

Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Witness Statement

**TESTIMONY OF
Jennifer Roberts**

Section Manager, Contaminated Sites Remediation Program

State of Alaska Department of Environmental Conservation

For the

STATE OF ALASKA

On the

PRIBILOF ISLANDS TRANSITION ACT

Before the

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON RESOURCES

SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE & OCEANS

JULY 29, 1999

INTRODUCTION:

Mr. Chairman and members of the committee, my name is Jennifer Roberts and I am the Contaminated Sites section manager representing Commissioner Michele Brown of the State of Alaska Department of Environmental Conservation on behalf of Governor Tony Knowles of the State of Alaska. Thank you for the opportunity to testify on the Pribilof Islands Transition Act.

The State of Alaska strongly supports this legislation. Since the purchase of Alaska in 1867 the federal government has been responsible for the economy, development, culture and welfare of the Pribilof Islands and its citizens. This dependence lasted over 100 years creating a unique relationship between the federal government and Pribilovians. Over the last 20 years, the federal government, specifically National Oceanic Atmospheric Administration (NOAA) has been charged with divesting federal ownership of the Pribilof Islands and transferring the property back to the Pribilovians. Alaska supports and encourages NOAA in these efforts. It is the Alaska Department of Environmental Conservation's (ADEC) responsibility to ensure environmental compliance is achieved prior to property transfer and that risks to human health and the

environment posed by contamination are acceptable.

With this goal in mind, in January 1996, the Department and NOAA signed the Pribilof Island Environmental Restoration Agreement (Two Party Agreement). This agreement forms the basis for NOAA's actions on petroleum, debris/open dumps and hazardous substance investigations, cleanups, and active landfill closures on St. Paul and St. George Islands.

The Pribilof Islands are a unique environment with world class wildlife habitat for marine birds and fur seal rookeries. The communities of St. Paul and St. George are striving to bring new economic opportunities and business ventures to the islands. Cleanup of historic federal government contamination, closure of the current landfills and redevelopment of permitted landfills are important aspects for the Pribilof Island economy.

This testimony represents Alaska's responses to Chairman Saxton's July 6, 1999 letter to Governor Knowles.

QUESTION #1. What is the status of the cleanup efforts to meet the Two Party Agreement? What projects have been completed? What is the time table for completing the agreement?

NOAA is responsible for Two Party Agreement status updates. However, Department records indicate Phase One debris removal is complete, one site has been cleaned up (Old Coal House site), the Salt Lagoon Diesel Seep removal is complete with the remaining contamination requiring monitoring, and an open dump site (NMFS dump site) is pending closure once NOAA provides clarification on site name and location. NOAA is currently behind on all other site investigation and cleanup work in the 2 Party Agreement work and unfortunately, NOAA has not done any significant environmental fieldwork for the last several years. Alaska is working with NOAA to update schedules and develop new timelines to get sites investigated and cleaned up. In recent meetings, the department has urged NOAA to move forward with some fieldwork on sites this year and has worked with NOAA to develop conceptual work plans for 5 to 6 sites that can be completed this year. However, the department has not received a firm commitment from NOAA that they will do any fieldwork this year.

The original Two Party Agreement had investigations scheduled to be done in 1995/96 with reports to be completed by 1996/97. NOAA's inability to meet Two Party Agreement schedules, regardless of the departments efforts, forced the department to initiate stipulated penalties--with the hope the penalties would inspire NOAA to generate revised schedules and re-confirm their commit to meet Two Party Agreement obligations. During meetings NOAA has expressed their desire to meet their obligations but are limited by their lack of administrative support to oversee and manage field work in a proper and timely manner.

QUESTION #2. What other cleanup responsibilities does NOAA have under Section 3(a) of P.L.104-91 that are not covered by the Two Party Agreement? In addition to the environmental cleanup work required by the Two Party Agreement, what other environmental cleanup work has or will the State ask NOAA to complete? What action will the State take if NOAA does not comply with those requests? What will be the cost and timetable for completing that work?

