

Know and Exercise Your Rights

Strategies Regarding ANCSA Contaminated Lands

Presented by

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Interactive Ask Questions

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Understanding the Issues

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“Storage tanks at the post office site in Iliamna. Soil issues at the Katmai National Park and Preserve headquarters. A tank farm in Newhalen. The former school in Pedro Bay. Those are just a few of the nearly 1,000 sites considered contaminated that were transferred from federal entities to Alaska Native corporations.”

Source: Molly Dischner, *BLM Report Catalogs Contaminated Land Conveyed to Native Corporations*, Alaska Dispatch News, Sept. 4, 2016.

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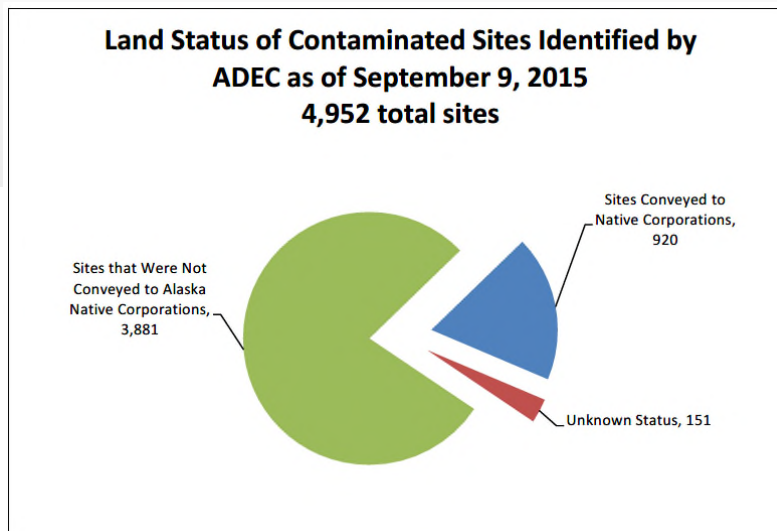
Contaminated Land Poses Several Problems

- **Health & Safety Concerns**
- **Land Use / Economic Issues**
- **Equity & Fairness**
 - ❖ **Conveyed to Extinguish Aboriginal Rights**
 - ❖ **But Conveyed Contamination & Liability**

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2016 Report to Congress



Source: 2016 Report to Congress: Hazardous Substance Contamination of Alaska Native Claim Settlement Act Lands in Alaska ("2016 Report to Congress") at 12.

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2016 Report to Congress

- **920 Contaminated Sites Conveyed to ANCSA Corporations**
 - ❖ **328 Sites Have Been Cleaned Up**
 - ❖ **338 Sites Require Additional Cleanup**
 - ❖ **242 Sites Have Sufficient Land Use Controls to Prevent Human Exposure**
 - ❖ **12 Sites Have No Confirmed Release of Contaminants**

Source: 2016 Report to Congress at 7.

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2016 Report to Congress

- **Pre-Transfer Owners or Operators of the 338 Sites That Require Additional Cleanup**
 - ❖ **162 – U.S. Department of Defense**
 - ❖ **51 – State of Alaska / Political Subdivisions**
 - ❖ **42 – Private Land Owners**
 - ❖ **26 – Unknown**
 - ❖ **20 – ANCSA Corporations**
 - ❖ **16 – Federal Aviation Administration**
 - ❖ **14 – Non-ANCSA Native Entities**
 - ❖ **7 – Other Federal Agencies**

Source: 2016 Report to Congress at 7-8.

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2016 Report to Congress

“The majority of contaminated sites conveyed under ANCSA were located on lands and facilities administered by the DoD. The DoD, in this case, retains responsibility for addressing contamination resulting from releases on those sites that occurred during its administration of the lands and facilities.”

Source: 2016 Report to Congress at 11.

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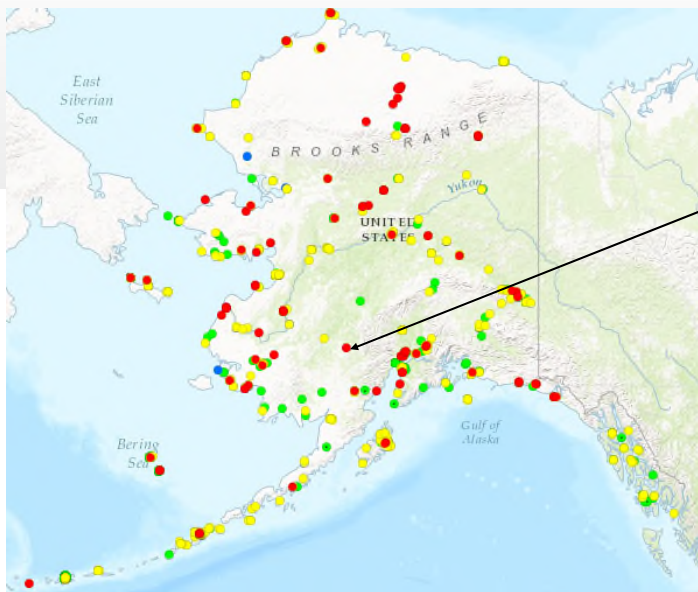
Contaminated Lands Inventory Map

- Created by the Bureau of Land Management
- Displays Locations as of October 2016
- Provides Basic Site Information
 - ❖ Description
 - ❖ Status
 - ❖ Report (Available for ADEC Sites)
 - ❖ Conveyance Document

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Contaminated Lands Inventory Map



Lime Village School

Agency: Alaska Department of Environmental Conservation

ID: 1037 ([Report - available for ADEC sites](#))

Name: Lime Village School

Status: Conveyed - Orphan

Description: Conveyed to Native corporation using site location, site not within a cleanup program.

