

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

April 4, 1995

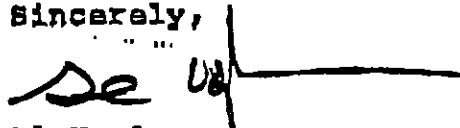
Marvin P. Taylor
President
Whitepass & Yukon Corporation
Box 4070
Whitehorse, Yukon
Y1A3V1

Dear Marvin,

Please regard this correspondence as written approval from the Alaska Department of Environmental Conservation for the lead cleanup conducted by your company in Skagway, Alaska. All up-land sites connected with the cleanup have had heavy metal contaminants removed to this Department's satisfaction.

If I may be of any further information or assistance in this matter, please contact me at 465-5348.

Sincerely,



Al Kegler
Juneau District

STEVE COWPER, GOVERNOR**DEPT. OF ENVIRONMENTAL CONSERVATION**

Division of Environmental Quality
Southeast Regional Office
P.O. Box 32420
Juneau, Alaska 99803

Phone: (907) 789-3151

September 5, 1990

Marvin Taylor
Yukon Alaska Transportation
P.O. Box 4012
Whitehorse, Yukon Territory
Canada, Y1A 3S9

Dear Mr. Taylor:

As discussed in our meeting in Juneau on June 3, 1990, the enclosed addendum documents our mutual understanding of the completion of work under Compliance Order by Consent 88-11-08-299-02. Please sign and return for the files.

Sincerely,



Dick Stokes
Regional Supervisor

Enclosure

cc: Paul Taylor, White Pass, Skagway
Tom Healy, City of Skagway

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

August 14, 1990

Marvin Taylor
President
White Pass Transportation
PO Box 4012
Whitehorse, Yukon Territory
Canada Y1A 3S9

Dear Mr. Taylor,

I have reviewed the data summary submitted on July 20, 1990, by your contractor VRCA Environmental Services, as well as other paperwork submitted during the remediation process. I have spoken with Al Kegler and Marnie Chapman, the Department's on-site representatives, one or both of whom were present throughout upland cleanup. Based on their communication and on the sample results submitted by VRCA, DEC has accepted your 1989-1990 cleanup as being effective in meeting the requirements of Compliance Order By Consent 88-11-09-299-02. This acceptance applies to all remediation areas specified in the Compliance Order. This discharges you from the specific requirements of the Compliance Order dealing with cleanup of the remediation areas. Please be aware that other requirements of this Compliance Order remain in effect, most notably sections referred to or added in the addendum of August 14, 1990.

There are two issues that remain to be discussed. One is the recovery of DEC costs associated with the cleanup. The other is the contamination of the Skagway Harbor. We want to schedule a time soon to deal with the former. Resolution of the latter is on the agenda for this fiscal year.

The cleanup of the upland industrial areas has been long and complicated. Throughout it, you have demonstrated that you operate a responsible and responsive company. We congratulate you on the completion of this major environmental cleanup project.

Sincerely,
Dick Stokes

Dick Stokes
Regional Supervisor



White Pass Transportation, Inc.

October 30, 1989

Via FAX

Mr. Dick Stokes
Regional Supervisor - Southeast
Alaska Department of Environmental Conservation
P.O. Box 32420
JUNEAU
Alaska 99803

Dear Mr. Stokes:

We are in the final stages of completing all alleged lead contamination soil in Skagway east and north of the ore storage building and office building including rail lines, rail yard and rail yard stock piles. We worked this phase of the clean up with super trucks.

Originally we had proposed a method of clean up with conventional equipment and methods for the terminal area immediately north and west of the ore storage building.

Please consider this a request to modify our Compliance Order by Consent dated September 12, 1989 permitting us to clean the area remaining as we originally proposed and is presently being used by Bowhead.

We would still continue to use a super sucker truck along the edge of the ore storage building and the enclosed area of our domestic tank farm located in the leased area.

Respectfully,

A handwritten signature in black ink, appearing to read 'M. Taylor', is written over the typed name.

Marvin P. Taylor
President and
Chief Operating Officer

cc - Al Kegler
Joe Singleton
Paul Taylor

MPT/ss

STATE OF ALASKA
SOUTHEAST REGIONAL OFFICE
DEPT. OF ENVIRONMENTAL CONSERVATION

SIEVE LOWPER, GOVERNOR

789-3151
P.O. BOX 32420
JUNEAU, AK 99803
FAX (907) 789-4877

November 6, 1989

Marvin P. Taylor, President
White Pass Transportation
P.O. Box 435
Skagway, AK 99840

cc: T.H. KING
A.M. STEWART
W.G. RUDDY
L. WATSON

Dear Marvin,

This is to inform you that, in concept, DEC agrees to amend the Compliance Order by Consent, 88-11-09-299-02, to modify cleanup techniques for your use of conventional equipment in the terminal area immediately north and west of the ore storage building. We understand that White Pass will continue the use of a super sucker truck along the edge of the ore storage building and the enclosed area of your domestic tank farm located in the lease area, and also for completion of the railway area as agreed upon.

