

Jason Brune, Commissioner, Alaska Department of Environmental Conservation
Testimony to Senate Committee on Indian Affairs
Hearing re. Contaminated Sites Transferred to ANCSA Corporations (August 23, 2022):

Congress is very familiar with the problem of contaminated sites on Alaska Native lands. It has, on no less than three occasions, instructed BLM to investigate the extent of contamination on ANC lands and prepare plans to remediate those sites. BLM says it can't. The State insists it must. Congress has the ability to end the dispute.

In 1971, Congress passed the Alaska Native Settlement ACT ("ANCSA") to create a "fair and just" settlement of aboriginal land claims to more than 360 million acres of land. Alaska Natives were to receive 44 million acres as consideration for the rights taken. What Congress did not intend in 1971 was to compensate Alaska Natives with dirty land – that is neither "fair nor just" in any sense of the word.

In 1990, again in 1995, and once more in 2014, Congress recognized that Alaska Natives did in fact receive contaminated lands. And it instructed BLM to investigate these sites and prepare a clean-up plan for *every* contaminated site with express timelines to do so.

The State of Alaska has repeatedly requested the BLM to follow through. To date, the BLM has ignored Congress' directives. It has prepared skeletal reports, attempted to foist its duties onto the State, ignored the plights of Alaska Natives, and most recently through counsel stated that "it is merely a real estate agent" and "has no authority" to do any of the things Congress has repeatedly directed BLM to do.

Congress should do more than tell the BLM what it has already told them. Congress should amend ANCSA to identify clear duties and include express remedies to the State and Alaska Native corporations. To this end, the State of Alaska has developed conceptual legislative proposals that could avoid costly litigation, and put money and resources on the ground.

Specifically, ANCSA should be amended to:

- Expressly recognize that there are contaminated and potentially contaminated sites on ANCSA lands that were contaminated while owned by the United States.
- Identify the Department of the Interior as the agency tasked with characterization and cleanup of federally contaminated sites on ANCSA lands.
- Identify date-certain benchmarks for progress which, if not met, trigger additional exchanges of land to Alaska Natives.
- Identify the trigger for remedial action at any site is a risk factor of 1×10^{-5} , including at the site investigation stage.
- Require DOI, or any other federal agency involved, to pay ADEC costs for oversight work.

The following amendments to CERCLA and RCRA would also provide helpful clarification:

- Amend CERCLA to expressly allow state claims against formerly owned or operated federal facilities.
- Amend RCRA to expressly allow citizen suits against formerly owned or operated federal facilities.

- Amend Section 113 to allow suit after a federal delay in performing substantive response actions at a site of more than three years.

For additional detail on this issue, a record of recent correspondence between the State of Alaska and the federal government is available at <https://dec.alaska.gov/spar/csp/federal/formal-correspondence/>.