

SETTLEMENT AGREEMENT

WHEREAS, on January 7, 1998 the Natural Resources Defense Council, Inc., the Humane Society of the United States, the Alliance of Residents Concerning O'Hare, Inc., and the U.S. Citizens Aviation Watch (hereafter referred to collectively as Citizens) sent a notice of violation to the City of Chicago Department of Aviation (City or DOA) alleging that the City was in violation of the reporting requirements of the Clean Water Act (CWA), 33 U.S.C. § 1251 et seq., as set forth in the City's National Pollutant Discharge Elimination System (NPDES) permit, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. § 9603, and the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, as applied to operations at O'Hare International Airport;

WHEREAS, Citizens' notice letter alleged over 120 violations of the reporting requirements under CERCLA and EPCRA in the 1996-97 deicing season and three additional CWA violations;

WHEREAS, the City has denied the allegations raised in the notice letter and has challenged the Citizens' interpretation of the reporting requirements under the CWA, CERCLA and EPCRA;

WHEREAS, Citizens acknowledge that the City responded to the notice letter and that the City has demonstrated a willingness to expand its reporting of ethylene glycol-based deicing fluids and to investigate ways to reduce the use of ethylene glycol at O'Hare Airport by studying alternative deicing fluids, as described fully below;

WHEREAS, Citizens further recognize that the City is constructing infrastructure improvements to collect storm water run-off, which all parties believe will be beneficial to the public interest;

WHEREAS, Citizens and the City desire to avoid the costs and uncertainties involved in litigation and to resolve, as provided herein, all issues relating to the City's past and current

reporting of ethylene glycol-based fluids under the CWA, CERCLA and EPCRA at O'Hare Airport; and,

WHEREAS, the existence of this Settlement Agreement and the provisions contained herein shall not be deemed an admission of or constitute evidence by or against either party with respect to any interpretation, construction or application of the reporting requirements of the CWA, CERCLA and EPCRA, or an admission of liability by the City with regard to the allegations set forth in the Citizens' notice letter.

NOW, therefore, Citizens and the City mutually represent and agree as follows:

I. REPORTING

1. Unless otherwise specified, all reporting activities as set forth below in paragraphs 2-7 will continue until November 2001.

A. Clean Water Act

2. The City currently files and will continue to file quarterly reports (Report) with the Illinois Environmental Protection Agency (IEPA) pursuant to its NPDES permit for O'Hare Airport that provide the amount of runway deicing fluid (RDF) actually used on a daily basis (Table 5 to the Report); the amount of aircraft deicing fluid (ADF) used on a monthly basis in areas that drain into South Detention Basin (Lake O'Hare) or other areas that drain toward holding ponds that discharge to the Metropolitan Water Reclamation District (MWRD) (Table 3 to the Report); and the amount of ADF that is used in areas that do not drain toward holding ponds that discharge to the MWRD (Table 4 to the Report). The City agrees to modify Tables 3 and 4 to the Report to provide the amount of aircraft deicing fluid (ADF) used on a per-event basis.

3. The City agrees to provide Citizens with copies of the quarterly reports referenced in paragraph 2 above within seven working days of submitting the reports to the IEPA.

4. Whenever there is a discharge to the Metropolitan Water Reclamation District (MWRD), the DOA currently tests and will continue to test its discharges from South Detention Basin (Lake O'Hare) and any other holding ponds discharging to the MWRD for BOD-5 (five-day biochemical oxygen demand), suspended solids, pH, and ammonia nitrogen (Kirie Plant only), and flow information. The City agrees to provide Citizens with copies of the laboratory data results performed during each month that deicing occurs as enclosures with the quarterly status reports to be submitted to citizens pursuant to paragraph 13 below. The City also agrees to provide Citizens with discharge monitoring reports relating to any overflow from Lake O'Hare or any other holding ponds into any water body within seven working days of submitting the reports to IEPA.

B. CERCLA/EPCRA

5. The City agrees to report its use of ethylene glycol-based runway deicing fluids at O'Hare in accordance with the continuous release reporting requirements under section 103(f) of CERCLA by performing the following actions: (1) telephoning the National Response Center (NRC) before DOA's first use of RDF for each year; (2) filing an *Initial Release* report within 30 days after the phone call; (3) filing any reports for statistically significant increase releases of RDF during the season, if any such releases occur, and (4) filing a *Final Release* report detailing total annual RDF releases to various environmental media within one year plus 30 days from the initial phone call to the NRC. In the event that U.S. Environmental Protection Agency requirements for continuous release reporting change to require activities other than those listed in this paragraph, DOA shall have the right to reopen negotiations with Citizens on this point without being considered in breach of this Settlement Agreement.

Further, the parties disagree as to whether releases of ethylene glycol-based RDF under the control of DOA must be aggregated with releases of ethylene glycol-based ADF under the control of the airlines or their contractors for purposes of determining whether an amount over

the reportable quantity has been reached. The parties agree that this Settlement Agreement shall not be construed as an admission by Citizens that such aggregation is not legally required or as an admission by the City that such aggregation is legally required.

