily excluded from CERCLA.⁶⁷

⁵⁶ 42 U.S.C. § 9621(b)(1). EPA has set the default standard for protectiveness to be one-in-a-million excess risk of lifetime cancers (in scientific notation, 1×10^{-6}); where site-specific conditions allow and regulators agree, risk can fall to one-in-ten thousand risk of excess lifetime cancers (1×10^{-4}). EPA, *Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions*, Oswer Directive 9355.0-30, Apr. 22, 1991, p. 2.

⁵⁷ The first step in a CERCLA cleanup is a Preliminary Assessment (“PA”), followed by a Remedial Investigation (“RI”) and a Feasibility Study (“FS”). The PA screens out sites that do not threaten public health or the environment, prepares for a Site Inspection (“SI”), determines if short-term “removal actions” are necessary, and gathers data to facilitate a fuller site evaluation. The RI characterizes the nature and extent – vertical and horizontal – of contamination. The FS analyzes remedial alternatives, proposes a preferred alternative, and summarizes the data relied upon in selecting the preferred alternative. The remedy is selected in a “Decision Document” (sometimes called a “Record of Decision”) delineating reasons for the selection. 42 U.S.C. § 9621(d)(2)(B)(ii), 40 C.F.R. § 300.430.

⁵⁸ Also known as the “Record of Decision.”

⁵⁹ 42 U.S.C. § 9621(d)(2)(B)(ii), 40 C.F.R. § 300.430.

⁶⁰ EPA, Superfund: National Priorities List, *available at* <https://www.epa.gov/superfund/superfund-national-priorities-list-npl> (last visited Mar. 6, 2025).

⁶¹ When a federal facility is not listed on the NPL, state laws regarding cleanup and enforcement apply to Federal facilities, as long as these laws do not treat Federal facilities more strictly than private ones. *See* summary of CERCLA § 120(a), *available at* <https://www.epa.gov/enforcement/comprehensive-environmental-response-compensation-and-liability-act-cercla-and-federal>.

⁶² 40 C.F.R. Part 300, App. A.

⁶³ *Id.*

⁶⁴ EPA, *Addition of a Subsurface Intrusion Component to the Hazard Ranking System*, 82 FR 2760 (Jan. 9, 2017), <https://www.federalregister.gov/documents/2017/01/09/2016-30640/addition-of-a-subsurface-intrusion-component-to-the-hazard-ranking-system>, at 2764.

⁶⁵ 42 U.S.C. § 6921(c).

⁶⁶ *Id.*

⁶⁷ 10 U.S.C.A. § 2701. DERP must be implemented consistent with CERCLA’s provisions for federal facilities.

Although Alaska’s Department of Environmental Conservation (“ADEC”) does not conduct cleanups on federal lands, it coordinates with and advises federal agencies, including ACE and EPA, that are conducting federal cleanups.⁶⁸ Further, Alaska’s state cleanup standards determine the level of contaminants permissible notwithstanding that federal agencies perform the cleanup: CERCLA provides that contaminated sites must meet either federal standards *or* any more stringent state standards relevant and appropriate to a site’s circumstances.⁶⁹

B. Military Remediation Efforts

ACE conducted the Sivuqaq FUDS remediation. Although the NEC military sites were abandoned in 1972, and the abandoned waste at Gambell was buried, ACE did not assess FUDS contamination until 1989, when it conducted an initial ecological assessment.⁷⁰ A Preliminary Assessment was formally completed in 1994.⁷¹

C. Gambell Decision Documents

In June 2005, ACE released the first of two Decision Documents for Gambell. The first was entitled *Decision Document, Gambell Formerly Used Defense Site F10AK0696, St. Lawrence Island, Alaska*, June 2005 (“2005 Gambell DD”). It covered all Gambell sites except Site 5 and divided the Gambell FUDS into thirty-eight (38) discrete sites. ACE addressed Site 5 two years later in a second, site-specific Decision Document.⁷²

The stated remedial goal was to “[r]estore contaminated soils for future residential land use,” and remove dangerously exposed military debris. The 2005 Gambell DD concluded that thirty-four (34) sites required no action and three required remediation:

- Site 7 (Former Power Plant): disposal of approximately four (4) tons of arsenic-contaminated soil above the remedial goal of 11 milligrams per kilogram (“mg/kg”).⁷³
- Site 8A (West Beach Area): removal of “physical hazards” at the site, including exposed Marston matting⁷⁴ near the airstrip.⁷⁵
- Site 12 (North Nayvaghat Lakes Disposal Site): removal of four (4) tons of soil that exceeded the remedial goal for chromium (26 mg/kg) and lead (400 mg/kg).⁷⁶

The 2005 Gambell DD projected that no hazardous contaminants would remain after remediation and therefore no five-year reviews would be required.⁷⁷

⁶⁸ Alaska Stat. § 46.03.822, available at <https://dec.alaska.gov/spar/csp/faq/>; see also <https://dec.alaska.gov/spar/csp/faq/cleanup>.

⁶⁹ 42 U.S.C. § 9621(d)(2)(A)(ii).

⁷⁰ ACE, *Second Five-Year Review Report for Northeast Cape Formerly Used Defense Site, Funds No. F10AK0969-03, St. Lawrence, Alaska* (Feb. 20, 2020) (“NEC Final Second FYR”), at Table C-2-1.

⁷¹ *Id.*

⁷² ACE, *Site 5 Decision Document, Hazardous, Toxic, and Radioactive Waste (HTRW) Project # F10AK069603, Gambell Formerly Used Defense Site (FUDS), St. Lawrence Island, Alaska* (Sept. 2007) (“Gambell Site 5 DD”).

⁷³ 2005 Gambell DD, *supra* note 30, at p. 4.

⁷⁴ Marston matting consists of pierced or perforated steel planking used for the rapid construction of temporary runways and landing strips.

⁷⁵ 2005 Gambell DD, *supra* note 30, at p. 4.

⁷⁶ *Id.*

⁷⁷ *Id.*

In comments to the Draft 2005 Gambell DD, ACAT raised concerns about Gambell's drinking water, which was not tested regularly; ACAT requested testing at least once a year.⁷⁸ Another concern was saltwater intrusion into the drinking water supply due to Gambell's geography and the low groundwater gradient.⁷⁹ ACE stated it would conduct a total of two drinking water tests and, though it agreed with ACAT's characterization of the geography and groundwater, it responded there was no evidence of saltwater intrusion.⁸⁰

ACAT also commented on ACE's dismissal of elevated arsenic levels as background contamination unrelated to military activities and objected to its practice of averaging contaminant levels.⁸¹ ACE defended its approach, claiming "arsenic has been documented at levels above the ADEC cleanup standards throughout Alaska," and arsenic that ranged between 10-15 ppm was not a concern.⁸² While conceding that "[o]nly a few 'outside' or 'background' samples have been collected," ACE maintained that the "evaluation of arsenic . . . has been considered appropriate in Gambell."⁸³

ACE dismissed concerns that a comprehensive background study had not been done, stating that "with the exception of arsenic, elemental concentrations [of contaminants] have **largely** been below cleanup levels."⁸⁴ (Emphasis added.) It also cited the difficulty of sampling due to Gambell's geography, but did not address the absence of reliable background data. Nevertheless, ACE maintained that "investigations have been thorough enough to demonstrate that gross, largescale contamination is not a legacy of the Gambell FUDS."⁸⁵

ACE's 2007 Site 5 Decision Document⁸⁶ concerns a former tramway corridor to the radar station on Sevuokuk Mountain that was abandoned in 1956.⁸⁷ Gambell's drinking water source was adjacent to Site 5,⁸⁸ and the community raised concerns about possible waste petroleum contamination of the water because a sample exceeded screening levels for Diesel Range Organics ("DRO").⁸⁹ ACE dismissed these concerns and concluded that no further action was necessary, despite having conducted only limited groundwater monitoring in 2005 and 2006.⁹⁰

ACE also acknowledged the community's concerns about "inadequate site characterization," "inadequate hydrology studies," and fears about the impact of "changing

⁷⁸ *Id.* p. 68.

⁷⁹ *Id.*

⁸⁰ *Id.* p. 69.

⁸¹ *Id.* p. 71. Throughout the document, it states that arsenic levels are attributable to background levels of arsenic in the environment and are not from military activities, but the document provides no data on natural background levels. In some cases, arsenic levels are averaged, and the average value (rather than the highest value) is inappropriately used to justify taking no further cleanup action. Often, arsenic levels exceed cleanup standards. These sites should be remediated to ensure that arsenic levels are below ADEC cleanup standards.

⁸² *Id.*

⁸³ *Id.* p. 77.

⁸⁴ *Id.* p. 82.

⁸⁵ *Id.* p. 83.

⁸⁶ Gambell Site 5 Decision Document, *supra* note 72.

⁸⁷ *Id.* p. 3.

⁸⁸ *Id.* p. 15.

⁸⁹ *Id.* pp. 15-16.

⁹⁰ *Id.* p. 13.

climate conditions, melting of permafrost, undetected contaminants, and contaminant migration.” Yet, it declared there was no basis for conducting any additional remediation.⁹¹

D. NEC Decision Documents

At the NEC, four remedial investigations between 1994 and 2004 identified hazardous releases at thirty-four (34) sites,⁹² with PCBs, petroleum products, and arsenic as primary contaminants. ACE issued two decision documents in 2009. The first, the 2009 *NEC Decision Document* (“2009 NEC DD”),⁹³ encompassed all NEC sites except Site 7, one of the two NEC landfills. A separate site-specific, decision document focused on Site 7 (“Site 7 NEC DD”).⁹⁴

The 2009 NEC DD outlined various options for the 34 individual sites, including “no further action,” land use controls, natural attenuation, long-term monitoring, and excavation.⁹⁵ The remedial goal set for PCBs in soil was 1 ppm.⁹⁶ The 2009 NEC DD reported six sites with PCB contamination exceeding this goal:

- Site 13 (Heat and Power Plant (moc [Main Operations Complex]): PCBs were identified at 37.1 ppm.⁹⁷
- Site 21 (Wastewater Tank): PCBs were identified at 4.2 ppm in surface soil and 1.7 ppm in subsurface soil. Tests also reported arsenic at 170 ppm, while the arsenic remedial goal was 11 ppm.⁹⁸
- Site 23 (Power and Communication Line Corridors): PCBs were identified at 1.28 ppm, although not all samples found PCBs.⁹⁹
- Site 31 (White Alice Communications area): PCBs were identified from 1.53 to 7.09 ppm.¹⁰⁰
- Site 16 (Paint and Dope Storage): PCBs were identified at 1.4 ppm.¹⁰¹
- Site 34 (Upper Camp): PCBs were identified at 1.06 ppm.¹⁰²

While Sites 16 and 34 exceeded the remediation goal, ACE decided they did not endanger human health and thus did not require remediation.¹⁰³

⁹¹ *Id.* p. 23.

⁹² 2009 NEC DD, *supra* note 51, at p. 120.

⁹³ *Id.*

⁹⁴ ACE, *Decision Document: Site 7 Cargo Beach Road Landfill Containerized Hazardous, Toxic, and Radioactive Waste (CON-HTRW) Project # F10AK096905, Northeast Cape Formerly Used Defense Site (FUDS), St. Lawrence Island, Alaska* (June 2009) (“2009 Site 7 NEC DD”).

⁹⁵ 2009 NEC DD, *supra* note 51, at pp. 10-11.

⁹⁶ *Id.* p. 75.

⁹⁷ *Id.* p. 44.

⁹⁸ *Id.*

⁹⁹ *Id.* p. 34. “The quantity of impacted soils was de-minimus and does not pose an unacceptable risk to human health or the environment,” and “[a]ll potential sources of contamination have been removed.” *Id.*

¹⁰⁰ *Id.* p. 65.

¹⁰¹ *Id.* p. 44.

¹⁰² *Id.* p. 42.

¹⁰³ *Id.* p. 59 (Site 16); p. 42 (Site 34).

The 2009 NEC DD set the remedial goal for most waste petroleum products at 9,200 ppm.¹⁰⁴ It cited eleven (11) sites where petroleum waste exceeded the remedial goals and would be remediated.¹⁰⁵ It also reported that two more sites exceeded the remedial goals for petroleum contamination, but dismissed their importance and stated that no remediation would be done¹⁰⁶:

- Site 4, Native Fishing and Hunting Camp: A post remediation confirmation sample, analyzed in triplicate, reported residual range organics (“RRO”) concentrations ranging from 2,380 to 14,000 ppm. However, ACE labelled the contamination “de-minimus,” stating the average of the three samples (6,950 ppm) was below the remedial goal.¹⁰⁷
- Site 29, Suqi River and Estuary: DRO results were 25,000 ppm. ACE declared this result was “anomalous,” as it was “not duplicated in subsequent sampling.”¹⁰⁸

ACE conducted no further investigation. This, despite that the site with the greatest remedial-goal exceedance was in the Suqi watershed, which was severely impacted by the 185,000-gallon oil spill in 1969 that decimated the river, its fish populations and its estuary,¹⁰⁹ and these results evidenced continuing contamination.