Al Kegler, Juneau District Manager and site manager for the cleanup in Skagway will work with you regarding your plans for prevention of tracking and fugitive dust control. I am pleased with the continued willingness of White Pass to cooperate with DEC in our mutual goal of lead cleanup in Skagway.

Sincerely,



Dick Stokes
Regional Supervisor

STATE OF ALASKA
SOUTHEAST REGIONAL OFFICE
DEPT. OF ENVIRONMENTAL CONSERVATION

STEVE COWPER, GOVERNOR

789-3151
P.O. BOX 32420
JUNEAU, AK 99803
FAX (907) 789-4877

November 9, 1989

CC: T.H. KING
A.M. STEWART
W.G. RUDDY
L. WATSON

Mr. Paul Taylor
White Pass
P.O. Box 435
Skagway, AK 99840

Dear Mr. Taylor:

Permission is granted to use mechanical grinders and stockpile material outside the existing pole building as requested in your letter of November 9, 1989. We will rely on the material handling provisions of the Compliance Order by Consent to assure that no additional releases of contaminated materials occur.

We appreciate your willingness to aggressively continue your cleanup efforts in spite of the unusually adverse weather.

Sincerely,

Helen Anderson
for Dick Stokes
Regional Supervisor



White Pass Transportation, Inc.

FAX: T.H.King
P.Taylor
M.G.Ruddy
A.M.Stewart
N.M.Kollar
L.Watson

MPT/ss

November 7, 1989

Via FAX

Mr. Dick Stokes
Regional Supervisor - Southeast
Alaska Dept. of Environmental Conservation
P.O.Box 32420
JUNEAU, Alaska 99803

*file
WP - Env US*

Dear Mr. Stokes:

Re: Skagway Lead Soil Cleanup

The Common Council of the City of Skagway, Alaska on Saturday, November 4, 1989, passed Resolution No. 89-23R withdrawing their previous request that the soil lead levels in the Skagway Terminal Company industrial area be lowered from 1,000 ppm to 500 ppm. Resolution No. 89-23R now reads as follows:

NOW, THEREFORE, BE IT RESOLVED that the Skagway City Council hereby withdraws any advocacy of or request for cleanup action levels more stringent than 1,000 ppm for lead in soils of lands that are zoned industrial including lands owned by the City itself that are zoned industrial.

AND BE IT FURTHER RESOLVED that a copy of this resolution shall be transmitted to the Alaska Department of Environmental Conservation.

As you know we were negotiating a Compliance Order based on 1,000 ppm and then had to renegotiate it to comply with 500 ppm. The balance of our industrial area was left at 1,000 ppm.

Our present Compliance Order based on 500 ppm due to the past wishes of the City Council was not based on technical or professional information.

Please consider this our request to amend our Compliance Order by Consent to permit a cleanup of the remaining portion of our Skagway Terminal Company's area to a level of 1,000 ppm.

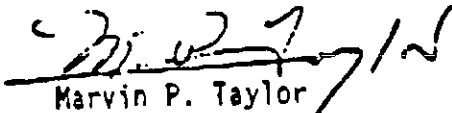
Pag: Two
November 7, 1989

We further request prompt action on our request as winter's freezing weather is rapidly moving in on us to say nothing of the economic burden of cleaning to 500 ppm in an industrial area for which there is no precedent.

We are continuing to do everything possible to cooperate with the Department of Environmental Conservation and complete cleanup by our target date of December 10, 1989.

Thanks for your prompt consideration of our request.

Sincerely,



Marvin P. Taylor
President and
Chief Operating Officer

MPT/ss

STATE OF ALASKA

STEVE LOWPER, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

P. O. Box 32420
Juneau, AK 99803
907-789-3151

Southeast Regional Office

November 20, 1989

Paul Taylor
White Pass Transportation
P. O. Box 435
Skagway, AK 99840

cc: T.H. KING
A.M. STEWART
W.G. RUDDY
L. WATSON

Dear Paul,

In your letter to me of November 7, 1989, you requested us to amend the Compliance Order by Consent (88-11-09-299-02) between us. You cite Resolution 89-23R which was passed by the Skagway City Council on November 4, 1989. That resolution withdrew the city's "advocacy of or request for cleanup levels more stringent than 1,000 ppm for lead in soils of lands that are zoned industrial, including lands owned by the city itself that are zoned industrial."

As you no doubt remember, I went on record in the spring of 1989 of accepting a level of 1,000 ppm lead in soils of industrial areas as being sufficiently protective of public health, assuming controls could be applied to prevent wholesale movement of contaminated soils out of the industrial area. My opinion was based on reviews of technical literature, the Interim Report #3 prepared in December 1988 by Dr. John Middaugh and others of the Alaska Department of Health and Social Services, and the technical memorandum of April 1987 prepared by Ecology and Environment under contract to the Environmental Protection Agency. A series of public forums in Skagway were conducted during the formulation of my opinion.