6. The City will file all reports required under paragraph 5 above with the State Emergency Response Commission and the Local Emergency Planning Committee pursuant to Section 313 of EPCRA.

7. The City will provide Citizens with copies of all reports filed pursuant to paragraph 6 within seven working days of submitting the reports to the National Response Center (NRC).

II. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

8. Alternative Fluid Laboratory and Field Tests - The City will perform laboratory bench tests on at least four runway deicing fluids (RDF) and in-field pilot tests on at least one alternative RDF fluid during the 1998-1999 deicing season. On or before July 1, 1999, a final report containing recommendations will be prepared by the City and submitted to the airlines, FAA and Citizens for review. Citizens will have a reasonable opportunity to comment on the scope of work of the study and on the products chosen for in-field pilot testing. If, at the end of the 1998-99 deicing season, the City elects to change from ethylene glycol-based RDF to a different RDF at O'Hare, the City will prepare a report by no later than August 1, 2001 documenting its experience with the new fluid. If the City elects not to switch fluids, it will perform laboratory testing of any new RDF formulations reasonably available, and, if any are found acceptable for use at O'Hare, the City agrees to conduct a field pilot test on at least one fluid during the 2000-2001 deicing season. The parties agree that a field pilot test may consist of pavement application of fluids utilizing a hand spreader.

9. Fluid Recycling Report - The City agrees to perform a review of aircraft deicing fluid recycling efforts currently being undertaken by at least six major airports across the country where significant deicing occurs. The study will examine the following factors:

- (i) types and amounts of ADF being recycled;
- (ii) equipment and methods used to capture and process ADF for recycling;
- (iii) ways to optimize recycling efforts including any infrastructure changes suggested, recommended, or actually made;
- (iv) the economics of recycling including such factors as costs, markets and profitability; and,
- (v) potential vendors/purveyors of recycling services.

As part of the study, the City agrees to request information from vendors/purveyors of recycling services regarding differences in costs, efficacy, and other operational considerations between recycling runoff containing one type of fluid and recycling runoff containing one or more fluids mixed together. The City will give Citizens a reasonable opportunity to comment upon the scope of work of the study and on the airports chosen for the study. The City agrees to complete a final report by December 1999 and provide Citizens with a copy of the final report. The City's obligations under this paragraph are contingent upon the City's ability to obtain the necessary information from the airports chosen for the study. The City agrees that it will make a continuing good faith effort to obtain such information. In the event that the City is still unable to obtain the information necessary to perform the study required under this paragraph, the City shall have the right, without being considered in breach of this Settlement Agreement, to reopen negotiations with Citizens for the purpose of substituting a reasonably comparable project for the recycling study.

10. Deicer Recycling RFP - The City agrees to prepare and to distribute a Request for Proposal (RFP) inviting proposals from third parties to collect and recycle deicing fluids at O'Hare. This RFP will be for runway deicing fluids and for aircraft deicing fluid not already recycled and will be timed so that any accepted proposal can be implemented by the 1999-2000 deicing season. The City will give Citizens a reasonable opportunity to comment on the RFP.

The objective of the RFP should be to maximize the amount of all deicing fluids recycled.

Conditions of the RFP will include at a minimum:

- (i) The City will make space reasonably available for necessary collection and storage facilities;
- (ii) the recycling is performed at no significant cost to the City;
- (iii) the possibility of a payment to O'Hare of some percentage of money recovered by third parties as a result of recycling efforts; and,
- (iv) airport flight and flight-support operations are not unreasonably impaired by recycling efforts.

11. Deicing Fluid Alternatives Technical Committee - The City agrees to form a committee composed of DOA and airline representatives that will conduct literature reviews and discussions on alternative products and technologies in an effort to reduce the use of deicing fluids at airports. The City will also make a reasonable good faith effort to encourage the airlines to pilot test alternative deicing technologies, particularly those not producing any air or water releases. The City will share information and issues considered by the committee with Citizens in the quarterly reports, described in paragraph 13, and will receive written comments, suggestions, or other information from Citizens.

12. Other - The City warrants that a major user of ethylene glycol-based ADF, accounting for a large percentage of the ethylene glycol-based ADF used at O'Hare, has advised the City that sometime during the 1998-1999 deicing season, it will stop using ethylene glycol ADF and begin using a non ethylene glycol ADF. The City further warrants that, at the time of executing this Settlement Agreement, it knows of no current user of ADF not based on ethylene glycol, who intends to switch to ethylene glycol based ADF during the 1998-1999 deicing season. The City agrees to make a reasonable good faith effort to ensure that such a switch does not occur.

III. STATUS REPORTS, ENFORCEMENT AND PAYMENT OF COSTS

13. The City agrees to submit quarterly written reports to Citizens, starting within 90 days of the execution of the Settlement Agreement. The reports will describe the progress of issues covered by the Settlement Agreement, but only if action was required on a particular issue during the time period covered by the report.