The 2009 NEC DD also reported that at two sites, arsenic contamination exceeded the remedial goal of 11 ppm, but required no further action:

- Site 9, the Housing and Operations Landfill: Arsenic in soil was reported at 30 ppm.¹¹⁰
- Site 21, Wastewater Tank: Surface soil testing found arsenic at 170 ppm.¹¹¹

The decision document for Site 7 reported PCB contamination at the former landfill in “6 discrete areas” along its southeastern edge.¹¹² Post-remediation testing found cleanup was unsuccessful at two locations, but ACE decided no additional sampling or remediation would be done.¹¹³

In comments on this issue, Alaska regulators at ADEC, which provided oversight to ACE, expressed concern. In comments to the Draft Site 7 NEC DD, ADEC argued the evidence demonstrated that there was off-site contaminant migration.¹¹⁴ ACE disagreed, asserting the data were “not significant” because of “the poor quality of the samples.”¹¹⁵ ACE also stated, “[i]f sampling suggests only low levels of contaminants outside of the landfill, we don’t recognize a substantial environmental concern. . . . It is not practical to sample every square foot of a site,

¹⁰⁴ *Id.* p. 75. Petroleum products were categorized as Diesel Range Organics (“DRO”), Gasoline Range Organics (“GRO”), or Residual Range Organics (“RRO”). *Id.* pp. 9-10.

¹⁰⁵ *Id.* p. 44. They included: Site 1, Airstrip; Site 3, Pumphouse; Site 6, Gravel Pad; Site 8, POL Spill; Site 10, Buried Drums; Site 11, Fuel Tanks; Site 13, Heat and Power Plant; Site 15, Fuel Pipeline; Site 19, Auto Maintenance; Site 27, Diesel Fuel Pump; and Site 32, Lower Tram.

¹⁰⁶ *Id.* p. 42.

¹⁰⁷ *Id.* pp. 26, 30.

¹⁰⁸ *Id.* p. 27.

¹⁰⁹ *See supra* Section I. C.

¹¹⁰ 2009 NEC DD, *supra* note 51, at p. 52.

¹¹¹ *Id.* p. 61.

¹¹² 2009 Site 7 NEC DD, *supra* note 94, at p. 17.

¹¹³ At one, ACE did no further sampling because “the soil contamination is commingled with buried landfill debris and further excavation was not practical.” *Id.* p. 24. At the other, along the western edge of the landfill, PCBs exceeded the remedial goal at 1.78 ppm, but ACE asserted this was not a health risk because “the landfill cap will cover this area.” *Id.* p. 32.

¹¹⁴ *Id.* p. 48.

¹¹⁵ *Id.* pp. 48-49.

and samples at the landfill were targeted to areas with the greatest likelihood for contaminant migration.”¹¹⁶ Despite acknowledging that it had taken “poor quality” samples, ACE continued to rely on its samples and failed to retest any part of Site 7.¹¹⁷

E. NEC Five Year Reviews (“FYR”)

ACE published its *First Five Year Review for the NEC FUDS*¹¹⁸ and its *First Five Year Review for NEC Site 7*,¹¹⁹ in 2015; in 2020, it published its *Second Five Year Reviews*.¹²⁰ The *Third Five Year Reviews* were due in February 2025 but have not been released as of the date of this Complaint. ACE did not conduct any five-year reviews for the Gambell FUDS.

1. Final First Five Year Review for the NEC

In August 2013, ACE published its *Draft NEC First Five Year Review* (“*Draft NEC First FYR*”) and accepted public comment.¹²¹ ACAT’s comments criticized the cleanup because the environment of the NEC had not been sufficiently restored to enable its former, displaced Yupik community, to return:

The original community at NE Cape, the Native Village of Northeast Cape, was and continues to be displaced by the military operations at NE Cape. The people of St. Lawrence Island intend to re-establish the community at NE Cape, however [they] cannot do so until they are assured that the cleanup is protective of health and well-being for a residential community and future generations. People cannot safely use the NE Cape area for traditional hunting and fishing or for the harvesting of food (greens and berries) and medicinal plants. The ground- and surface sources of drinking water sources are not safe.¹²²

Among ACAT’s chief concerns was that Sivuqaq’s Tribes had not been adequately involved in the planning and approval of a complete, health protective cleanup, depriving ACE of relevant information about Indigenous food harvesting and consumption practices, local knowledge of where waste was disposed during the period of military use, and more. ACAT wrote: “[ACE] has not conducted proper government-government consultation according to their legal obligations,” and further compounded legal inadequacy with cultural insensitivity.¹²³ The result was an incomplete cleanup that did not protect the health of the Native residents.¹²⁴

ACAT cited evidence that contamination from PCBs, pesticides, and petroleum wastes continued to pollute the Suqi River watershed. It specifically identified contaminants that were

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *First Five-Year Review Report Northeast Cape FUDS, St. Lawrence Island, Alaska, Formerly Used Defense Site No. F10AK0969-03* (Feb. 2015) (“NEC Final First FYR”).

¹¹⁹ *Final First Periodic Review Report Site 7 Cargo Beach Road Landfill, Northeast Cape FUDS, St. Lawrence Island, Alaska, FUDS No. F10AK0969-05* (Feb. 2015) (“Site 7 Final First FYR”).

¹²⁰ NEC Final Second FYR, *supra* note 70; *Final Second Periodic Review Report Site 7 Cargo Beach Road Landfill, Northeast Cape FUDS, St. Lawrence Island, Alaska, FUDS No. F10AK0969-05* (2020) (“Site 7 Final Second FYR”). The cover sheet for the Site 7 Final Second FYR is dated “August 2020,” but the signature page is dated June 23, 2021. There is no explanation for the 10-month difference.

¹²¹ NEC Final First FYR, *supra* note 118.

¹²² *Id.* p. 590.

¹²³ *Id.* p. 591.

¹²⁴ *See id.* pp. 33-34.

leaching from beneath capped landfills at Sites 7 and 9,¹²⁵ and recommended sampling methods that would fill data gaps created by ACE's self-labeled "poor quality" samples.¹²⁶

ACAT was not the only critical party. Following DoD guidelines, ACE established a Restoration Advisory Board ("RAB") as part of its community engagement program and to provide technical support to interested parties.¹²⁷ The RAB's technical advisor agreed that the Suqi estuary needed improved site characterization, and that ACE should use innovative remedial measures to reduce the concentration and distribution of chlorinated compounds like PCBs, Mirex (an insecticide and flame retardant), dichlorodiphenyldichloroethylene ("DDE," a breakdown product of dichlorodiphenyltrichloroethane or "DDT"), non-chlorinated organics, and toxic metals, including mercury.¹²⁸

ACE's 2015 *NEC Final First FYR* ignored the ACAT and RAB critiques and factual support. ACE did not commit to any further action to address the NEC's continuing contamination, thus continuing to harm the health and well-being of the residents. Typical of ACEs' indifference to remaining hazards at the site was its approach to Site 6, where a pre-construction soil sample had revealed PCBs at 2.2 mg/kg, more than double the applicable cleanup standard (1 mg/kg). The Review stated: "Excavations were performed as part of the remedial action for DRO at the site and may have removed the PCBs. Post-excavation samples were not tested for PCBs. **It is not known if PCBs remain onsite at the location of the previous detection.**"¹²⁹ (Emphasis added.) Despite this admission, ACE walked away from its responsibility to complete a cleanup that protects human health and the environment.

2. *Final Second NEC Five Year Review*

When ACE issued its Draft NEC Second Five Year Review, ACAT commented anew, reiterating what ACE ignored in the *First Five Year Review*.¹³⁰ ACAT also called attention to the health conditions associated with exposure to PCBs and other chemicals, including cancers, heart disease, strokes, reproductive health harms, birth defects, learning disabilities, diabetes, and thyroid disease, that were devastating the native community and endangering future generations.¹³¹

¹²⁵ *Id.* p. 155.

¹²⁶ 2009 Site 7 NEC DD, *supra* note 94, at p. 48. Recommended testing methods included semipermeable membrane devices, sediment cores, and biological sampling. They also requested more sensitive analytical methods to detect specific contaminants, including congener-specific PCBs, Mirex, hexachlorobenzene, dioxins/furans, and others that ACE had neglected to test for. NEC Final First FYR, *supra* note 118, at pp. 590, 592.

¹²⁷ *Management Guidance for Execution of the FY94/95 and Development of the FY96 Defense Environmental Restoration Program*, 60 Fed. Reg. 27460 (May 24, 1995), available at <https://www.govinfo.gov/content/pkg/FR-1995-05-24/html/95-12628.htm>.

¹²⁸ NEC Final First FYR, *supra* note 118, at p. 592.

¹²⁹ *Id.* p. 17.

¹³⁰ ACATs first comments were offered at a community meeting on April 11, 2018, (*Id.* pp. 536-540); written comments were also submitted on December 21, 2018. (*Id.* pp. 556-559). ACAT reiterated that ACE had not involved the Tribes in assessing the protectiveness of remedial work conducted; that residual contamination remained insufficiently investigated; and that additional sampling was necessary—particularly at Sites 7 and 9, which evidenced contaminants from landfills leaching off-site. ACAT again highlighted that because the cleanup was not protective, residents could not access "traditional subsistence foods, water supplies, and medicinal plants," and the Yupik people were still displaced from NEC by contamination.

¹³¹ *Id.* pp. 556-557.

Once again, ACE dismissed ACAT's evidence of ongoing contamination and rejected its requests for additional sampling:

- PCBs in Suqi River fish: ACAT's comments urged ACE to test for specific PCB congeners (i.e., structural variants) in fish samples, which can help pinpoint contamination sources.¹³² ACE declined, citing the absence of specific cleanup standards for these compounds.¹³³
- Mercury at Site 28: ACAT presented evidence from its own sampling indicating mercury contaminated the soil at Site 28.¹³⁴ ACE declined to conduct further testing, stating that mercury was not found in ACE's original sampling, and that "all sources of mercury which could contribute to Site 28 have been removed."¹³⁵
- Elevated PCB levels in Tapi River water and indicator fish: ACAT commented that its research showed "elevated levels of PCBs" in the Tapi River. ACE declined to investigate further.¹³⁶ ACAT likewise commented that its research found that stickleback and blackfish "continue to have elevated levels of PCBs" whose source needed to be further investigated. ACE did nothing.¹³⁷

ACE's consistent refusal to conduct further sampling when confronted with evidence of ongoing NEC contamination flew in the face of its repeated assurances to the public that new information could warrant additional sampling or re-opening of a closed CERCLA site.¹³⁸

ACAT also raised the issue of climate warming's impact on toxic contamination that may appear to be contained under present conditions. It noted that ACE had never "assessed the effects of climate warming on the mobilization of contaminants that have been sequestered in landfills and within permafrost." This was vital, ACAT said, because global warming and permafrost melt "will likely increase the mobilization and bioavailability of contaminants at NE Cape, thus increasing hazards to the health of fish, wildlife, and people."¹³⁹

ACE had no comment beyond stating: "Additional sampling may be warranted if new contamination is discovered."¹⁴⁰ It has not conducted any additional sampling.

3. *Re-Evaluation of Human Health Risk*

In addition to the five year reviews, ACE released a re-evaluation of the human health risks for arsenic at two NEC sites in 2016: Site 21 (a wastewater tank), and Site 28 (a drainage

¹³² The term "congeners" describes variation in a chemical structure, in this case the number of chlorine atoms in PCB compounds, *see* <https://www.epa.gov/pcbs/learn-about-polychlorinated-biphenyls>. Congener analysis can help fingerprint PCBs to determine their source. *See* <https://semspub.epa.gov/work/03/2085992.pdf>.

¹³³ NEC Final Second FYR, *supra* note 70, at p. 539.

¹³⁴ *Id.*

¹³⁵ *Id.* p. 540.

¹³⁶ *Id.* p. 559.

¹³⁷ *Id.* p. 556.

¹³⁸ An ACE memorialization of the April 11, 2018, community meeting indicated new information could re-open an already closed site: "Once the site is closed, there will be no further monitoring at the site **unless new information is presented to the USACE that justifies re-opening the site.**" Further, ACE stated, "**Additional sampling may be warranted if new contamination is discovered,**" and "[n]ew data that indicates a risk to human health can **re-open a site.**" *Id.* p. 537. (Emphasis added.)

¹³⁹ *Id.* p. 522.

