Sherry Jackman

Ms. Treccani:

Please see the attached comment letter and supporting exhibits uploaded on behalf of Union Pacific Railroad Company. These documents were also sent via email.

Thanks and regards,
David E. Cranston
Sherry E. Jackman
Greenberg Glusker LLP
Outside Counsel for Union Pacific Railroad Company

BUILDING AMERICA®

July 23, 2021

By Public Comment Form and Email

Ms. Sandra Treccani
Site Manager
Washington State Department of Ecology
4601 N. Monroe St.
Spokane, WA 99205
sandra.treccani@ecy.wa.gov

Re: Union Pacific Railroad Company | Comment Letter
Aluminum Recycling Trentwood - 2317 N. Sullivan Rd., Spokane Valley, WA
Facility Site ID #628; Cleanup Site ID #1081

Dear Ms. Treccani:

Union Pacific Railroad Company ("Union Pacific") appreciates the opportunity to comment on the draft Cleanup Action Plan dated May 2021 ("CAP"), Enforcement Order ("Order"), Scope of Work and Schedule ("SOW"), and Feasibility Study (Revised) dated April 20, 2021 ("FS" and, with the CAP, Order, and SOW, the "Draft Documents") issued for public comment on June 9, 2021 by the Washington State Department of Ecology ("Ecology") regarding the Aluminum Recycling Trentwood Property in Spokane Valley, Washington ("Trentwood Property"). Union Pacific's comments are set forth below and supporting exhibits will supplied via Ecology's online Public Comment Form.

By way of background, Union Pacific recently identified documents within its files that reveal previously unknown operator history at the Trentwood Property. Some of these documents were difficult to locate because they were associated with a Union Pacific predecessor that owned the Trentwood Property until 1987.[1] Union Pacific regrets the delay in bringing these documents to light, but believes they form a critical piece of the operator history at the Trentwood Property, and are relevant to the identification of additional potentially liable persons ("PLPs") that fall within the PLP categories set forth in the Washington Model Toxics Control Act ("MTCA").

Accordingly, as explained in greater detail below, Union Pacific believes Ecology should consider revising the Draft Documents to: (I) reflect additional operator history; and (II) relatedly, name additional PLPs at the Trentwood Property, as enumerated below. Irrespective of Union Pacific's comments, Union Pacific intends to comply with the final Order assuming no substantive revisions to the proposed cleanup.

I. Supplemental Operator History at the Trentwood Property

Union Pacific submits the supplemental operator history set forth below for Ecology's consideration.

[1] In 1987, Union Pacific acquired the Property when it merged with a subsidiary, Spokane International Railroad Company ("Spokane International"), which owned the property before the merger. For convenience, Union Pacific and Spokane International are used interchangeably herein.

UNION PACIFIC RAILROAD
9451 Atkinson Street
Roseville, CA 95747

Robert C. Bylsma
Sr. General Attorney

P 916-789-6229
F 916-789-6415
E rcbylsma@up.com

A. Between 1966 and 1980, early tenant Hillyard operated a dross processing facility at the Trentwood Property.

The Draft Documents identify Trentwood Property dross operations dating back to 1979;[2] however, Trentwood Property dross operations actually date back to 1966.

According to recently discovered records, The Hillyard Processing Company ("Hillyard Processing") leased the Trentwood Property starting in 1966. Although Union Pacific has not yet located the 1966 Hillyard Processing lease, historical correspondence references "a lease of the site for an aluminum processing plant and the right to drill a 10-inch water well and construct the necessary facility thereto" commencing in 1966 and terminating in 1980, when the lease was assigned to Aluminum Recycling Corporation ("ARC"), the now-defunct operator from 1980 to 1986.[3] Well records confirm that Hillyard Processing was in the business of "processing aluminum dross" at the Trentwood Property.[4]

The name "Hillyard" may sound familiar to Ecology because Ecology oversaw PLP BNSF's cleanup of another Hillyard site at 3412 East Wellesley Avenue in Spokane ("Wellesley Property") in the early 2000s.[5] In 1954, Hillyard Processing leased the Wellesley Property from BNSF and operated an aluminum dross facility thereon.[6] According to the 2001 Wellesley Property Consent Decree, Hillyard Processing was sold to Hillyard Aluminum Recycling Corporation ("Hillyard Aluminum") in 1976, which was then sold to ARC in 1979.[7] Similar to the activities at the Trentwood Property, at the Wellesley Property, "[Hillyard] processed aluminum scrap metals and aluminum skim called white dross, obtained from aluminum smelters, in a batch process. This secondary processing of aluminum dross involved addition of sodium and potassium chloride salts. Molten aluminum metal was extracted during the process, poured into ingots and sold. Spent dross process waste called black dross, along with non-reprocessed white dross waste" were eventually abandoned and then became the subject of an Ecology cleanup.[8]

