

THE STATE OF ALASKA

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

ALASKA DEPARTMENT OF)
 ENVIRONMENTAL CONSERVATION)
)
 Complainant,)
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 vs.)
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)
)
 BOWHEAD EQUIPMENT COMPANY,)
 and)
 YUKON ALASKA TRANSPORT,)
 and)
 CURRAGH RESOURCES, INC.)
)
 Respondents.)
)
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)
)

C.O. 88-11-09-299-01

COMPLIANCE ORDER BY CONSENT

WHEREAS, the State of Alaska Department of Environmental Conservation (hereinafter "Department") and Bowhead Equipment Company, Yukon Alaska Transport, and Curragh Resources, Inc., (hereinafter "Respondents") are desirous of resolving a disputed matter it is therefore agreed as follows:

I. The City of Skagway, Alaska, a first class city, has leased portions of its lands to Pacific and Arctic Railway and Navigation Company ("PARN") under a 55-year lease with the full knowledge that an ore terminal and dock would be built thereon. PARN sublet the ore terminal to Skagway Terminal Company ("STC") in 1981. PARN and STC are wholly-

owned subsidiaries of White Pass. PARN, STC, and White Pass are hereinafter jointly and severally referred to as "White Pass."

II. White Pass owns, leases, and operates railroad facilities in Skagway, Alaska, and elsewhere. Included among these facilities are a railyard north of the City proper, a railbed and railroad right-of-way along the east side of town, and a rail/ship terminal south of town.

III. The City of Skagway, Alaska, a first class city, has leased portions of its lands to White Pass under a 55-year lease with the full knowledge that an ore terminal and dock would be built thereon.

IV. Cyprus Anvil Mining Corporation ("Cyprus"), a Canadian corporation, operated, from 1968 until 1982, galena mining and concentrating facilities at Faro ("Faro mill") in the Yukon Territory of Canada.

V. Prior to reorganization about 1974, Cyprus operated as Anvil Mining Corporation, Ltd. In 1981, Cyprus was purchased by Hudson's Bay Oil and Gas Co. Ltd., a Canadian corporation. Dome Petroleum Ltd., a Canadian corporation, acquired shares of Hudson's Bay Oil and Gas Co. Ltd. in 1981 and acquired the remainder in 1985. Dome Petroleum Ltd was acquired in 1988 by Amoco Canada Petroleum Company, Ltd., a Canadian corporation.

VI. Respondent Curragh Resources, a Canadian partnership, purchased the Faro mine and mill from Cyprus and commenced operations in 1986. Curragh Resources subsequently transferred its interests to Curragh Resources, Inc., a Canadian corporation. Both are herein referred to as "Curragh." Respondent Curragh is a person under Alaska state law.

VII. Respondent Yukon Alaska Transport ("Yukon") is a joint venture of Yukon Alaska Transport Ltd., a Canadian company, and Alaska-West Express, an Alaska corporation and wholly-owned subsidiary of Lynden, Inc.,

Washington corporation. Respondent Yukon is a person under Alaska state law.

VIII. Respondent Bowhead Equipment Company ("Bowhead") is a wholly-owned subsidiary of Lynden, Inc., a Washington corporation. Respondent Bowhead is a person under Alaska state law.

IX. From 1969 until 1982, White Pass, under contract to Cyprus, transported lead and zinc concentrates ("concentrates") in the form of sulfides from Cyprus' operations at Faro by rail through Skagway to the ore-loading facilities and periodically loaded the concentrates onto ships for further transportation out of Skagway.

X. From 1986 to present, Respondent Yukon, under contract to Respondent Curragh, has transported concentrates from Curragh's operations at Faro by truck through Skagway to the ore-loading facilities.

XI. From June, 1986 to present, Respondent Bowhead, under contract to Respondent Curragh, has periodically loaded concentrates from Curragh's operations onto ships for further transportation out of Skagway.

XII. In November, 1988, Respondents voluntarily undertook a program of soil tests of the terminal area and nearby parts of town. Preliminary findings showed metals levels, particularly lead, in the soil to be above natural background levels. Respondents reported their preliminary findings to local city officials, the Environmental Protection Agency, and the Department.

XIII. Beginning in 1988, Respondents made a number of significant modifications to the shiploader, terminal building, and their operations, which modifications were designed to eliminate the historic release of fugitive lead dust.