There are two outstanding issues these questions raise. One is redevelopment of solid waste facilities for the communities of St. Paul and St. George. The other is NOAA's responsibility as the federal landowner to manage cleanups done by other federal agencies (specifically Department of Defense Formerly Used Defense Sites Program).

Solid Waste Management Issues

Under section 3 of Public Law 104-91, NOAA was directed to "redevelop" existing landfills to meet statutory requirements (see Section 3(e) (16 U.S.C. 1165 note). During subsequent discussions on this issue, NOAA clearly indicated NOAA's position is they were not responsible for redevelopment of the landfills, only closure of the current operating landfills. In June 1998, Commissioner Michele Brown wrote to Terri Garcia, Assistant Secretary for Oceans and Atmosphere requesting that NOAA proceed with redevelopment of the existing landfills on St. Paul and St. George. Commissioner Brown's letter cited Public Law 104-91 stating that landfill redevelopment per P.L 104-91 Section 3(e) was a necessary action rather than simply closing the landfills as required in the Two Party Agreement.

In an October 1998, Terri Garcia responded giving NOAA General Counsel's position that Public Law 104-91 does not require NOAA to open new landfills, redevelop the existing landfills or otherwise address ongoing solid waste management issues for the Islands. Assistant Secretary Garcia set forth NOAA's view that for it to utilize Congress' "redevelopment" authorization in the 1996 law there must be some other pre-existing statutory requirement requiring NOAA to "open new landfills."

The State of Alaska believes that this interpretation is contrary to Congress' clear intent in 1996. The purpose of the 1996 legislation was to authorize NOAA to upgrade the existing landfills to meet existing state and federal solid waste requirements and thereby Congressionally resolve NOAA's legal posturing that it had no obligation to resolve these environmental problems on the Pribilofs.

Unfortunately despite Congress' 1996 direction to NOAA, the State and NOAA have been at a stand-off for nearly two years over the need to develop new solid waste management facilities for the Island before NOAA closes its existing landfills. NOAA's basic premise is that it does not wish any continuing responsibility for solid waste management on the Pribilofs.

The State's proposed solution is for Congress to provide funding via an escrow type account from Commerce. The account would allow the State of Alaska to draw on those funds for the activities necessary to siting, permitting and development of the needed new solid waste facilities for the City of St. Paul and City of St. George. Commerce's involvement would be to provide the funds, establish the account and verify the State of Alaska bills. The State's established Solid Waste and Facility Construction and Operation Programs can develop and get these needed facilities in place in consultation with the local cities, without NOAA's continued involvement or oversight. The new or developed landfills would be owned and operated by the City of St. George and City of St. Paul under permits issued to them under Alaska law by the Department of Environmental Conservation.

NOAA'S RESPONSIBILITY AS LAND MANAGER FOR FEDERAL GOVERNMENT

There is no question that historically the federal government has been the owner, operator, and manager of the Pribilof Islands. Department of Commerce is clearly the federal agency tasked with the responsibility of federal land manager. Through time many different federal agencies have operated facilities on the Pribilof Islands with Commerce's acknowledgement and approval. In some cases these federal agencies have left a legacy of debris, leaking drums of waste and other sources of contamination.

These sites are a challenge to site closure and property transfer. Several sites listed in the Two Party Agreement, for example Telegraph Hill disposal pit and Oil Drum Dump Site, were created by both Department of Defense (DoD) and NOAA activities. In the 1980's DoD made an effort to remove sources of

contamination, leaking drums, debris or at least cover these open dump areas. While some removal and contamination abatement work was done, the DoD reports are inadequate to determine if all the releases and risks generated by DoD have been addressed.

