

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In The Matter Of:

AZC Township Soil Area :  
Borough of Burgettstown : Hazardous Sites Cleanup Act  
Smith Township :  
Washington County, Pennsylvania :

**CONSENT ORDER AND AGREEMENT:**  
**INVESTIGATION AND CLEANUP OF AZC TOWNSHIP SOIL AREA**

This Consent Order and Agreement ("CO&A") is entered into this 21<sup>ST</sup> day of NOVEMBER, 2013, by and between the Commonwealth of Pennsylvania, acting through the Department of Environmental Protection ("Commonwealth" or "Department") and Cyprus Amax Minerals Company ("Cyprus").

**FINDINGS**

The Department has found and determined the following:

**Authority**

A. The Department is the agency with the duty and authority to administer and enforce the Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001; the Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, 35 P.S. §§ 6020.101-6020.1305 ("HSCA"); the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9675 ("CERCLA"); the Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995, P.L. 4, No. 1995-2, 35 P.S. §§ 6026.101-6026.909 ("Act 2"); the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, No. 97, *as amended*, 35 P.S. §§ 6018.101-6018.1003; Section 1917-A of the Administrative Code of 1999, Act of April 9, 1929 P.L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative Code"); and the rules and regulations ("rules and regulations") promulgated thereunder.

### Background

B. Cyprus is a wholly owned subsidiary of Freeport-McMoRan Corporation, a wholly owned subsidiary of Freeport-McMoRan Copper & Gold Inc., with a business address at 333 North Central Avenue, Phoenix, Arizona.

C. Beginning in 1913, American Zinc and Chemical Company ("AZC"), a former subsidiary to a predecessor-in-interest to Cyprus, owned approximately 155 acres of land in Smith Township, Pennsylvania, near the Borough of Burgettstown, where it operated a coal-fired zinc smelter facility ("AZC Site"). AZC ended its zinc smelter operations at the AZC Site in 1947. Beginning in late 1947 and continuing into 1950, AZC sold various portions of the AZC Site, ultimately selling all of its property interests there. After liquidating all of its property interests at the AZC Site, AZC was dissolved as a Pennsylvania corporation in 1951.

D. During its operations, AZC generated various waste materials at the AZC Site, including but not limited to air emissions; slag; discarded retorts and condensers; brick; coal ash; and construction debris. On June 9, 2009, Cyprus entered into a consent order and agreement with the Department to investigate and remediate the AZC Site. Per that consent order, the investigation of the AZC Site is in progress.

E. The Parties recognize that some of the waste materials generated at the AZC Site are likely to have been released in or onto surrounding areas, either through their transport by air; their use as fill; or otherwise. This CO&A memorializes the Parties' agreement on Cyprus' investigation and cleanup of soils impacted by waste materials of areas surrounding and impacted by operations at the AZC Site.

F. For purposes of this CO&A, the AZC Township Soil Area ("Township Soil Area") shall mean the soil of all residential properties, non-residential properties, public properties, and agricultural properties within the Site Boundaries defined in the Statement of Work ("SOW") attached hereto as Exhibit A, or anywhere Waste Materials from the AZC Site have come to be

located. A map of the Township Soil Area is attached hereto as Exhibit B. The Township Soil Area is subject to change as specified in the SOW.

G. For purposes of this CO&A, waste material ("Waste Material") shall mean waste material from the AZC Site that contains a (1) "hazardous substance" under Section 103 of HSCA, 35 P.S. § 6020.103, and Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); or (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

H. The AZC Site and the Township Soil Area shall together be considered one "site" under Section 103 of HSCA, 35 P.S. § 6020.103, and, as such, investigation and cleanup work performed there pursuant to this CO&A shall be eligible for the Department's waiver of State and local permits, as described in Section 504(g) of HSCA, 35 P.S. § 6020.504(g).

#### Cyprus' Liability

I. Some of the Waste Materials described in Paragraph D are "hazardous substances," as that term is defined in Section 103 of HSCA, 35 P.S. § 6020.103, and in Section 101 of CERCLA, 42 U.S.C. § 9601.

J. Past and present conditions at the Township Soil Area constitute a "release" or threatened "release" of "hazardous substances," as those terms are defined in Section 103 of HSCA, 35 P.S. § 6020.103, and in Section 101 of CERCLA, 42 U.S.C. § 9601.