XIV. Based on analyses by the Department and others, soils in some parts of Skagway ("contaminated areas") contain more lead than naturally occurs in the Skagway area. The release of lead, a hazardous substance, constitutes a violation of AS 46.03.710 and AS 46.03.745 which the Department alleges Respondents, in part, have caused or permitted.

XV. The contaminated areas with the highest concentrations of lead as of October, 1988, were:

A. The railyard north of 23rd Street ("railyard"),

B. The railroad right-of-way along the east side of the City ("right-of-way"),

C. The ore-loading facility area occupied by Respondents under a use agreement with White Pass as shown on the attached Exhibit 1 ("usage area"), and

D. The upland portion (landward of the top of the harbor rip-rap) of the rail/marine terminal area leased to White Pass by the City, excluding that portion occupied by Respondents ("terminal").

XVI. On December 8, 1988, the Department issued Notices of Intent to Issue Compliance Orders ("Notices") to Respondent Bowhead (C. O. No. 88-11-09-299-01), White Pass (88-11-09-299-02), and Respondent Yukon (88-11-09-299-03), the three persons responsible for the handling and movement of the concentrates through Skagway; to Cyprus (88-11-09-299-05), the operator of the Faro mill prior to 1982 and the owner of the concentrates shipped through Skagway prior to that year; and to Respondent Curragh (88-11-09-299-04) the subsequent operator of the Faro mill and the owner of the concentrates currently being shipped through Skagway. Since the issuance of the Notices, there have been no facts

brought to the attention of the Department which would contradict the findings of violation in the Notices. Those findings are, accordingly, adopted by reference.

XVII. On or about January 17, 1989, White Pass submitted a report as required by its Notice (C. O. No. 88-11-09-299-02) describing the movement of concentrates through Skagway when White Pass was involved in such movement (until October, 1982) and proposing testing and, as necessary, remediation by covering contaminated areas along the railroad right-of-way with three to four inches of crushed gravel.

XVIII. On January 25, 1989, Respondents jointly requested an extension to March 10, 1989, of the time allowed for response to the Notices to allow for a technical analysis of the soils.

XIX. On or about March 10, 1989, Respondents jointly filed a response which addressed the usage area and proposed remediation of lead contamination in the usage area by removal of soils containing more than 1000 milligrams per kilogram (1000 ppm) lead ("Pb").

XX. On or about April 6, 1989, the Department notified Respondents and White Pass that soils in the railyard, railroad right-of-way, usage area, and terminal areas containing more than 1000 ppm Pb would have to be excavated.

XXI. Subsequent to the issuance of these notices, Respondents removed soils from the usage area. However, surface soils in this area may still contain in excess of 1000 ppm Pb and, if so, further remediation will be necessary.

XXII. On September 15, 1989, The Department issued to White Pass, Compliance Order by Consent No. 88-11-09-299-02 which requires, inter

alia, "Not later than June 15, 1990, [White Pass] shall ... [excavate] ... from the portion of the remediation areas owned by the City of Skagway and leased to [White Pass] ... all soils containing Pb in excess of 500 ppm as determined by EPA Method 3050." The remediation areas as defined in C.O. 88-11-09-299-02 exclude the usage area.

XXIII. The area addressed herein and hereafter referred to as the "usage remediation area" is the usage area less such portions of the usage area presently covered by asphaltic or concrete pavement. The Department expressly reserves the right to take further such actions as the law may allow with respect to contaminated areas not included in the usage remediation area. In particular, the parties acknowledge that the Department expressly reserves the right to pursue, through Compliance Orders by Consent or by other means, testing and, as appropriate, removal of contaminated soils presently covered by asphaltic or concrete pavement.

XXIV. In consideration of the exercise of enforcement discretion by the Department and in order to avoid the uncertainty and expense of litigation or further compliance order proceedings, Respondents agree to perform the activities in the usage remediation area as set forth in this Order. The Department intends to pursue, through Compliance Orders by Consent or by other means, remediation of lead contamination in the residential area of Skagway simultaneously with the remediation described herein. State and federal laws and regulations govern the disposal of contaminated soils. The Department reserves the right to pursue, through Compliance Orders by Consent or by other means, proper disposal.