¹⁴⁰ *Id.* p. 537.

basin from the Main Operations Center to the Suqi River).¹⁴¹ Relevant to this report, the remedial goal for arsenic was 11 mg/kg.¹⁴²

At Site 21, “[a]t the conclusion of the remedial activities, arsenic contamination ranging from 2 to 17 mg/kg remained at nine sample locations identified during 2012; 12 sample locations from 2013; and 31 sample locations from 2014.”¹⁴³ Although many post-remediation samples continued to exceed cleanup goals, ACE opined that the additional human health risk was acceptable, and that no further remediation was necessary.¹⁴⁴

At Site 28, arsenic concentrations ranged from 4.6 to 88 mg/kg in ACE’s 2013 samples, 20 of which exceeded 11 mg/kg.¹⁴⁵ ACE concluded the risk was acceptable for “seasonal residents,” notwithstanding that (a) the most contaminated sample showed an 8-fold exceedance of the cleanup level (which in turn represents a level of risk ACE wrongly deemed tolerable), and as noted above, and (b) the Yupik displaced from NEC—first by the military’s presence, and then by toxic contamination—have consistently expressed their desire to reestablish the full-time community that existed prior to military use of the island.¹⁴⁶

4. *Five Year Review for NEC Site 7*

ACE released a *Five Year Review for NEC Site 7* in February 2020.¹⁴⁷ It reported that the 2005 removal removed PCBs to concentrations below 1 mg/kg at only 4 of the 6 locations where PCB-contaminated soil was excavated and disposed of offsite. It acknowledged that “[a]reas on the southeastern slope of the landfill **may still contain PCB concentrations greater than 1 mg/kg** in soil beneath the landfill cap.”¹⁴⁸ (Emphasis added.) However, it argued that “[a]ll areas where PCB-contaminated soil may persist were covered by the 2-foot thick landfill cap, and no longer pose an unacceptable risk to visitors at Site 7.” Thus, ACE declined to take further action.¹⁴⁹

5. *Agency for Toxic Substance and Disease Registry (“ATSDR”) Health Consultation*

In 2022, the Agency for Toxic Substances and Disease Registry (“ATSDR”) released a Health Consultation regarding the NEC FUDS site,¹⁵⁰ responding to a request from the Sivuqaq Village of Savoonga.

¹⁴¹ ACE, *Northeast Cape Re-evaluation of Human Health Risk at Sites 21 and 28, Northeast Cape FUDS St. Lawrence Island, Alaska, Site. No. F10AK0969-03* (June 2016) (“Re-Evaluation of Sites 21 & 28”), available at <https://www.apeoplesepa.org/modules/acat-foia-repository-193>.

¹⁴² *Id.* p. 15.

¹⁴³ *Id.* p. 13.

¹⁴⁴ *Id.* pp. 50-51.

¹⁴⁵ *Id.* p. 15.

¹⁴⁶ *Id.* p. 50.

¹⁴⁷ See NEC Final Second FYR, *supra* note 70.

¹⁴⁸ *Id.* p. 55.

¹⁴⁹ *Id.* p. 127.

¹⁵⁰ ATSDR, *Final Health Consultation, Northeast Cape Formerly Used Defense Site (FUDS) St. Lawrence Island, Alaska*, EPA Facility ID: AKD981765984 (Nov. 28, 2022) (“ATSDR Health Consultation.”), available at <https://www.atsdr.cdc.gov/HAC/pha/NortheastCape/NE-Cape-Formerly-Used-Defense-Site-508.pdf>.

ATSDR concluded that fish from NEC “are not expected to be harmful if eaten for three months a year.”¹⁵¹ It did not reach any conclusions about long-term risk: “The data are too limited to evaluate long-term exposures to the variety of fish available.”¹⁵² However, ATSDR ignored Indigenous Knowledge; as noted, NEC was not a temporary, three-month fishing camp, but a thriving year-round community, before the military displaced it.¹⁵³ Accordingly, ATSDR’s risk analysis seriously underestimated the risk. In fact, ATSDR acknowledged this deficiency, but deferred risk analysis for year-round exposures: “If [NEC] becomes a year-round community in the future, ATSDR recommends collecting additional edible fish samples and analyzing exposure over 12 months, versus the three months examined in this health consultation.”¹⁵⁴

ATSDR¹⁵⁵ also reported that cancer rates in Savoonga and Gambell were “higher than expected,” due to lung cancer.¹⁵⁶ It attributed the cancers on Sivuqaq primarily to smoking.¹⁵⁷ However, ACAT cited evidence contrary to what ATSDR claimed, that cancers were affecting young people and non-smokers and that other cancers are prevalent. “Cancers on [Sivuqaq] are occurring more prevalently among younger people as well as among those who do not smoke or drink. The assessment should not dismiss local knowledge about health outcomes.”¹⁵⁸

A 2022 study also challenged ATSDR’s conclusions.¹⁵⁹ It found that the NEC FUDS “remains a point source” of mercury and PCB contamination, which “may pose a health risk for Sivuqaq residents.”¹⁶⁰ It concluded, “[c]ollectively, **our results contradict the findings reported in the ATSDR assessment.**”¹⁶¹ (Emphasis added.)

ATSDR reported mean concentrations of PCBs “less than half of the mean total” measured in Dolly Varden collected for the 2022 study. Furthermore, PCB profiles in the study showed that fish from the NEC FUDS “have significantly heavier PCBs” than reference fish from other sites. Since heavier PCB classes are less volatile; they are not as likely to be distributed by global distillation — a geochemical process that moves chemicals from warmer regions to colder regions — and thus “heavily chlorinated PCBs in Suqi River fish are likely a result of FUD site contamination.”¹⁶² The findings indicated:

In summary, the ATSDR concluded that the FUD site does not pose a health risk to Sivuqaq residents. However, **our results do not support this conclusion** and highlight the need for robust health assessments based on relevant data to accurately assess risk. In particular, an assessment of human health consequences of consumption of Suqi River fish.¹⁶³ (Emphasis added.)

¹⁵¹ *Id.* p. 1. ATSDR also concluded that eating NEC greens and berries year-round and accidentally ingesting soil “was not expected to harm people’s health.” However, “[t]he data are too limited to evaluate long-term exposures to the variety of plants available.” *Id.* p. 2.

¹⁵² *Id.* p. 1.

¹⁵³ Interviews conducted by ACAT intern with Savoonga residents, Aug. 2024.

¹⁵⁴ ATSDR, *Final Health Consultation*, *supra* note 150, at pp. 1-2.

¹⁵⁵ Note that the ATSDR was assisted by the Alaska Department of Health and Social Services (“ADHSS”).

¹⁵⁶ ATSDR, *Final Health Consultation*, *supra* note 150, at p. 2.

¹⁵⁷ *Id.* pp. 2-3.

¹⁵⁸ Comments by SLI and ACAT, ATSDR, *Final Health Consultation*, *supra* note 150, at p. 18.

¹⁵⁹ Jordan-Ward, et al., *supra* note 12.

¹⁶⁰ *Id.* p. 2.

¹⁶¹ *Id.* p. 9.

¹⁶² *Id.* pp. 9-10.

¹⁶³ *Id.* p. 10.

In particular, the authors said, a health assessment should include “a large sample size of fish collected from sites spanning from the headwaters to the estuary across multiple years,” to differentiate between resident freshwater fish and those that spend part of their lives in the ocean, and cumulative analysis of all pollutants at the NEC FUDS.¹⁶⁴

6. Pending Third NEC Five Year Review

When ACE was preparing its *Draft NEC Third Five Year Review*, ACAT once again submitted comments, reiterating criticisms it raised to the first two reviews.¹⁶⁵ In addition, ACAT referenced its most recent, peer-reviewed community-based research demonstrating ongoing harm from contamination, as further discussed immediately below.

As noted, the *Final Third Five Year Review* has not been released as of the date of this Complaint.

F. Community Based Participatory Research

In light of ACE’s persistent failure to follow up on community concerns about the inadequacy of the cleanup and its unwillingness to conduct further sampling at the Sivuqaq FUDs, the local Tribes and residents, assisted by ACAT, took matters into their own hands by conducting Community Based Participatory Research (“CBPR”).¹⁶⁶

For more than twenty-five years, ACAT and their CBPR partners, the two Sivuqaq Tribes, have been pioneers in CBPR. Significantly, the scientific research ACAT has pursued is peer reviewed, and thus verified. Many of its research projects have focused on the remediation of the Sivuqaq FUDs at the behest of the Indigenous residents frustrated by what they view as an incomplete remediation that continues to put their health at risk. ACAT’s studies have filled key data gaps, and validated residents’ concerns over the cleanup’s inadequacy.

As Pamela Miller, ACAT’s Executive Director, wrote in 2023:

Initially, this community-based research collaboration began with Alaska Community Action on Toxics (ACAT) at the request of respected Savoonga elder and community health aide Annie Alowa. Annie witnessed health disparities among her people such as cancers, thyroid disease, miscarriages, birth defects, and reproductive disorders, particularly among the people who lived and worked at Northeast Cape on Sivuqaq. Our research team has been conducting community-based participatory environmental health research on Sivuqaq (traditional name for St. Lawrence Island) for more than 22 years.¹⁶⁷

The research shows there continue to be sources of contamination at both FUDs that endanger the health of the people of Sivuqaq and the lands they rely on for sustenance.¹⁶⁸

¹⁶⁴ *Id.*

¹⁶⁵ *See supra* Section II. E. 1 & 2. These included: that there should be government-to-government discussions with the Yupik regarding ACE’s failure to investigate contamination adequately; to perform a sufficiently protective cleanup; to assess the hazards from salvaged materials that contained dangerous materials such as asbestos; and to communicate transparently regarding its decision making with respect to military waste on Sivuqaq.

¹⁶⁶ CBPR is a collaborative research method that brings together community members, researchers, and organizations to work together to improve health and well-being in communities. In CPBR projects, researchers and community members work as equal partners, learning together and pooling skills and knowledge to address local community issues.

¹⁶⁷ Miller, *supra* note 41, at p. 271.

¹⁶⁸ *See generally, id.*

In a 2005 paper,¹⁶⁹ for example, researchers biomonitored residents' blood serum for PCBs. The data demonstrated that Sivuqaq residents have "elevated levels of total PCBs as compared to the general North American background."¹⁷⁰ NEC family members had the highest mean PCB concentration (1,143 parts per billion ("ppb")), whereas Savoonga residents (who live midway between NEC and Gambell) were lower (847 ppb), and Gambell residents (who live farthest from NEC) were lowest (785 ppb).¹⁷¹

Subsequent research focused on evidence of contamination of local foods—and the ecosystems on which they rely—that are part of the Yupik's traditional subsistence diet:

- A 2011 paper investigated PCBs in blubber and rendered oils from bowhead whale, walrus, and seals. These marine mammals are major contributors to the Yupik's subsistence diet. It concluded: "Concentrations of PCB in rendered oils (193–421 ppb) and blubber (73–317 ppb) from all marine mammal samples were at **levels that trigger advisories for severely restricted consumption**" by the EPA.¹⁷² (Emphasis added.)
- A study published in 2017 investigated contamination of stickleback, a sentinel fish, taken from Troutman Lake near Gambell, by polybrominated diphenyl ethers (PBDEs) and per- and polyfluoroalkyl substances (PFAS).¹⁷³ It reported that "[e]levated concentrations of long chain PFAS in serum are likely due to exposure from traditional foods,"¹⁷⁴ and suggested both local and distal pollution sources: "Locally collected stickleback **indicate a point source of PBDE and PFAS pollution near Gambell**, while the lower concentration of these compounds in fish collected elsewhere on the island also suggest that both PFASs and PBDEs are present due to atmospheric deposition."¹⁷⁵ (Emphasis added)
- A 2020 paper investigated semi-volatile organic chemical ("SVOC") contamination in stickleback collected from Troutman Lake, near Gambell.¹⁷⁶ Testing found elevated PCBs, PBDEs and PFAS, that suggested "an unknown local contamination source," warranting further investigation.¹⁷⁷ Researchers concluded that "[c]hemical patterns . . . [in] comparison with SVOC concentrations in stickleback from other parts of the island **suggest strong local sources of PCBs, PBDEs, and PFAS.**"¹⁷⁸ (Emphasis added.)
- A study published in 2022 tested Dolly Varden trout, an important subsistence-food fish, taken from the Suqi River over a three-year period, downstream from

¹⁶⁹ Carpenter, et al., *supra* note 2, at p. 322.

¹⁷⁰ *Id.* p. 332.

¹⁷¹ *Id.* p. 327. Serum concentrations are lipid-adjusted to enhance accuracy.

¹⁷² Gretchen Welfinger-Smith, et al., *Organochlorine and Metal Contaminants in Traditional Foods from St. Lawrence Island, Alaska*, *J. of Toxicology and Env't Health, Part A* (2011) 1195, 1195.

¹⁷³ Samuel Byrne, et al., *Exposure to polybrominated diphenyl ethers and perfluoroalkyl substances in a remote population of Alaska Natives*, *Env't Pollution* (Dec. 2017) Vol. 231, pp. 387-395, available at <https://www.akaction.org/wp-content/uploads/Byrne-et-al-2017-Exposure-to-PBDEs-and-PFAS-Env-Poll.pdf>.