When, on August 8, 1989, the City of Skagway requested us to require a cleanup level of 500 ppm lead on industrial lands, we considered the request to be more of a land use request than a technical one. We don't think the city said that cleanup to 500 ppm was necessary, but that since DEC was considering a cleanup level of at least as low as 500 ppm in residential sections, the city wanted their lands to be returned to them without restrictions. We honored the city's request because of "due deference" to their rights as a property owner and as a regulator of land use.

The October 23, 1989 final report, "Health Hazard and Risk Assessment from Exposure to Heavy Metals in Ore in Skagway, Alaska," by the Alaska Department of Health and Social Services gives me considerable extra assurance that 1,000 ppm is a sufficiently safe level to leave at the surface of the ore terminal providing that adequate safeguards can be put in place to minimize movement of contaminated soils off-site. With this

in mind, we are willing to amend the Compliance Order by Consent to allow soils of up to 1,000 ppm to remain on the lands subject to the Compliance Order by Consent. We understand that this change will allow you to finish the job more quickly and at less expense. We request that you in return commit to grassing the entire area next summer in order to minimize dust from the remediation area.

This position applies only to the area of the ore terminal covered by the Compliance Order by Consent between us. We are not at this time making a decision on any other industrial areas in town, although we will clearly allow the same standard for Bowhead, et. al., within the "usage area" covered by their Compliance Order by Consent. - This position does not apply to residential areas.

In closing, I wish to thank you for your cooperation and for your willingness to push ahead with the cleanup in spite of the inclement weather.

Sincerely,



Dick Stokes
Regional Supervisor

cc: Skagway Distribution List

**White Pass Transportation Limited**

COPY: T. H. King
A. M. Stewart
W. G. Ruddy
P. Taylor
L. Watson

October 9, 1990

MPT/ss

Mr. Dick Stokes
Regional Supervisor
Department of Environmental Conservation
Southeast Regional Office
P.O. Box 32420
JUNEAU
Alaska 99803

Dear Mr. Stokes:

As requested in your September 6, 1990 letter I am pleased to sign and enclose the addendum for Compliance Order by Consent 88-11-09-299-02.

Sincerely,

Marvin P. Taylor
President and
Chief Operating Officer

Enclosure

MPT/ss

ADDENDUM TO COMPLIANCE ORDER BY CONSENT 88-11-09-299-02

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION; COMPLAINANT

WHITE PASS TRANSPORTATION, INC.; PACIFIC AND ARCTIC RAILWAY AND NAVIGATION COMPANY; AND SKAGWAY TERMINAL COMPANY; RESPONDENT

Section XX

The Department acknowledges that acceptable remediation of a subarea south of Zero-th Street was completed before this compliance order came into effect. This subarea is defined as the area west of a line drawn from the Stardancer Dock (the vehicle ramp approximately 50 feet east of the ore terminal dock) to Zero-th Street. This subarea does not include rail road rights-of-way.

Section XXI, B, 4

The Department waives the requirement that separate plans for fencing and soil migration control be submitted for areas left at greater than 1000 ppm lead. Instead these areas are formally identified and dealt with in this document as follows. The areas left at greater than 1000 ppm are limited to six of the roughly 300 sites included in the remediation areas. The Department considers that soils at these sites can be left with minimal risk to public health or the environment.

Site N30 on the ore terminal area map, located at the southeast corner of the ore terminal immediately under the conveyor system. This area was excavated to 48"; soils at the 48" depth contained 1535 ppm lead.

Sites C5 and C6 on the stockpile area map, located approximately 250 feet south and 100 feet north of the southwest corner of the ore terminal. These areas were excavated to 6-36"; soils contained 1779 - 1842 ppm lead when inadvertently covered by another contractor.

Sites HLA 113 and 116 on the Harding Lawson Associates railroad map, a 300 foot section of railroad track parallel to Congress Way and immediately south of the junction between these tracks and the tracks leading to the Broadway and Ore Terminal Cruise ship docks. These areas were excavated 6"; soils contained 320 - 3370 ppm lead when prematurely covered with 6-8" of ballast.

Sediment left directly under rail road ties in excavated areas. This sediment was left in place to maintain the integrity of the railroad tracks. The majority of excavated areas are now covered with 4-8" of ballast.

Sediment left in the breakwater-rubble pile located on the east bank of the mouth of the Skagway River, southwest of the ore terminal. Sediment in this pile tested at 763 - 2990 ppm lead. The quantity of sediment in this pile is relatively small,

estimated at less than 20 yards. Complete removal of the sediment would require dismantling the heavy cement slabs that comprise the pile and we are not requiring that action at this time. It is understood that the possible need for this action will be reevaluated after decisions have been reached concerning the harbor contamination issue.