In 2000, Ecology notified the former Hillyard Aluminum ultimate parent, Aluminum Company of America ("Alcoa"), of the preliminary finding of potential liability at the Wellesley Site and requested comment on that finding. After reviewing Alcoa's responsive comments, Ecology determined that Alumax Inc. was the corporation responsible for the release of hazardous substances at the Wellesley Site[9] and found that "Alumax Incorporated is the corporate successor to Hillyard Aluminum."[10] That conclusion is consistent with Union Pacific's research, which shows that Hillyard Aluminum was a subsidiary of Alumax

---

[2] *See, e.g.*, CAP at section 2.1 ("Site Description and History"); FA at p. i ("Executive Summary"); FA at p. 1 ("Background and Summary of Remedial Investigation"); Order at V ("Findings of Fact").
[3] *See* Exhibit 3 (1980-05-29 Letter from C.O. Durham (Spokane International) discussing Hillyard lease); Exhibit 5 (1985-08-22 Letter from P. Conley (Spokane International) discussing ARC 1979 assignment of 1966 Hillyard lease).
[4] *See* Exhibit 1 (1966 Hillyard Processing well records).
[5] Aluminum Recycling Corp., Facility Site ID #627; Cleanup Site ID 1133 - https://apps.ecology.wa.gov/gsp/Sitepage.aspx?csid=1133.
[6] *Id.*
[7] *See* Exhibit 17 (2001 Consent Decree re: Hillyard Wellesley Site, ¶ 4).
[8] *See* Exhibit 17 (2001 Consent Decree re: Hillyard Wellesley Site, ¶ 5); Aluminum Recycling Corp., Facility Site ID #627; Cleanup Site ID 1133 - https://apps.ecology.wa.gov/gsp/Sitepage.aspx?csid=1133.
[9] *See* Exhibit 17 (2001 Consent Decree re: Hillyard Wellesley Site, ¶ 19).
[10] *See* Exhibit 17 (2001 Consent Decree re: Hillyard Wellesley Site, ¶ 3).

Inc. prior to Alcoa's $2.8 billion acquisition of Alumax Inc. in 1998.[11] Hillyard Aluminum dissolved in 1998[12] and Alumax Inc. n/k/a Alumax LLC (an active entity) appears to have assumed the Hillyard Aluminum liabilities. For reasons unknown to Union Pacific, Alumax Inc. declined to sign the Wellesley Site Consent Decree.[13]

The fact that Hillyard Aluminum operated two nearby facilities around the same time is further confirmed through historic Ecology documents. A 1970 Ecology Water Pollution Status Report identifies the two Hillyard Processing Company facilities: one on Wellesley Avenue and one on Sullivan Road (the location of the Trentwood Property).[14]

Recently obtained aerial images also confirm the earlier operations. A 1972 EDR aerial depicts the Trentwood Property with what appears to be the Hillyard dross facility surrounded by piles of dross.[15]

Accordingly, the Draft Documents should be updated to reflect the Hillyard tenancies and operations. Additionally, as stated in Section II below, Hillyard's successor, Alumax LLC f/k/a Alumax Inc.[16] should be named a PLP at the Trentwood Property.

B. The Imperial West Chemical Co. tenancy was understated: IWC operated a dross processing facility at the Trentwood Property from as early as 1976 to 1998, not merely from 1986 to 1995.

It was previously believed that Imperial West Chemical Co. ("IWC")[17] leased the Trentwood Property from 1986 to 1995;[18] however, our review of recently discovered documents indicates that IWC leased the Trentwood Property from as early as 1976 to 1998.

---

[11] *See* Exhibit 34 (1997 Annual Report (10-K) of Alumax Inc.); Exhibit 20 (2006 California Regional Water Quality Control Board Cleanup and Abatement Order, stating that Hillyard Aluminum was a wholly-owned subsidiary of Alumax Inc.); Exhibit 14 (1998 Wall Street Journal Article – "Alcoa Reaches Deal to Buy Alumax for $2.8 Billion in Cash and Stock"). *See also*, infra n.16.

[12] *See* Exhibit 25 (Hillyard Aluminum Recovery Corporation - corporate records).

[13] *See* Exhibit 17 (2001 Consent Decree re: Hillyard Wellesley Site, Exhibit D [2001 Draft Public Participation Plan] p. 2).

[14] *See* Exhibit 2 (1970 Ecology Water Pollution Status Report).

[15] *See* Exhibit 24 (EDR Aerial Photo Decade Package).

