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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10
1200 Sixth Avenue
Seattle, WA 98101

AUG 15 2002

Reply To
Attn Of: ECL-115

Fritz Waghiyi, President
Native Village of Savoonga
P.O. Box 120
Savoonga, Alaska 99769

Dear President Waghiyi:

The Environmental Protection Agency (EPA) is considering the request of the Native Villages of Savoonga and Gambell to determine if the N.E. Cape site is eligible for placement on the National Priorities List (NPL). We appreciated the opportunity to meet with Jeanette Iya and Morris Toolie on June 11, 2002, at the EPA office in Seattle. During this meeting, as well as at the government-to-government consultation EPA held with representatives of the Villages of Savoonga and Gambell last August, EPA learned more about the Tribe's concerns over the U.S. Army Corps of Engineers (Corps) work at the N.E. Cape site.

In responding to the Tribes' request to place this site on the NPL, EPA conducted an extensive review of the Corps' work conducted at the N.E. Cape Site. This included review of the Corps' existing reports and plans for the N.E. Cape site as well as interviews with the Corps and Alaska Department of Environmental Conservation (ADEC). The purpose of this review is to determine whether the Corps' work at the site is consistent with EPA requirements. Because of the limits of our authority, our review and evaluation focused on the adequacy and time line of the Corps' hazardous waste cleanup activities, not debris removal, health evaluations, or petroleum contamination.

EPA's review is now complete and a copy of this evaluation is enclosed. EPA has concluded the following:

- ***The Corps is proceeding with work at N.E. Cape in a manner that is consistent with EPA expectations for hazardous waste sites.*** This includes development and execution of technically sound work plans; following sampling and analysis protocols to gather high quality data; analysis of site conditions and data to identify data gaps; publishing draft documents for review, soliciting comments, holding comment resolution meetings, providing written responses to comments, and publishing revised documents that reflect changes based on comments.



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- ***The Corps is expending considerable resources and effort on the N.E. Cape Formally Used Defense Site (FUDS) project.*** Funding in FY 2001 reportedly was one third of the entire Alaska District FUDS budget. Over the past few years the N.E. Cape site has been a high priority project for the Corps, as well as for the State of Alaska. In the current Department of Defense State Memorandum Of Agreement (MOA) between the Corps and ADEC, the N.E. Cape site is projected to have \$10M work performed over the next two years. This includes additional site investigations, development of the final human health and ecological risk assessments, development of a feasibility study for the N.E. Cape waste sites, cleanup of Polychlorinated Biphenyls (PCB) source areas; and additional building demolition and debris removal. These are all indications that environmental cleanup and building demolition/debris removal work at N.E. Cape are high priorities for the Corps and for ADEC.
- ***Community input has been sought through the Restoration Advisory Board (RAB) and other forums.*** The Corps has made efforts to respond to concerns raised by the RAB and community members. The Corps has funded a Technical Assistance for Public Participation (TAPP) grant to the St. Lawrence Island RAB since March 12, 2001, to provide for independent technical assistance to the RAB. While efforts are being made to improve communication among the Corps, ADEC, community members, the RAB and other stakeholders, the Tribes believe that additional effort is still necessary. In addition, EPA recognizes that the RAB meetings are not a substitute for government-to-government consultations.
- ***The remote location of the N.E. Cape site and short field season that is typically three to four months long presents significant logistical challenges for conducting site work.*** The remote location of the N.E. Cape site requires substantial advance planning for mobilization and demobilization of equipment and personnel. A combination of field screening and fixed lab chemical analysis has been required to offset the distance from the site to labs and holding times for certain organic compounds. Even so, site conditions can make it difficult to operate equipment and take samples due to temperatures, wind, rain, and soil moisture. These have resulted in delays in the execution and completion of planned work by the Corps.
- ***The Alaska Department of Environmental Conservation has had a substantial regulatory role in overseeing The Corps's work at this site.*** In addition, many of the final cleanup levels most likely will be based on State of Alaska requirements and will require enforcement by the State if they are not met. It appears, however, that the Native Villages of Savoonga and Gambell have not been fully informed of the State's activities and recommendations, and the rationale supporting these recommendations, concerning this site.

In determining whether this site should be included on the NPL, it is important to consider a number of factors. Regardless of NPL listing, the Department of Defense (DoD) would remain responsible for cleaning up the site. Executive Order 12580 states that DoD is

responsible for cleaning up contamination at its facilities, wherever and whenever it is found. Within DoD, these cleanup responsibilities have been delegated to the Corps at sites that are no longer owned or operated by the military services. If this site were to be proposed for the NPL, the oversight lead could change from the ADEC to EPA, or it could remain with ADEC. NPL listing for federal facilities requires the responsible agency (e.g., the Corps) to enter an enforceable agreement with EPA to ensure the timely completion of remedial actions at the facility. This transition would require some time and could potentially impact the rate of the site investigation and cleanup. It typically takes at least six months to propose a site to the NPL and at least another six months to actually list the site on the NPL. It is possible that this transition time may give rise to uncertainties on the part of the Corps and cleanup activities may be delayed as a result of these uncertainties. Finally, EPA can *not* provide funding for any site investigation or cleanup activities at a FUD site, regardless of whether this site is included on the NPL.

Like EPA, the Corps has a federal trust responsibility to consult with Tribal governments. During our meetings, it was noted that the RAB meetings are not a substitute for Tribal consultation. EPA views consultation as respectful, meaningful, and effective two-way communication that works toward a consensus reflecting the concerns of the affected federally recognized tribes before a decision is made. We encourage you to continue to pursue formal government-to-government consultations with the Corps and we will encourage the Corp to do likewise.

In addition, EPA will encourage the State to directly communicate with the Tribes on this project. One of the attachments to EPA's review of the Corps' cleanup activities is a copy of the Corps and ADEC's Department of Defense State Memorandum of Agreement (DSMOA) cleanup plan. This agreement states that ADEC will be the lead agency for oversight. This work plan includes a schedule for activities from July 1, 2002, to June 30, 2004.

Taking all of these factors into account, EPA does not believe that placing the N.E. Cape site on the NPL will significantly improve conditions at the site. Therefore, EPA is not planning to propose this site for the NPL at this time. EPA is, however, willing to assist in working to improve communications between the Tribes, the Corps, and ADEC. EPA will send a letter to the Corps reiterating the Tribes' concerns with the cleanup activities and encouraging the Corps to initiate formal government-to-government consultations with the Native Villages of Savoonga and Gambell. In addition, EPA will point out specific concerns the Tribe has expressed concerning the Corps' activities at the site. EPA will also encourage ADEC to communicate directly with the Tribe concerning their oversight activities and to better understand the tribal issues.

We appreciated the opportunity to meet with you. Should you have any additional questions or concerns regarding consultation or the site please do not hesitate to call me at (206) 553-1234, or Michelle Pirzadeh, Associate Director of the Office of Environmental Cleanup, at (206) 553-1272. Joanne LaBaw, the staff person assigned to the site, can be reached at (206) 553-2594.

Sincerely,



L. John Iani
Regional Administrator

Enclosure

cc: Sandra Johnson, EPA
Marcia Combes, EPA, Alaska Operations Office
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