¹⁷⁴ *Id.* p. 387.

¹⁷⁵ *Id.* p. 393.

¹⁷⁶ Guomao Zheng, et al., *Legacy and emerging semi-volatile organic compounds in sentinel fish from an arctic formerly used defense site in Alaska*, *Environmental Pollution* (Apr. 2020) Vol. 259, 113872, available at <https://www.sciencedirect.com/science/article/abs/pii/S0269749119346020?via%3Dihub>.

¹⁷⁷ *Id.* p. 7.

¹⁷⁸ *Id.* p. 1.

the NEC FUDS.¹⁷⁹ It found that, “[a]ll fish sampled near the FUD site exceeded the EPA’s PCB guidelines for cancer risk for unrestricted human consumption.”¹⁸⁰ The study found “heavier” congeners of PCBs in Suqi River fish—heavy congeners are less volatile, and unlikely to result from long-range atmospheric transport—which **“are likely a result of FUD site contamination.”**¹⁸¹ (Emphasis added.)

- The same study also found that “89% of fish collected from near the FUD site had Hg [mercury] concentrations that exceeded the U.S. Environmental Protection Agency’s (EPA) unlimited Hg-contaminated fish consumption screening level for subsistence fishers.”¹⁸² The results suggested that “the [NEC] FUD site remains a point source of Hg and PCB pollution and contributes to higher concentrations in resident fish, including subsistence species . . . [and] **may pose a health risk for Sivuqaq residents.**”¹⁸³ (Emphasis added.)
- A study published in 2023 reported that **“PCB concentrations in Troutman Lake stickleback exceeded (by 3.8-fold) the EPA’s guideline for unlimited fish consumption.”**¹⁸⁴ Further, the authors wrote, “our data and those from previous studies suggest that PCB contamination of Troutman Lake is due primarily to a local point source of pollution.”¹⁸⁵ The data, they concluded, “indicate that military contamination continues to impact local food webs.”¹⁸⁶ The authors noted that Troutman Lake is a local source of Gambell drinking water,¹⁸⁷ elevating concerns about its pollution. (Emphasis added.)

Despite this abundance of scientifically validated research, ACE has denied, and continues to deny, that further characterization and remediation of the Gambell and NEC FUDS is required to protect the health of the Yupik people and their ecosystem. Furthermore, ACE has consistently underestimated contaminant exposures because it failed to conduct a cumulative health risk assessment, including all contaminants to which Sivuqaq residents are exposed, regardless of whether they are from global transport or local sources.

III. VIOLATIONS OF U.S. LAW

A. EPA Erred in Declining to Put the Sivuqaq FUDS on the Superfund List

The Sivuqaq Tribes, with ACAT’s assistance, petitioned the US EPA to place the Sivuqaq FUDS on the National Priorities List (“NPL”), or “Superfund,” a list of the most urgent

¹⁷⁹ Jordan-Ward, et al., *supra* note 12.

¹⁸⁰ *Id.* pp. 1-2.

¹⁸¹ *Id.* pp. 9-10.

¹⁸² *Id.* p. 1.

¹⁸³ *Id.* p. 2.

¹⁸⁴ Renee Jordan-Ward, et al., *Differential gene expression and developmental pathologies associated with persistent organic pollutants in sentinel fish in Troutman Lake, Sivuqaq, Alaska*, *Env’l Pollution* (Jan. 1, 2024) Vol. 340, Part 2, at 122765, p. 7, available at <https://www.sciencedirect.com/science/article/abs/pii/S0269749123017670>.

¹⁸⁵ *Id.* p. 8.

¹⁸⁶ *Id.* p. 2.

¹⁸⁷ *Id.*

sites that need remediation. Sites on the list get priority funding and US EPA oversight.¹⁸⁸ According to the calculations provided to EPA in the petition, both FUDS exceed the Hazard Ranking System score necessary for listing.¹⁸⁹ However, EPA has declined to list them. It provided limited information about this decision in a 2013 EPA assessment, which stated:

In the spring of 2010 EPA region 10 was tasked by EPA’s Office of Solid Waste and Emergency Response to review the Army Corps of Engineers cleanup of the two Form[erly] Use Defense Sites, Gambell and Northeast Cape. This review was in response to the concerns raised by the communities of Gambell and Savoonga and Alaska Community Action on Toxics. EPA Region 10’s task was to review the cleanup at these sites to determine if the cleanup was consistent with CERCLA regulations and EPA guidance.¹⁹⁰

Unfortunately, EPA stated that ACE’s remedial actions were acceptable up to that point and concluded its oversight was unnecessary.¹⁹¹

The Yupik residents of Sivuqaq continue to assert that ACE’s cleanup has been inadequate and incomplete, and that the Sivuqaq FUDS should be listed on the NPL to get the attention and oversight they deserve.

B. ACE Must Revisit its FUD Cleanup

1. ACE Conducted an Incomplete and Inadequate Cleanup

ACEs’ investigation and remediation of the NEC and Gambell FUDS breached the military’s agreement with the Sivuqaq Yupik and violated CERCLA, because ACE:

1. Failed to inventory all hazardous and non-hazardous wastes left by the military;
2. Failed, in its Remedial Investigations (“RIs”), to identify all areas contaminated by the military;
3. Failed, in areas where it did find military contamination, to conduct a comprehensive investigation to determine its vertical and horizontal extent;
4. Failed to investigate and test for all potential military contaminants, such as PCBs, mirex (an insecticide and flame retardants) and other chlorinated pesticides, PFAS and PBDEs;
5. Failed to obtain and act on the Indigenous Knowledge and experience of the Sivuqaq Yupik in conducting investigations and planning and executing remedial actions;
6. Failed to do an accurate and comprehensive analysis of the risk to native inhabitants from ingesting contaminated native foods and drinking water, and grossly underestimated the quantity and types of native foods in a traditional Yupik diet;
7. Failed to analyze the implications of climate warming, sea-level rise and groundwater impacts on the protectiveness of chosen site remedies, both at the remedies-selection stage and in the opportunities provided by each successive *Five Year Review*;
8. Failed to conduct additional sampling despite community-based research demonstrating there is continuing contamination impacting current Sivuqaq residents

¹⁸⁸ See *supra* Sections II.A & III.A. To become listed, sites must satisfy a scoring calculation called the Hazard Ranking System.

¹⁸⁹ *Id.*

¹⁹⁰ EPA, *Region 10’s Evaluation of ACOE Cleanup of FUDS at NE Cape and Gambell*, EPA Region 10, Feb. 2013.

¹⁹¹ *Id.*

and despite ACE’s public assurances that site cleanups would be reopened and additional remediation done if there was such evidence.¹⁹²

Further, changes in both federal policy and facts on the ground strengthen the legal basis for reopening the Sivuqaq remediation and increase the urgency of so doing, as detailed below.

2. *Additional Factors That Require ACE to Reopen the Sivuqaq Remediation*

a. *Indigenous Knowledge and Expertise*

The Sivuqaq tribes and their people and supporters have repeatedly objected to ACE’s non-inclusive process and policy decisions, and particularly to ACE’s consistent failure to consult meaningfully with, and learn from, the extensive local knowledge and expertise of Sivuqaq’s Indigenous residents.

At the time ACE selected its site remedies for Sivuqaq, however, there was arguably no federal requirement to do so. Since then, the White House Council on Environmental Quality (“CEQ”) has explicitly directed federal agencies to include Indigenous Knowledge in agency decision making. CEQ’s *Guidance to Federal Departments and Agencies on Indigenous Knowledge* (“CEQ Guidance”),¹⁹³ issued in 2022, “reaffirms that Agencies should recognize and, as appropriate, **apply Indigenous Knowledge in decision making, research and policies across the Federal Government.**”¹⁹⁴ (Emphasis added.) The Guidance states that Indigenous Knowledge should be treated as valid evidence in federal decision making, and as important, it recognizes that obtaining and deploying such knowledge requires “sustained engagement” with Tribes.¹⁹⁵

This Guidance is a step toward a goal the Sivuqaq Tribes have always sought: government-to-government discussion and collaboration in ensuring a health-protective cleanup.

ACE’s disregard for Indigenous Knowledge was more than just a cultural affront; it had the effect of greatly underestimating potential health effects of known contamination. As noted above, Indigenous Knowledge was that the NEC was inhabited year-round, yet the government’s health risk analysis only considered exposure at NEC for three months per year. Similarly, risk calculations did not reflect the true nature of the native diet and contamination of traditional water sources, leading it to further underestimate human exposures to contaminated native foods. In addition, peer-reviewed, community based participatory research demonstrated higher contamination levels in native foods than ACE acknowledged.

CEQ Guidance now requires ACE to do what it should have done in the first instance: take seriously the extent of the Sivuqaq Indigenous peoples’ knowledge of their local environment and the enduring impact military contamination has had on them.

¹⁹² See *supra* note 138.

¹⁹³ Council on Env’t Quality (“CEQ”), *Guidance to Federal Departments and Agencies on Indigenous Knowledge*, Nov. 30, 2022, available at <https://www.bia.gov/events/indigenous-knowledge-guidance-federal-agencies>.

¹⁹⁴ *Id.* p. 3.

¹⁹⁵ *Id.* p. 9.

b. Climate Change, Sea-Level Rise and Groundwater Impacts

The Sivuqaq Tribes and supportive stakeholders have also consistently urged ACE to address the impact of climate change on contaminated sites. Primary among their concerns is melting permafrost, rising groundwater, and potential leachate from landfills.

When asked at an April 2018 public meeting on the *Draft Second NEC Five Year Review* whether global warming would affect contaminated sites, ACE deferred all consideration of climate change, stating it would address climate-related changes “during the next [i.e., Third] five-year review site inspections,” and that “additional sampling may be warranted if new contamination is discovered.”¹⁹⁶ ACE provided no justification for failing to address climate change in the two years before it released the *2020 NEC Final Second FYR*.¹⁹⁷ It failed to commit to any proactive assessment of how climate change might affect military contaminants in landfills vulnerable to rising groundwater levels; neither did it commit to examining how melting permafrost and rising groundwater could impact the Gambell and NEC sites.

Here too, however, a recent policy change—this time, at the DoD itself—requires that ACE revisit the cleanups. In September 2024, DoD issued its *2024-2027 Climate Adaptation Plan* to address the effects of climate change on CERCLA and DERP remedies.¹⁹⁸ In it, DoD stated that “the effects of extreme weather and climate change” must be considered “at every level of the enterprise.”¹⁹⁹

This updated policy provides additional support for revisiting the current and longer-term protectiveness of the Sivuqaq FUD remedies. It also weighs heavily in favor of stronger consultations between ACE and the Yupik Tribes. DoD’s *Climate Adaptation Plan* expressly endorses the use of Cooperative Agreements, “with maximum Tribal participation through government-to-government consultation,” that would “support Tribal conservation and restoration priorities,” and “increase access to safe areas for traditional cultural and subsistence practices.”²⁰⁰

As DoD sites implementing cleanups under CERCLA and DERP, the Sivuqaq FUDs are subject to this climate change policy. ACE must therefore timely and fully reassess the cleanups to identify sites where residual toxic contaminants may be mobilized by the effects of climate change and may endanger human health and the environment.

c. Per- and Polyfluoroalkyl Substances (“PFAS”)

PFAS are a class of compounds used in diverse industrial and consumer product applications that are known as “forever chemicals,” because they resist breakdown in the

¹⁹⁶ NEC Final Second FYR, *supra* note 70, at p. 537, Apr. 16, 2018, Meeting Minutes memorializing the April 11, 2018, meeting re: *Draft Second Five Year Review*.

¹⁹⁷ See generally, *id.* pp. 1-30.

¹⁹⁸ DoD, Office of the Undersecretary of Defense (Acquisition and Sustainment), *Department of Defense 2024-2027 Climate Adaptation Plan, Report Submitted to National Climate Task Force and Federal Chief Sustainability Officer*, Sept. 5, 2024, available at <https://www.sustainability.gov/pdfs/dod-2024-cap.pdf>.

¹⁹⁹ *Id.* p. 1.

²⁰⁰ *Id.* p. 17.

environment and in mammals' bodies.²⁰¹ On Sivuqaq²⁰² PFAS were used mostly in firefighting foam during military training exercises.²⁰³

Here again, federal policy changes require ACE to reexamine whether its site remedies on Sivuqaq are protective. In January 2025, DoD issued a new PFAS policy, *Investigating Per- and Polyfluoroalkyl Substances within the Department of Defense Cleanup Program*, that became effective immediately.²⁰⁴ The policy states that not only will DoD henceforth incorporate PFAS screening levels into remedial investigations in process, but the agency will ensure that even sites that have been determined to need no further action “**will be re-assessed based on the updated screening levels.**”²⁰⁵ (Emphasis added.)