K. As an area where hazardous substances have been released, the Township Soil Area is a "site," as that term is defined in Section 103 of HSCA, 35 P.S. § 6020.103, and in Section 101 of CERCLA, 42 U.S.C. § 9601.

L. During the course of the investigation and cleanup of the Township Soil Area, the Department anticipates incurring "response" costs, as that term is defined in Section 103 of HSCA, 35 P.S. § 6020.103.

M. The Department believes that, as the successor in interest to the “operator” of a “site” at the time of a “release” or threatened “release” of “hazardous substances,” Cyprus is a “responsible person” as those terms are defined in Section 103 of HSCA, 35 P.S. § 6020.103, and as those terms are used in Section 701 of HSCA, 35 P.S. § 6020.701, and in Section 107 of CERCLA, 42 U.S.C. § 9607, with respect to the release and threatened release of hazardous substances at the Township Soil Area.

N. The Department believes that, as the successor in interest to the “owner” of a “site” at the time of a “release” or threatened “release” of “hazardous substances,” Cyprus is a “responsible person” as those terms are defined in Section 103 of HSCA, 35 P.S. § 6020.103, and as those terms are used in Section 701 of HSCA, 35 P.S. § 6020.701, and in Section 107 of CERCLA, 42 U.S.C. § 9607, with respect to the release and threatened release of hazardous substances at the Township Soil Area.

O. The Department believes that Cyprus is strictly and jointly and severally liable for response costs, damages and any applicable interest which result from the release or threatened release of hazardous substances at the Township Soil Area, pursuant to Sections 6020.702(a) and (b) of HSCA, 35 P.S. § 6020.702(a) and (b).

#### Settlement

P. The Department and Cyprus have engaged in extensive negotiation over settlement of the Department’s potential claims against Cyprus as to the investigation and cleanup of the Township Soil Area.

Q. The Department has elected to enter into a settlement with Cyprus requiring Cyprus to conduct an investigation and cleanup of the Township Soil Area. Cyprus reserves its rights to seek cost recovery and contribution from other parties not participating in this CO&A.

R. The Department's settlement with Cyprus calls for Cyprus' undertaking the investigation and cleanup of soils at properties that provide Cyprus with access within the Township Soil Area pursuant to the cleanup levels and procedures described in the Scope of Work, in exchange for a Covenant Not To Sue by the Department as set forth in Paragraph 11 and the Contribution Protection as set forth in Paragraph 20.

S. This CO&A memorializes the Parties' agreement as to the investigation of the Township Soil Area and the implementation of the Township Soil Area cleanup.

T. Cyprus has submitted for the Department's review and approval a SOW describing the plan to investigate and clean up the Township Soil Area specific to lead, cadmium, and arsenic. The Department has approved the SOW. A copy of the SOW is attached as Exhibit A.

U. The Department's settlement with Cyprus is in the public interest and is authorized by Sections 505(g) and 505(h) of HSCA, 35 P.S. §§ 6020.505(g) and 6020.505(h).

### **ORDER**

NOW THEREFORE, after full and complete negotiation of all matters set forth in this CO&A, and upon mutual exchange of the covenants contained herein, the Parties intending to be legally bound, it is hereby ORDERED by the Department, and AGREED to by Cyprus and the Department, as follows:

1. This CO&A is an Order of the Department authorized and issued pursuant to Sections 505(c) and 1102 of HSCA, 35 P.S. §§ 6020.505(c) and 6020.1102, Section 107 of CERCLA, 42 U.S.C. § 9607, and Section 1917-A of the Administrative Code. Except as provided herein, the failure of Cyprus to comply with any term or condition of this CO&A shall subject Cyprus to all penalties and remedies provided by HSCA and the Administrative Code for failing to comply with an order of the Department.

## CYPRUS' REMEDIAL ACTION FOR THE SITE

2. Cyprus seeks a covenant not to sue pursuant to HSCA, CERCLA and other applicable law for the remediation of identified contamination at the Township Soil Area. Cyprus shall therefore undertake the investigation and cleanup of the Township Soil Area in the manner outlined in this Paragraph.

