

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:	:	
American Zinc and Chemical Site	:	Hazardous Sites Cleanup Act
Cyprus Amax Minerals Company	:	Comprehensive Environmental
Smith Township	:	Response, Compensation and
Washington County, Pennsylvania	:	Liability Act
PF ID # 664730	:	

**CONSENT ORDER AND AGREEMENT**  
**SETTLEMENT OF COMMONWEALTH'S CLAIMS FOR NATURAL RESOURCE**  
**DAMAGES AND COSTS OF ASSESSMENT**

This Consent Order and Agreement ("CO&A") is entered into this 26th day of September, 2024, by and between the Commonwealth of Pennsylvania, acting through the Department of Environmental Protection ("Commonwealth" or "Department") and Cyprus Amax Minerals Company ("Cyprus") (collectively referred to as "Parties").

**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 ("Clean Streams Law"); 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 ("SWMA"); 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 promulgated thereunder.

### Background

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

C. The site ("Site") includes approximately 157 acres and is located in Smith Township, Washington County, Pennsylvania. The Site is situated near the Borough of Burgettstown, to the southeast of the town of Langeloth and west of the town of Slovan and State Route 18.

D. Burgetts Fork flows along the eastern Site boundary, into Racoon Creek approximately 2.5 miles from the Site, and then into the Ohio River approximately 15 miles from the Site. Additional surface water at or near the Site includes a breached dam containing water, located near the southern Site boundary; an unnamed tributary to Burgetts Fork in the northern portion of the Site; an unnamed tributary to Burgetts Fork near the southeastern Site boundary; and a seep originating in the southern portion of the Site and flowing into the southeastern unnamed tributary. There is a mine drainage passive wetland treatment pond near the southern Site boundary. Approximately 9.59 acres of wetland are located within the Site.

E. Beginning in 1913, American Zinc and Chemical Company ("AZC") owned the Site and operated there a coal-fired zinc smelter facility. To supply its smelter operation, AZC deep-mined coal under portions of the Site. AZC ended its zinc smelter operations at the Site in 1947; it ended its operation of an acid plant and residue mill at the Site in early 1948. During its operations, AZC disposed of various waste at the Site, including but not limited to slag; discarded retorts and condensers; brick; coal ash; and construction debris.

F. Beginning in late 1947 and continuing into 1950, AZC sold various portions of the Site, ultimately selling all of its property interests there. After liquidating all of its property interests at the Site, AZC was dissolved as a Pennsylvania corporation in 1951.

G. From 1915 until its 1951 dissolution, AZC was a wholly-owned subsidiary of American Metal Company, Ltd. ("AMCo"), incorporated in New York in 1887.

H. The Department believes that, from 1915 through early 1948, through its subsidiary AZC, AMCo managed, directed and conducted operations at the Site, including those related to the zinc smelter facility, the acid plant, the residue mill, and coal mining that ultimately resulted in Site contamination and, further, that AMCo was the decision-maker regarding whether and how those operations would comply with environmental regulations, including how waste from the operations was disposed of at the Site and whether and how resulting contamination was addressed.

I. AMCo merged with Climax Molybdenum Company in 1957 and became known as American Metal Climax, Inc. In 1974, American Metal Climax, Inc. changed its name to AMAX, Inc. In 1993, Cyprus Minerals Company merged with AMAX, Inc. to form Cyprus Amax Minerals Company. In 1999, C.A.V. Corporation, a wholly owned subsidiary of Freeport-McMoRan Corporation (formerly Phelps Dodge Corporation), acquired the stock of Cyprus Amax Minerals Company. C.A.V. Corporation was then renamed Cyprus Amax Minerals Company. Freeport-McMoRan Corporation, a New York corporation, merged with and into Freeport-McMoRan Corporation, a Delaware corporation, and then changed its name to Freeport Minerals Corporation.

J. Cyprus owns approximately 111 of the approximately 157 acres comprising the Site. Zachary Szabo owns approximately 4 acres of the Site, Langeloth Metallurgical Company, L.L.C. owns approximately 38 acres, and Smith Township owns approximately 4 acres.

K. Two individual parcels make up the approximately 38 acres of the Site presently owned by Langeloth Metallurgical Company, L.L.C. At various times between 1953 and 1993, each of the parcels was owned by Climax Molybdenum Company, AMAX, Inc., or both.

### Site Investigations

L. Prior to 2019, the Site was characterized by an irregular ground surface, much of it barren; large waste piles; dilapidated buildings; and large concrete foundations, both in and out of place. The portion of the Site owned by Langeloth Metallurgical Company, L.L.C. has been graded, covered with soil and seeded.

