

STATEMENT
OF
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UKPEAGVIK INUPIAT CORPORATION

United States Senate
Committee on Environment and Public Works
Subcommittee on Chemical Safety, Waste Management, Environmental Justice, and Regulatory
Oversight
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DELBERT J. REXFORD TESTIMONY

I. INTRODUCTION

Chairman Merkley, Ranking Member Wicker, and Members of the Subcommittee, I am honored to testify before you today. Senator Sullivan, thank you for affording me this opportunity. My name is Delbert Rexford. I am a member of the Inupiat Native Tribe and have lived in the North Slope Borough of Alaska since August 17, 1959. I am a shareholder and have worked in the leadership of the Ukpeagvik Inupiat Corporation, an Alaska Native Corporation, for over 30 years fighting for the rights of our people and creating opportunities to grow our economy. I thank you for allowing me the opportunity to provide a unique perspective on the impact Federal Government activity has had on our environment, community, food and water resources, and workforce.

II. ALASKA NATIVE CORPORATIONS

In 1971, Congress passed *the Alaska Native Claims Settlement Act* (ANCSA). ANCSA, P.L. 92-203, and it was signed into law by President Richard Nixon on December 18, 1971. Through ANCSA, the Federal Government agreed to convey to 12 Alaska Native regional corporations and more than 200 village corporations 44 million acres of land and \$962.5 million in settlement of aboriginal land claims of Alaska Native people. **Alaska Native people gave up 88 percent of our traditional lands through this settlement.** The Inupiat people of the Arctic Slope were the only group of people who did not support ANCSA. We as a people are heavily dependent on subsistence resources consisting of migratory birds, caribou, fish, and marine mammals to sustain our culturally healthy way of life creating a spiritual link with nature. It is our cultural belief that taking care of our environment will continue to sustain a health way of life.

Congress directed the Department of the Interior (DOI) to oversee the transfer of Federal lands to Alaska Native Corporations. The congressionally created Alaska Native Corporations hold fee simple title to surface and subsurface ANCSA land across Alaska and today are the largest private landowners in the State subject to regulatory permitting restricting environmentally sound development.

Alaska Native people became “shareholders” in a regional corporation and village corporation, based on cultural and familial ties. Under the terms of ANCSA, Alaska Native Corporations are mandated to provide for the economic, social, and cultural well-being of our shareholders in perpetuity for the lifespan of each shareholder. Today, Alaska Native Corporations serve over 130,000 Alaska Native shareholders.

III. ANCSA CONTAMINATED LANDS

During the 1990s, the Alaska Native community raised significant concerns that the DOI was conveying contaminated land to Alaska Native Corporations (ANCs). Congress heard the community's concerns and took action through Section 326 of Public Law 101-512 *Department of the Interior and Related Agencies Appropriations Act, 1991*, which required the Secretary of Interior to report to Congress on contaminated lands conveyed through ANCSA. The Bureau of Land Management (BLM) conducted a mail-out survey of ANCs and other interested parties, and documented 22 responses. It is unclear what, if anything, was done with this information.

Later, in 1995, Congress directed the Secretary of the Interior to prepare a report on the extent of contamination on lands conveyed pursuant to ANCSA. In December of 1998, the DOI submitted a report to Congress entitled *Hazardous Substance Contamination of Alaska Native Claims Settlement Act Lands in Alaska*.

The DOI report acknowledged conveying approximately 650 contaminated sites to Alaska Native Corporations with various types of hazardous waste and toxic materials that pose significant health risk to humans, animals and the environment, including arsenic, unexploded ordinances, and PCBs, among others. 189 of the contaminated sites identified in the report were classified as Formerly Used Defense Sites (FUDS). Many of these sites also include petroleum contamination.

Importantly, the DOI report discussed ANCs concerns that they may be held responsible for the cleanup of prior contamination of ANCSA lands as the current landowners under existing Federal and State environmental laws. Under Section 107(a) of the *Comprehensive Environmental Response, Compensation, and Liability Act, 1980* (CERCLA), the current owner may be held liable for response costs or natural resource damages without regard to fault, (i.e., UIC Navy Land Transfer Agreement that attempted to hold UIC liable for all environmental clean-up in order to transfer the land that was selected under ANCSA). The DOI report asserted that ANCs would not be held liable under the Environmental Protection Agency's (EPAs) "Policy Towards Landowners and Transferees of Federal Facilities" (published June 13, 1997), which states EPA does not intend to enforce Section 107(a) of CERCLA. The DOI report emphasized:

...EPA will not take enforcement action against a person or entity, or its transferees or successors to require the performance of response action or payment of response costs incurred to respond to contamination existing as of the date that person or entity acquires the property from the United States. EPA is also aware that even preliminary assessment and evaluation can be burdensome and expensive to a landowner, and will not seek to impose these costs against ANCSA landowners relative to contamination or potential contamination that was on their property at the time of conveyance....Many land transfers under ANCSA were finalized before CERCLA was enacted and the statutory covenants were required. However, EPA applies this policy to transferees and successors that acquired property from the United States in this type of situation in which the property transferred before CERCLA was enacted.

