



ANCSA and State-Owned Contaminated Sites

Legend

State Owned Sites

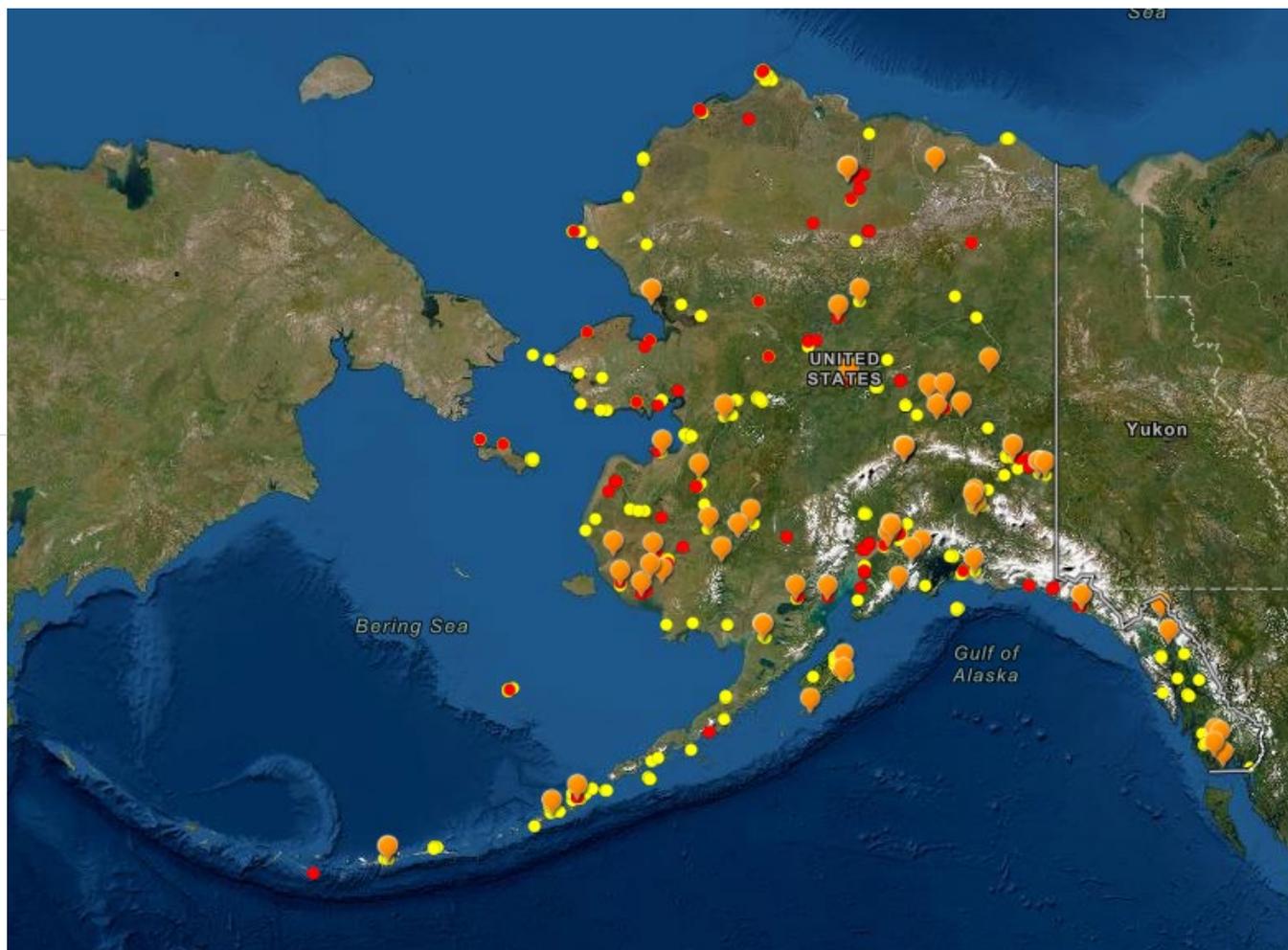


BLM_AK_Contaminated_Sites

Orphan



In Cleanup Program





Federal Conveyance of Contaminated Lands





Substantial risk to human health and the environment

- ▶ Former military installations
- ▶ Schools
- ▶ Tank farms
- ▶ Oil exploration sites
- ▶ Ordinances
- ▶ Abandoned mines