[16] As mentioned herein, Alumax Inc. was previously a subsidiary of Alcoa. In 1998, Alumax Inc. (i.e., "old" Alumax) merged into AMX Acquisition Corp. as part of Alcoa's acquisition of Alumax Inc. and, following the merger, AMX Acquisition Corp. changed its name to Alumax Inc. (i.e., "new" Alumax). In 2016, Alumax Inc. converted into Delaware limited liability company "Alumax LLC." *See* Exhibit 28 (Alumax LLC - corporate documents), Exhibit 29 (Alumax Inc. – corporate documents). As of 2020, Alumax LLC was a subsidiary of Arconic Inc. *See* 2020 Arconic Inc. annual report - https://www.arconic.com/global/en/investors/pdf/Arconic-Annual-Report-2020.pdf.

[17] Pioneer Companies, Inc. and related entities, including IWC, were involved in a bankruptcy in or around 2000; however, it does not appear that all environmental liabilities were discharged in connection with that bankruptcy.

[18] *See, e.g.*, CAP at section 2.1 ("Site Description and History"); FA at p. i ("Executive Summary"); FA at p. 1 ("Background and Summary of Remedial Investigation"); Order at V ("Findings of Fact").

In addition to IWC's direct lease with Union Pacific's predecessor commencing in 1986, IWC was also an earlier subtenant of Aluminum Recycling Corporation on a portion of the Trentwood Property.[19] In fact, IWC's tenancy dates back to approximately 1976, around the time IWC was formed—which means that IWC was also likely a subtenant of Hillyard Aluminum (a Trentwood Property operator from approximately 1976-1980).[20]

After ARC filed for bankruptcy and was evicted from the Property in 1986, Union Pacific and IWC entered into a new 1986 lease for the Property.[21] IWC purchased assets from ARC, including dross, as part of the bankruptcy proceedings,[22] and therefore it is possible that IWC is also a *de facto* corporate successor to ARC, which is now defunct.

IWC operations at the Property included manufacturing and distributing aluminum sulfate and aluminum oxides and storage and handling of sulfuric acid in addition to aluminum recycling.[23] In or after 1986, IWC transported to the Trentwood Property dross from the nearby Hillyard Wellesley Site for use in aluminum sulfate manufacturing[24]—further confirming the nexus between the two Hillyard sites. In the early 1990s, Union Pacific conducted an environmental audit at the Trentwood Property and noted that IWC was operating a byproduct dump at the Property, consisting of 30,000 tons of slag produced by ARC and 15,000 tons of alum byproduct generated by IWC since 1976.[25] Although some black dross was allegedly removed in 1986,[26] black dross was observed during IWC's tenancy.[27] IWC continued to lease the Property until 1998, when Kemwater North America Company ("Kemwater") entered into a lease for the Property.

Accordingly, the Draft Documents should be updated to reflect the full scope of the IWC tenancy. Additionally, as explained in Section II, IWC should be named a PLP at the Trentwood Property given that it released dross and other hazardous substances on the Trentwood Property during its operations.

C. KNA California, Inc. (f/k/a Kemwater North America Company) operated at the Trentwood Property and utilized hazardous substances thereon between 1998 and 2000 and is potentially a successor to IWC.

In 1996, the parent company of IWC, Pioneer Companies, LLC (f/k/a Pioneer Companies, Inc.), arranged for the sale of IWC's assets (and the assets of another Pioneer subsidiary, Pioneer Water

---

[19] *See* Exhibit 5 (1985-08-22 Letter from P. Conley (Spokane International) re: ARC Bankruptcy).
[20] *See* Exhibit 10 (1992-10-19 Letter from J. Gorley (Spokane International) stating that IWC has occupied the Trentwood Property since 1976); Exhibit 26 (IWC – corporate records).
[21] *See* Exhibit 6 (Lease to IWC).
[22] *See* Exhibit 7 (1987-12-00 Phase I Site Inspection Report – Aluminum Recycling Corporation by Ecology).
[23] Exhibit 4 (1985-07-15 Industrial Lease Form - IWC); Exhibit 32 (1985-08-07 Letter from IWC clarifying scope of operations); Exhibit 6 (1986-11-02 Lease to IWC); Exhibit 11 (1992-11-2 Lease Supplemental Agreement to IWC); Exhibit 12 (1995-07-17 Lease to IWC).
[24] Exhibit 7 (1987-12-00 Phase I Site Inspection Report – Aluminum Recycling Corporation by Ecology).
[25] Exhibit 10 (1992-10-19 Letter from J. Gorley (Union Pacific) re: inspection report).
[26] Exhibit 33 (1986-07-15 Real Estate Environmental Audit by Union Pacific).
[27] Exhibit 8 (1992-06-24 Union Pacific Lease File Information comment stating that "photos show that ground is saturated with aluminum oxide and settling ponds and black dross."); Exhibit 9 (1992-06-29 Memo from D. Rice (Union Pacific) enclosing photos depicting black dross); Exhibit 7 (1987-12-00 Phase I Site Inspection Report – Aluminum Recycling Corporation (Ecology) section 2 ("IWC could handle high-salt dross . . . some high-salt black dross has been left on site because of this")).

