THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Environmental Conservation

SPILL PREVENTION & RESPONSE
Contaminated Sites Program

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Electronic Delivery Only
Chris Generous
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Naval Facilities Engineering Systems Command Northwest
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Subject: **Recission Request** for Second Five-Year Review Report for Former Distant Early Warning (DEW) Line Station, Point McIntyre, Alaska (Liberty JV, July 2023)

Dear Mr. Generous,

The Alaska Department of Environmental Conservation (ADEC), Contaminated Sites Program is writing this letter to request recission of the above-referenced Second Five-Year Review (FYR) Report for the Former DEW Line Station in Point McIntyre, Alaska. This request is because the Navy gave ADEC an inadequate opportunity to participate in the FYR process, and when given a chance to participate ADEC identified several issues that impact the protectiveness of the remedy, which the Navy failed to address in the required manner.

Background
In an email to the Navy on February 24, 2023, DEC noted that a FYR for Point McIntyre was due soon and that a FYR interview form had not yet been provided to ADEC. No form was provided. ADEC again inquired about the FYR interview form on March 29, 2023, and again, the Navy failed to provide the form to ADEC. On April 6, 2023, the Navy submitted the draft FYR and an interview form. ADEC provided substantial comments on the draft FYR and submitted our completed interview form on May 19, 2023. The Navy provided responses to ADEC's comments on June 14, and during June 2023, ADEC and the Navy had two phone calls to discuss comment resolution. The parties failed to resolve all of ADEC's comments.

On July 7, 2023, ADEC submitted responses to comment and noted that several of the FYR comments were still unresolved. Additionally, a new comment was added to document ADEC's concerns about not being invited to participate in the FYR process and the Navy's exclusion of ADEC's interview feedback from the text of the finalized FYR.

On September 14, 2023, the Navy submitted a final FYR and indicated that it was for ADEC's records. In a follow-up email, the Navy clarified that the FYR was signed by the Navy on June 27, 2023, and no changes were made to the document. Even though the FYR was purportedly signed on

June 27, a copy of the ADEC comment table, with multiple unresolved comments from July 7 was attached to the Final FYR as Appendix E.

State of Alaska Involvement in the Five-Year Review Process
ADEC involvement in the FYR process is supported under two lines of authority: U.S. Environmental Protection Agency (EPA) guidance which is binding on the Department of Defense (DOD) per the terms of their delegated authority and State involvement requirements in the National Contingency Plan (NCP).

In the FYR itself, the Navy acknowledged that environmental cleanup at the former DEW Line Station is regulated by ADEC and that the Navy and ADEC have agreed to conduct the FYR using Navy and EPA Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) guidance for FYRs. The cited CERCLA FYR guidance states: "The goal should be to resolve any concerns of support agencies before drafting the final report… Lead and support agencies should work together throughout the five-year review process to ensure that concerns are resolved in a timely manner, and to the extent practicable, prior to finalizing the Five-Year Review report." DOD is further obligated to follow this guidance by Section 120(a)(2) of CERCLA, which states that "[a]ll guidelines, rules, regulations, and criteria which are… applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States".

The FYR process is required by the NCP as a part of the remedy selection process. Section 121 of CERCLA on "State involvement" requires, at a minimum, that states have a reasonable opportunity to comment on the planned remedial option and other reports relating to implementation of the remedy. Section 300.500 of the NCP states that EPA will ensure meaningful and substantial state involvement in remedy selection and enforcement response activities.

Disagreement with FYR Protectiveness Findings
The Final Record of Decision (ROD; 2012) for Pt. McIntyre includes a remedial action objective (RAO) to prevent erosion of solid waste and hazardous chemicals into the marine environment. During the FYR period, the Navy reported that drums, an exposed pipe, and what appeared to be a metal track pad were observed along the beach at the former eroding landfill. The Navy also acknowledged that the exposed debris appears to have daylighted as a result of shoreline erosion. ADEC submitted comments on the FYR indicating that we do not agree that the remedy is functioning as intended with regard to that RAO. However, the Protectiveness Statement in the FYR does not mention the observed solid waste at the eroding landfill, and the Navy asserted an overall FYR finding of protective, summarily dismissing ADEC's concerns. ADEC does not agree with this protectiveness finding and asserts the Navy is out of compliance with the ROD.

Recission Request
ADEC is concerned with the Navy's approach on the Pt. McIntyre FYR, as it is not consistent with past practices at Navy sites in Alaska, CERCLA, the NCP, or Emergency Order 12580. **ADEC requests that the Navy rescind the Pt. McIntyre FYR that was signed by the Navy on June 27, 2023**. We further request that the Navy work with ADEC, to resolve the comments and concerns that were identified during review of the draft FYR, particularly those related to the coastal erosion RAO.

ADEC has successfully coordinated with the Navy at multiple sites in the State of Alaska and we hope to continue to do so. If you have any questions, please contact me at (907) 465-5076 or via email at stephanie.buss@alaska.gov.

Sincerely,

Stephanie Buss

Stephanie Buss
Contaminated Sites Program Manager

cc, via email: Robert Boyd, NAVFAC Northwest
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