- a. Within fifteen (15) days of the effective date of this CO&A, as described in Paragraph 25 ("Effective Date"), Cyprus shall submit to the Department the name of the environmental consultant who will be implementing the remedy for the Township Soil Area in accordance with the SOW.
- b. Cyprus shall develop and implement a Sampling Analysis Work Plan ("SAP") in accordance with the SOW. The SAP shall be submitted to the Department for approval ninety (90) days after the Effective Date of this CO&A. The SAP shall include a Quality Assurance Project Plan ("QAPP") for the Township Soil Area.
- c. All activities undertaken by Cyprus pursuant to the CO&A shall be in accordance with the requirements of all applicable federal and state laws and regulations. The activities required of Cyprus pursuant to this CO&A shall be necessary and consistent with the National Contingency Plan, 40 C.F.R. Part 300 and Section 105 of CERCLA, 42 U.S.C. § 9605.
- d. After completing implementation of the SAP, Cyprus shall submit and implement a Remedial Action Work Plan ("RAWP") in accordance with the SOW.
- e. After completing implementation of the RAWP, Cyprus shall submit to the Department within ninety (90) days a final completion report for the Township Soil Area. Within thirty (30) days of receiving the final completion report, the Department shall either issue a letter of completion to Cyprus or notify Cyprus in writing of the activities that must be taken to complete the cleanup of the

Township Soil Area, provided, however, that the Department may only require Cyprus to perform such additional activities to the extent such activities are consistent with the scope of the remedy selected in the SOW. A letter of completion issued by the Department pursuant to this paragraph shall terminate any and all of Cyprus' obligations under this CO&A .

#### **TOWNSHIP SOIL AREA ACCESS**

3. To the extent any part of the Township Soil Area, or any other property where access is needed to implement this CO&A, is owned or controlled by Cyprus, Cyprus shall provide the Department and its representatives with access at all reasonable times to that part of the Township Soil Area, or such other property, for the purpose of conducting any activity related to this CO&A.

4. To the extent any part of the Township Soil Area, or any other property where access is needed to implement this CO&A, is owned or controlled by persons other than Cyprus, its successors or assigns, Cyprus shall use the efforts described in the SOW to secure from such persons an agreement to provide access thereto for Cyprus, the Department, and their representatives (including contractors) for the purpose of conducting any activity related to this CO&A.

#### **PAYMENT OF DEPARTMENT RESPONSE COSTS**

5. On a monthly basis or as otherwise agreed to by the Parties, the Department shall submit, in group, cost invoices to Cyprus for response costs the Department incurs in connection with the Township Soil Area. Within ten (10) business days of Cyprus' receipt of a group of invoices from the Department, Cyprus shall review the invoices and shall e-mail the Department to advise, as to each invoice, either that (a) the invoice has been approved and will be timely processed for payment; or (b) the invoice has been disapproved, along with the reasons therefor. Should a dispute arise as the result of Cyprus' approval or disapproval of an invoice or the failure of Cyprus to timely review or pay an invoice, the Parties shall engage in the dispute resolution

process described in Paragraph 22. The Parties shall meet at least once every three months, or as otherwise agreed, to review an accounting of all Department-expended costs related to the Township Soil Area work.

#### **CYPRUS' SUBMISSION OF WORK REPORTS**

6. Cyprus shall provide the Department with written progress reports quarterly, commencing on the Effective Date of this CO&A and continuing until the cleanup is completed as described in Paragraph 2. At a minimum, the progress reports shall: (1) Describe the actions, progress and status of projects which have been taken toward achieving compliance with this CO&A, as well as actions that are scheduled for the next quarter; and (2) Identify any requirements under the CO&A that were not timely completed and any problem areas and anticipated problem areas in complying with this CO&A.

#### **STIPULATED PENALTIES**

7. In the event Cyprus fails to comply in a timely manner with any material term or provision of this CO&A, Cyprus shall be in violation of this CO&A and, in addition to other applicable remedies, shall at the Department's request pay to the Department a stipulated penalty of TWO HUNDRED DOLLARS (\$200.00) per day for each violation it has failed to fulfill. The penalty shall be due upon written notice from the Department. Such penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, shall reference the AZC Township Soil Area, and shall be made by corporate check or the like made payable to the "Commonwealth of Pennsylvania, Hazardous Sites Cleanup Fund." The payments shall be sent to the Department consistent with Paragraph 31.