14. If the City breaches its obligations contained in paragraphs 5 and 6 of the Settlement Agreement, City agrees to pay a stipulated penalty of \$500 per violation per day to Citizens. The City, however, will have one month, following written notification of violation by Citizens, to cure any alleged violation prior to becoming subject to a penalty. It is understood and agreed by the parties that the City's total potential liability for payment of stipulated penalties under this paragraph is limited to, and shall not exceed, twenty-five thousand dollars (\$25,000.00).

15. Prior to seeking judicial review to enforce this Settlement Agreement, Citizens must first make a good faith effort with the City to resolve any dispute between the parties. If Citizens' good faith effort fails to resolve the dispute and Citizens must seek judicial review to enforce this Settlement Agreement and it is determined by the Court to be the prevailing party, the City agrees to pay Citizens their reasonable costs including expert and attorneys fees incurred in pursuing such action.

16. The parties agree that any action to enforce this Settlement Agreement will be brought in the United States District Court for the Northern District of Illinois, and all parties will act in accordance with the intention that enforcement actions proceed in that Court. The parties are aware that the Court's jurisdiction depends on complete diversity of citizenship. The parties

agree that, in any action to enforce this Settlement Agreement, the Alliance of Residents Concerning O'Hare, Inc. (AReCO) and U.S. Citizens Aviation Watch (USCAW) will not be parties so that complete diversity of citizenship between the parties will be maintained. All parties to this Settlement Agreement, specifically including AReCO and USCAW, further agree to be bound by any decision rendered by that Court (or, if the matter is appealed, by the U.S. Court of Appeals for the Seventh Circuit). If the U.S. District Court, for any reason, finds that AReCO or USCAW must be a party to any enforcement action and that adding AReCO or USCAW as a party would destroy that Court's jurisdiction, then the parties agree that any action to enforce the terms of this Settlement Agreement shall be by binding arbitration utilizing an arbitrator mutually agreed upon by the parties. The parties will split the cost of the arbitrator's fee and otherwise bear their own costs and expenses.

17. Within 60 days of the execution of the Settlement Agreement, the City will pay Citizens costs in the amount of \$25,000, by check payable to Natural Resources Defense Council, Inc.

IV. RELEASES

18. In consideration of the actions described above which the City undertakes, Citizens, on their own behalf and on behalf of their officers, employees, agents, representatives, attorneys, predecessors, successors, assignees, and all other parties (natural or otherwise) acting by, through, under or in concert with Citizens, hereby settle, release, waive and discharge the City and DOA from any and all claims, demands, damages, losses or causes of action, whether previously known or unknown, whether fixed or contingent, and whether previously asserted or not asserted, that Citizens could have brought relating to the reporting by the City of ethylene glycol runway deicing fluid under the CWA, CERCLA or EPCRA for

airport operations at O'Hare and for claims similar to those raised in the January 1998 notice letter relating to the reporting of releases of deicing fluids, including hazardous substances contained therein, to surface waters during the period between the January 1998 notice letter and the execution of the Settlement Agreement.

V. TERM OF SETTLEMENT AGREEMENT

19. This Settlement Agreement will remain in effect until November 2001.

VI. NOTICE

20. Whenever, under the terms of this Settlement Agreement, notice, correspondence, reports, payment, or other written communication or information is required to be submitted or forwarded by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or other respective successors give written notice to the other parties of another individual designated to receive such communications.

As to Citizens:

Nancy S. Marks
Natural Resources Defense Council, Inc.
40 West 20th Street
New York, NY 10011
(212) 727-4414

As to the City:

George D. Theophilos
City of Chicago Law Department
Regulatory and Aviation Litigation Division
30 North LaSalle Street, Suite 900
Chicago, IL 60602
(312) 742-0306

VII. MISCELLANEOUS

21. This Agreement represents the entire agreement and understanding among the parties. The recitals to this Agreement are incorporated into and are an integral part of this Agreement. All headings in this Agreement are provided as a matter of convenience only, and shall not govern or be used to interpret the meaning of any provision in this Agreement.

22. This Agreement is entered into the State of Illinois and shall be construed and interpreted in accordance with its laws and the laws of the United States.

23. The undersigned representative(s) for each party certifies that he/she is fully authorized by the party that he/she represents to enter into the terms and conditions of this Agreement, and to legally bind the party he/she represents to this Agreement.

Date: *April 1, 1999*

Natural Resources Defense Council, Inc.

Nancy S. Marks
Nancy S. Marks, Senior Attorney

Date: *April 5, 1999*

Humane Society of the United States

Patricia N. Lane
Patricia Lane, Attorney

Date: *April 6, 1999*

Alliance of Area Residents
Concerning O'Hare
U.S. Citizens Aviation Watch

Jack Saporito
Jack Saporito, President

Date: 6/3/99

City of Chicago Department of Aviation

Mary Rose Loney

Mary Rose Loney, Commissioner