Section XXI,C,3

The Department provided approval for the size of HLA transects to be reduced through additional sampling. New sampling sites were established every 250 feet. Excavation of these sites was completed as specified in the compliance order. However the new sample sites did not necessarily correspond to past HLA sites. In areas where past HLA samples exceeded 1000 ppm, further excavation and sampling was required by the Department. A minimum of fifty feet of track area centered on these specific sites was excavated. Additional sampling was done at each site and at locations halfway between these sites and the nearest VRCA sites. The length and/or depth of the excavated area was extended if samples were greater than 1000 ppm Pb.

Section XXI,E,3

The Department approved a sampling plan for washed materials. Sufficient sampling of coarse material was ($>1/4"$) required to demonstrate that this material was well below 1000 ppm Pb. For fine material, ongoing sampling was required. The Department approved a plan in which 3-5 grab samples were collected from every one to two days accumulation of stockpiled washed materials. If any sample exceeded 1000 ppm, we required that the entire one to two day stockpile be reprocessed or shipped back to the mine area.

Section XXI,E,4

The Department acknowledges that after this compliance order became effective, the respondents were consistent in seeking and receiving authorization prior to placing fill in remediation areas. However, sections HLA 115 & 116 were covered with fill prior the compliance order; sections C5 & C6 were covered with fill by a third party after the compliance order. In each of these cases the Department chose to use reasonable discretion and allow the fill and underlying soils to remain in place.

Section XXI,F

Air monitoring was not required from the end of December, 1989 to the beginning of April, 1990. During this period there were no cleanup activities in progress.

Section XXI,G,3

Duplicate samples were provided to the Department as required. Sufficient analysis of these duplicate samples coupled with review of other relevant quality assurance data lead to general

approval of the VRCA laboratory for soil lead analysis. The Department did not analyze all duplicates because of tremendous sample volume. Ongoing quality control oversight was provided by continuing to require that duplicates of all samples be submitted for archival or analysis, and by independent collection of field samples.

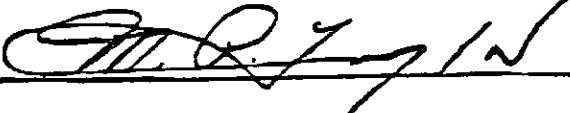
Section XXI, G, 7
Mislabelled, should be G, 4

Section XXI, G (page 20)
This section is mislabeled as "G", the same designation as the previous section. The Department waives the land use restrictions and annual sampling required in this section. Notification of the current legal owners, and of any future land transferees, of any portion of the remediation area left at greater than 1000 ppm, remains applicable and can be satisfied by provision of this compliance order and addendum.

Section XXI, H
The Department acknowledges that progress reports which did not contain all specified information were acceptable, provided that such information was made available through other means.

Attachment
The fines portion of the washed contaminated sediment shall be restricted to use in industrial areas or incorporation into a stable matrix, such as concrete or asphalt. This material totals approximately 1000 cubic yards and assays at 420 - 990 ppm lead; it described as the large sandpile located roughly 150 feet west of the ore terminal. Restrictions in use are made to insure that this material is not released into residential or pristine areas.

Signed by:

 Date: 10/5/90

Marvin P. Taylor
President
White Pass Transportation, Inc.
Pacific & Arctic Railway & Navigation Company
Skagway Terminal Company

 Date: 8-28-90

Richard A. Stokes
Regional Environmental Supervisor
Alaska Department of Environmental Conservation

PACIFIC AND ARCTIC RAILWAY AND NAVIGATION COMPANY

SKAGWAY TERMINAL COMPANY LIMITED

September 11, 1989

Mr. Dick Stokes
Southeast Regional Supervisor
State of Alaska
Department of Environmental Conservation
9000 Old Glacier Highway
JUNEAU, Alaska 99803

Dear Mr. Stokes:

Re: Compliance Order by Consent

I enclose the executed Compliance Order by Consent.

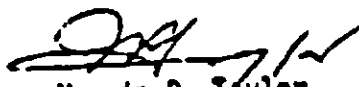
I would like to confirm various matters that were discussed before the order was signed:

1. With regard to II, the railroad facilities are owned by PARN.
2. White Pass Transportation, Inc. is not party to the contract on the usage area with Curragh and was not party to the Cyprus Anvil contract.
3. The VRCA contract is with PARN and Skagway Terminal Company and they will be the companies doing and supervising the work.

As you know, White Pass Transportation, Inc. is denying liability but signed the Order only to permit clean up to begin.

Thank you once again for your assistance and cooperation throughout.

Yours truly,


Marvin P. Taylor
President and
Chief Operating Officer

Enclosure
MPT/ss

SCHEDULE 2

THE STATE OF ALASKA

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Complainant,

vs.

WHITE PASS TRANSPORTATION, INC.
and
PACIFIC AND ARCTIC RAILWAY
AND NAVIGATION COMPANY
and
SKAGWAY TERMINAL COMPANY

Respondent.