Recognizing the unjustness of conveying contaminated lands to ANCs in settlement of aboriginal rights to land, the DOI recommended "...an approach to fully identify contaminated sites and

cleanup needs on ANCSA lands,” with six specific recommendations in their 1998 report. The recommendations included:

1. establish a forum of ANCSA landowners and Federal, State, local and Tribal agencies to exchange information and set priorities;
2. create and maintain a comprehensive inventory of contaminated sites;
3. apply EPA policies not to impose landowner liability to ANCs for prior contamination;
4. within 30 months DOI to report back to Congress on sites that were identified but not covered by existing cleanup programs;
5. revise relevant policies covering existing cleanup programs to address the remediation of petroleum, asbestos, and the removal of unsafe structures and debris, among others;
6. develop a process to train and enable local residents to better participate in cleanup efforts.

The DOI stated it would “coordinate the implementation of these recommendations, although other agencies such as the EPA and the Corps of Engineers may take the lead in certain aspects of the recommendations.” Largely, nothing happened because the agencies could not obtain funding through congressional action.

More than a decade later, in 2012, ANVCA selected the contamination of ANCSA lands issue as a top priority. ANVCA began educating members of Congress, the State Legislature, and Federal agencies about this issue, urging the cleanup of ANCSA contaminated sites. Today, ANVCA enjoys broad support to address cleanup of ANCSA lands, including from the Alaska Federation of Natives, ANCSA Regional Association, Alaska State Legislature and Alaska Governor William Walker.

In December 2014, Congress through Public Law 113-235 requested the following information from the BLM:

1. A comprehensive inventory of contaminated sites conveyed through ANCSA, including sites identified subsequent to the 1998 report
2. An updated status on the six recommendations listed in the 1998 report
3. A detailed plan on how the DOI intends to complete cleanup of each contaminated site

In June 2016, the BLM submitted the 2016 Update to the DOI 1998 Report to Congress. The 2016 update discussed the contaminated sites inventory prepared by the BLM (with input from Federal, State and local entities and Alaska Native stakeholders). The inventory identified 537 sites that require remediation. Of the identified sites, the majority are Department of Defense sites (162 sites, 120 of which are FUDS). 94 of the contaminated sites are not in a cleanup program and are classified by the BLM as “orphan” sites (notably the report states an additional 104 sites still require further verification and may be added later to the Orphan Site Database). 92.5 percent of the 94 “orphan” sites are within 2 miles of Alaska villages, places where our Native people engage in subsistence activities, obtain our drinking water, and let our children play. An additional 242 sites identified in the report have land use controls in place, limiting use and development of the land.

The 2016 report acknowledged that because BLM lacks authority to compel cleanup of contaminated ANCSA lands subsequent to transfer, no action has been taken on the following three steps identified in the 1998 report:

1. applying EPA policies on liability of landowners to ANCSA landowners
2. modifying policies, where needed, to address contaminants and structures that may affect public health and safety on ANCSA lands
3. developing a process to train and enable local residents to better participate in cleanup efforts

The 2016 report included three recommended next steps:

1. the Alaska Department of Environmental Conservation (ADEC) should finalize the comprehensive inventory and implement a remedial action process
2. establishment of a formal contaminated lands working group; and
3. initiation of a site cleanup process.

In stark contrast to the DOI's willingness in 1998 to take a leadership role to facilitate the cleanup of ANCSA contaminated lands, the 2016 update proposes that ADEC and EPA oversee cleanup of the sites. It also states that:

The BLM does not have the authority to provide liability relief under CERCLA for potentially responsible parties at sites not under the BLM's jurisdiction, custody, or control; that authority rests with EPA or Federal courts in accordance with the provisions of Section 107 of CERCLA, 42 U.S.C. 9607.

Today, this represents the ongoing struggle for ANCs. The mandates for cleanup have no regulatory teeth leading to little or no remediation and/or cleanup.

IV. FIRST HAND KNOWLEDGE

I am here today to share my firsthand knowledge as a lifelong Alaska resident born in the territory of Alaska now known as the State of Alaska. I have grown up on this land. This land the Federal Government contaminated and left behind. This land that they transferred to my people without complete cleanup and removal of contaminants and debris. This land where we hunt, fish, gather subsistence resources and butcher our whale – it is contaminated.

The cost to clean up the contamination is astronomical, but we cannot put a price on the health of our families. I know for a fact that 80% of one family subsisted on contaminated sites and passed away from cancer.

Cleanup of these lands is not a Federal Government priority.

The regulatory process, which we have to go through to get projects to Alaska has hampered our ability to get worthwhile projects to protect human lives.

Big commissioned jobs typically go to outside companies, which come in, do the job and leave – they do not hire our locals, they do not educate our locals and we are left without jobs and opportunities for economic development.

IV. CONCLUSION

The Federal Government conveyed contaminated land to ANCs in return for the extinguishment of up to 88% of aboriginal rights to land. Under Federal and State law, ANCs face potential legal exposure for the remediation of those lands. In addition, some of those contaminated lands pose significant health risk to humans, animals and the environment. It is unacceptable that after nearly fifty years after the passage of ANCSA and the extinguishment of certain aboriginal land claims,

Alaska Native Corporations continue to face legal exposure for contaminated lands conveyed to them by the Federal Government and that many of those sites still do not have a clearly identified responsible party, assessment, or plan for cleanup.