As DoD sites implementing cleanups under CERCLA and DERP, the Sivuqaq FUDs are subject to this PFAS policy. ACE must reassess the cleanups to identify sites with known or potential PFAS releases to determine if they pose a risk to human health and the environment. If so, the cleanup must be reopened to remediate the harmful PFAS contamination.

ACE's past and ongoing failure to fully characterize the contamination at the Sivuqaq FUDs; its failure to adopt and implement a protective remedial plan (in nontrivial part, because of its failure to seek and/or its discounting of local Indigenous Knowledge); its failure to revisit the remediation's protectiveness when confronted with troubling peer-reviewed scientific evidence during regular five year reviews; and its failure to consider federal policy changes and on-the-ground changes induced by climate change all point in the same direction. Under both U.S. hazardous waste law and international human rights law, ACE must reopen and further remediate the Sivuqaq FUDs.

IV. VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW

By exposing the Yupik people of Sivuqaq to polluted drinking water sources, air, and soil, and by contaminating local native foods; by causing pervasive human exposure to hazardous chemicals through multiple routes; by toxifying the broader ecosystem; and by not cleaning up contamination sufficiently to protect human health and the environment, the U.S. Air Force and Army Corps of Engineers (“ACE”) violated human rights long recognized in

²⁰¹ Harvard Sch. of Pub. Health, News, Protecting against ‘forever chemicals’, Mar. 16, 2023, *available at* <https://www.hsph.harvard.edu/news/hsph-in-the-news/protecting-against-forever-chemicals/>. They are resistant to water, grease, and heat which makes them very useful and therefore can be found in cosmetics, food packaging, etc.

²⁰² Other defense sites (FUDS) across the country are contaminated with PFAS. *See Updated map: Toxic ‘forever chemicals’ confirmed to contaminate 455 military sites*, EWG, Aug. 15, 2023, *available at* <https://www.ewg.org/news-insights/news-release/2023/08/updated-map-toxic-forever-chemicals-confirmed-contaminate-455>.

²⁰³ Maksat Babayev, et al., *PFAS in Drinking Water and Serum of the People of a Southeast Alaska Community: A Pilot Study*, (July 15, 2022), *Env't Pollution*, Vol. 305, 119246, at 1-2, 6, *available at* <https://www.sciencedirect.com/science/article/abs/pii/S0269749122004602>; *Per- and Polyfluoroalkyl Substances (PFAS) in Breast Milk: Findings of a New Study and Policies Needed to Protect Future Generations*, Collaborative for Health & Env't (June, 30 2021), *available at* <https://www.healthandenvironment.org/che-webinars/96573>. *See also*, https://alaskasenate.org/press/082923_press_release.htm.

²⁰⁴ *Investigating Per- and Polyfluoroalkyl Substances within the Department of Defense Cleanup Program* (Jan. 21, 2025), *available at* <https://www.acq.osd.mil/eie/eer/ecc/pfas/tf/policies.html>, at p. 2. This update superseded the previous policy stated in *Investigating Per- and Polyfluoroalkyl Substances within the Department of Defense Cleanup Program*, issued on August 24, 2023.

²⁰⁵ *Id.* p. 4.

international law. These include: the human right to free, prior and informed consent; the right to cultural integrity, land and natural resources; the right to life, health, and personal integrity; the right to a clean, healthy, and sustainable environment; the right of access to information and science; and the right to an effective remedy and access to justice.

As a signatory to relevant international instruments cited below, the United States is legally obligated to protect these rights. Further, putative regulators such as the U.S. Environmental Protection Agency and the Alaska Department of Environment Conservation have failed to exercise their authority to assure a protective cleanup and fulfill their duty to protect citizens from toxic exposures. As the SR has written, this duty of public health protection is “a fundamental obligation that rests with the State.”²⁰⁶

A. The Right to Free, Prior and Informed Consent

“We are being contaminated without our consent. It’s environmental violence.”

—Vi Pangunnaaq Waghiyi, a Sivuqaq Yupik grandmother, Native Village of Savoonga Tribal Citizen & ACAT’s Environmental Health and Justice Director²⁰⁷

1. Nature of the Right

Free, prior and informed consent is a human right grounded in the fundamental rights to self-determination and to be free from racial discrimination. These rights are guaranteed by the International Covenant on Civil and Political Rights (“ICCPR”),²⁰⁸ the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”)²⁰⁹—to which the United States is a party—and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”),²¹⁰ to which the United States is a signatory.²¹¹ Article 15 ICESCR recognizes the right of everyone to take part in cultural life, and that this right requires the participation of all people, including Indigenous peoples, in the implementation and planning of policies that affect them. States must also obtain their free, prior and informed consent when Indigenous peoples’ cultural resources are at stake due to a state’s policies and practices.²¹²

The U.N. Declaration on the Rights of Indigenous Peoples (“UNDRIP”)²¹³ centers the right to free, prior and informed consent by repeatedly emphasizing States’ obligations to consult and cooperate in good faith with Indigenous peoples through representative Indigenous institutions. UNDRIP states, for example:

²⁰⁶ Marcos A. Orellana, *Visit to Italy: Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, U.N. Hum. Rts. Council, (July 13, 2022) A/HRC/51/35/Add. 2, at p. 4.

²⁰⁷ Brian Bienkowski, *Cold War-era military site continues to pollute fish and Yupik People*, Env’l Health News (Dec. 4, 2017), available at <https://www.ehn.org/military-site-polluting-yupik-people-2513528278.html>.

²⁰⁸ Art. 1, ICCPR, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

²⁰⁹ Art. 1, ICERD, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>.

²¹⁰ ICESCR, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

²¹¹ Art. 1 of the ICESCR guarantees all people the right to self-determination.

²¹² U.N. Hum. Rts. Council, *Free, prior and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples*, A/HRC/39/62, available at <https://documents.un.org/doc/undoc/gen/g18/245/94/pdf/g1824594.pdf>, at p.2.

²¹³ UNDRIP, available at <https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples>.

- States must consult and cooperate in good faith with Indigenous peoples and their representative institutions to obtain their free, prior and informed consent before approving any projects affecting their lands, territories, or resources.²¹⁴
- Indigenous peoples cannot be relocated from their lands or territories without their free, prior and informed consent, and there must be an agreement on just and fair compensation, as well as discussions regarding their possible return to their lands.²¹⁵
- Hazardous waste cannot be disposed of or stored on Indigenous lands or territories without their free, prior and informed consent.²¹⁶
- Military activities cannot take place in the territories of Indigenous peoples, “unless justified by a relevant public interest or otherwise freely agreed with or requested by the [I]ndigenous peoples concerned.”²¹⁷ Furthermore, States must engage in consultations with Indigenous peoples through their representative institutions and cooperate in good faith prior to undertaking any military activities on their lands or territories.²¹⁸
- Indigenous peoples are entitled to redress when their lands or resources have been occupied, damaged, or confiscated without free, prior and informed consent.²¹⁹
- States must consult and work with Indigenous peoples and obtain their free, prior, and informed consent, before approval and implementation of projects that affect their territories and resources, and specifically as to anything that affects their water.²²⁰

The SR has further stated that free, prior and informed consent can exist only when information shared with Indigenous peoples is “comprehensive and culturally understandable.”²²¹

²¹⁴ Art. 19 UNDRIP.

²¹⁵ Art. 10 UNDRIP. *See also*, Art. 16 ¶ 2 of the Convention 169 on Indigenous and Tribal Peoples – which the U.S. has not ratified. It also affirms that people cannot be displaced from their land without their free, prior and informed consent. If such consent cannot be obtained, the relocation must be conducted in accordance with appropriate procedures, laws, and regulations, ensuring that the affected peoples have the opportunity for effective representation. This Convention is a mutually reinforcing instrument providing the framework for the universal protection of indigenous and tribal peoples’ rights. *See* Convention 169 and International Day of the World’s Indigenous People C169 – Indigenous and Tribal Peoples Convention, 1989, May 7, 2012, *available at* <https://www.ilo.org/resource/convention-169-and-international-day-worlds-indigenous-people>.

²¹⁶ Art. 29, § 2 UNDRIP.

²¹⁷ Art. 30, § 1 UNDRIP.

²¹⁸ *Id.*

²¹⁹ Art. 28, § 2 UNDRIP. The Human Rights Council has clarified that Article 30 generally prohibits military activities on Indigenous Peoples’ land, with two narrow exceptions: when the state has established a legitimate public interest and when Indigenous Peoples themselves request military presence. In both cases, the State must conduct effective consultations with the affected Indigenous Peoples. *Impact of militarization on the rights of Indigenous Peoples*, A/HRC/EMRIP/2023/2, Para. 9-10. (Internal source omitted.)

²²⁰ Art. 32, § 2 UNDRIP.

²²¹ Marcos A. Orellana, *The impact of toxic substances on the human rights of Indigenous peoples—Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, (July 28, 2022), A/77/183, p.12/25, § 55, *available at* <https://docs.un.org/en/A/77/183report>.

2. Evidence of Violation

While the Yupik people of Sivuqaq have title to their land today, this has only been true since July 27, 2016, when two island corporations based in the villages of Savoonga and Gambell—Kukulget, Inc. (formerly known as Savoonga Native Corporation) and Sivuqaq, Inc. (formerly known as Gambell Native Corporation)—obtained title pursuant to the Alaska Native Claims Settlement Act. In 1971, both Native villages chose to retain ownership of their traditional lands rather than accept money in exchange for its relinquishment. They have remained fiercely protective of that ownership.

Twenty years before, in 1951, the U.S. Air Force (“USAF”) sought to use Sivuqaq Island, and an agreement was signed between the Council of Savoonga and the USAF. It limited the use of the area and sought USAF’s protection of the purity of Indigenous land. In particular, the USAF agreed not to dump refuse in the streams or along the beach near the proposed military area. The USAF not only breached this agreement during the period of active military use, but they failed to clean up their refuse, in the form of both garbage (e.g., abandoned drums) and toxic chemicals which contaminated large areas of traditional lands and therefore failed to comply with the agreement. To this day, NEC remains severely polluted and Yupik residents that were displaced to Savoonga cannot return to their traditional and ancestral lands for fear of putting their health at risk.²²²

The USAF did not act in good faith vis-à-vis its promises to the Yupik, and it violated their right to free, prior and informed consent by dumping toxic chemicals and failing to adequately remediate a broad array of wastes. To date, it has never acknowledged—much less offered an apology to the Yupik—for this human rights violation and assault on their dignity.

The Yupik Peoples’ right to free, prior, and informed consent was violated.

B. The Right to Cultural Integrity, Lands, and Natural Resources

“We don’t have the option of buying other foods because they are too expensive. And we shouldn’t have to. This is a terrible injustice. Our traditional foods have sustained us for generations. We must be able to continue this because it is vital for our well-being and culture.”

—Erika Apatiki, Yupik resident of Gambell²²³

1. Nature of the Right

The right to cultural integrity, lands, and natural resources is provided in the Universal Declaration of Human Rights (“UDHR”)²²⁴ along with the ICCPR,²²⁵ the ICESCR²²⁶ and the UNDRIP. Additionally, the UDHR²²⁷ and ICESCR state that every individual is entitled to

²²² For example, the *NEC Decision Document* wrongly designates Site 4 as a “Native Fishing and Hunting Camp” despite that Sivuqaq natives have consistently stated that it was a full-time community where their people resided; their continued displacement is a violation their right to self-determination. *Supra* note 40.

²²³ See ACAT News Release (Sept. 18, 2017), available at <https://www.akaction.org/wp-content/uploads/News-Release-Global-Report-on-Mercury-Alaska-9-18-17-WEB-READY.pdf>.

²²⁴ Art. 22 UDHR, available at <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english>

²²⁵ Preamble, Art. 27 ICCPR.

²²⁶ ICESCR.

²²⁷ Art. 29 UDHR.

engage openly in the culture of their community.²²⁸ The ICCPR likewise states that minority communities must not be denied the right to enjoy their culture,²²⁹ including their right to pray and practice their spirituality.

The right to self-determination is provided in Article 1 of the ICESCR and ICCPR identically: all peoples must be freely able to “pursue their economic, social and cultural development.”²³⁰ Article 12 of the ICCPR—legally binding for the U.S.—specifies that people have the right to freedom of movement and are free to choose their place of residence.²³¹

UNDRIP particularizes how these principles apply to Indigenous peoples, who:

- “[H]ave the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”²³²
- Cannot be forced to assimilate or be subject to cultural destruction,²³³ which includes any action with the effect, even if it was not the aim, of depriving Indigenous peoples of their “cultural values or ethnic identities,”²³⁴ as well as actions that have the effect of “dispossessing them of their lands, territories or resources,”²³⁵ and “any form of population transfer.”²³⁶
- “[H]ave the right to the lands, territories and, resources which they have traditionally owned, occupied or otherwise used or acquired.”²³⁷ They also have “the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use.”²³⁸
- “[H]ave the right to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities,”²³⁹ and those who are deprived of this right are entitled to redress.²⁴⁰
- “[H]ave the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources,” such as water.²⁴¹
- “[H]ave the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions,”²⁴² and “have the right to promote, develop and maintain their customs, traditions, and practices.”²⁴³

²²⁸ Art. 15 ICCPR.