8. It is understood by Cyprus that payment of any penalty under Paragraph 7 shall neither constitute a waiver of Cyprus' duty to meet its obligations under this CO&A nor preclude the Department from commencing an action to compel Cyprus' compliance with the terms and conditions of this CO&A, or any applicable statute, rule, regulation, permit or order of the Department. The payment resolves only Cyprus' liability for civil penalties arising from the



violation of this CO&A for which the payment is made.

9. Stipulated penalties paid pursuant to this CO&A shall be in lieu of any other penalty or monetary sanction available to the Department, including but not limited to civil penalties pursuant to Section 1104 of HSCA, 35 P.S. § 6020.1104, provided, however, that the Department may decline to accept stipulated penalties and seek civil penalties instead.

10. If the Department brings an action against Cyprus to collect any stipulated penalty due under this CO&A, Cyprus shall reimburse the Department for all reasonable costs and expenses of such action, including but not limited to Department personnel costs and attorney's fees.

#### **COVENANT NOT TO SUE BY THE DEPARTMENT**

11. Upon the Effective Date, subject to the reservation of rights provided in Paragraphs 12 through 13, and so long as Cyprus is in full compliance with this CO&A, the Department covenants not to sue or to take administrative action against Cyprus pursuant to CERCLA, HSCA, or any other state or federal statutory or common law, for the response actions described in Paragraph 2 specific to the soil areas investigated and/or cleaned up for arsenic, lead and cadmium. or for response costs related thereto. This Covenant Not To Sue does not include groundwater related to the Township Soil Area.

#### **RESERVATION OF RIGHTS**

12. Notwithstanding any other provision of this CO&A, the covenant not to sue by the Department set forth in Paragraph 11 shall not apply to claims by the Department against Cyprus based on:

- a. failure to meet the requirements of this CO&A, in a proceeding to enforce the terms hereof;

- b. past, present, or future disposal of hazardous substances outside the boundaries of the Township Soil Area;
- c. past, present or future violations of federal or state criminal law; or
- d. damages, if any, for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment.

13. With regard to all matters not addressed in this CO&A, the Department specifically reserves all rights to institute equitable, administrative, civil, and criminal actions against Cyprus for:

- a. any past, present, or future violations of any statute, regulation, permit or order; or
- b. any pollution or potential pollution to the air, land or waters of the Commonwealth of Pennsylvania.

#### **EFFECT ON THIRD PARTIES**

14. Nothing in this CO&A shall constitute or be construed as a release or covenant not to sue regarding any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, which the Department or Cyprus may have against any person who is not a party to this CO&A. The Department and Cyprus expressly reserve the right to sue or continue to sue any person who is not a party to this CO&A.

#### **EXISTING OBLIGATIONS UNAFFECTED**

15. Nothing set forth in this CO&A is intended, nor shall it be construed, to relieve or limit Cyprus' obligation to comply with any existing or subsequent statute, regulation, permit or order. In addition, nothing set forth in this CO&A is intended, nor shall it be construed, to

authorize any violations of any statute, regulation, permit or order issued or administered by the Department.

#### **ACKNOWLEDGMENT OF NO OBLIGATION**

16. Cyprus acknowledges that the Department has no obligation to defend it in any suit, demand or claim for contribution for any matters arising from the release or threatened release of hazardous substances at the Township Soil Area, arising out of response actions conducted by or authorized by the Department at the Township Soil Area, or arising out of this CO&A.

#### **REMEDIES FOR BREACH**

17. In the event of any material breach of this CO&A, the Department may, in addition to any remedies prescribed herein, institute against Cyprus any equitable, administrative, or civil action, including an action to enforce this CO&A. These remedies are cumulative, and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. Cyprus' remedies for a breach by the Department shall be as specified in this Paragraph and as may otherwise be provided by law. The failure of Cyprus to pursue any remedy shall not be deemed to be a waiver of that remedy.

#### **COVENANT NOT TO SUE BY CYPRUS**

18. Except as allowed herein, Cyprus covenants not to sue and shall not assert any claims, demands or causes of action, in law or in equity, against the Commonwealth government, as that term is defined in 42 Pa. C.S.A. § 102, arising from the release or threatened release of hazardous substances at the Township Soil Area, arising out of any response actions conducted by or authorized by the Department at or related to the Township Soil Area, or arising out of this

CO&A. This covenant not to sue extends only to the Commonwealth government with regard to those matters addressed in this CO&A and does not extend to any other person.