M. Environmental investigations of the Site include those conducted by Magee and Edmiston in 1987; by Wagh in 1993; by the S.M. Stoller Corporation in 1994; by the Department in 1999 and 2000; by Brown and Caldwell in 2002 and 2009-2012; and by Arcadis in 2015.

N. During its investigation in 1987, Magee and Edmiston delineated nine waste areas at the Site and estimated a volume of total waste in excess of 349,000 cubic yards.

O. — During its investigations in 1999 and 2000, the Department sampled Site soil, waste, sediments and surface water. Analysis of the Department's soil and waste samples showed exceedances of Act 2 Non-Residential Statewide Health standards for lead, arsenic, cadmium, zinc, copper, tin and antimony. Analysis of the Department's sediment samples showed the presence of lead, cadmium, antimony and arsenic. In addition, one of the Department's sediment samples showed low-level polychlorinated biphenyls ("PCBs"). Analysis of the Department's surface water samples showed an increase in lead, zinc, cadmium, cobalt, copper, arsenic and nickel between points upstream and downstream from the Site.

P. During its investigation in 2002, Brown and Caldwell sampled Site groundwater and surface water. Analysis of Brown and Caldwell's groundwater samples showed exceedances of Act 2 Used Aquifer Medium-Specific Concentration standards for total arsenic, cadmium, copper, lead and zinc. Analysis of Brown and Caldwell's surface water samples showed elevated concentrations of zinc in downstream Burgetts Fork.

Q. During its investigation in 2009 as part of the Remedial Investigation (RI), Brown and Caldwell sampled Site surface soils, subsurface soils, groundwater, fill and smelter material, surface water and sediment. Analysis of Brown and Caldwell's surface soil samples showed exceedances of Act 2 Non-Residential Direct Contact Medium-Specific Concentration standards (MSCs) for arsenic and lead. Analysis of Brown and Caldwell's subsurface soil samples showed an exceedance of Act 2 Non-Residential Direct Contact MSCs for iron. Analysis of Brown and Caldwell's smelter material samples showed elevated levels of metals, including lead and zinc. Analysis of Brown and Caldwell's surface water and sediment samples showed cadmium, chromium, lead, selenium and zinc in downstream Burgetts Fork. Eight wetlands with a total wetland acreage of 3.1 acres were identified at the Site.

R. During its investigation in 2015 as part of the Pre-Design Investigation (PDI), Arcadis sampled Site smelter material, surface water and sediment. Analysis of Arcadis' surface water showed aluminum, beryllium, cadmium, calcium, cobalt, copper, iron, lead, manganese, mercury, and zinc at concentrations greater than the surface water screening criteria (SWSC) in Site surface water. Analysis of Arcadis' sediment samples showed arsenic, cadmium, copper, iron, lead, manganese, silver and zinc in downstream Burgetts Fork. Seventeen wetlands with a total wetland acreage of 9.59 acres were identified at the Site, including the 3.1 acres of wetland previously identified by Brown and Caldwell.

#### **Cyprus' Liability**

S. The substances described in Paragraphs O, P, Q and R contain "hazardous substances," as that term is defined in Section 103 of HSCA, 35 P.S. § 6020.103 and 42 U.S.C. § 9601.

T. Past conditions at the Site 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 42 U.S.C. § 9601.

U. As an area where hazardous substances have been released, the Site is a "site" or a "facility" as those terms are defined in Section 103 of HSCA, 35 P.S. § 6020.103 and 42 U.S.C. § 9601, respectively.

V. The past release and threatened release of hazardous substances at the Site constitutes a "public nuisance" pursuant to Section 1101 of HSCA, 35 P.S. § 6020.1101.

W. During the course of the Site's investigation and remediation, the Department has incurred "response" costs, as that term is defined in Section 103 of HSCA, 35 P.S. § 6020.103 and 42 U.S.C. § 9601.

X. The Department believes that, as the successor in interest to the "operator" of a "site" or "facility" 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 42 U.S.C. § 9607, with respect to the release and threatened release of hazardous substances at the Site in its entirety.

Y. The Department believes that, as the successor in interest to the "owner" of a "site" or "facility" 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 42 U.S.C. § 9607, with respect to the release and threatened release of hazardous substances at the portion of the Site comprised of the approximately 38 acres of the Site owned by Langeloth Metallurgical Company, L.L.C.