²²⁹ *Id.*

²³⁰ Art. 1 ICCPR and ICESCR.

²³¹ Art. 12 ICCPR.

²³² Art. 25 UNDRIP.

²³³ Art. 8 UNDRIP.

²³⁴ Art. 8, § 2 (a) UNDRIP. *See also*, Art. 33 UNDRIP.

²³⁵ Art. 8, § 2 (b) UNDRIP.

²³⁶ Art. 8, § 2 (c) UNDRIP.

²³⁷ Art. 25, § 1 UNDRIP.

²³⁸ Art. 26, § 2 UNDRIP.

²³⁹ Art. 20, § 1 UNDRIP.

²⁴⁰ Art. 20, § 2 UNDRIP.

²⁴¹ Art. 32, § 2 UNDRIP.

²⁴² Art. 31, § 1 UNDRIP.

²⁴³ Art. 33 UNDRIP.

- Indigenous peoples have the right to have agreements with governments respected and upheld.²⁴⁴

The right to natural resources in the context of Indigenous peoples includes the right to food (including that obtained from fishing, hunting, and gathering), which is integral to the right to an adequate standard of living recognized in the ICESCR²⁴⁵ and UDHR.²⁴⁶ Also, states are responsible for ensuring that discrimination does not limit access to food based on race, religion, national origin, or any other status. Any individual who faces discrimination or is denied their right to food is entitled to effective judicial and other remedies.²⁴⁷

The right to land and natural resources also encompasses the right to water, which is recognized as both an independent and basic human right, and a precondition for the enjoyment of other rights.²⁴⁸ According to the Committee on Economic, Social and Cultural Rights (“CESCR”), the right to water should be viewed in relation to the right to life, health and human dignity since life depends on water (*see infra*).²⁴⁹ The Office of the High Commissioner for Human Rights, along with the World Health Organization, state that water for personal and domestic uses must be “safe and acceptable,” meaning that it must be free from substances dangerous to health.²⁵⁰ These organizations also recognize that ensuring access to safe drinking water is intrinsically tied to maintenance of Indigenous peoples’ control over their ancestral lands and resources.

The United States’ status as a signatory to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes (the Basel Convention)²⁵¹ obligates the U.S. to protect the Yupik People’s right to a toxics-free natural environment notwithstanding the U.S. Congress’ failure to ratify these conventions and give them the force of domestic law. The Basel Convention provides, “[t]hat persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment.”²⁵²

States thus have a duty to protect Indigenous people against cultural destruction and safeguard their right to cultural integrity, lands, and natural resources, including subsistence food and water.

²⁴⁴ Art. 37, § 1 UNDRIP.

²⁴⁵ Art. 11 ICESCR.

²⁴⁶ Art. 25 UDHR. *See also* Art. 29 § 1 UNDRIP, which states that “[i]ndigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.”

²⁴⁷ *Id.* p. 31.

²⁴⁸ OHCHR Fact Sheet No. 35: The Right to Water (August 2010) *available at* <https://www.ohchr.org/en/publication/s/fact-sheets/fact-sheet-no-35-right-water>, p. 10.

²⁴⁹ UN Comm. on Econ., Soc., and Cultural Rts. (“CESCR”), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant) (Jan. 20, 2003) E/C.12/2002/11, *available at* https://www2.ohchr.org/english/issues/water/docs/cescr_gc_15.pdf.

²⁵⁰ *Id.* p. 10.

²⁵¹ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Mar. 22, 1989, 1673 U.N.T.S. 125, *available at* <https://www.basel.int/portals/4/basel%20convention/docs/text/baselconvention-text-e.pdf>.

²⁵² *Id.* p. 11.

2. Evidence of Violation

The U.S. military's despoiling of the lands and waters at the military FUDs at NEC and Gambell is a direct violation of the Yupik people's right to cultural integrity, lands, and natural resources. Military activities and toxic contamination of Indigenous lands in NEC forced the residents to abandon their community and move to Savoonga, impeding access to traditional subsistence activities.²⁵³ A 2005 study found that Savoonga residents closely associated with NEC had higher levels of PCBs in their blood than those in Savoonga that did not visit NEC, evidencing a local source of contamination.²⁵⁴

Further, residents report that the Suqi River, which was once among the most productive salmonid streams on the island, has been dramatically degraded by military contamination, including but not limited to the massive 1969 fuel spill that decimated the Suqi's fish population. Habitat for salmon and fish native to the Suqi has been compromised to the point that subsistence fishing has not been possible for decades—violating the Yupik people's right to food—and has only recently begun to show signs of (limited) recovery.²⁵⁵

A former resident of NEC recollected that as a child he and other Yupik children swam in a pond in the Suqi watershed; he remembered the discolored water from the fuel spill.²⁵⁶ The military personnel of USAF would watch the kids swim,²⁵⁷ but would never get into the water themselves.²⁵⁸ Similarly, they would not drink the local water—unlike the Yupik residents who had no other option—instead, they imported drinking water from mainland Alaska.²⁵⁹ During the remediation, ACE likewise brought its own drinking water.²⁶⁰ This confirmed the community's suspicion that the water at NEC was too polluted to drink safely.²⁶¹ This condition persists to this day and violates the Yupik's human right to clean water.

Military contamination and the failure to conduct thorough remediation has violated Indigenous people's rights to their land and resources. To understand these effects on traditional food consumption, it is essential to understand local culture. For instance, “rural communities in Western Alaska consume an average of 183 g [grams of] fish per adult per day[,] while the general U.S. population consumes only 22–24 g fish/adult/day.”²⁶² Thus, contamination of seafood—such as from ongoing, waste-derived pollution at Troutman Lake in Gambell and the Suqi River in the NEC²⁶³—is of considerable consequence to the Yupik, who face a Hobson's choice of either abandoning a dietary mainstay, or eating potentially dangerous food.

Additionally, melting sea ice has resulted in low harvests of walrus and seal in recent years, which are essential foods for the Yupik Natives of Sivuqaq. Together, these factors have caused food insecurity. As a result, the people of Sivuqaq are constrained to rely on expensive

²⁵³ There were roughly 30 houses at NEC. Interview with Savoonga residents, July 2024. *See supra*, note 40.

²⁵⁴ Carpenter, et al., *supra* note 2, at p. 322.

²⁵⁵ Interviews with former NEC residents, July 2024.

²⁵⁶ Interview with a former NEC resident, Mar. 2024.

²⁵⁷ The Suqi River runs through the NEC FUD; the river and its estuary are NEC Site 29. 2009 NEC DD, p. 27.

²⁵⁸ Interview with a former NEC resident, Mar. 2024.

²⁵⁹ Interview with former NEC families, Mar. 2024.

²⁶⁰ *Id.*

²⁶¹ Interview with Savoonga residents, July 2024.

²⁶² Jordan-Ward, et al., *supra* note 12, at 2 and referenced sources.

²⁶³ Zheng, et al., *supra* note 176, at 113872; Jordan-Ward, et al., *supra* note 12, at 2; Jordan-Ward, et al., *supra* note 184, at 122765.

imported commercial foods for survival. Damaging the lands and waters of Sivuqaq has thus set off a chain reaction resulting in compelled assimilation to Western society and food insecurity, which violates the people of Sivuqaq's right not to be subjected to cultural destruction or forced assimilation, as guaranteed by UNDRIP.²⁶⁴

In these many ways, the U.S. military's legacy of toxic materials and ACE's incomplete remediation of the Sivuqaq FUDs has undermined the Yupik's culture and means of survival and identity. Any act that inhibits the Yupik's ability to deploy their traditional knowledge, traditions, spirituality, practices, and cultural expressions, all intimately connected to their relationship with the land, violates their human right to preservation of land, natural resources, and culture.

C. The Right to Life, Health, and Personal Integrity

"I will die with a smile on my face [if my people receive an apology from the U.S. government]."

—*Delbert Pungowiyi, Yupik elder, former President of the Native Village of Savoonga Tribal Council and international advocate for Indigenous rights and climate justice based in Savoonga; Mr. Pungowiyi's family lived at NEC.*

1. Nature of the Right

The right to life²⁶⁵ is recognized in Article 6 of the ICCPR.²⁶⁶ The Human Rights Committee ("HCR") states that the right to life encompasses the right of individuals to be protected from actions or inactions that could lead to their unnatural death and their right to live a life with dignity.²⁶⁷ The U.S. is obligated to protect Sivuqaq's residents' right to life, health and well-being, which requires the prevention of harmful environmental exposures. The U.N. General Assembly, the Human Rights Council, and other Special Procedures have likewise identified exposure to hazardous substances as infringing on the right to life.²⁶⁸

The right to health, a precondition for life, is recognized in Article 12 of the ICESCR as the right of everyone to the enjoyment of the "highest attainable standard of physical and mental

²⁶⁴ Art. 8 UNDRIP.

²⁶⁵ U.N. Gen. Assembly, Int'l Covenant on Civ. and Pol. Rts. ("ICCPR"), Dec. 16, 1966, U.N., Treaty Series, Vol. 999, p. 171 (Art. 6(1): "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."), available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

²⁶⁶ *Id.* at 7. The United States signed on Oct. 5, 1977, and ratified on June 8, 1992. The Human Rights Committee is the body of independent experts that monitors the implementation of the ICCPR by its state parties. See <https://www.ohchr.org/en/treaty-bodies/ccpr>.

²⁶⁷ U.N. HRC, General comment no. 36, Art. 6 (Right to Life), Sept. 3, 2019, CCPR/C/GC/35, ¶ 3. available at <https://docs.un.org/en/CCPR/C/GC/36>.

²⁶⁸ See generally U.N. Gen'l Assembly, A/74/480: Report on States' duty to prevent exposure, Oct. 7, 2019, available at <https://www.ohchr.org/en/documents/thematic-reports/a74480-report-states-duty-prevent-exposure>; see also HRC, Gen. comment no. 36, Art. 6 (Right to Life), Sept. 3, 2019, CCPR/C/GC/35, ¶ 3 ("The right to life is a right that should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity"). See also *Cannavacciuolo and Others v. Italy*, 39742/14, 51567/14, 74208/14, et al., Judgment, Jan. 30, 2025 (where the European Court of Human Rights, for the first time, found that that Italy violated the right to life of residents in the Terra dei Fuochi ("Land of Fires") region of Campania, due to prolonged inaction on widespread illegal waste dumping and burning. It emphasized that states have a duty to protect people from known life-threatening risks, including environmental hazards.).

health.”²⁶⁹ In a 2022 report on the impact of toxic substances on the human rights of Indigenous peoples, the SR recognized that exposure to toxic substances, even in small quantities, poses immediate and long-lasting risks to Indigenous peoples’ health and lives, violating their personal integrity.²⁷⁰ Over time, the presence of toxins on or near Indigenous lands has resulted in disabilities that potentially compromise their ability to transmit cultural heritage and traditions to future generations.²⁷¹ The SR also found that Indigenous people who are exposed to hazardous substances do not have enough access to primary health care services and their “traditional health practices cannot cope with the unfamiliar problems that emerge from exposure to toxics.”²⁷² “[T]he right to health includes access to timely and accessible health care for the specific health impacts of toxics.”²⁷³

The SR report further elaborated that “[c]ontamination of food and water supplies results in toxic exposure up the food chain, leading to immune suppression, hormone disruption and cancer, among other serious health conditions. These traumas can also cause serious mental health issues, including anxiety, loss of identity and loss of hope.”²⁷⁴ UNDRIP specifies that governments must ensure that health programs for Indigenous peoples, which are developed and implemented by the affected communities themselves, are properly carried out to monitor, maintain, and restore their health.²⁷⁵

Toxic exposures have a particularly profound impact on children’s rights. As stated in a 2019 SR report, “[m]illions of children are deprived of their right to maximum development by exposure to hazardous substances before they can even begin to exercise their fundamental right to be heard.”²⁷⁶ The SR further warned of the dangers that toxics pose to healthy reproduction, describing “the phenomenon of children being born ‘pre-polluted,’” and the corresponding need for nations to protect the bodily integrity of women of reproductive age.²⁷⁷

States have a corresponding duty to protect individuals and communities from non-consensual exposure to hazardous substances.²⁷⁸

2. Evidence of Violation

The U.S. military has released toxic chemicals into air, water, soil, and groundwater on Sivuqaq, impacting the island and its residents for more than seven decades. As recollected by Yupik residents, many families who lived and/or worked at the NEC, or near contaminated sites in Gambell, have members who have suffered and often died prematurely from illnesses that were previously rare or nonexistent on Sivuqaq.²⁷⁹ These include thyroid dysfunction, diabetes,

²⁶⁹ Int’l Covenant on Econ., Soc. and Cultural Rts., opened for signature Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976), Art. 12, p. 4, <https://www.ohchr.org/sites/default/files/cescr.pdf>.