#### **WAIVER OF OTHER CLAIMS BY CYPRUS**

19. Except as allowed herein, Cyprus shall not assert any claims for reimbursement, contribution and/or indemnity from the Pennsylvania Hazardous Sites Cleanup Fund for matters arising from the release or threatened release of hazardous substances at the Township Soil Area, arising out of any response actions conducted by or authorized by the Department at or related to the Township Soil Area, or arising out of this CO&A. Cyprus waives any claims or defenses it may have regarding the application of Sections 708, 709 or 1301 of HSCA, 35 P.S. §§ 6020.708, 6020.709 or 6020.1301, with respect to the enforcement of this CO&A.

#### **CONTRIBUTION PROTECTION**

20. Subject to the reservation of rights provided in Paragraphs 12 through 13, and so long as Cyprus is in full compliance with this CO&A, upon the Effective Date, Cyprus shall have resolved its liability to the Department for the response actions described in Paragraph 2 or for response costs related thereto. At that time, provided that Cyprus remains in compliance with the requirements of this CO&A, to the extent that protection is provided by Section 705(c)(2) of HSCA, 35 P.S. § 6020.705(c)(2), Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and any common law, Cyprus shall be protected from contribution regarding the response actions described in Paragraph 2 or for response costs related thereto.

#### **AGREEMENT AS TO FINDINGS**

21. The Findings contained in Paragraphs A through U are to be used solely by the Department and solely for the enforcement of this CO&A in the event of an alleged breach thereof by Cyprus. The Findings are not to be used by any other person or for any other purpose. In any such enforcement proceeding, Cyprus shall not challenge the accuracy or validity of the Findings.

### DISPUTE RESOLUTION

22. All disputes arising from or associated with this CO&A shall be resolved according to the following procedure:

a. To initiate dispute resolution, Cyprus shall provide written notice to the Department within five (5) days of a dispute concerning the obligations imposed upon Cyprus under this CO&A. Cyprus shall have an additional five (5) days to provide the Department with a written list of objections to the Department's action ("Statement of Position").

b. The Department shall have seven (7) days following receipt of Cyprus' Statement of Position to provide its response ("Response"), in writing, to Cyprus.

c. Within the seven-day period following receipt of the Department's Response by Cyprus, the Department's Regional Director or, in the event the Regional Director is unavailable, the Assistant Regional Director, shall meet and confer with Cyprus' designated representatives in an attempt to resolve the dispute. In the event the Parties are unable to resolve the dispute in this fashion and within this seven-day period, the Parties shall jointly set out in writing within the seven-day period their unresolved differences, identifying the issues which remain in dispute and any work that Cyprus can reasonably undertake that is unaffected by the issues that are in dispute ("Joint Dispute Statement").

d. Following the Parties' drafting of the Joint Dispute Statement, the Department shall issue a written decision ("Written Decision") setting forth its final position on the issues in dispute. The Department's Written Decision shall constitute an appealable action for purposes of review by the Pennsylvania Environmental Hearing Board ("EHB"). Should it appeal, Cyprus shall have the burden of proof to show by a preponderance of the evidence that the Department's Written Decision was arbitrary and capricious.

e. Should Cyprus appeal the Department's Written Decision to the EHB, at the Department's discretion, stipulated penalties shall accrue per day per violation, consistent with Paragraphs 7 through 10, beginning the fifth (5<sup>th</sup>) day following the Department's issuance of the Written Decision and continuing through the date Cyprus initiates compliance with the obligation in dispute, except that Cyprus shall owe no stipulated penalties pursuant to this subparagraph and shall be refunded all stipulated penalties paid pursuant to this subparagraph in the event the EHB (i) decides the appeal in Cyprus' favor or (ii) determines that the appeal was not taken in bad faith and without merit.

f. During the pendency of an appeal by Cyprus before the EHB of the Department's Written Decision, and until the later of such time as either Cyprus withdraws its appeal or the Parties reach agreement either through settlement negotiations or by means of an EHB opinion or adjudication, except as set forth in the Joint Dispute Statement, Cyprus shall not be obligated to perform any work set forth in the document or report that is being contested, nor shall Cyprus be obligated to pay any costs being demanded, except whatever accrued stipulated penalties that may become due and owing as described in subparagraph (e). Notwithstanding, Cyprus shall proceed to perform any obligations under this CO&A not contested in its Statement of Position or, subsequently, the Joint Dispute Statement. In any appeal, Cyprus shall not contest the Findings contained in Paragraphs A through R or Cyprus' obligations under this CO&A not the subject of dispute resolution.