Notes: ANCSA Conveyed IC 709/10 (PA 50-2007-0114/5)

[Conveyance Document](#)

[Email](#)

[Zoom to](#) ...

- Orphan
- In Cleanup Program
- Informational
- Cleanup Complete with Institutional Controls
- Cleanup Complete

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Contaminated Lands Inventory

- The ADEC Should Finalize the Inventory
- Do ANCs agree with the inventory?
 - ❖ 328 sites in fact cleaned up?
 - ❖ 242 sites in fact have sufficient land use controls?
 - ❖ Pre-Transfer Owners or Operators

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2016 Report to Congress

“Only the ADEC and the ... EPA have authority to compel cleanup on ANCSA lands. To the extent that they can be identified, responsible parties are expected to conduct clean-up activities.”

Source: 2016 Report to Congress at 8.

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2016 Report to Congress

“[W]here available information indicates that conveyed lands contain contaminated sites that may require additional investigation and/or remedial work, it is the responsibility of state (ADEC) or Federal (EPA) regulators to identify the potentially responsible party (or parties) responsible for contamination so that cleanup can be undertaken.”

Source: 2016 Report to Congress at 11.

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Action

- Don't Wait for State and Federal Agencies
- Know and Exercise Your Rights
- Take Action

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2016 Report to Congress

- **Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), parties that may be held responsible for remediating contaminated sites include the following:**
 - ❖ **facility owners and operators at the time of release**
 - ❖ **current owners and operators**
 - ❖ **parties that arranged for the disposal or transport of waste at or to the site**
- **Most state and other Federal environmental laws establish responsibility for remediation of contaminants in a manner similar to CERCLA.**

Source: 2016 Report to Congress at 12.

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Strategies & Next Steps

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2016 Report to Congress

- **ADEC Should Finalize the Comprehensive Inventory and Implement a Remedial Action Process**
- **Establish Formal Contaminated Lands Working Group**
- **Initiate Site Clean-Up Process**
 - ❖ **ADEC Document Responsible Parties**
 - ❖ **Clean-Up Work Directed or Conducted by the Appropriate Agency**

Source: 2016 Report to Congress at 8-9.

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Take Action

- **Advocacy**
- **Investigation (Under Attorney-Client Privilege)**
- **Legal Analysis and Strategies (Under Attorney-Client Privilege)**

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ANCs Advocacy

- Lobby for Legislation
 - ❖ Protect ANCs From Claims Related to Prior Contamination
 - ❖ Address U.S. Sovereign Immunity
 - ❖ Address Cleanup
 - ❖ Provide for ANC Contractor Preference for the Cleanup of Contaminated Sites
- Annual Agency report to Congress on Status of ANCSA Cleanup
- Prioritize Cleanup of ANCSA Lands
- Swap ANCSA Contaminated Lands With U.S. Gov't

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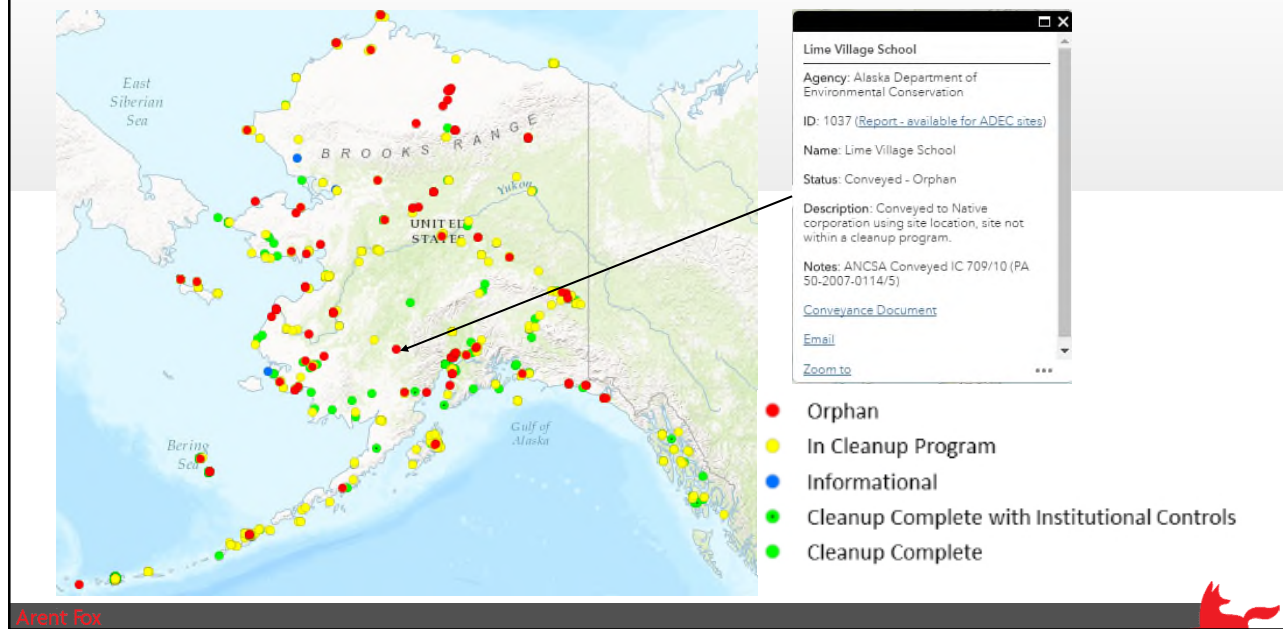
ANCs Investigation (Privileged)