SEP 20 1989

C.O. 88-11-09-299-02

COMPLIANCE ORDER BY CONSENT

WHEREAS, the State of Alaska Department of Environmental Conservation (hereinafter "Department") and White Pass Transportation, Inc., Pacific and Arctic Railway and Navigation Company, and Skagway Terminal Company (hereinafter jointly and severally "Respondent") 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 Respondent 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 Respondent Skagway Terminal Company ("STC") in 1981. PARN and STC are wholly-owned subsidiaries of Respondent White Pass.

II. Respondent 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. Respondent is a person under Alaska state law, licensed to do business and doing business in Alaska.

III. 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.

IV. 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.

V. Curragh Resources, a Canadian partnership, purchased the Faro 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".

VI. Yukon Alaska Transport, Inc. ("Yukon") is a wholly-owned subsidiary of Lynden, Inc., a Washington corporation.

VII. Bowhead Equipment Company ("Bowhead") is a wholly-owned subsidiary of Lynden, Inc., a Washington corporation.

VIII. From 1969 until 1982, Respondent, 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.

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

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

XI. 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 Respondent, in part, has caused or permitted.

XII. 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 Bowhead under a use agreement with Respondent ("usage area"), and

D. The upland (landward of the top of the harbor rip-rap) portion of the rail/marine terminal area leased to Respondent by the City, less the usage area ("terminal").

XIII. On December 8, 1988, the Department issued Notices of Intent to Issue Compliance Orders ("Notices") to Bowhead (C. O. No. 88-11-09-299-01), Respondent White Pass (88-11-09-299-02), and 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 1981 and the owner of the concentrates shipped through Skagway prior to that year; and to Curragh (88-11-09-299-04) the then-current operator of the Faro mill and the owner of the concentrates then 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.

XIV. On or about January 17, 1989, Respondent submitted a report as required by its Notice (C. O. No. 88-11-09-299-02) describing the movement of concentrates through Skagway when Respondent 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.

XV. On January 25, 1989, Bowhead, Curragh and Yukon ("Bowhead et al") 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.

XVI. On or about March 10, 1989, Bowhead, et al 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").

XVII. On or about April 6, 1989, the Department notified Bowhead et al and Respondent 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.

XVIII. Subsequent to the issuance of these notices, Bowhead et al removed soils from the usage area. However, surface soils in this area still contain in excess of 1000 ppm Pb and further remediation will be necessary.

XIX. On August 8, 1989, the City Council of the City of Skagway adopted resolution #89-16R which states, in part, "Now, therefore be it resolved that the Skagway City Council hereby requests that ...(a)ll soils containing 500 ppm or greater lead compounds are to be removed and disposed of in an environmentally safe manner..." On August 17, 1989, this resolution was vetoed by Skagway Mayor Bill Feero. On August 21, 1989, the City Council passed Resolution #89-18R which states, in part, the City Council's "...support of a cleanup action level of 500 ppm lead", affirms "(t)he need for a surface stabilization program", and "requests ADEC to set cleanup levels in minimize future land use restrictions."

XX. The areas addressed herein and hereafter referred to as the "remediation areas" are: (1) the entire area south of "Zero-th Street" which is owned by, leased to, or otherwise occupied or used by Respondent less only that area occupied by Bowhead under the aforementioned use agreement, hereafter the "terminal", (2) all rights-of-way occupied by Respondent's railroad tracks south of the Gold Rush Cemetery less only such rights-of-way which may be included in the terminal as described above, hereafter the "right-of-way", and (3) the entire area north of 24th Street and east of the Skagway River which is owned or otherwise occupied or used by Respondent less only that portion which may be included in the right-of-way as described above, hereafter the "rail yard". The remediation areas are the sole subjects of the following paragraphs. 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 remediation areas addressed herein.

XXI. Respondent agrees to the following stipulations ("remediation"). However, Respondent expressly denies any legal liability for such removal and reserves to itself the right to seek reimbursement and such other relief as the law may allow from third parties. Respondent acknowledges that 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. Respondent also acknowledges that 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.

A. Respondent has contracted with VRCA for the excavation (removal and processing) of contaminated soils in the remediation areas. The plan prepared by VRCA has been reviewed by the Department and the public. Respondent agrees 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.

B. Schedule

1. Not later than five (5) days after the date of execution of this Compliance Order by Consent, Respondent shall identify subareas, sampling transects, and sample locations for testing as described below.

2. Not later than 15 days after the date of execution of this Compliance Order by Consent, Respondent shall initiate excavation of the contaminated soil stockpiles in the railyard.

3. Not later than June 15, 1990, Respondent shall complete the following excavations. Pb concentrations shall be as determined by EPA Method 3050.

a. From the portion of the remediation areas owned by the City of Skagway and leased to Respondent of all soils containing Pb in excess of 500 ppm, and

b. From the portions of the remediation areas not owned by the City of Skagway of all soils containing Pb in excess of 1000 ppm.

