**ANCSA Contaminated Lands: Cleaning Up and Moving Forward**

Since 1971, approximately 44 million acres of land have been conveyed to Alaska Native Corporations (“ANCs”) under the Alaska Native Claims Settlement Act (“ANCSA”). Based on 2016 data from the U.S. Department of the Interior, 920 contaminated sites were conveyed to ANCs under ANCSA.[[1]](#footnote-1) Of those 920 sites, 328 allegedly have been cleaned up, 338 allegedly require additional cleanup, 242 allegedly have sufficient land use controls to prevent human exposure, and 12 allegedly have no confirmed release of contaminants.[[2]](#footnote-2) These contaminated lands were transferred to ANCs from, among others, the U.S. Department of Defense, the Federal Aviation Administration, other Federal Agencies, and the State of Alaska. These original owners and operators retain some responsibility for addressing contamination that occurred during their ownership or operation of the sites.[[3]](#footnote-3)

Actual cleanup of contaminated sites has been extremely slow—or nonexistent. It also appears that the U.S. Department of the Interior’s 2016 data may not be complete, and there may be additional contaminated sites that require cleanup. ANCs can determine whether contaminated sites that they currently own have been properly inventoried by checking the Bureau of Land Management’s Contaminated Lands Inventory on ANCSA Conveyed Lands, which is available [online](http://blm-egis.maps.arcgis.com/apps/webappviewer/index.html?id=3af8be2b154c440abf4efb3702b1df5d).[[4]](#footnote-4)

In 2017, the issue of ANCSA contaminated lands gained significant national attention. Bills were introduced in Congress (H.R. 3017 and S. 822), and the ANVCA spent a week in Washington, D.C.—and engaged in countless other meetings and efforts—advocating on behalf of ANCs for the cleanup of the contaminated sites. Because of the ANVCA’s efforts, a working group is being formed, and there is progress. However, there is still more to be done.

In 2018, and moving forward, ANCs have multiple options and strategies to address contaminated sites on their lands. ANCs can pursue these different avenues simultaneously to work toward cleanup of contaminated sites.

1. *Site-By-Site Investigation and Analysis of the Contaminated Sites*. Because it appears that the U.S. Department of the Interior’s data on contaminated lands is incomplete and has not been verified, ANCs should inventory contaminated sites on their lands and complete a site-by-site investigation and analysis to:
	* identify the scope and type of contamination at each site;
	* assess the cost of cleanup at each site;
	* assess the economic opportunities that have been lost because of the contamination;
	* assess and project future economic opportunities that may be available after cleanup;
	* identify the current options and strategies that likely are available for each site;
	* identify additional options and strategies that could be pursued; and
	* prioritize each site for any necessary legal or other action, and cleanup.
2. *Continued Advocacy*.ANCs should continue to advocate for their rights with U.S. Government Agencies and Congress, working to ensure that decision makers are aware of the issue and are taking steps to resolve it.
3. *Negotiations With Previous Owners and Operators of Contaminated Lands.* A site-by-site investigation and analysis should inform ANCs’ negotiating positions. ANCs can then engage in direct negotiations with the previous owners and operators of contaminated sites to clean-up the sites.
4. *Plan and Pursue Appropriate Legal and Other Action.* ANCs can use the site-by-site investigation and analysis to plan and, as necessary, pursue legal and other action to clean-up the sites. Devising a strategic legal action plan for each site—even if legal action is not taken—likely will improve and strengthen ANCs’ advocacy and negotiating positions.

If you have any questions, please contact Hallie Bissett, Executive Director of the ANVCA (hbissett@anvca.biz) or Jeffrey R. Makin of Arent Fox LLP (jeffrey.makin@arentfox.com).

1. 2016 Report to Congress: Hazardous Substance Contamination of Alaska Native Claims Settlement Act Lands in Alaska (“2016 Report to Congress”) at 7. [↑](#footnote-ref-1)
2. 2016 Report to Congress at 7. [↑](#footnote-ref-2)
3. 2016 Report to Congress at 11. [↑](#footnote-ref-3)
4. Bureau of Land Management, Contaminated Lands Inventory on ANCSA Conveyed Lands, <http://blm-egis.maps.arcgis.com/apps/webappviewer/index.html?id=3af8be2b154c440abf4efb3702b1df5d>. [↑](#footnote-ref-4)