Technologies, Inc.) to create a new wholly-owned subsidiary, Kemwater North America Company ("Kemwater").28 Although the transaction appears to have been an asset sale, in 1997, Kemwater held itself out to Union Pacific as the successor to IWC and should be equitably bound by that representation.29

At that time, Kemwater also informed Union Pacific that it desired to construct a new facility at the Property and sought a long-term lease. In 1998, Kemwater entered into a five-year lease ("1998 Lease")30 with Union Pacific for the Property for "manufacturing and distribution of aluminum sulfate and oxides, storage and handling of sulfuric acids, a hazardous commodity and purposes incidental thereto . . ." The 1998 Lease provided that upon its commencement, the 1995 Lease with IWC was canceled, "except for any rights, obligations or liabilities arising under such prior lease before cancellation . . . ." Such liabilities included IWC's environmental liabilities based on its operations. In 2000, Kemwater sold its coagulant business and assigned its lease to Kemiron Northwest, Inc. ("Kemiron NW").31 In 2002, Kemwater changed its name to KNA California, Inc.32

Accordingly, the Draft Documents should be updated to reflect the Kemwater tenancy and operations. Additionally, as explained in Section II, Kemwater should be named a PLP at the Trentwood Property given that it was potentially an operator at the time of disposal of dross and the admitted successor to IWC.

D. Kemira and its predecessor Kemiron NW operated at the Trentwood Property and utilized hazardous substances thereon from 2000 to present.

As Ecology is aware, Kemira Water Solutions Inc. ("Kemira") is the present-day lessee and operator of the Trentwood Property. The Draft Documents characterize Kemira as a producer of "industrial water treatment chemicals" and indicate that Kemira "does not stockpile or process aluminum dross."33 While those facts may be true today, Kemira's corporate history reveals a nexus to aluminum dross.

Kemira's predecessor, Kemiron Northwest, Inc. ("Kemiron NW"), was incorporated in Delaware in 2000. As mentioned above, in 2000, Kemiron NW purchased the coagulant business from Kemwater and reported to Union Pacific that Kemiron NW would continue Kemwater's operations at the Property.34 It is unclear whether stockpiled dross was part of the asset sale; however, it appears that some or all liabilities

---

[28] Exhibit 22 (2009-03-13 Letter from Olin re: PLP status).
[29] Exhibit 13 (1997-09-17 Letter from Kemwater to Union Pacific).
[30] *See* Exhibit 36 (1998 Lease with Kemwater).
[31] *See* Exhibit 19 (2001 Lease Assignment to Kemiron NW backdated to 2000).
[32] *See* Exhibit 35 (Kemwater – corporate records).
[33] *See, e.g.*, FS at 1.
[34] Exhibit 16 (2001-03-15 Email from Kemiron NW to Union Pacific stating that "We recently purchased the business of Kemwater North America"); Exhibit 15 (2000-06-21 Kemiron NW Land Lease Application Form stating that Kemiron NW "intends to continue [Kemwater's] business activities" at the Trentwood Property).

associated with the operations at the Property were transferred to Kemiron NW.35 Kemwater assigned the 1998 Lease to Kemiron NW in 2001 but backdated the assignment to 2000.36 In a Land Lease Application Form, Kemiron NW reported to Union Pacific that "the intended use [of the Property] will stay basically the same. [Kemiron NW] will continue [Kemwater's] operating activities at the Spokane site."[37] Additionally, Kemiron NW listed the following "Hazardous Materials or Petroleum Products" that would be used on the property: "Aluminum and Iron Sulfates, Aluminum and Iron Chlorides, Poly Aluminum Chloride, Sulfuric Acid, Hydrochloric Acid."[38] In 2006, Kemiron NW merged into Kemira.[39]

Accordingly, the Draft Documents should be updated to reflect Kemira's predecessor's earlier operations. Additionally, as explained in Section II, Kemira should be named a PLP at the Trentwood Property given that (a) its predecessor was likely an operator at the time of disposal of dross and (b) Kemira is the current operator at the Trentwood Property.

E. Pioneer Companies, LLC, the parent company of IWC and Kemwater, arranged for the disposal of dross when it sold (i) IWC's assets to Kemwater in 1996 and/or (ii) Kemwater's assets to Kemiron NW in 2000.

As discussed above, in 1996, Pioneer Companies, LLC (f/k/a Pioneer Companies, Inc.) ("Pioneer")40 arranged the sale of assets of IWC and another company, Pioneer Water Technologies, Inc., to form Kemwater; and in 2000, Pioneer arranged the sale of Kemwater's assets to Kemiron NW, the predecessor of present-day operator Kemira.41 The stockpiled aluminum dross remained at the Trentwood Property, as Pioneer necessarily intended, but Kemiron and its successor Kemira have failed to properly handle or dispose of the dross. Therefore, the transaction arranging for the sale of the aluminum dross and its disposal at the Trentwood Property by virtue of lack of its removal subjects Pioneer to arranger liability under MTCA.