XXV. The Department and Respondents agree that the actions undertaken by Respondents do not constitute an admission of any violation of state or federal law, nor shall this Order be used as evidence or as collateral estoppel against Respondents in any action or proceeding other than an action or proceeding to enforce the terms of this Order. Further, Respondents specifically deny any legal liability. Respondents expressly reserve the right to sue any person or other entity for reimbursement for the costs expended pursuant to this Order and for such other relief as the law may allow. Respondents have submitted a cleanup plan to the Department. Respondents agree to implement this plan without deviations except as such deviations may be or may become necessary in order to comply with the stipulations of this Compliance Order by Consent and except as specifically approved in writing by the Department.

A. Respondents agree to remove from the usage remediation area all soils containing in excess of 1000 ppm Pb.

B. Schedule

1. Not later than five (5) days after the effective date of this Order, Respondents shall identify on a diagram subareas of the usage remediation area for testing as described below.

2. Not later than November 15, 1989, Respondents shall initiate excavation of contaminated soils in the usage remediation area.

3. Within five (5) days of signing this Order, Respondents shall identify within the usage area, areas where surface soils exceed 1000 ppm lead. Respondents shall install and maintain necessary signs, fences and other physical structures to prevent tracking of contaminated soils out of these identified areas, and to prevent entry by unauthorized

persons. Current fencing and posting are adequate with the exception that a sign shall be posted on the east side of the Bowhead office building facing the railroad tracks. Any changes must be approved by the Department. Vehicles coming into contact with soils exceeding 1000 ppm lead shall not leave these identified areas without being decontaminated to the satisfaction of the Department official on-site.

4. Not later than January 15, 1990, Respondents shall prepare and submit for DEC approval a long-term material release and tracking prevention program which will apply to existing ore terminal facilities. Respondents shall implement this plan no later than April 15, 1990. Beginning January 15, two composite samples (one from the north end of the usage area and one from the west side of the ore terminal) will be taken every 30 days. Program to include:

a. Monitoring procedures which demonstrate the extent to which ores may be escaping from the ore-handling area. This includes but is not necessarily limited to:

1. Potential tracking or escape resulting from normal movement of ore trucks along State Street and in and out of the ore terminal area.

2. Potential tracking or escape of ore during loading bay operations.

3. Potential escape of ore from openings in ore terminal building through ventilation, leakage or other means.

4. Potential tracking or escape of ore during ship loading operations.

5. Potential tracking from employees themselves into

non-ore-handling industrial areas and/or into residential areas.

b. Periodic reports to DEC of the results of the above sampling,

c. Planned responses to spills of ores, and

d. Likely measures to counter tracking from spills and from normal operations.

5. Not later than June 15, 1990, Respondents shall complete the excavation of all soils in the usage remediation area containing Pb in excess of 1000 ppm as determined by EPA Method 3050.

6. Not later than March 15, 1990, Respondents shall submit to the Department for approval a surface treatment plan for the control of soil migration in the usage remediation area.

7. Not later than June 15, 1990, Respondents shall control soil migration in the usage remediation area by implementation of the approved surface treatment plan. Respondents shall provide for adequate maintenance of the approved surface treatment.

8. The above requirements are based on certain presumptions by the Department and Respondents. In the event that these presumptions prove incorrect, amendment of the schedule or other requirements of this Order may be appropriate.

a. In the event that a representative sample of soils (taken as described below) in any identified subarea are found by EPA Method 3050 to contain less than the stipulated cleanup level for that subarea, underlying soils may be considered to also contain less than the stipulated cleanup level for that subarea and need not be excavated.

b. It is presumed that soils containing more than 1000

ppm Pb will not be found except on or near the pre-existing soil surface. In the event that soils containing in excess of 1000 ppm Pb are found to exist more than forty-eight (48) inches below the surface (or below the proposed finished grade in those areas which, due to previous excavations or natural depressions are slated for filling), the parties agree to renegotiate this Compliance Order by Consent to determine if such soils may be left at such depth. The parties acknowledge that Respondents do not admit any liability for lead contamination in the soil which may be found at depth. It is understood and further agreed that such renegotiation would not take place without an opportunity for the Department to solicit public comments on such a course of action. It is also understood that at some Pb concentration, regardless of depth, Federal laws regarding hazardous substances may take precedence and that soils exceeding Federal limitations may need to be removed and disposed of in a Federally approved landfill,

c. It is presumed that remediation in the usage remediation area and in the terminal (exclusive of the usage remediation area) being performed by White Pass under Compliance Order by Consent No. 88-11-09-299-02 will proceed independently. In the event that White Pass or others, in order to remediate contamination in the terminal area exclusive of the usage remediation area, reach agreement with Respondents to coordinate cleanup activities with the remediation described herein, adjustment of the schedule may be appropriate and will be approved by the Department provided that, in the estimation of the Department:

(1) The time required for the complete remediation of both the usage remediation area and the remainder of the terminal area

is not thereby increased, and

(2) The extent of such complete remediation accomplished in 1989 is not less than the extent of remediation which would result from disapproval of such coordinated activity.