g. In an appeal before the EHB, the Parties shall have thirty (30) days to conduct expedited discovery. The period of discovery shall commence seven (7) days after Cyprus' Notice of Appeal is received by the Southwest Region, Office of Chief Counsel. Cyprus shall file its Pre-Hearing Memorandum within fifteen (15) days after the close of discovery. The Department shall file its Pre-Hearing Memorandum within fifteen (15) days of its receipt of Cyprus' Pre-Hearing Memorandum. Nothing contained herein shall preclude the Parties from extending the foregoing schedule by mutual agreement.

h. Within seven (7) days of a final resolution of the appeal, either through an EHB opinion or adjudication or through settlement negotiations that may occur during the pendency of the appeal before the EHB, Cyprus shall perform its obligations under this CO&A consistent with the EHB opinion or adjudication or any settlement agreement reached between the Parties.

i. All decisions of the EHB regarding disputes submitted hereunder shall be final, and the Parties expressly waive any right of appeal, statutory or otherwise.

#### **FORCE MAJEURE**

23.a. In the event Cyprus is prevented from complying in a timely manner with any time limit imposed in this CO&A solely because of a strike, fire, flood, act of God, or other circumstances beyond Cyprus' reasonable control and which Cyprus, by the exercise of all reasonable diligence, is unable to prevent or mitigate, or for any other reason recognized as a *force majeure* event in this CO&A, including inability to obtain access to property within the Township Soil Area, Cyprus may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this CO&A shall not constitute circumstances beyond Cyprus' control. Cyprus expressly agrees that its economic inability to comply with any of the obligations of this CO&A shall not be the sole grounds for any extension of time under this Paragraph.

b. Cyprus shall only be entitled to the benefits of this Paragraph if it notifies the Department within three (3) business days by telephone and within ten (10) calendar days in writing ("Written Statement") of the date it becomes aware or reasonably should have become aware of the circumstances impeding performance. The Written Statement shall include all related documentation, as well as a written statement made subject to penalty for falsification by Cyprus' Project Manager specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by Cyprus to minimize the length of the delay. Cyprus' failure to comply with the requirements of this Paragraph specifically and in a

timely fashion shall render this Paragraph null and of no effect as to the particular incident involved.

c. Within five (5) calendar days after receipt of Cyprus' Written Statement, the Department shall decide whether to grant all or part of the extension requested on the basis of all documentation submitted by Cyprus and other information available to the Department. Only a letter which has been signed by the Department and its counsel shall constitute an extension under this Paragraph.

d. In the event Cyprus is dissatisfied with the Department's decision as to Cyprus' request for extension, Cyprus may submit the contested decision to the dispute resolution process described in Paragraph 22.

#### **OPPORTUNITY FOR PUBLIC COMMENT**

24. Pursuant to Section 1113 of HSCA, 35 P.S. § 6020.1113, the Department shall publish a notice of settlement in the *Pennsylvania Bulletin* and in the *City of Washington Observer-Reporter* containing a summary of the terms of this CO&A. This notice of settlement shall also be sent to all parties known by the Department to be responsible persons at the Township Soil Area, as defined by Section 103 of HSCA, 35 P.S. § 6020.103. The notice of settlement shall indicate that the Department shall receive and consider comments relating to this CO&A for sixty (60) days beginning on the date of publication of the notice. The notice shall further indicate that the Department will hold a public hearing on the settlement if a written request for such is received within thirty (30) days of publication of the notice. The Department reserves the right to withdraw its consent to this CO&A if the comments concerning this CO&A disclose facts or considerations which indicate that this CO&A is impracticable or not in the public interest.



**EFFECTIVE DATE**

25. This CO&A shall be effective upon the date Cyprus receives written communication from the Department that this CO&A is final and effective in its present form. The Department shall send such written communication once it has filed a response to any significant written comments received pursuant to the settlement notice described in Paragraph 24 and no timely appeal has been taken from that response, or once the Department has confirmed that no significant written comments have been received. In the event that the Department notifies Cyprus that it is withdrawing its consent to this CO&A in light of public comments, the terms of this CO&A shall be void, shall have no force or effect and may not be used as evidence in any litigation or any other proceeding.