Ecology may recall that it issued a 2008 PLP notice letter to Pioneer for the Trentwood Property stating that Pioneer was the corporate successor to IWC and Aluminum Recycling Corporation, and

---

[35] Exhibit 28 (2001-09-91 U.S. Bankruptcy Court Chapter 11 Debtor's Joint Disclosure Statement In re: Pioneer Companies, Inc., *et al.* stating "On August 21, 2000, Pioneer sold its remaining coagulant business and transferred to the buyer fixed assets, including plants in Spokane, Washington, and Savannah, Georgia, certain technology-related assets and liabilities associated with the Spokane operations . . . Pioneer received cash of $0.9 million as payment for Spokane.").
[36] Exhibit 19 (2001-08-15 Lease Assignment to Kemiron NW backdated to 2000).
[37] Exhibit 15 (2000-06-21 Kemiron NW Land Lease Application Form).
[38] Exhibit 15 (2000-06-21 Kemiron NW Land Lease Application Form).
[39] Exhibit 27 (Kemira/Kemiron NW – corporate records).
[40] Pioneer is the parent company of IWC, and IWC is the parent company of Kemwater (n/k/a KNA California, Inc.). Olin Corporation is the ultimate parent company of Pioneer. *See* https://www.olin.com/investors/financials-filings/annual-reports-proxy/ (2020 Olin Annual Report). *See* Exhibit 35 (Kemwater/KNA California – corporate records).
[41] Exhibit 22 (2009-03-13 Olin response to Ecology PLP Letter).

therefore responsible for those companies' dross operations.42 Pioneer's parent company, Olin Corporation, responded by confirming that "Pioneer was merely the successor to the former parent holding company of [Kemwater], which in turn was the successor to IWC" and "[as] the successor with little direct involvement at the [Trentwood Property], neither Olin nor Pioneer should be considered a PLP."43 Ecology accepted that explanation in a letter dated March 30, 2009 but "reserve[d] the right to name Pioneer . . . as a PLP at any time should additional information come forward."44 The arranger activities discussed herein constitute additional information that Ecology should consider in naming Pioneer/Olin a PLP.

Accordingly, the Draft Documents should be updated to reflect the arranger role of Pioneer Companies, LLC at the Trentwood Property. Additionally, as explained in Section II, Pioneer Companies, LLC should be named a PLP at the Trentwood Property.

F. Tenancy Summary

For Ecology's convenience, a summary of the aforementioned tenancies is as follows:

Approx. Years	Operator/Tenant
1966-1980	Hillyard Processing Company / Hillyard Aluminum Company
1980-1986	Aluminum Recycling Corporation ("ARC") (defunct)
1986-1998	Imperial West Chemical Co. (earlier sublease from ARC/Hillyard Aluminum Company from approximately 1976 to 1986; purchased assets of ARC out of bankruptcy)
1998-2000	Kemwater North America Company (admitted it was the successor to Imperial West Chemical Co.)
2000-Present	Kemira Water Solutions, Inc. (successor-in-interest to Kemiron Northwest, Inc., which purchased the business from Kemwater North America Company)

II. Additional PLPs at the Trentwood Property

The Washington Model Toxics Act specifies who is liable for response costs at a facility. In sum, the following persons may be held liable:

- The current owner or operator of the facility;
- Persons who owned or operated the facility at the time of release;
- Persons who generated hazardous waste disposed of or treated at the facility;
- Persons who arranged for the disposal or treatment of a hazardous substance at the facility;
- Persons who transported a hazardous substance for disposal or treatment at the facility, if the facility could not legally receive the substance; and

42 Exhibit 21 (2008-07-23 Pioneer PLP Notice Letter).
43 Exhibit 22 (2009-03-13 Letter from Olin to Ecology re: PLP determination).
44 Exhibit 23 (2009-03-30 Letter from Ecology re: Olin PLP determination).

- Persons who sell and provide written instructions for the use of a hazardous substance, if a person following those instructions causes the release.[45]

The Draft Documents identify only two PLPs: Union Pacific and Pentzer, based on their respective current owner statuses. The Draft Documents do not, however, identify past operators or arrangers as PLPs and, as explained above, there are several viable additional PLPs.