- To Date, Reliance on Agency Analyses and Reports
 - ❖ Incomplete / Inaccurate Information
 - ❖ Allegations Lands Were Contaminated Post-Conveyance
 - *"It is possible some sites that are now posing contamination issues were not contaminated at the time of conveyance."* 1998 Report to Congress: Hazardous Substance Contamination of Alaska Native Claims Settlement Act Lands in Alaska ("1998 Report to Congress") at 9.
 - *"The DoD, in this case, retains responsibility for addressing contamination resulting from releases on those sites that occurred during its administration of the lands and facilities."* 2016 Report to Congress at 11.
- Protect Your Rights—Consequences of Merely Accepting the Agency Analyses and Reports

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ANCs Investigation (Privileged)



ANCs Investigation (Privileged)

IN WITNESS WHEREOF, the undersigned authorized officer of the Bureau of Land Management has, in the name of the United States, set her hand and caused the seal of the Bureau to be hereunto affixed on this 22nd day of September, 1983 in Anchorage, Alaska.

UNITED STATES OF AMERICA

Ann Johnson
 Chief, Branch of ANCSA
 Adjudication

ANCs Investigation (Privileged)

Site Report: Lime Village School

Site Name: Lime Village School
 Address: Lime Village, 48 Miles SE of Stony Riv., Stony River, AK 99557
 File Number: 2426.38.001
 Hazard ID: 1037
 Status: Active

Problems/Comments

Soil contamination was found beneath a diesel driven pump that is used to pump fuel from airport to tanks. Recently separated fuel line that spans slough of Stony River which discharged fuel into slough. Soil contamination present near school building fuel line joint. Update 2009: It is suspected that the areas of contamination, listed above, resulted from poor fueling practices and leaking pipe joints in the 1980's and 1990's. In 2003 AEA/Denali Commission constructed a new bulk fuel system (tank farm and piping) from the air-strip to the school.

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ANCs Investigation (Privileged)

- **Assess and Evaluate the Agency Reports**
 - ❖ **Identify Factual Claims**
 - **328 Sites Cleaned Up**
 - **242 Sites With Sufficient Land Use Controls**
 - **338 Sites Require Additional Cleanup**
 - ❖ **Evaluate / Verify Factual Claims**
 - **Analyze and Review Conveyance Documents**
 - **Analyze and Review Site Histories and Chronologies**
 - **Interviews**
 - **Site Visits and Analysis**

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ANCs Legal Analysis (Privileged)

- **Negotiation and Other Options**
- **Evaluate Options Under CERCLA (Site Specific)**
 - ❖ **PRPs Generally Liable for Costs of Removal or Remediation (42 U.S.C. §9607(a)(4))**
 - ❖ **Cost Recovery and Contribution**
- **Evaluate Options Under State Law (Site Specific)**
- **Evaluate Options Under ANCSA**
 - ❖ **Conveyed to Extinguish Aboriginal Rights**
 - ❖ **But Conveyed Contamination & Liability**
- **Analyze Other Options and Strategies**

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What now?

- **Strategies Are Not Mutually Exclusive**
- **Complex Problems Often Require Multifaceted Approaches**
- **Simultaneous Pursuit Increases Pressure to Resolve Issues and Complete Cleanup**
- **Economies of Scale: ANVCA Members Can Work Together to Pursue Issues of Common Interest**
- **Take Action to Protect Your Rights and Interests**

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What about the cost/funding?

- **Superfund (Possible but Unlikely Given Current Information About Sites)**
- **Formerly Used Defense Sites Funding (Site Dependent)**
- **Federal Judgment Fund (Typically Not Available to Fund Investigations, Analysis of Remedial Alternatives, etc.)**
- **Third Party Funders (Typically Look for a High ROI)**
- **ANVCA Members Work Together (Example: 338 sites require additional cleanup x \$300 per month)**

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Questions?

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