NOAA has stated that since DoD generated a portion of the contamination NOAA is not responsible for ensuring those sites are adequately cleaned up and the property is acceptable for transfer. It is the State's position that as landowner and manager it is NOAA's responsibility to ensure that DoD, and other federal agencies, adequately cleanup their contamination and disposal areas. And further--if work done by another federal agency is inadequate, then it is NOAA's responsibility as land manager to ensure that the problem is properly addressed according to both state and federal law (CERCLA Section 120, 107, SWDA Section 60001, 7002(a), 9007, FWPCA Section 313 and Alaska Statutes Title 46).

To resolve these issues, Alaska's first efforts will be to enforce the Two Party Agreement. If enforcement of the Two Party Agreement does not resolve the situation, Alaska must consider requesting congressional action or reluctantly, judicial action.

QUESTION #3. Is there long-term monitoring or remediation work required under the Two Party Agreement that will prevent or delay NOAA from transferring property in a timely manner?

It is the Department's experience that properly planned and implemented investigation activities, cleanup work, or long term monitoring required for site cleanup and closure do not prevent or delay property transfer. The Two Party Agreement contains two sections pertaining to this issue. Section 83 specifically covers the possibility of properties on Two Party Agreement Table C being transferred and ensures that NOAA will have adequate access to complete any necessary environmental investigations and cleanup activities. Section 49 addresses access to sites not owned by NOAA, and further states that if NOAA is unable to obtain access DEC will assist NOAA in making all reasonable efforts to gain access for NOAA.

In public meetings, local community members have expressed concerns about receiving property that has not been adequately investigated or where the cleanup remedy is not in place. To a large extent, NOAA's inability to meet their commitments to the State and community has fostered this concern. For this concern to be resolved, NOAA must keep environmental work on schedule, ensure field work is done in a timely, competent manner, that commitments and schedules in the Two Party Agreement are met and that the community is given adequate opportunity to comment on investigation and cleanup actions.

QUESTION #4. Is NOAA facing State-imposed penalties for failure to comply with the Two Party Agreement in a timely manner?

DEC invoked stipulated penalties under the Two Party Agreement only after NOAA's continued failure to comply with the agreement and the deadlines for work agreed to under the agreement. DEC begrudgingly took this action for several reasons. First, all other actions to seek NOAA's compliance and cooperation under the agreement failed and second, NOAA's lack of coordination and planning had brought the project to a stand-still and threatened the ability to get any work accomplished in the limited construction field season on the Islands. DEC invoked stipulated penalties in April of this year only after NOAA failed to meet a 30 day extension of time to provide its Phase II workplan for cleanup and investigation work in the Islands.

NOAA remains out of compliance with the agreement since it has not supplied DEC with revised work schedules or information on their funding and projected work budgets as specified under the Agreement.

DEC is working with NOAA to bring the agency into compliance and to resolve the issue of stipulated penalties. Those efforts are on going but the ball is in NOAA's court to provide the requested information and work plans so that environmental work can proceed this field season. Since its project reorganization in the earlier part of this year, NOAA has made some strides in getting Two Party Agreement work back on track. DEC for its part has prioritized its review of NOAA's work in an effort to accomplish important work on the Islands this summer and fall.

STATE OF ALASKA'S GOALS

Since Alaska's testimony to this committee on May 1983, Alaska has supported Department of Commerce and NOAA's efforts to resolve federal government's historic management issues and allow the Pribilovians to direct their own destiny. To further this effort, Alaska's goal is to have Two Party Agreement sites adequately investigated, cleaned up, property transferred, active landfills closed and redevelopment of new permitted landfills completed in a rapid and timely manner. Community involvement during investigation and cleanup efforts is critical to achieving public acceptance for site closure and final property transfer. For these goals to be achieved NOAA must commit to keeping project schedules on track, adequate project administration and management support, and funding resources.

Thank you Mr. Chairman for the opportunity to testify on behalf of the State of Alaska on this very important legislation. I am prepared at this time to answer any questions the committee may have on my testimony.

#