In summary and as discussed above, Ecology should name the following PLPs at the Trentwood Property because they fit within the categories of liable parties under the Washington Model Toxics Act:

1. Alumax LLC f/k/a Alumax, Inc. as the successor to Hillyard Aluminum Corporation (and possibly The Hillyard Processing Company), which, as described above, operated a dross processing facility on the Trentwood Property from 1966 to 1980 and released dross thereon;

2. Imperial West Chemical Co. ("IWC"), which operated a dross processing facility on the Trentwood Property from as early as 1976 to 1998 and released dross thereon;

3. KNA California, Inc. (f/k/a Kemwater North America Company), which operated a dross processing facility on the Trentwood Property from 1998 and 2000 and released dross thereon (and as the admitted successor to IWC);

4. Kemira Water Solutions, Inc. (f/k/a Kemiron Northwest Inc.), the present operator of the Trentwood Property whose tenancy dates back to 2000, and whose predecessor Kemiron Northwest Inc.'s operations likely resulted in the release of dross at the Trentwood Property; and

5. Pioneer Companies, LLC (f/k/a Pioneer Companies, Inc.), the parent company of IWC and Kemwater, which arranged the sale of IWC's assets to Kemwater in 1996 and Kemwater's assets to Kemiron in 2000, functionally resulting in arrangement for disposal of dross at the Trentwood Property.

Union Pacific is in the process of searching for additional parties that may also be properly identified as PLPs. To the extent that Union Pacific identifies any additional PLPs, it will notify Ecology.[46]

III. Site Plan Exhibit

[45] *See* RCW 70.105D.040(1); *see also* Ecology's Policy 500A regarding the "Identification of Potentially Liable Persons."

[46] For example, Union Pacific is presently researching whether Kaiser Aluminum of Washington, LLC (f/k/a Kaiser Aluminum & Chemical Corporation) ("Kaiser") should be named as a PLP given that one or more of the entities discussed herein were in the business of processing dross supplied to them by Kaiser. *See, e.g.,* Exhibit 1 (Hillyard well record indicating that Hillyard was processing dross from Kaiser). Therefore, Kaiser is likely a generator with respect to the Trentwood Property. Union Pacific understands that Ecology issued Kaiser a PLP letter in 2008 based on generator activities; but Kaiser asserted a bankruptcy defense and was not pursued further. However, as conceded by Kaiser, Kaiser's bankruptcy did not fully discharge all environmental liabilities, and Union Pacific is evaluating whether a PLP case may be made against Kaiser. *See* Exhibit 18 (2008-08-20 Kaiser response to Ecology re: PLP status).

As a final miscellaneous comment, the Order did not include an exhibit for the Site Plan. We suggest using Figure 2 from the Revised Feasibility Study as the Site Plan because it provides a reasonable representation of the Site as a whole.[47]

***

We welcome the opportunity to discuss any and all aspects of this letter with Ecology, including the new facts set forth herein. We are continuing our investigation based on the recently discovered documents and will provide you with additional supporting documentation as we receive it. Please note that Union Pacific has recently notified the foregoing entities of their PLP status under MTCA and PRP status under CERCLA.

Sincerely,

Robert C. Bylsma
Sr. Regional Environmental Counsel

cc: Tod Gold – tgold@jzplaw.com
Ivy Anderson – ivy.anderson@atg.wa.gov
David E. Cranston – dcranston@greenbergglusker.com
Sherry E. Jackman – sjackman@greenbergglusker.com

[47] *See* Exhibit 31 (Proposed Trentwood Site Plan).

Exhibit List

Exhibit No.	Document
1	1960s Well records for Hillyard Processing Company
2	1970-03 Ecology Water Pollution Status Report
3	1980-05-29 Letter from C.O. Durham (Spokane International)
4	1985-07-15 Industrial Lease Form
5	1985-08-22 Letter from P. Conley (Spokane International)
6	1986-11-02 Lease to IWC
7	1987-12 Phase I Site Inspection Report – Aluminum Recycling Corporation
8	1992-06-24 Union Pacific Lease File Information
9	1992-06-29 Memo from D. Rice (Union Pacific) enclosing photos
10	1992-10-19 Letter from J. Gorley (Union Pacific) re: inspection report
11	1992-11-2 Lease Supplemental Agreement with IWC
12	1995-07-17 Lease with IWC
13	1997-09-17 Letter from Kemwater to Union Pacific
14	1998-03-10 WSJ Article – "Alcoa Reaches Deal to Buy Alumax for $2.8 Billion in Cash and Stock"
15	2000-06-21 Kemiron NW Land Lease Application Form
16	2001-03-15 Email from Kemiron NW to Union Pacific
17	2001-04-12 Consent Decree re: 3412 Wellesley Avenue, Spokane, Washington
18	2008-08-20 Kaiser response to Ecology re: PLP status
19	2001-08-15 Lease Assignment to Kemiron NW
20	2006-06-08 CA Regional Water Board Cleanup and Abatement Order
21	2008-07-23 Pioneer PLP Notice Letter
22	2009-03-13 Letter from Olin to Ecology re: PLP determination
23	2009-03-30 Letter from Ecology re: Olin PLP determination
24	EDR Aerial Photo Decade Package – Trentwood Property
25	Hillyard Aluminum Recovery Corporation - corporate records
26	IWC – corporate records
27	Kemira/Kemiron NW – corporate records
28	2001-09-91 U.S. Bankruptcy Court Chapter 11 Debtor's Joint Disclosure Statement In re: Pioneer Companies, Inc.
29	Alumax Inc. – corporate records
30	Alumax LLC – corporate records
31	Trentwood Site Plan
32	1985-08-07 Letter from IWC clarifying scope of operations
33	1986-07-15 Real Estate Environmental Audit by Union Pacific
34	Alumax Inc. 10-K (1997)
35	Kemwater/KNA California – corporate records
36	1998-08-20 Lease with Kemwater