²⁷⁰ U.N. Gen. Assembly, A/77/183, *supra* note 221, at p. 14/25, § 65.

²⁷¹ *Id.* p. 16/25, § 80.

²⁷² *Id.* p. 3/25, § 5.

²⁷³ U.N. Gen. Assembly, A/77/183, *supra* note 221, at p. 14/25, § 71.

²⁷⁴ *Id.* p. 14/25, § 67.

²⁷⁵ Art. 29, § 3 UNDRIP, *available at* https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

²⁷⁶ *See* U.N. Resols. A/73/567, A/HRC/39/48, and A/HRC/33/4.

²⁷⁷ *See* Art. 22 UNDRIP which affirms that States must work with Indigenous peoples to protect the rights and special needs of vulnerable groups, such as elders, women, youth, children, and those with disabilities, ensuring they are safeguarded against violence and discrimination, *supra*, note 210.

²⁷⁸ U.N. Gen. Assembly, A/74/480, *supra* note 268, at p. 6/24, § 13.

²⁷⁹ Interview with Savoonga residents, July 2024.

dementia, asthma, fertility issues, feminization of men²⁸⁰ and numerous forms of cancer (cervical, liver, colon, breast, blood, stomach).²⁸¹

Illnesses have wiped out entire families and have affected the next generation. Residents of the island have noticed that their children increasingly have illnesses and challenges such as learning disabilities,²⁸² affecting their ability to pass on their language, creation stories, songs and dances, traditions, cultures and spirituality, violating their human right to life, health, and personal integrity. For this reason, even currently healthy Yupik live with fear for themselves, their families, and their descendants.

These rights violations are compounded by residents' difficulty accessing adequate health care in light of Sivuqaq's remote location and lack of a hospital (the nearest hospital is in Nome,²⁸³ on mainland Alaska).²⁸⁴ Residents believe it is not a matter of if they will get cancer, but when. They have framed their predicament in dramatic terms, stating that the health corporations are "killing people" on the island; the health aids on the island and in Nome are not trained to deal with the number and variety of illnesses in the region.²⁸⁵

Most Sivuqaq residents that have undergone treatments for cancer have had to travel to Anchorage.²⁸⁶ In many cases, however, contamination of Yupik territories results simply in untreated health conditions, violating the people's right to health.

By failing to credit Indigenous Knowledge of the dramatic decline in community health since the military came to Sivuqaq, caused in large part by exposure to military toxics; by refusing to conduct health studies that could establish closer causal links between exposures and disease; and by continuing to refuse to reopen the FUD remediation to prevent further toxic exposures, DoD and its sub-unit ACE, has violated Yupik Peoples' rights to life, health, and personal integrity and dignity.

²⁸⁰ Interviews conducted in Savoonga, July 2024 and in Anchorage, Mar. 2024.

²⁸¹ Although ATSDR has suggested that the Yupik's cigarette smoking in recent decades—itsself a product of the military's presence on the island as recalled by NEC residents—is a major cause of the island's high cancer rate, numerous cancers now common among the Yupik are not necessarily only correlated with smoking, such as liver cancer (Laura Deen, et al., *Cancer Risk following Residential Exposure to Airborne Polychlorinated Biphenyls: A Danish Register-Based Cohort Study*, *Env't Health Persp.* Oct 28, 2022, available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC9616107/>) or colon or colorectal cancer, (Hyejin Kim, et al., *Dietary mercury intake and colorectal cancer risk: A case-control*, *European J. of Clinical Nutrition*, Jul. 2020; 39(7):2106-2113, available at <https://pubmed.ncbi.nlm.nih.gov/31522783/#full-view-affiliation-1>). Another study concluded that while smoking cessation would significantly reduce cancer incidence, eliminating smoking completely would still not prevent approximately 60% of cases for 12 major smoking-related cancer types, highlighting the importance of addressing other risk factors, including environmental and occupational carcinogens. (Douglas J. Myers, et al., *Cancer rates not explained by smoking: a county-level analysis*, *Env't Health*, Volume 19, Art. no.: 64 (2020) 22, *Altmetric Metrics*, available at <https://ehjournal.biomedcentral.com/articles/10.1186/s12940-020-00613-x>.) The latter study supports the need for adequate remediation of FUDS in places like Sivuqaq.

²⁸² Interview with Savoonga residents, July 2024.

²⁸³ Approximately an hour's flight from the island of Sivuqaq, provided there are no weather delays and flight disruptions which is a common occurrence.

²⁸⁴ Interview with Savoonga residents, July 2024.

²⁸⁵ Residents must take two flights to get any cancer treatment, for instance, in Anchorage. ELC interview with a former Savoonga resident, now based in Anchorage, Mar. 2024.

²⁸⁶ *Id.*

D. The Right to a Clean, Healthy and Sustainable Environment

“Due to massive fuel spills and contamination, the fish have never returned. We have no more seal haulouts ... and we now have a cancer crisis.”—Vi Waghiyi²⁸⁷

1. Nature of the Right

The right to a clean, healthy and sustainable environment has been newly elevated as a fundamental human right by its recognition in a 2022 U.N. General Assembly Resolution supported by the United States.²⁸⁸ The right to a healthy environment²⁸⁹ is both a standalone right and a necessity for the realization of other rights, such as life, health and food.²⁹⁰ It includes “clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems.”²⁹¹

The right to a healthy environment places significant duties on the state. The HRC notes that the right to health includes “the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals.”²⁹²

2. Evidence of Violation

The people of Sivuqaq have longstanding cultural ties to their lands and waters, where subsistence activities are integral to their cultural values and ways of life. The destruction of lands, waters, ingestible plants such as greens and berries, medicinal plants, and animals due to the legacy of toxic military dumping has forced the inhabitants of NEC to remain displaced in Savoonga. This has compromised their health and well-being. The Yupik people’s ongoing inability to enjoy their lands and resources, and to pursue traditional means of subsistence, violates their right to a clean, healthy and sustainable environment.

Relatedly, because the Yupik on Sivuqaq cannot safely engage in traditional ways of life, they cannot fulfill culturally important responsibilities to younger generations. These include teaching younger relatives how to live in proper relationship with the land, waters, greens, berries, fish and wildlife they rely on for survival; how to interact with other living things to maintain ecological balance; how to find purpose and engage in community; and how to gain greater spiritual understanding of their role as stewards of the land and other living things. U.S.

²⁸⁷ *Sivuqaq’s Community-Driven Science: Documenting Contamination in the Arctic*, CHE Collaborative for Health & Env’t, Aug. 30, 2023, available at <https://www.healthandenvironment.org/latest-research/blog/sivuqaqs-community-driven-science-documenting-contamination-in-the-arctic>.

²⁸⁸ U.S. Mission to the U.N., *Explanation of Position on the Right to a Clean, Healthy, and Sustainable Environment Resolution*, July 28, 2022, available at <https://usun.usmission.gov/explanation-of-position-on-the-right-to-a-clean-healthy-and-sustainable-environment-resolution/#:~:text=In%20that%20context%2C%20the%20United,what%20its%20scope%20would%20entail; see also U.N. Meetings Coverage, 76th Session, 97th Meeting, GA/12437, July 28, 2022, available at https://press.un.org/en/2022/ga12437.doc.htm>.

²⁸⁹ UNHCHR, et al., *What is the Right to a Healthy Environment?*, Info. Note, available at <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf>, at p. 5.

²⁹⁰ *Id.*

²⁹¹ *Id.* p. 9.

²⁹² Art. 29 § 3 UNDRIP, available at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

military pollution, and ACEs' insufficient site remediation, are the primary cause of these infringements on residents' right to a clean and healthy environment and toxic-free food.

E. The Right to Information and Science

*They [the military's cleanup contractor] never told us about any samples or anything about it. That is why I said, 'Why are they keeping this secret? We're not the enemies.'*²⁹³

—Annie Alowa²⁹⁴

1. Nature of the Right

a. The Right to Information

The SR has identified the right to information as integral to the mandate to uphold human rights.²⁹⁵ This was clearly articulated in a 2019 SR communication to the U.S. government concerning the U.S. Navy's inadequate cleanup efforts to remedy a (different) community's toxics exposure from military activities on the island of Vieques in Puerto Rico. The SR stated: "Access to information is a prerequisite to the protection of human rights, including worker rights, from hazardous substances to public participation in decision-making and for monitoring governmental and private-sector activities."²⁹⁶

When a state proactively publishes information of public interest, it fully honors the Right to Information.²⁹⁷ Where the public requests information that has not affirmatively been made available, the state must timely provide the information (in compliance with applicable disclosure laws) and cannot impose fees.²⁹⁸ The state must also be transparent when it denies information requests and provide a mechanism for appeal.²⁹⁹

Critically, in the context of toxics production, use, and disposal, the SR has emphasized that the actualization of informational rights requires more than simply supplying the government's data already in hand: "[S]tates discharge their human rights obligations not when they provide access to information, but rather when they generate, or compel responsible third parties to generate, the information necessary to understand the hazards and risks of exposure and then use that information to execute their duty to prevent exposure."³⁰⁰ The information available to people about toxic contamination is often linguistically or technically inaccessible, such that it cannot perform its educational and democratizing function.

²⁹³ Interview with Annie Alowa, available at <https://www.youtube.com/watch?v=QeD1vhwcWr8>, at 11:52.

²⁹⁴ See *supra*, Figure 3.

²⁹⁵ To uphold human rights affected by hazardous substances, states must i) gather and assess information, ii) keep this information current, and iii) effectively share it, especially with high-risk groups. Başkut Tuncak, *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, July 8, 2015, A/HCR/30/40, para. 99, available at <https://digitallibrary.un.org/record/3879377?ln=en&v=pdf>.

²⁹⁶ Commc'n to the U.S. from the SR, May 29, 2018, AL USA 11/2018, p. 6, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23867>.

²⁹⁷ Gen. Comment No. 34 on Art. 19 of the ICCPR, available at <https://www.justiceinitiative.org/uploads/5332d9b3-c57a-4d5c-9a99-89b7da93889f/UNHRCgeneral-comment34-20110725.pdf>, at p. 5.

²⁹⁸ *Id.* pp. 5-6.

²⁹⁹ *Id.*

³⁰⁰ See U.N. Gen. Assembly, A/74/480, *supra* note 268, at p.13/24, § 43.

b. *The Right to Access to Science*

The UDHR—to which the U.S. is a signatory—and the ICESCR guarantee the right to Access to Science. In Article 27 and Article 15 respectively, these instruments declare that everyone has the right to enjoy and share scientific advancement and their benefits. In the context of toxic contamination, the right to access science is linked to the right to access comprehensible information.

2. Evidence of Violation

A stark example of the breach of the Sivuqaq Yupik’s right to access scientific information about military sources of toxic exposure risk was when the military posted signs around certain polluted sites at the NEC FUDS; they were not written in the local language.³⁰¹ Sivuqaq residents also used abandoned military materials for home constructions that were contaminated by hazardous materials,³⁰² thereby violating their right to free, prior informed consent. More broadly, ACE’s superficial site characterization at the Sivuqaq FUDs deprived the local community of robust scientific information and led directly to selection and implementation of an insufficiently protective remediation plan.

Prior to the steadfast advocacy by Yupik elder and community health aide Annie Alowa³⁰³ that prompted ACAT’s creation, the people of Sivuqaq had little knowledge of the harm the USAF was causing by contaminating their land and resources: they could not depend on the minimal, linguistically and technically inaccessible information provided by the U.S. government. Although ACAT, their research partners, the Tribes of Sivuqaq, community based participatory research, and Freedom of Information Act³⁰⁴ requests have helped Yupik communities learn about the FUDS remediation, important data gaps remain, and it is not civil society groups’ obligation to fill them.

ACAT and the Sivuqaq Tribes urge the SR on toxics and human rights to vindicate Sivuqaq residents’ right to information and science by pressing the U.S. military and U.S. environmental health agencies to conduct the supplemental environmental sampling and health studies necessary to assess, make transparent, and manage the communities’ many toxics-induced or toxics-exacerbated health harms.

³⁰¹ Interview with Savoonga residents, July 2024.

³⁰² Interview with Sivuqaq residents, Mar. 2024.

³⁰³ See *supra* Figure 3.

³⁰⁴ ACAT worked with the Environmental Data & Governance Initiative (EDGI) to build a public repository under the Freedom of Information Act (FOIA) *available at*: <https://apeoplesepa.org/home/acad-foia-repository>.

F. The Right to an Effective Remedy and Access to Justice

“About 25 years ago, . . . we went to one agency, and this agency sent us to another agency, who sent us to another agency. We went to about seven, and then they started sending us back all the way around again. We never got one agency to take responsibility or to give us a definite answer that they would look into it.”³⁰⁵

—Annie Alowa³⁰⁶

1. Nature of the Right

a. *The Right to an Effective Remedy*

The ICCPR guarantees victims of human rights violations an effective remedy.³⁰⁷ As a party to the Covenant,³⁰⁸ the U.S. must ensure that any individual seeking a remedy has their rights determined by competent judicial, administrative, or legislative authorities.