C. Respondents and the Department agree as follows:

1. The results of an analysis of a composite of five (5) samples taken as described below shall be considered representative of the surface (natural or as excavated) of a single subarea.

2. In the event that such a composite is found to contain Pb in excess of the cleanup level, Respondents shall excavate to a more-or-less equal depth the entire subarea of which the composite is considered to be representative.

3. As an alternative to the above, Respondents may differentially excavate the subareas in segments of not less than 500 square feet centered (more-or-less) on the sampling location of each aliquot which is found on individual analysis to exceed the cleanup level.

D. Materials Handling

1. In no case shall soils excavated from the usage remediation area be transported or stockpiled in such a manner as to allow unregulated access by the public, leaching by rainfall, or suspension in the air and subsequent transportation by the action of the wind out of the controlled access areas where excavation, transportation and processing of removed materials are occurring.

2. Respondents shall exercise such dust controls as are necessary to assure that contaminated materials under action of the wind

do not, in the estimation of the DEC Regional Supervisor or his designated on-site representative, increase air-borne dust from the usage remediation area.

3. In no case shall excavated material or any fraction thereof be placed in areas excavated by such removals or in any other areas accessible to the public unless such material has been analyzed and found to contain less than the stipulated cleanup level as determined by EPA method 3050. Analyses must be performed on a representative sample prepared by thoroughly mixing approximately one (1) cubic inch for every ten (10) cubic yards in a batch proposed for such return and taking from such mixture not less than one cubic inch. Analytical samples shall be prepared in duplicate with appropriate identifying numbers. One sample of each such pair shall be sealed with an approved custody seal and provided to the Department within two weeks for independent analysis.

4. Respondents shall exercise such tracking prevention measures as are necessary to assure that contaminated soils exposed during excavation are not tracked out of the usage remediation area by Respondents' ore trucks or other vehicles entering and exiting the usage remediation area.

5. In no case shall topsoil, sand, gravel or other such materials, asphalt or concrete be placed in any part of the usage remediation area without specific written authorization by the Department.

E. Air monitoring

1. Respondents shall continue the monitoring of air-borne dust and lead along the northern boundary of the terminal in accordance with

Federal siting criteria. Specifically, two (2) total suspended particulate (TSP) monitoring devices (one as the primary device and one as a back-up and for comparison checking) which have been installed shall be operated on the current schedule (every third day plus all ship-loading days) with the exception of periods when the Respondents are engaged in soil excavation and removal activities; during such periods the devices shall be operated continuously.

2. The air monitoring devices shall be operated in accordance with the protocols set forth in the Alaska Quality Assurance Manual (for) Ambient Air Quality Monitoring (Draft), September, 1988.

3. The back-up TSP device shall be operated in parallel with the primary device at least one day per week.

4. Analyses shall be performed in accordance with standard methods as set forth in the quality assurance manual referenced above and the results of analyses of all monitoring performed within a given calendar month shall be provided in writing to the Department not later than the twenty-fifth (25th) day of the following month. This written report shall include results from both the primary and the back-up TSP devices for those periods during the month when the two operated in parallel.

F. Sampling and analysis

1. Not later than the date specified in Paragraph XXV. B. 1 above, Respondents shall identify subareas for testing to determine compliance with the cleanup level. Subareas shall be approximately two thousand five hundred (2500) square feet in size, shall not overlap, and shall collectively comprise all of the usage remediation area.

2. To be considered representative for purposes of this Compliance Order by Consent, samples for analysis shall be prepared in accordance with standard methods and by thoroughly mixing five roughly equal aliquots taken from the top one quarter inch (more-or-less) at sites more-or-less evenly dispersed over a subarea.

3. Analytical samples shall be prepared in duplicate with appropriate identifying numbers. One sample of each such pair shall be sealed with an approved custody seal and delivered to the Department within two weeks of sampling. Results shall be made available to the Department within 24 hours of their availability to Respondents. Respondents shall use a Department approved laboratory.