4. Not later than June 15, 1990, Respondent shall prepare and submit to DEC for approval a plan for fencing to restrict public access and soil migration controls ("area control plan") for areas where soil Pb concentrations in excess of 500 ppm will remain. By "soil migration controls" Respondent and the Department mean measures to effect the stability under normal traffic and wind conditions. The plan shall include at least the following:

a. A map or maps showing the areas where soil concentrations exceeding 500 ppm Pb remain.

b. A map or maps showing which of the above described areas have been provided with soil migration controls (seeding or other surface treatment) and indicating what controls have been used in each area.

c. A map or maps showing areas which will be provided with soil migration controls and indicating what controls will be used in each area.

d. A map or maps indicating the locations of existing and planned fences to restrict public access.

e. A detailed schedule for completion of all public access restrictions and soil migration controls.

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

a. It is presumed that another party or parties named herein, namely Bowhead, Yukon and/or Curragh, will commit to complete remediation to 500 ppm in areas already partially cleaned by those parties in 1988. In the event that such commitment is not obtained by October 15, 1989, the Department will so notify Respondent and shall extend all subsequent schedule dates herein by twenty (20) days to allow Respondent time to remediate these areas.

b. 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.

c. It is presumed that soils containing more than 500 ppm Pb will not be found except on or near the pre-existing soil surface. In the event that soils containing in excess of 500 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. 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,

d. It is presumed that the railyard will be found upon testing to contain Pb in concentrations less than the cleanup level except as identified in the VRCA Plan of Operations dated July 25, 1989; that is: in the immediate vicinity of the existing stockpiles and at the sites already identified by Harding Lawson Associates (hereafter "HLA") in the preparation of their February 7, 1989, report entitled Surficial Soil Sampling Program - White Pass and Yukon Route Railroad - Skagway, Alaska. If this presumption is found by sampling (as described below) to be incorrect, amendment of the schedule may be necessary to allow for additional cleanup in the railyard.

e. It is presumed that remediation in the usage area and in the terminal (exclusive of the usage area) will proceed independently. In the event that Bowhead et al or others, in order to remediate contamination in the usage area, reach agreement with Respondent 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 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.

f. It is presumed that the remediation will not be enjoined by third parties. The Department understands that deadlines may need renegotiation if third parties successfully enjoin work on the project.

C. In regard to the right-of-way, Respondent and the Department agree as follows:

1. In the event that any sample as reported by HLA exceeded 1000 ppm Pb prior to any of the excavation work contemplated under this Compliance Order by Consent, Respondent will excavate to a more-or-less equal depth an area 10 feet wide and 250 feet long (along the railroad tracks) centered at the HLA transect.

2. After excavation, respondent shall analyze a composite of five (5) samples taken as described below. In the event that analysis of such a composite sample exceeds 1000 ppm Pb, Respondent shall again excavate to a more-or-less equal depth an area 10 feet wide and 250 feet long (along the railroad tracks) centered at the HLA transect.

3. Respondent may reduce the area to be excavated at any HLA transect upon written authorization by DEC by establishing additional transects and analyzing composites of five (5) samples (taken as described below) at such additional transects.

4. All soils within five (5) feet of the centerline of the track which would otherwise have a surficial Pb concentration in excess of 500 ppm, shall be covered in accordance with standard railroad practice with suitable ballast (generally not less than three (3) inches) which has a Pb concentration of less than 500 ppm.

5. All soils within the right-of-way more than five (5) feet from the centerline of the track which would otherwise have a surficial Pb concentration in excess of 500 ppm, shall be graveled, grassed or otherwise treated to prevent air-borne migration of contaminated soils into less contaminated areas.

D. In regard to the terminal area and that portion of the railyard known to be contaminated (the immediate vicinity of the existing stockpiles and at the sites already identified by HLA), Respondent 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, Respondent shall excavate to a more-or-less equal depth the entire subarea of which the composite is alleged to be representative.

3. As an alternative to the above, Respondent 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.

K. Materials Handling

1. In no case shall soils excavated from the remediation areas 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 ("exclusion zones").

2. Respondent shall exercise such dust controls as are necessary to assure that contaminated materials under action of the wind do not as a result of Respondent's activities, in the estimation of the DEC Regional Supervisor or his designated on-site representative, increase air-borne dust from the exclusion zones or outside of the remediation areas prior to the establishment of exclusion zones.

3. In no case shall removed 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 for that proposed placement area 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 72 hours for independent analysis.

4. In no case shall topsoil, sand, gravel or other such materials, asphalt or concrete be placed in any part of the remediation area without specific written authorization by the Department. Respondent shall remove any such material within seventy-two (72) hours unless Respondent demonstrates to the satisfaction of the Department that areas so covered had, prior to covering, surficial concentrations less than the applicable cleanup level and that leaving such coverage, together with any mitigation Respondent will undertake, will not adversely affect public health or the environment. This provision is not intended to and does not restrict the right of Respondent to cover any part of the remediation area with plastic sheets, tarps or other readily removable materials, nor does it apply to the movement of excavated materials within or between the exclusion zones.