Communities, like individuals, are rights-holders under this framework, and may seek redress,³⁰⁹ including for physical or mental injury, emotional suffering, human and economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law. Remedies encompass the victim’s entitlement to access to pertinent information regarding the violations and available reparation mechanisms; access to justice; and adequate, effective, and prompt redress for harm suffered.³¹⁰

b. *The Right to Access to Justice*

Without access to justice, “people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable.” Access to justice for victims can be particularly elusive.³¹¹

The UDHR guarantees the right to a fair and public hearing and a right to an effective remedy.³¹² The U.N. Declaration of the High-level Meeting on the Rule of Law (Rule of Law Declaration) also stresses the importance of investigations “of past violations of international human rights and their causes and consequences,” which can complement judicial processes.³¹³ It further emphasizes the importance of the right to equal, nondiscriminatory access to justice for all people, and especially, for vulnerable communities.³¹⁴ As the SR has noted, “[l]ack of

³⁰⁵ Interview of Annie Alowa, *supra* note 290.

³⁰⁶ See *supra* Section I. D.

³⁰⁷ U.N. Gen. Assembly, ICCPR, Pt. II, Art. 2(b), available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

³⁰⁸ The U.S. signed the ICCPR in 1977 and ratified it in 1992. Status of Ratification, Interactive Dashboard available at <https://indicators.ohchr.org/>.

³⁰⁹ UDHR Art. 8, Victims may include, “groups of victims,” available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>.

³¹⁰ UDHR Art. 1, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>.

³¹¹ U.N. and the Rule of Law, *Access to Justice*, <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>.

³¹² UDHR Arts. 8 & 10.

³¹³ Decl. of the High-level Meeting of the Gen. Assembly on the Rule of Law at the Nat’l and Int’l Levels (2012) available at <https://digitallibrary.un.org/record/734369?ln=en&v=pdf>, ¶ 21, p. 4.

³¹⁴ *Id.* ¶¶ 14-15, p. 3.

information compounds the challenges that Indigenous people face to accessing justice for human rights violations.”³¹⁵

2. Evidence of Violation

a. *Right to an Effective Remedy*

The Yupiks of Sivuqaq have never received equal and effective access to substantive justice, notwithstanding the extreme harm to their health, loss of human lives, damage to the local environment, and traditional ways of life due to military contamination. Neither have they received procedural justice, as their comments on ACE’s cleanup decision making have been ignored for decades.

Most importantly, the Yupik residents have never obtained effective remedies for the harms they have suffered. NEC residents, in particular, cannot safely return to their land due to its continuing contamination. ADEC’s failure to impose higher-than-federal standards at the Sivuqaq FUDS has meant that these sites are not safe enough for unrestricted residential use. Most consequentially for the Yupik, this state regulatory laxity has precluded the reestablishment of a community at NEC.

Justice for the Sivuqaq Yupik requires that the U.S. government live up to the commitments it made in the 1951 Agreement promising that the military would not despoil the island. This includes medical screening, diagnosis of illnesses related to exposures to military contamination, treatment and proper health care. It further requires that Alaska regulators use their legal authorities to ensure that federal cleanup of the Sivuqaq FUDS is truly protective of human health and the environment.

b. *Access to Justice*

The U.S. legal system poses high barriers to judicial relief for Sivuqaq residents whose health and lives have been compromised by exposure to military contamination. U.S. law makes it difficult, expensive, and time consuming to investigate and substantiate environmental violations. Statutes of limitations in many instances are much shorter than the decades it often takes for the health effects of exposure to toxic materials to manifest. For example, the time limit for filing a personal injury case in Alaska is just two years.³¹⁶ The American legal system disadvantages communities like the Sivuqaq Yupik when, as here, the government has failed to develop the data necessary to vindicate their basic human rights.

V. **REQUEST FOR SPECIAL PROCEDURES ACTION**

The Indigenous Yupik people and their supporters are gravely concerned about the unremediated contamination of the Sivuqaq ecosystem, and its effects on human health and Yupik cultural practices. ACAT and the Sivuqaq Tribes urgently request intervention by the SR on toxics and human rights to: (a) publicly acknowledge and spread awareness of the violations of human rights of the residents of Sivuqaq at the hands of the U.S. military, with the acquiescence of federal and state regulators; (b) issue letters of allegation to state and federal perpetrators of

³¹⁵ U.N. Gen. Assembly, A/77/183, *supra* note 221, at p. 12/25, § 58.

³¹⁶ Alaska Stat. § 9.10. 070(a).

human rights violations; and (c) prepare a report on this environmental human rights crisis, and engage in associated media activities, to advance the goals below.

VI. RELIEF THAT ALASKA COMMUNITY ACTION ON TOXICS SEEKS

Through consultation with affected individuals and in partnership with the Tribes on Sivuqaq, and building upon the work of local, state, and national allies in advocacy to protect Yupik Native Peoples and all Indigenous peoples and Americans from further military toxic chemical-related harms, ACAT identifies the following priorities (listed from urgent to longer-term) as requested subjects for SR Communications to the U.S. and the Alaska government:

1. **THE U.S. GOVERNMENT SHOULD HONOR ITS 1951 AGREEMENT WITH THE SIVUQAQ YUPIK LEADERSHIP THAT PROHIBITED THE DESPOILING OF SIVUQAQ BY WASTE DUMPING, AND SHOULD ENSURE THE FULL REHABILITATION OF SIVUQAQ LAND AND RESOURCES.**
 - a. The Sivuqaq Yupik have deep historic, cultural, and spiritual connections to the island and its geographic features. They agreed to host the military on condition that the island would not be despoiled. The United States government did not live up to its agreement and must fully rectify this failure.
 - b. The U.S. government must take all steps necessary to return Sivuqaq to the condition in which the military found it.

2. **THE U.S. GOVERNMENT MUST REOPEN THE NORTHEAST CAPE AND GAMBELL FORMERLY USED DEFENSE SITE (FUDS) REMEDIATIONS TO ASSURE THE REMEDIES ARE, AND IN FUTURE REMAIN, PROTECTIVE OF HUMAN HEALTH AND THE ENVIRONMENT.**
 - a. ACE must do a comprehensive review of the Sivuqaq cleanup to identify and remedy deficiencies that render it unprotective of human health and the environment at present and in coming years.
 - b. ACE must involve the Tribal governments in government-to-government discussions and engage Indigenous Yupik leadership and People of Sivuqaq in such review, planning, and implementation.
 - c. ACE must identify all toxic, hazardous, and non-hazardous waste present on Sivuqaq from military sources that are still causing negative health effects for the Yupiks, by conducting new investigations at the Sivuqaq FUDS to determine the full vertical and horizontal extent of contamination that may endanger human health and the environment, incorporating data from community-based research led by ACAT and the Sivuqaq Tribes.
 - d. ACE must adopt updated remedial goals for the cleanup that reflect the most recent scientific and health-risk data and reflect a comprehensive health risk assessment that relies on Indigenous Knowledge and expertise concerning the types, amounts and frequency with which the Sivuqaq Yupik consume traditional, potentially contaminated foods.
 - e. ACE must assure that an updated risk assessment considers cumulative risk from all sources of possibly contaminated foods, including Arctic marine mammals that may be contaminated from non-military sources on Sivuqaq or from long-range

transport of persistent pollutants, but that contribute to toxic exposures to Sivuqaq residents.

- f. ACE must assure that an updated risk assessment considers cumulative risk from all sources of possibly contaminated drinking water sources, including the Suqi and Tapi watersheds in NEC and Troutman Lake near Gambell, that may be contaminated from non-military sources on Sivuqaq or from long-range transport of persistent pollutants, but that contribute to toxic exposures to Sivuqaq residents.
 - g. ACE, in developing a plan for further FUDS cleanup proven to be effective in the Arctic, must consider all scientific evidence developed by ACAT and its research partners and/or other investigators concerning continuing Sivuqaq contamination and its health impacts on residents.
 - h. ACE must consider and mitigate the potential impacts that climate change and sea-level rise may have on any remedies selected, to assure that any contaminants remaining after additional cleanup cannot be mobilized (e.g., because of melting of permafrost), including removal of contamination left behind in unlined landfills and which create a risk of future toxic exposures.
3. THE U.S. GOVERNMENT MUST CONDUCT A COMPREHENSIVE HEALTH STUDY OF THE IMPACTS OF MILITARY POLLUTION ON SIVUQAQ RESIDENTS, INCLUDING SCREENING OF RESIDENTS TO PREVENT FUTURE HEALTH HARMS.
- a. The U.S. government must fund and conduct independent, comprehensive, and scientifically rigorous health studies of Sivuqaq residents' illnesses that may be traceable to exposure to military wastes abandoned on the island, using a whole of government approach to provide proper diagnosis and treatment of environmental health harms for current residents and future generations.
 - b. The U.S. government must provide health care to all former and current residents of Sivuqaq to address the negative health consequences of their exposure to military wastes to date.
4. THE U.S. GOVERNMENT MUST ENSURE THAT RESIDENTS OF THE NEC, CURRENTLY DISPLACED IN SAVOONGA, CAN RETURN TO THEIR NEC HOMES AND RESTORE A THRIVING YEAR-ROUND COMMUNITY.
- a. ACE, U.S. EPA, and ADEC must recognize that former residents of the NEC seek to return and rebuild the community that has been and continues to be displaced due to information gained through community-based participatory research and fear of exposure to unremediated toxic hazards abandoned at NEC and buried at Gambell.
 - b. ACE must remediate the NEC FUD sufficiently to meet the health risk standard protective for unrestricted, full-time residential use of the site.
5. THE U.S. EPA MUST ADD THE SIVUQAQ FUDS TO THE NATIONAL PRIORITIES LIST (NPL).
- a. The U.S. government must add the Sivuqaq FUDS to the NPL ("Superfund"), as they meet the criteria qualifying them for inclusion.

- b. U.S. EPA should list the Sivuqaq FUDS on the NPL to assure the remedies are, and in future remain, protective of human health and the environment.
6. ALL GOVERNMENT ACTORS SHOULD PROVIDE INFORMATION AND PROMOTE TRANSPARENCY REGARDING REMEDIATION DECISIONS ON SIVUQAQ.
 - a. U.S. EPA, ACE, and ADEC must affirmatively provide to the public all data necessary to explain the rationale for future cleanup decisions, without requiring Sivuqaq residents to make formal public records requests.
 - b. U.S. EPA, ACE, and ADEC must hold regular meetings with Tribes, Tribal governments, Native corporations, local governments, Sivuqaq residents and other interested parties to discuss further testing and remediation plans, and to accept and respond meaningfully to public comments.
7. THE U.S. GOVERNMENT SHOULD FORMALLY APOLOGIZE FOR THE HARM AND HUMAN RIGHTS VIOLATIONS IT HAS INFLICTED ON THE YUPIK PEOPLES OF SIVUQAQ.
 - a. The U.S. government must take responsibility for silencing Yupik voices during cleanup decision making to date. It must apologize and commit to full public participation in future cleanup planning and decision making that includes the Yupik Tribes of Sivuqaq, their members, and affected non-Yupik parties.
8. THE SPECIAL RAPPORTEUR ON TOXICS AND HUMAN RIGHTS SHOULD TAKE SUCH ADDITIONAL ACTIONS AS APPROPRIATE AND NECESSARY TO MITIGATE HARMS FROM MILITARY CONTAMINATION ON SIVUQAQ.
 - a. The SR should consult with Sivuqaq residents to identify additional opportunities to mitigate harm to individuals, families, children, communities, and Yupik Tribes of Sivuqaq from un-remediated military contamination.
 - b. The SR should further investigate the U.S. military's treatment of the native Yupik people and make additional recommendations to the U.S. government that may be required to redress the effects of the military pollution on Sivuqaq.
 - c. An intervention by the SR holds great potential for holding ACE and acquiescent agencies accountable for environmental human rights violations, and for involving the affected parties as participants in solutions. Alaska Community Action on Toxics, with the Sivuqaq Tribes and its counsel, stand ready to assist the SR in this effort.

VII. CONCLUSION

The SR on Toxics and Human Rights has written that “[t]he toxification of our planet and bodies constitutes what is arguably one of the most underappreciated threats to the ability of present and future generations to enjoy their human rights to life, health and a life with dignity.”³¹⁷ The pervasive pollution of human bodies and the ecosystem of Sivuqaq by hazardous materials demonstrates the urgency of addressing the causative military toxics at their source. We urge the SR to use his powers of investigation and exhortation to challenge government and military leaders to vindicate the native Yupiks’ basic human rights.

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³¹⁷ U.N. Gen. Assembly, A/74/480, *supra* note 268, at 5/24, § 8.