4. In the event that the Pb content of any sample as determined by the Department analysis differs significantly from the Pb content of the duplicate sample as determined by Respondents, both samples shall be reanalyzed. If the results obtained (in the four tests) continue to differ significantly after completion of the second pair of analyses, the highest of the concentrations shall be presumed to be correct unless the Department and Respondents agree that the analysis yielding the highest concentration was in error and agree to accept the highest of the remaining results as the correct value.

G. If Respondents transfer, sell, lease, grant an easement, or in any other manner transfer title or a right to occupy or use, in whole, in part, exclusively or nonexclusively, any portion of the usage area, Respondents shall make the contents of this and any other compliance order applicable to that area known to the transferees and shall attach a copy of the compliance orders to the instruments of transfer and

Respondents shall identify to the transferees with specificity all those areas not known to contain less than 1000 ppm Pb. This requirement shall not expire with the remainder of the compliance orders, but shall continue as long as there remain parts of the usage area which have not been found to contain less than 1000 ppm Pb.

H. Respondents shall, within ninety (90) days of completion of excavation, notify, in writing, the legal owners of any areas which Respondents do not own but of which Respondents have beneficial use through grants, leases, easements or other means, upon the date of execution of this Compliance Order by Consent, providing to said owners a full and complete copy of this Compliance Order by Consent as well as a complete and detailed description of those areas where soils known to contain in excess of 1000 ppm Pb remain.

I. Progress reports

1. Not later than 4:00 PM on the first regular business day of each week, Respondents shall provide to the Department, in writing, a report of the progress made toward compliance with the stipulations of this Compliance Order by Consent in the previous calendar week. The frequency of these reports may be reduced, upon written authorization by the Department, after completion of the excavation and processing of soils from the usage remediation area. The reports shall include at least the following:

a. The status of any activities scheduled in the preceding week together with, as appropriate, an explanation of the causes of any delays which Respondents contend were beyond its effect and control.

b. The approximate volume of soils excavated in the previous week.

c. The results of any soils testing received during the previous week which, in the estimation of Respondents, indicates that any of the subareas are in compliance with the cleanup level.

d. A map of the areas in which excavation is complete indicating those areas where surficial soils exceeding 1000 ppm Pb remain and those areas where surficial concentrations are less than 1000 ppm Pb. XXVI. Respondents further agree, upon demand, to the payment of the following monetary penalties for violations of the above stipulations. "Dollars" means U. S. dollars. "Days" means normal calendar days.

A. For delays in the identification of sampling subareas beyond the date stipulated in Paragraph XXV. B. 1 above: a penalty of five thousand (5,000) dollars.

B. For delays of the initiation of excavation beyond the date stipulated in Paragraph XXV. B. 2 above: a penalty of one hundred thousand (100,000) dollars.

C. For delays in the completion of the excavation of the usage remediation area beyond the date specified in Paragraph XXV. B. 5 above: a penalty of fifty thousand (50,000) dollars plus one thousand (1000) dollars per day for each day beyond the scheduled date up to and including the date on which excavation is complete.

D. For noncompliance with the materials handling provisions: a penalty for each separate documented incident of noncompliance an amount calculated as follows: for the first such incident after the effective date of this Compliance Order by Consent, a penalty of one hundred (100)

dollars; for the second, two hundred (200) dollars; for the third, four hundred (400) dollars; for the fourth, eight hundred (800) dollars; and for the fifth and any succeeding such incidents, one thousand (1000) dollars. In regard to the release of air-borne dust from the exclusion zones, each day or portion thereof during which, in the estimation of the DEC Regional Supervisor or his designated on-site representative, such release continues shall be considered a separate incident. "Documented" means a photograph or other substantial evidence is obtained.

E. For untimely or incomplete submittal of progress reports, a penalty of one hundred (100) dollars for each day beyond the scheduled submittal date up to and including the date on which a complete report is received.

F. For delays in the initiation of air monitoring beyond the date stipulated in Paragraph XXV. E above: one hundred (100) dollars for each day beyond the scheduled date up to and including the date on which air monitoring is initiated.

G. For delays in the establishment and maintenance of segregated ore-handling areas and installation of appropriate structures beyond the date stipulated in Paragraph XXV. B. 3 above: one thousand (1000) dollars for each day beyond the scheduled date up to and including the date on which these actions are completed.