Department of Interior was tasked with addressing these sites in 2016

- ▶ Comprehensive inventory
- ▶ Identification of nature and type of contamination
- ▶ Identification of existing remedies at each site
- ▶ Recommend legislation to remedy the situation
- ▶ **“[a] detailed plan on how the Department intends to complete cleanup of each contaminated site.”**



Fort Glenn outside Dutch Harbor, Alaska

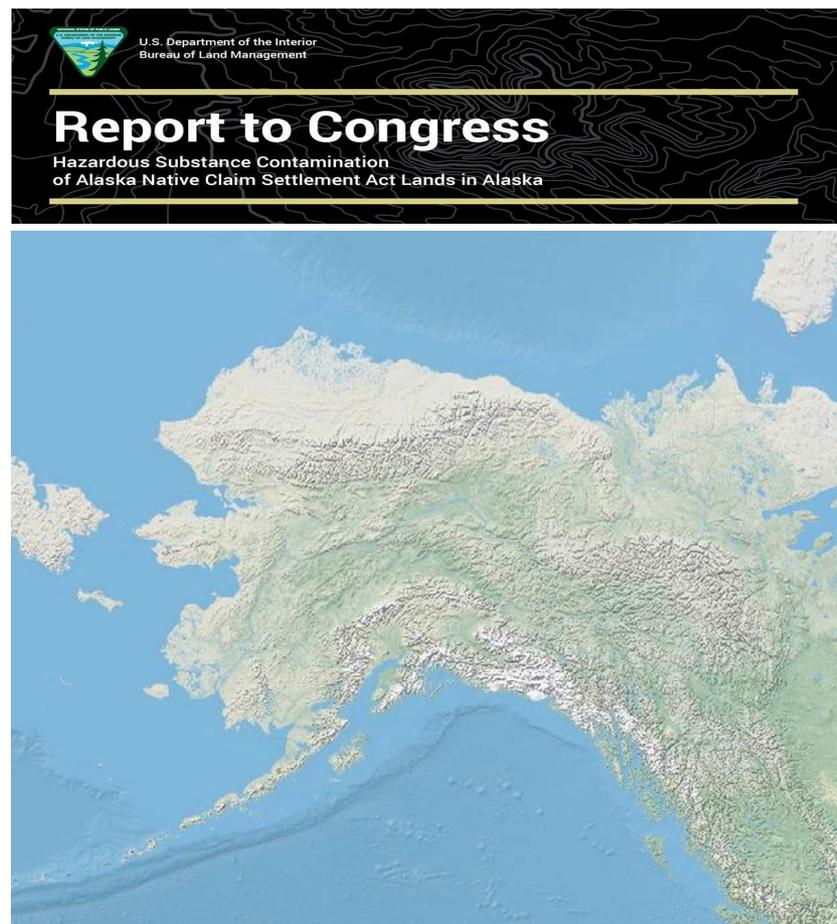


BLM put onus on State of Alaska

BLM's 2016 Report recommendations:

- ▶ The Alaska Department of Environmental Conservation (DEC) should finalize the comprehensive inventory and implement a remedial action process.
- ▶ The establishment of a formal contaminated lands working group.
- ▶ DEC or another party initiates of a site cleanup process.

“Now that the [inventory] has been completed and the Orphan Site Database has been developed, it is critical that those agencies in Alaska with regulatory authority over or responsibility for cleanup of contaminated sites on ANCSA lands, utilize the data to prioritize action in the State.”





Federal Agency Responsibility

Federal agencies need to:

- ▶ Compile a complete list of sites
- ▶ Complete verification of sites where contaminated is suspected
- ▶ Investigate and cleanup those sites not already being actively addressed
- ▶ Pursue funding to complete necessary work in a proactive timeframe





Correspondence

Letters Sent May 27, 2021:

- **Governor Dunleavy to President Biden**
- **DEC to Secretary Haaland (DOI)**
- **DEC to BLM**
- **DEC to Secretaries Haaland (DOI), Vilsack (Agriculture), and Austin (DOD)**

<https://dec.alaska.gov/spar/csp/federal/formal-correspondence/>

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Governor Mike Dunleavy
STATE OF ALASKA

May 27, 2021

The Honorable Joseph R. Biden, Jr.
President of the United States of America
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Biden:

In 1959, Alaska received 104 million acres of land from the federal government when it became a state under the Alaska Statehood Act. In 1971, Alaska Natives agreed to relinquish their aboriginal land rights in exchange for 44 million acres of land from the federal government under the Alaska Native Claims Settlement Act (ANCSA). Neither Alaska Native people nor Alaska residents should have expected that the federal government would transfer contaminated lands in fulfillment of its obligations under these laws; however, that is exactly what happened.