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

AA. The Department believes that, as a responsible person with respect to the release and threatened release of hazardous substances at the Site, Cyprus is liable for natural resource damages pursuant to Section 507(a) of HSCA, 35 P.S. § 6020.507(a).

BB. Pursuant to Section 301(14) of HSCA, 35 P.S. § 6020.301(14) and Section 107(f)(2)(B) of CERCLA, 42 U.S.C. §§ 9607(f)(2)(B), the Department has the power and duty to “[a]ct as trustee of this Commonwealth’s natural resources. The [D]epartment may assess and collect damages to natural resources for the purposes of this act, and the federal Superfund Act for those natural resources under its trusteeship.”

CC. The Department believes that, as a responsible person with respect to the release and threatened release of hazardous substances at the Site, Cyprus is liable for natural resource damages pursuant to Sections 107(a)(4)(d) and 107(f)(1) of CERCLA, 42 U.S.C. §§ 9607(a)(4)(d) and 9607(f)(1).

DD. Pursuant to Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1), a State’s authorized trustee, like the Department, can recover natural resource damages on behalf of the public.

EE. Pursuant to Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1) “[s]ums recovered by a State as trustee...shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State.”

**Settlement as to Department’s Claims for Site Investigation and Cleanup**

FF. The Department and Cyprus have engaged in extensive negotiation over settlement of the Department’s potential claims against Cyprus as to the remedial investigation and cleanup of the Site.

GG. In 2009, the Department elected to enter into a settlement with Cyprus to share with Cyprus the funding of a portion of the Site's remedial investigation, cleanup and post-remediation care. At the same time, the Department and Cyprus each reserved their respective rights to seek cost recovery and contribution from other parties not participating in the settlement.

HH. In essence, the Department's settlement with Cyprus as to the remedial investigation and cleanup of the Site calls for: (a) Cyprus' undertaking the remedial investigation, cleanup and post-remediation care of the Site; (b) Cyprus' payment of 100% of the remedial investigation, cleanup and post-remediation care costs associated with two parcels of the Site owned by Langeloth Metallurgical Company, L.L.C. and totaling approximately 38 acres; and (c) Cyprus' payment of 60% and the Department's payment of 40% of the remedial investigation, cleanup and post-remediation care costs associated with the approximately 119 acres making up the balance of the Site, including a portion of one parcel owned by Zachary Szabo totaling approximately 4 acres and, as well, three parcels owned by Smith Township and totaling approximately 4 acres.

II. The Parties' settlement as to the remedial investigation and cleanup of the Site has been memorialized in three individual consent order and agreements. The Parties executed the first consent order and agreement on June 9, 2009, to memorialize the Parties' agreement as to the remedial investigation of the Site and the development of a plan for the Site's cleanup. The second consent order and agreement, executed September 23, 2015, memorialized the Parties' agreement as to the finalization and implementation of the Pre-Design Investigation Work Plan and the Cleanup Plan Detailed Designs. The third consent order and agreement, executed August 15, 2016, memorialized the Parties' agreement as to implementation of the Cleanup Plan Detailed Designs, using the same cost-sharing allocation set forth in Paragraph DD. (A fourth consent order and agreement was executed on July 25, 2018, by the Department, Cyprus, Bologna Coal Company, Smith Township, and the Independence Conservancy. Among other things, that consent order and agreement called for Bologna Coal Company's transfer of 89 acres of the Site to Cyprus.)



JJ. Per the Parties' settlement, Cyprus has submitted, and the Department has reviewed and approved, a Remedial Investigation Work Plan, a Remedial Investigation Report, a Groundwater Exposure Pathway Elimination Analysis, a Conceptual Cleanup Proposal, a Cleanup Plan, a Pre-Design Investigation Work Plan, a Pre-Design Investigation Report, and the Cleanup Plan Detailed Designs. Each of these documents is on file and available for public review at the Department's Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222.

KK. Since the Parties' execution of the August 15, 2016 consent order and agreement, and consistent thereto, the Cleanup Plan Detailed Designs are being implemented, and cleanup of the Site progresses steadily towards completion. Since 2019, the Site has undergone significant remediation. Impacted sediments, soil and residual smelter materials have been consolidated into a capped on-site repository. The Site has been regraded, covered with soil, and seeded.

**Settlement as to Commonwealth's Claims for Natural Resource Damages and Costs of Assessment**

LL. The Department and Cyprus have engaged in extensive negotiation over settlement of the Commonwealth's potential claims against Cyprus as to natural resource damages the Department believes were sustained at the Site and their costs of assessment. This CO&A memorializes the Parties' resolution of those claims.