H. For delays in submittal of the long-term material release and tracking prevention program beyond the date stipulated in Paragraph XXV. B. 4 above: one thousand (1000) dollars for each day beyond the scheduled date up to and including the date on which the program is received by the Department.

I. For delays in the implementation of the soil migration controls beyond the date specified in the approved plan: one thousand (1000) dollars for each day beyond the scheduled date up to and including the date on which implementation is complete.

XXVII. The Department reserves the right, after notification by Respondents of completion of remediation as described above, to inspect and to sample any of the areas to determine compliance with the stipulations. In general, the Department will sample only at such depths as reflect the actual depths of excavations but reserves the right to sample at any depth. If requested by Respondents, any such sample shall be thoroughly mixed and split into two roughly equal portions, one of which shall be provided under "custody seal" to Respondents for independent analysis. As with other such samples, in the event that Pb content as determined by the Department differs significantly from the Pb content of the same sample as determined by Respondents, the samples will be reanalyzed and the highest of the four concentrations shall be presumed to be correct unless the Department and Respondents agree that the analysis yielding the highest concentration was in error and agree to accept the highest of the remaining results as the correct value.

XXVIII. Force Majeure

A. "Force Majeure," for the purposes of this Compliance Order by Consent is defined as any event arising from causes beyond the control of the Respondents which delays or prevents the performance of any obligation required herein. "Force Majeure" shall not include (1) increased costs or expenses; (2) technical inability to meet the cleanup requirements set forth herein; (3) failure to apply for any

required permits or approvals or to provide all information required therefore in a timely manner; or (4) normal inclement weather in the Skagway area. "Force Majeure" shall include, but not be limited to (1) injunctive relief granted to third parties enjoining remediation work, and (2) an early, hard and deep freeze which prevents completion of excavation by the date stipulated in Paragraph XXV. B. 5 above.

B. When circumstances occur or are foreseen which may delay the completion of any phase of the remedial work as a result of a Force Majeure event, Respondents shall promptly notify the Department by telephone or personal communication. In addition, within ten (10) days of such notice, the Respondents shall give the Department a written statement of the reasons therefore, the anticipated duration of the delay, the measure taken or to be taken to prevent or minimize the delay, and the timetable for implementation of such measures. Failure to give notice in accordance with this paragraph shall constitute a waiver of any claims of Force Majeure by the Respondents.

C. The Department shall promptly notify the Respondents, in writing, and specify the additional time that is allowed, if any, as necessary for the completion of the work affected by such delay.

XXIX. The Department recognizes that Respondents are desirous of timely approval of minor changes and timely analysis of duplicate samples by the Department. The Department also recognizes that timeliness may be critical to completing the remediation within the schedule set forth above. Accordingly, the Department agrees to take such steps as are feasible and appropriate to provide such actions in a timely manner. The Department acknowledges the need to have a representative available in

Skagway during normal working hours who is empowered to make decisions related to the discretionary provisions of this Compliance Order. The Department acknowledges the need of Respondents to receive analyses of duplicate samples taken by the Department within seven (7) days of their submittal by Respondents. However, except when lack of approval and/or analysis directly effects the ability of Respondents to meet a deadline in this Compliance Order by Consent, failure of the Department to provide approval and/or analysis within a time deemed appropriate by Respondents does not relieve Respondents from their duty to comply with the schedule and requirements of this Order.

XXX. The Department expressly reserves the right to seek enforcement of this Compliance Order by Consent and additionally, at its discretion, file a suit for injunctive relief and civil penalties and/or damages under AS 44.62.590, AS 46.03.760 or AS 46.03.790, or any other appropriate remedy including completion of the remediation as described herein by the Department, in the event that Respondents do not comply with the terms or deadlines set forth herein. However, if Respondents are subject to stipulated penalties under this Compliance Order by Consent, the Department may seek contempt penalties and either the stipulated penalties or penalties under AS 46.03.760(a).

XXXI. Respondents acknowledge, by execution of this Compliance Order by Consent, that they are waiving rights which would attach otherwise to the procedure for issuance of a compliance order under 18 AAC 95, including the right to an adjudicatory hearing and judicial review of the provisions of this order, and that these rights are knowingly and voluntarily waived.

XXXII. In the event a dispute should arise between the parties regarding the implementation or interpretation of the requirements of the Compliance Order by Consent, the parties shall attempt to resolve the dispute by informal negotiations.