F. Air monitoring

1. Respondent shall provide for monitoring of air-borne dust and lead along the northern boundary of the terminal in accordance with Federal siting criteria as described in the attached audit. Specifically, two (2) total suspended particulate (TSP) monitoring devices (one as the primary device and one as a back-up and for comparison checking) shall be installed and operated continuously from thirty-five (35) days after the date of execution of this Compliance Order by Consent until the completion of all excavation, transportation and processing of removed materials within the terminal site and until specific written authorization is given by the Department. Not later than five (5) days after the date of execution of this Compliance Order by Consent, Respondent shall issue a purchase order for the equipment required to perform this monitoring.

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 tenth (10th) 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.

G. Sampling and analysis

1. Not later than five (5) days after the date of execution of this Compliance Order by Consent, Respondent shall identify subareas, sampling transects, and sample locations for testing to determine compliance with the cleanup levels.

a. Subareas in the terminal area and in the immediate vicinity of the stockpiles of contaminated material at the railyard shall be approximately fifty (50) feet square, shall not overlap, and shall collectively comprise all of the remediation area. By "immediate vicinity" Respondent and the Department agree to include contaminated areas as identified by HLA and areas through which contaminated material may have been transported by Respondent and areas into which contaminated materials from those stockpiles or such transportation may have been carried by the wind.

b. Along the right-of-way and the rail extensions into the railyard and the terminal, sampling transects shall be those used by HLA in the preparation of their February 7, 1989, report referenced above (hereafter "HLA transects"). Additional transects may be established by Respondent between the HLA transects if approved by the Department.

c. Along the road adjacent to the railbed and its extensions into the railyard and the terminal to be used by Respondent for transportation of excavated material during the remediation of the railyard and the right-of-way (hereafter the "haul road"), sampling transects shall be established at points more-or-less on lines perpendicular to that road through the above described right-of-way sampling stations (HLA transects). Where such transects cannot be established (ie: where the road is not adjacent to portions of the railbed sampled by HLA), Respondent shall establish transects at approximately the same intervals (250 feet) used in the establishment of the HLA transects.

d. In that portion of the railyard not in the immediate vicinity of the stockpiles as described above, forty (40) sampling locations shall be established randomly throughout in cooperation with a Department representative.

2. ~~To be considered~~ representative for purposes of this Compliance Order by Consent, samples for analysis shall be prepared as described in the HLA report and:

a. For subareas of the terminal and the railyard (as described above): 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 the subarea.

b. For transects along the railroad: by thoroughly mixing five (5) roughly equal aliquots taken from the top one quarter inch (more or less), three (3) taken at approximately the same locations as used by HLA, one (1) along an eastward extension of the HLA transect halfway (more-or-less) between the easternmost rail and the adjacent pipeline, and one (1) along an eastward extension of the HLA transect approximately under or immediately east of the pipeline.

c. For transects along the haul road: by thoroughly mixing three roughly equal aliquots each of which consists of not less than one quarter and not more than one half cubic inch taken from the top one quarter inch (more or less) taken at sites more-or-less equally spaced between the westernmost rail of the adjacent track and the western edge of the haul road or, in the event that there is no adjacent track, more-or-less equally spaced across the road.

d. For sampling locations in that portion of the railyard not in the immediate vicinity of the stockpiles of contaminated material: 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 an area approximately twenty (20) feet in diameter centered on the sample site.

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 provided within 72 hours of collection to the Department for independent analysis.

4. In the event that the Pb content of any sample as determined by the Department differs significantly from the Pb content of the duplicate sample as determined by Respondent, 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 Respondent 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.

H. Restrictions on land use

1. In the event that there exists upon completion of this remediation any portion of the remediation area that has been tested for lead contamination and found to contain more than 500 ppm Pb at the surface prior to implementation of soil migration controls the following restrictions will apply:

a. If Respondent transfers, sells, leases, grants an easement, or in any other manner transfers title or a right to occupy or use, in whole, in part, exclusively or nonexclusively, any portion of the remediation area that has not been tested for lead contamination or has been tested and found to contain more than 500 ppm Pb, Respondent 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 Respondent shall identify to the transferees with specificity all those areas not known to contain less than 500 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 remediation area which have not been found to contain less than 500 ppm Pb.

b. Respondent shall, within ninety (90) days of completion of excavation, notify, in writing, the legal owners of any areas which Respondent does not own but of which Respondent has 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 500 ppm Pb remain.

c. Neither Respondent nor any person acting for or with the authorization of Respondent, shall excavate or otherwise disturb any such area except upon the specific written authorization of the Department. This provision is not intended to and does not restrict the right of the Respondent to conduct normal maintenance, such as replacement of damaged ties, provided that such activities do not result in the transport of soils containing more than 500 ppm Pb out of the corridor within five (5) feet of the centerline of the track. This requirement shall not expire with the remainder of the compliance orders, but shall continue as long as there remain parts of the remediation area which have not been found to contain less than 500 ppm Pb.