MM. In essence, the Department's settlement with Cyprus as to natural resource damages and costs of assessment calls for: (a) Cyprus' payment of \$1.62 million in natural resource damages as the result of a release of hazardous substances at or from the Site; (b) Cyprus' reimbursement of \$68,057 in costs of assessment the Department has incurred through its retention of a natural resource damages consultant; and (c) the Department's intended dedication of Cyprus' settlement payment towards projects to benefit the impacted community by restoring, replacing, rehabilitating, and/or acquiring the equivalent of the natural resources that the Department believes have been injured, destroyed or lost as the result of hazardous substances released at or from the Site.

NN. As with their prior settlements described above, the Department's settlement with Cyprus as to natural resource damages and costs of assessment is in the public interest and is authorized by Section 505(g) of HSCA, 35 P.S. § 6020.505(g). As before, pursuant to Section 502(c) of HSCA, 35 P.S. § 6020.502(c), the Department has not published this Site for listing in the *Pennsylvania Bulletin* because Cyprus and the Department have entered into a settlement which provides for the abatement of the release or threatened release of hazardous substances at the Site.

### **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 authorized and is being executed pursuant to Section 505(g) of HSCA, 35 P.S. § 6020.505(g), and Section 107 of CERCLA, 42 U.S.C. § 9607. 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 any other applicable law.

### **CYPRUS' PAYMENT OF NATURAL RESOURCE DAMAGES**

2. Within thirty (30) days of the Effective Date ("Effective Date") of this CO&A, as described in Paragraph 19, Cyprus shall submit to the Department payment in the amount of **\$1.62 million (ONE MILLION SIX HUNDRED TWENTY THOUSAND DOLLARS)**, representative of natural resource damages the Department believes were sustained at the Site by the Commonwealth as the result of a release of hazardous substances at or from the Site. Cyprus shall make payment by wire transfer to a Commonwealth restricted account, in accordance with instructions the Department will provide to Cyprus following the Effective Date, or as otherwise agreed to by the Parties, and consistent with Paragraph 26. On receipt, the Department intends to maintain Cyprus' payment in the Commonwealth restricted account, pending finalization of its

intended use towards projects to benefit the impacted community by restoring, replacing, rehabilitating, and/or acquiring the equivalent of the natural resources which the Department believes have been injured, destroyed or lost as the result of hazardous substances released at or from the Site.

#### **CYPRUS' REIMBURSEMENT OF COSTS OF ASSESSMENT**

3. Within thirty (30) days of the Effective Date of this CO&A, Cyprus shall submit to the Department payment in the amount of **\$68,057 (SIXTY EIGHT THOUSAND FIFTY SEVEN DOLLARS)**, to reimburse the Department its costs of assessment incurred through its retention of a natural resource damages consultant to help determine and quantify the extent of injuries to natural resources and associated service losses resulting from the release of hazardous substance at or from the Site and to identify potential restoration projects. Cyprus shall make payment by wire transfer to a Commonwealth restricted account, in accordance with instructions the Department will provide to Cyprus following the Effective Date, or as otherwise agreed to by the Parties, and consistent with Paragraph 26.

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

4. Upon the Effective Date, subject to the reservation of rights provided in Paragraphs 5 through 8, including the reopener provisions described in Paragraph 6, and only so long as Cyprus is in compliance with this CO&A, the Department covenants not to sue or to take action against Cyprus pursuant to CERCLA, HSCA, Clean Streams Law, SWMA, or any other state or federal statutory or common law, to recover natural resource damages the Commonwealth has sustained for injury to, destruction of, loss of, or loss of use of natural resources or resource services resulting from a release or threatened release of hazardous substances at or from the Site.

#### **RESERVATION OF RIGHTS**

5. The information received by and presently known to the Department includes only that information contained in the reports from those investigations described in Paragraphs M through R, in the Department's March 10, 2004 Response Justification Document, any other

information included in reports or other documents provided to the Department by Cyprus or third parties, any information included in the responses to the information requests sent by the Department pursuant to Section 503 of HSCA, 35 P.S. § 6020.503, as of the date of the Parties' execution of the CO&A, and any other information in the Department's possession.

