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February 18, 2025

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Federal Appeals Court Gives Green Light to CHamoru Community Group Lawsuit to Protect Ancestral Lands from US Air Force's Open Detonation of Bombs on Beach in Northern Guam

The Ninth Circuit reversed the Guam District Court's decision, which insulated the Air Force from accountability for violating its duty to consider environmental impacts and alternatives to blowing up hazardous waste explosives on Tarague Beach.

Hagåtña, Guam – Prutehi Litekyan: Save Ritidian (now known as Prutehi Guåhan), represented by Earthjustice, won an appeal before the 9th Circuit Court of Appeals last Thursday, sending their lawsuit challenging the US Air Force's failure to comply with the National Environmental Policy Act (NEPA) back to the Guam District Court. The community group filed the lawsuit to challenge the Air Force's lack of environmental review before deciding to blow up bombs and other hazardous waste munitions on the bare sand on Tarague Beach in northern Guam. The 9th Circuit's ruling recognizes that the Air Force can be sued for this kind of legal violation and that Prutehi has standing to bring the challenge now.

The 9th Circuit Court's message is clear: the Air Force cannot ignore NEPA whenever they need a permit to conduct harmful activities. Under this law, the Air Force must evaluate the environmental impacts of its proposal to open burn and open detonate hazardous waste munitions on Tarague Beach and consider alternative, less environmentally damaging ways to perform its mission *prior to* acting on that proposal. Because the Air Force failed to do so, it deprived Prutehi and the rest of the public of the opportunity to have their voices considered by the Air Force before it settles on a decision. The 9th Circuit Court rejected the Air Force's attempt to pass the buck to Guam EPA. Even though Guam EPA's process "provides for public engagement before the issuance of a permit, that public engagement cannot lead to the "internaliz[ation of] opposing viewpoints into [the Air Force's] decisionmaking process to ensure that [the agency is] cognizant of all the environmental trade-offs,"" because that process "occurs only after the Air Force has completed its decisionmaking."

While this case has moved through the courts, the Air Force has continued to dispose of hazardous waste explosives by blowing them up at Tarague Beach under an expired permit because the Guam

EPA has failed to reject the Air Force's clearly deficient pending permit renewal application that it submitted in 2021.

"The Air Force's open detonation operations are contaminating our land and water with their toxic waste," said **Monaeka Flores of Prutehi Guåhan**. "We must fight to protect and preserve our aquifer, our food resources and traditional fishing grounds, our sacred sites, and our coastlines that contain traditional medicines for us and for the future generations of Guåhan. It's time for the district court to hear our arguments and hold the Air Force accountable."

Prutehi's lawsuit seeks to compel the Air Force to consider alternatives to open burning and open detonation (OB/OD) of bombs and other hazardous waste explosives on ancestral lands that the military seized after WWII from CHamoru families. OB/OD operations could permanently contaminate the area with unexploded ordnance and toxic chemicals, effectively precluding the return of these lands to the families that originally owned them. OB/OD releases both toxic chemicals — such as RDX, HMX, TNT, perchlorate, and dioxins/furans — and unexploded ordnance directly to the surrounding land, air, and ocean. The Air Force could avoid the cultural and environmental harms caused by OB/OD on Tarague Beach by looking at alternative technologies and locations—including locations outside Guam—for its operations.

"The Ninth Circuit firmly rejected the Air Force's attempt to insulate from judicial review its failure to comply with NEPA before making its decision to continue blowing up bombs on the beach in Guam," said **Earthjustice attorney David Henkin, who represents Prutehi Guåhan**. "We are pleased that Prutehi will finally get its day in court."

Background:

The Air Force first received a permit to conduct OB/OD operations at Andersen Air Force Base in 1982, but no open burning has occurred in the past two decades. The Air Force has never conducted the legally required environmental review for OB/OD operations, despite the potentially significant harm to the surrounding environment. The OB/OD site is sandwiched between the Pacific Ocean (which lies about 180 feet away) and the jungle (80 feet away), and it sits above a shallow, unconfined aquifer.

OB/OD operations could contaminate the aquifer, which supplies drinking water to more than 80% of Guam's population. Contaminants also could enter the ocean, harming local families that frequent nearby beaches and culturally significant fishing sites. The explosions from open detonation on the bare sand of Tarague Beach threaten harm to endangered green sea turtles, which nest there, and migratory seabirds that use the beach.

In 2019, the National Academies of Sciences, Engineering, and Medicine published a report on "Alternatives for the Demilitarization of Conventional Munitions" that concluded that "[v]iable alternative technologies exist within the demilitarization enterprise" for almost all the munitions in the military's demilitarization stockpile, including munitions that the Air Force seeks to treat with OB/OD at Andersen AFB. The study further concluded that, as compared to OB/OD, the alternative technologies would all have "lower emissions and less of an environmental and public health impact."