2. Respondent shall annually sample and analyze for Pb, not more than fifty (50) soil samples collected at sites into which soils containing in excess of 500 ppm Pb may have migrated. Such sites shall be reviewed and approved by the Department prior to sampling. The number and frequency of such samples may be decreased upon written authorization by the Department provided the sample results demonstrate that, in the estimation of the Department, such migration is not occurring. This requirement shall not expire with the remainder of the compliance orders, but shall continue as long as there remain parts of the remediation area which have not been found to contain less than 500 ppm Pb.

I. Progress reports

1. Not later than 4:00 PM on the first regular business day of each week after the date of execution of this Compliance Order by Consent, Respondent 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 that portion of the remediation areas owned by the City of Skagway. 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 Respondent contends were beyond its effective control.

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

c. The results of any soils testing during the previous week which, in the estimation of Respondent, 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 500 ppm Pb remain and those areas where surficial concentrations are less than 500 ppm Pb.

XXII. Respondent further agrees, 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, transects, and locations beyond the date stipulated above: five thousand (5,000) dollars.

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

C. For delays in the issuance of a purchase order for air monitoring equipment beyond the date stipulated above: five thousand (5000) dollars. For delays in the initiation of air monitoring beyond the date stipulated above: one hundred (100) dollars for each day beyond the scheduled date up to and including the date on which air monitoring is initiated.

D. For delays in the completion of the excavation of the remediation areas beyond the date specified above: fifty thousand (50,000) dollars plus one thousand (1000) dollars for each day beyond the scheduled date up to and including the date on which excavation is complete.

E. For delays in the submittal of an area control plan beyond the date specified above: five thousand (5,000) dollars.

F. For delays in the implementation of the area control plan 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.

G. 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.

H. 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.

I. The Department expressly reserves the right, in addition to or in lieu of the above penalties, to initiate administrative proceedings or to seek contempt judgement and any such penalties and injunctive relief as the law may allow, including completion of the remediation as described herein by the Department, in the event that Respondant does not comply with the terms or deadlines set forth herein.

XXIII. The Department reserves the right, after notification by Respondent 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 Respondent, any such sample shall be thoroughly mixed and split into two roughly equal portions, one of which shall be provided under "custody seal" to Respondent 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 Respondent, the samples will be reanalyzed and the highest of the four concentrations shall be presumed to be correct unless the Department and Respondent 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.

XXIV. 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 Respondent 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 therefor in a timely manner; or (4) normal inclement weather in the Skagway area.

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, Respondent shall promptly notify the Department by telephone or personal communication. In addition, within ten (10) days of such notice, the Respondent 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 Respondent.

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

XXV. The Department recognizes that Respondent is 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 Respondent to receive analyses of duplicate samples taken by the Department within seven (7) days of their submittal by Respondent. However, failure of the Department to provide approval and/or analysis within a time deemed appropriate by Respondent does not relieve Respondent from its duty to comply with the schedule and requirements of this Order.

XXVI. Respondent acknowledges that should any provision of this Compliance Order by Consent not be met, the Department may 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.

XXVII. Respondent acknowledges, by execution of this Compliance Order by Consent, that he is 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 Department's determinations in this matter, and that these rights are knowingly and voluntarily waived.

XXVIII. If the Respondent transfers, sells, or leases any portion of the remediation areas addressed in this Compliance Order by Consent to another party, prior to Respondent's fulfillment of the provisions of this Compliance Order by Consent with respect to such portion, Respondent shall incorporate a copy of this Compliance Order by Consent into the documents of transfer or lease, and shall provide in those documents that the new owners or lessees shall take or lease subject to compliance with this Compliance Order by Consent.

XXIX. 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.

XXX. The Department expressly reserves the right to initiate further administrative or legal proceedings relating to any violation not described and dealt with in this Compliance Order by Consent. The Department further reserves the right to initiate further administrative or legal proceedings relating to this violation but to areas outside of the remediation area addressed herein or in the event that material information regarding this violation of which the Department is not presently aware becomes known to the Department in the future. 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.

XXXI. Respondent 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.

XXXII. 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 Respondent believes that the demonstration of compliance with the cleanup requirements has been made, Respondent 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 Respondent has demonstrated compliance with the cleanup requirements as set forth herein in accordance with the terms of this Compliance Order by Consent, and that the Respondent is 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.

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.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Richard A. Stokes

By: Richard A. Stokes
Regional Environmental Supervisor

Date: 9-8-89

Subscribed and sworn before me this 9th day of Sept, 1989.

Walter M. Gusterson

Notary Public in and for Alaska

My commission expires: 9-15-89

WHITE PASS TRANSPORTATION, INC.

and
PACIFIC AND ARCTIC RAILWAY)
AND NAVIGATION COMPANY)
and
SEAGWAY TERMINAL COMPANY)

Marvin P. Taylor

By: Marvin P. Taylor
President and Chief Operating Officer

Date: September 12, 1989

Subscribed and sworn before me this 12th day of September, 1989.

[Signature]

Notary Public in and for Alaska
My commission expires: 11/26/91