



**U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration**

National Ocean Service  
Office of Response and Restoration  
7600 Sand Point Way NE BIN C15700  
Seattle, WA 98115-0070  
Pribilof Project Office

13 December 1999

Louis Howard  
Pribilof Project Manager  
Alaska Dept. of Environmental Conservation  
555 Cordova Street  
Anchorage, AK 9950 1

Subject: Reopening of a Closed Site: Salt Lagoon Diesel Seep; Two Party Agreement Site No. 13-1,  
St. Paul Island, Alaska

Dear Mr. Howard:

NOAA has reviewed your letter dated 1 November 1999 regarding the subject Two Party Agreement Site No. 13-1. This letter is written under your approval via email on 24 November, granting a fifteen-day extension to NOAA's response time.

NOAA's response to the concerns raised by ADEC through your letter have been addressed by Craig O'Connor, Esq., Acting General Counsel in a letter (attached) to Ms. Jennifer Roberts on 29 November 1999.

If you have a questions regarding this letter please contact my at (206) 526-4560.

Sincerely,

John A. Lindsay  
Pribilof Project Manager

cc: Elary Gromoff  
Flores Lekanof  
Victor Mercurieff  
Tessa Meuhllehner  
John Mercurief  
Myron Melovidov  
Mike Zacharof  
Richard Zacharof  
Ron Philemonoff  
Jason Bourdukofsky  
Debbie Bourdukofsky



354



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
OFFICE OF THE GENERAL COUNSEL  
Washington, D.C. 20230

NOV 29 1999

The Honorable Michele Brown  
Commissioner  
Alaska Department of Environmental Conservation  
4'10 Willoughby Avenue, Suite 105  
Juneau, Alaska 99801

Dear Commissioner *Michele* ~~Brown~~:

In recent weeks, the National Oceanic and Atmospheric Administration (NOAA) has encountered several problems as it has sought to carry out the Pribilof Islands Environmental Restoration Agreement (commonly called the Two-Party Agreement, or TPA) entered into in 1996 by NOAA and the Alaska Department of Environmental Conservation (ADEC). Until those problems are definitively resolved, NOAA cannot move forward with any new activities under the TPA, or initiate activities outside the scope of the TPA such as advancing funds to ADEC for the purpose of planning for and designing new landfills for St. George and St. Paul Islands.

The matters of concern to NOAA all ultimately relate to NOAA's ability to rely upon the actions and decisions of ADEC's apparently authorized officials, and to achieve final closure of cleanup sites under the terms of the TPA. These matters arise from interpretations of the TPA's provisions by ADEC officials, and consequently it may be necessary to re-negotiate the TPA to eliminate any uncertainty or ambiguity that could render future ADEC actions or decisions unreliable. My purpose in writing is to advise you of NOAA's concerns, and to seek your cooperation in resolving those concerns at the earliest feasible date, with a view to preventing similar problems from arising in the future.

A review of the provisions of the TPA makes it quite clear that it was the intent of the parties to create a mechanism under which NOAA could achieve closure and finality for the work it performed. NOAA understood and intended that the Two Party Agreement's NFA provisions would finally cut off NOAA's obligations for closed sites. NOAA would not have entered into the Agreement if this were not the case. The recent ADEC actions that concern NOAA include --

A decision to "re-open" St. Paul TPA Site 13, the Salt Lagoon Diesel Seep, without any factual or legal basis for taking that action. A "No Further Action" (NFA) letter for Site 13 was provided to NOAA on November 2, 1995, by ADEC's Pribilofs Project Manager, Mr. Ray Dronenberg.



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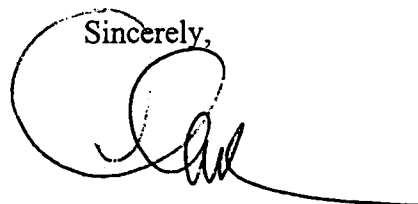
A discussion between Ms. Jennifer Roberts of ADEC and Mr. John Lindsay, NOAA's Pribilofs Project Manager, in which Ms. Roberts indicated that ADEC is reviewing, and may "re-open," other TPA sites for which Mr. Dronenberg had provided NFA letters, ostensibly on the grounds that Mr. Dronenberg may not have had authority to provide those letters.

A statement by Ms. Roberts during a November 18, 1999, meeting that stipulated penalties imposed by ADEC pursuant to the TPA were to be calculated on the basis of a penalty "per site," an interpretation clearly inconsistent with the provisions of the TPA.

Any attempt by ADEC to assert that its former project manager, Mr. Dronenberg, was not authorized to take the actions he did, necessarily leads to the conclusion that ADEC misled NOAA into entering into the TPA, and induced NOAA to take cleanup actions and expend Federal funds based on a false predicate. This would provide grounds for NOAA to rescind the TPA and to recover monetary damages from ADEC. NOAA has paid a considerable amount to ADEC over the years in reimbursement for Mr. Dronenberg's actions as project manager. If ADEC were now to assert that Mr. Dronenberg was not authorized to act as project manager under the TPA, NOAA would be forced to demand immediate repayment of those sums. Further, if Mr. Dronenberg was not authorized to act as project manager, then clearly he did not have the authority to impose stipulated penalties under the terms of the TPA, as he purported to do in an April 5, 1999, letter to Minh Trinh of NOAA.

Following a recent series of meetings and correspondence between NOAA and ADEC representatives, we had come to believe that there was a basis for a cooperative and productive working relationship between our agencies. It would be unfortunate to undermine the good will that has been generated between our agencies by taking these ill-advised steps. While these recent actions and comments have generated considerable negative reaction, NOAA will seek to maintain a positive working relationship. We urge ADEC to return to working in good faith with NOAA to resolve remaining cleanup issues and to avoid diverting to closed issues any of the limited time and funding we have available.

I would appreciate an opportunity to meet with you in Juneau in the near future to discuss the various issues raised in this letter, and to resolve how to work with ADEC in the future. Please call me at (202) 482-4080 to arrange a mutually acceptable time to meet.

Sincerely,  


Craig R. O'Connor  
Acting General Counsel