XXXIII. The Department expressly reserves the right to initiate further administrative or legal proceedings relating to any violation outside of the usage remediation area and to compel Respondents to undertake additional remediation in the usage remediation area if material conditions presently unknown become known to the Department in the future and this information indicates that remediation activities described in this Compliance Order by Consent are not adequately protective of human health and the environment. The Department further expressly reserves the right to initiate administrative or legal proceedings to recover costs incurred by the Department relative to the remediation of the lead contamination problem in Skagway including costs incurred relative to remediation of the areas addressed in this Compliance Order by Consent.

XXXIV. Respondents and the Department agree that it is proper that all potentially responsible parties be treated equitably, although it is recognized that due to varying conditions equitable treatment does not necessarily mean equal treatment. If the Department agrees to less stringent requirements for remediation in a subsequent Compliance Order by Consent with another party, the Department agrees to consider whether this Compliance Order by Consent should be amended in order to achieve equity between similarly situated parties. If the Department, in its discretion, concludes that no amendment is needed in order to achieve equity, that decision is not subject to further review and will not

affect the validity of the terms of this Compliance Order by Consent.

XXXV. Each of the requirements of this Compliance Order by Consent applies to each of the Respondents individually and failure of one of them to perform any portion of it will not excuse either of the others from the duty to perform. The Department may enforce the terms of the order against the Respondents individually, jointly or in combination.

XXXVI. Effective and Termination Dates

A. This Compliance Order by Consent shall be effective upon the date of its execution by both parties.

B. Certification of Completion of Remedial Action

1. Application When Respondents believe that the demonstration of compliance with the cleanup requirements has been made, Respondents shall submit to the Department a notification of completion of remedial action and a final report which summarizes the work done, any modification made to the plans thereunder relating to the cleanup requirements, and the cleanup requirements achieved or waived. The report shall include or reference any supporting documentation.

2. Certification Upon receipt of the notice of completion of remedial action, the Department shall review the final report and any other supporting documentation and the remedial actions taken. The Department shall issue a certification of completion of remedial action upon a determination that Respondents have demonstrated compliance with the cleanup requirements as set forth herein in accordance with the terms of this Compliance Order by Consent, and that the Respondents are otherwise in compliance with the requirements of this Compliance Order by Consent at the time the Department reviews the notice of completion.

of remedial action. If the Department fails to issue a certificate of completion upon receipt of the Respondents' notice of completion of remediation and the parties are unable to resolve disputes in accordance with Paragraph XXXII above, the Department shall issue a written rejection of the notice of completion which shall constitute final agency action for purposes of judicial review pursuant to Alaska Rules of Appellate Procedure 602(a)(2).

3. Termination Upon the filing of the Department's certificate of completion pursuant to the preceding paragraph, and a showing that the other terms of this Compliance Order by Consent have been complied with, this Order shall be terminated by notice by either party. However, Respondents' obligations to perform post-termination monitoring and reporting shall survive the termination of the Order and shall be enforceable by the Department by reinstatement of this proceeding or by institution of a judicial proceeding.

4. The Department and Respondents agree that upon the filing of the Department's certificate of completion, Respondents have fully resolved their liability, if any, subject to the provisions of Paragraph XXXIII relating to previously unknown conditions, for all alleged violations enumerated in this Compliance Order by Consent within the usage remediation area.

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DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Richard A. Stokes

By: Richard A. Stokes
Regional Environmental Supervisor

Date: 12/11/85

Subscribed and sworn before me this 11 day of Dec, 1989.

Helen M. Rasmussen

Notary Public in and for Alaska

My commission expires: 9/15/93

CURRAGH RESOURCES, INC.

M. Kelly

By: Marvin H. Kelly
Executive Vice President, Mining

Date: Dec 13/89

Witness: *William R. Small*

Subscribed and sworn before me this _____ day of _____, 1989.

Notary Public in and for Alaska

My commission expires: _____

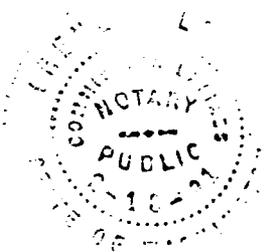
BOWHEAD EQUIPMENT COMPANY

Robert C. Miller

By: Robert C. Miller
President

Date: January 3, 1990

Subscribed and sworn before me this 3rd day of Jan., 1989⁹⁰.



Gene Nelson

Notary Public in and for Alaska WA

My commission expires: 2/18/91