EXHIBIT 1

Progress Sheet—Ground Water Application

4-1-67

The Hillyard Processing Co., for
Spokane International Railroad ~~Co.~~
Box 6055
Spokane, Washington 99207

NAME ..... Assigned to .....

G. W. APPLI. NO. 7886 PERMIT NO. 7409 CERT. NO. 5484 A

AMENDED ..... CANCELLED .....

Application received December 10, 1965 Initial $10.00 fee received December 10, 1965
Statement of additional examination fee $ ..... Sent ..... Received .....
Application returned for completion or correction ..... Received .....

TEMPORARY PERMIT: Approved by ..... Issued .....

PUBLICATION:
O.K.'d by BW Date 12/15/65 Notice sent 12-23-65
Protests .....
Filed .....
Affidavit received and checked 2-3-66 Time expired 2-21-66
Amended notice sent ..... Affidavit received .....
Time expires .....

DEPT. OF GAME REPORT .....

EXAMINATION Made 3-30-65 by E E L
O.K.'d for permit 4-12-66 by .....
Statement of permit fee sent 4-6-66 Amount $ 20.00 Received 4-12-66
($10.00 credit (9-29-65) — $10.00 due)

PERMIT NO. 7409 ISSUED 4-14-66

BEGINNING OF CONSTRUCTION: Notice sent Started Filed .....
Extension fee $ ..... Extended to .....
Extended to .....

WELL DRILLER'S REPORT: Sent 12-23-65 Filed 2-3-66

COMPLETION OF CONSTRUCTION: Notice sent Completed Filed .....
$2.00 extension fee ..... Extended to .....
To .....

PROOF OF APPROPRIATION: Sent 4-18-66 Filed 8-15-66
$2.00 extension fee ..... Extended to .....

Statement of certificate fee sent 4-18-66 $ 5.00 Received 8-15-66

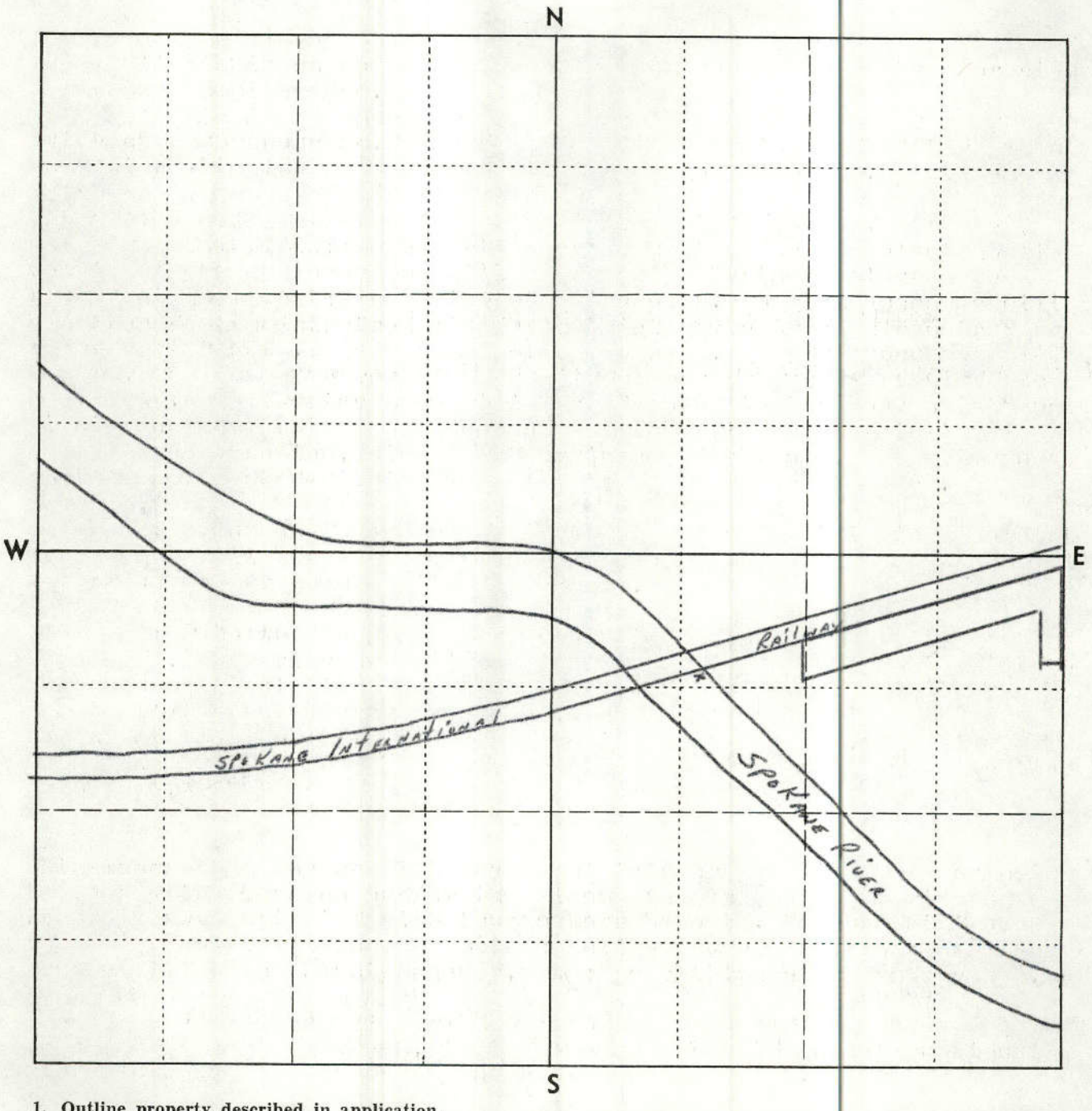
CERTIFICATE OF GROUND WATER RIGHT NO. 5484 A ISSUED 8-18-66