**ATTORNEY'S FEES**

26. The Parties agree to bear their respective attorney's fees, expenses and other costs in the prosecution or defense of this matter, or any related matters, arising prior to execution of this CO&A.

**ENTIRE AGREEMENT**

27. This CO&A shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or intent of any provision herein in any litigation or any other proceeding.

**MODIFICATION**

28. No changes, additions, modification, or amendments of this CO&A shall be effective unless they are set out in writing and signed by the Parties hereto.

### TITLES AND DEFINITIONS

29. A title used at the beginning of any section of this CO&A is provided solely for the purpose of identification and shall not be used to interpret this CO&A. Unless otherwise expressly defined herein, terms used in this CO&A shall have the meaning assigned to them in HSCA.

### SEVERABILITY

30. The paragraphs of this CO&A shall be severable, and should any part hereof be declared invalid or unenforceable by a tribunal having jurisdiction, the remainder shall continue in full force and effect between the Parties.

### CORRESPONDENCE

31. All correspondence with and submittals to the Department related to this CO&A shall reference the AZC Township Soil Area and shall be addressed to:

Terry Goodwald  
Project Manager  
Environmental Cleanup Program  
Pennsylvania Department of Environmental Protection  
Southwest Regional Office  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745

Phone: 412-442-4133  
Fax: 412-442-4194  
E-Mail: tgoodwald@state.pa.us

A copy of all correspondence with the Department concerning this CO&A shall reference the AZC Township Soil Area and shall be addressed to:

Edward S. Stokan, Esquire  
Assistant Counsel  
Department of Environmental Protection  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745

Phone: 412-442-4262

Fax: 412- 442-4267  
E-mail: estokan@state.pa.us

32. All correspondence with and submittals to Cyprus related to this CO&A shall reference the AZC Township Soil Area and shall be addressed to:

Michael D. Leach  
Manager, Remediation Projects  
c/o Cyprus Amax Minerals Co.  
333 North Central Avenue  
Phoenix, AZ 85004

Phone: 602-366-8452  
Fax: 602-366-7313  
E-mail: Michael\_Leach@fmi.com

A copy of all correspondence with Cyprus concerning this CO&A shall reference the AZC Township Soil Area and shall be addressed to:

David L. Wallis, Esquire  
Gallagher & Kennedy  
2575 East Camelback Road  
Phoenix, AZ 85016-9225

Phone: 602-530-8000  
Fax: 602-530-8500  
E-mail: dlw@gknet.com

In addition, Cyprus agrees that the service of any notice or any legal process for any purpose under this CO&A, including its enforcement, may be made by mailing a copy by certified mail, return receipt requested, or by any overnight delivery service with standard tracking, to its attorney, whose name and address are contained in this Paragraph.

#### **EXECUTION IN COUNTERPARTS**

33. This CO&A may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.


IN WITNESS WHEREOF, the Parties hereto have caused this CO&A to be executed by their duly authorized representatives. The undersigned representative of Cyprus certifies, under penalty of law, as provided by 18 Pa. C.S. § 4904, that he/she is fully authorized to execute this CO&A on behalf of Cyprus, that Cyprus consents to the entry of this CO&A as an ORDER of the Department; and that Cyprus hereby knowingly waives its right to appeal this CO&A, which right may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514, the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A, Sections 508 and 1102 of HSCA, 35 P.S. §§ 6020.508, and 6020.1102, or any other provision of law. The undersigned officers and employees of the Commonwealth certify that they have authority to sign this CO&A.

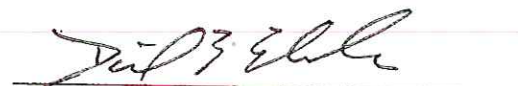
**FOR CYPRUS AMAX MINERAL  
COMPANY:**


PA Vendor ID # 759194


Federal Taxpayer ID # 86-0971216

**FOR THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT  
OF ENVIRONMENTAL PROTECTION:**

  
Name L. Richards McMillan II  
Title: Senior Vice President

  
David E. Eberle  
Manager  
Environmental Cleanup Program  
Southwest Region

  
David L. Wallis, Esq.  
Attorney for Cyprus Amax Minerals Company

  
Edward S. Stokan, Esq.  
Assistant Counsel