6. Notwithstanding any other provision of this CO&A, the covenant not to sue by the Department set forth in Paragraph 4 shall be null and void in the case of application of any of the reopeners listed in Section 505 of Act 2, 35 P.S. § 6026.505, or in the case of a reopening of this matter in the event that:

a. information is received concerning the volume or type of hazardous substances contributed to the Site by Cyprus or any of its officers, directors, employees, contractors or agents, and that information was previously unknown to the Department and indicates that Cyprus or any of its officers, directors, employees, contractors or agents, contributed to the Site an amount or type of hazardous substances in material excess of that amount or toxicity reasonably understood by the Department to have been contributed to the Site based on the information known to the Department, as described in Paragraph 5; or

b. Cyprus or its officers, directors, employees, contractors or agents are found to have falsified information, reports, or data, or to have made a false representation or statement in a record, report or document relating to the release or threatened release of hazardous substances at the Site.

7. Notwithstanding any other provision of this CO&A, the covenant not to sue by the Department set forth in Paragraph 4 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; or
- b. past, present or future violations of federal or state criminal law.

8. 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**

9. 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**

10. 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**

11. 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 Site, arising out of response actions conducted by or authorized by the Department at the Site, or arising out of this CO&A.

### **REMEDIES FOR BREACH**

12. 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 Paragraph 17 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**

13. Except as allowed herein or under any other consent order and agreement entered into by the Parties, 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 Site, arising out of any response actions conducted by or authorized by the Department at or related to the site, 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**

14. Except as allowed herein or any other consent order and agreement entered into between the Parties, 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 Site, arising out of any response actions conducted by or authorized by the Department at or related to the Site, 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**

15. Subject to the reservation of rights provided in Paragraphs 5 through 8, including the reopener provisions provided in Paragraph 6, and only so long as Cyprus is in compliance with this CO&A, upon the Effective Date, Cyprus shall have resolved its liability to the Department for the Department's claims for natural resource damages related to the Site and the costs of their assessment. As of the Effective Date, 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 other relevant laws, Cyprus shall be protected from contribution regarding the Department's claims for natural resource damages related to the Site and the costs of their assessment.

### **AGREEMENT AS TO FINDINGS**

16. The findings contained in Paragraphs A through NN 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, but it reserves the right to contest the accuracy or validity of the findings in any other proceeding.

### **DISPUTE RESOLUTION**

17. 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, stipulated penalties shall accrue per day per violation, consistent with Paragraphs 15 through 18, 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 FF 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 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.

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

18. 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 third parties known by the Department to be responsible persons at the site, 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 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**

19. 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 18 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**

20. 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**

21. 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**

22. 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**

23. 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**

24. 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, provided, however, that, if the funding provision of Paragraph 8 is declared invalid or unenforceable, this CO&A shall terminate as of the date such declaration becomes final and unappealable.

### **CORRESPONDENCE**

25. All correspondence with and submittals to the Department related to this CO&A shall reference the Site and shall be addressed to:

Paul Vogel  
Environmental Group Manager  
Environmental Cleanup & Brownfields  
Hazardous Sites Cleanup Section  
Pennsylvania Department of Environmental Protection  
Southwest Regional Office  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745

Phone: 412-442-4132  
Fax: 412-442-4194  
E-Mail: pvogel@pa.gov

A copy of all correspondence with the Department concerning this CO&A shall reference the Site and shall be addressed to:

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

Phone: 412-442-4249  
Fax: 412- 442-4267  
E-mail: estokan@pa.gov

26. All correspondence with and submittals to Cyprus related to this CO&A shall reference the Site and shall be addressed to:

Cyprus Amax Minerals Company  
333 North Central Avenue  
Phoenix, AZ 85004  
Attn: David P. Gosen

Phone: 602-319-0484  
E-mail: dgosen@fmi.com

A copy of all correspondence with Cyprus concerning this CO&A shall reference the Site 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, each party 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 electronic mail, 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**

27. 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 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 MINERALS  
COMPANY:**

PA Vendor ID # 759194

Federal Taxpayer ID # 86-0971216

Digitally signed by Scott  
Statham  
Date: 2024.09.26  
13:17:26 -07'00'

Scott Statham

K. Scott Statham  
Vice President

Digitally signed by  
Michele A Hughes  
Date: 2024.09.24  
10:14:37 -07'00'

Michele A  
Hughes

Michele A. Hughes  
Secretary



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

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

Digitally signed by Diane D.  
McDaniel  
Date: 2024.10.09 13:50:15 -04'00'

Diane D. McDaniel

Diane D. McDaniel, P.E.  
Program Manager  
Environmental Cleanup and Brownfields  
Program



Edward S. Stokan, Esquire  
Assistant Regional Counsel