Despite repeated direction from Congress since 1990, the Department of the Interior and Bureau of Land Management have not completed a full site inventory, identified potentially responsible parties, or initiated site characterization or cleanup of the contamination on these ANCSA lands. To our knowledge, no federal agency has completed this work for State-owned sites either. To that end, I have directed the Alaska Departments of Law and Environmental Conservation to pursue resolution of these issues with your Secretaries of Interior, Defense, and Agriculture.

We are demanding that these agencies develop detailed plans with the goal of cleaning up these contaminated sites as required by state and federal law. Please direct your cabinet to dedicate appropriate funding and agency resources to address these long overdue environmental contamination issues.

I look forward to the day when the federal government has cleaned up these contaminated sites allowing Alaskans, Alaska Native Corporations, and their shareholders to use their lands freely.

Sincerely,

Mike Dunleavy
Governor



ANCSA Contaminated Sites

► December 17, 2021: 548 Notices of Intent to Sue

"50 years after the passage of ANCSA, the contamination that the federal government left behind still threatens the health of Alaska Natives and limits the use of lands that were meant to be a resource for them in exchange for their aboriginal rights. Alaska Native people did not expect that the federal government would transfer contaminated lands in fulfillment of its obligations under ANCSA, but that is what happened."

- Governor Mike Dunleavy



DOI's Response

The BLM's role in conveying and patenting lands under ANCSA is solely in a pass-through capacity as the Federal government's "real estate agent;" therefore, the BLM is not a PRP pursuant to CERCLA section 107 and is not liable for monitoring and cleanup as a result of its role in the conveyance process.

The BLM has no continuing obligation for documenting or remediating contaminated sites conveyed under ANCSA unless future documentation shows contamination occurred while the BLM managed or controlled a particular parcel.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

Jason W. Brune
Commissioner
Department of Environmental Conservation
State of Alaska
Post Office Box 111800
Juneau, AK 99811-1800

Dear Commissioner Brune:

Thank you for your letters of May 27, 2021, regarding sites conveyed out of Federal ownership to Alaska Native corporations through the Alaska Native Claims Settlement Act (ANCSA) and to the State of Alaska through the Alaska Statehood Act. This letter serves as a response to the three separate letters received by the Department of the Interior (DOI) from the Alaska Department of Environmental Conservation (ADEC). I apologize for the delay and any resulting inconvenience as we worked to coordinate a response to the important issues raised in these inquiries.

In the Bureau of Land Management's (BLM) 2016 Updated Report to Congress on behalf of DOI, *Hazardous Substance Contamination of Alaska Native Claims Settlement Act Lands in Alaska* (2016 Report), the bureau summarized the significant progress made by both ADEC and BLM as part of a collaborative multiagency effort to develop an inventory of potentially contaminated sites that have been conveyed to Alaska Native corporations (Inventory). While the 2016 Report recommended that ADEC host the ANCSA Contaminated Site Database, the BLM continues to provide that service to the public. Developing an accurate, working Inventory is the essential first step in completing a comprehensive database of contaminated sites on conveyed lands, and the ADEC is uniquely positioned among the collaborating agencies to advance subsequent cleanup and remediation efforts for sites identified through this process.

Specifically, the ADEC has the regulatory mission of identifying and monitoring contaminated sites and the authority to ensure that the preliminary Inventory is finalized into a comprehensive database that includes a Potentially Responsible Party (PRP) determination. Additionally, with the passage of the Brownfields Utilization, Investment, and Local Development Act and SB 202, Alaska Native corporations may be more likely to work with the ADEC to report potential contamination now that they may have liability relief as a PRP from both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and associated state laws. The ADEC also has the authority to implement a remedial action process and can provide for specific training of local residents to enhance participation in ongoing and future site work.

By contrast, the DOI has no statutory authority to compel or conduct the cleanup of lands that have been conveyed out of Federal ownership, nor is it able to impose liability for contamination



Conclusion

- The State's fight remains the same: the transfer of contaminated sites to Alaska Natives is one of, if not the, most significant environmental injustices perpetuated by the federal government in Alaska. It is time for the United States to make good on its bargain.
- This lawsuit is just the beginning. If the federal government doesn't take responsibility, the State will look at filing lawsuits on individual sites. There are sites all over the State that the federal government was obligated to clean up, and the State will seek to hold them responsible.