STATE PRINTING PLANT OLYMPIA, WASHINGTON

S. F. No. 1854-A—OS

SECTION PLAT

Sec. 11 Twp. 25 N. R. 44



1. Outline property described in application.
2. Show by a cross (X) the location of point of diversion (surface water source) or point of withdrawal (ground water source). For ground water applications, show by a circle (O) the locations of other wells or works within a quarter of a mile.
3. Indicate traveling directions from nearest town.

Scale: 1 inch = 800 feet (each small square = 10 acres)

East out of Spokane on Freeway to Sullivan Road, north on Sullivan 2000' north of Spokane River. Turn left along railroad tracks.

October 8, 1965

Hillyard Processing, Inc.
P O. Box 6055
East 3412 Wellesley Avenue
Spokane, Washington

ATTENTION: Paul V. Ortman
Plant Manager

Dear Sir:

In response to your letter of October 4, we are enclosing a ground water application and set of well driller's record forms with which your company may request a permit to appropriate ground water for your processing plant. Please complete the application and return for processing. The examination fee submitted with the surface water application will be applied to the ground water application when received.

The well driller's record forms should be completed by the driller and the original and first copy returned for our file.

The surface water application has been rejected.

Very truly yours,

DEPARTMENT OF CONSERVATION

ROBERT H. RUSSELL, Asst. Supervisor
Division of Water Resources

RHR:bj
Enclosure

WATER WELL REPORT
STATE OF WASHINGTON

File Original and First Copy with the Division of Water Resources
Second Copy — Owner's Copy
Third Copy — Driller's Copy

Application No. 7886
Permit No. ....

(1) OWNER:
Name The Hillyard Processing Company
Address Box 6055
Spokane, Washington 99207

(2) LOCATION OF WELL:
County Spokane Owner's number, if any—
¼ ¼ Section 11 T. 25 R. 44 W.M.
Bearing and distance from section or subdivision corner
2440 ft. northwest of southeast corner

(3) TYPE OF WORK (check):
New Well ☒ Deepening ☐ Reconditioning ☐ Abandon ☐
If abandonment, describe material and procedure in Item 11.

(4) PROPOSED USE (check):
Domestic ☐ Industrial ☒ Municipal ☐
Irrigation ☐ Test Well ☐ Other ☐

(5) TYPE OF WELL:
Rotary ☐ Driven ☐
Cable ☒ Jetted ☐
Dug ☐ Bored ☐

(6) CASING INSTALLED:
Threaded ☐ Welded ☒
10" Diam. from 0 ft. to 125 ft. Gage 3/8"
..... Diam. from ..... ft. to ..... ft. Gage .....
..... Diam. from ..... ft. to ..... ft. Gage .....

(7) PERFORATIONS:
Perforated? ☒ Yes ☐ No
Type of perforator used Roller Punch
SIZE of perforations 1¼" in. by 3/16 in.
106 perforations from 106' ft. to 115 ft.
..... perforations from 106' ft. to 120 ft.
..... perforations from ..... ft. to ..... ft.
..... perforations from ..... ft. to ..... ft.
..... perforations from ..... ft. to ..... ft.

(8) SCREENS:
Well screen installed ☐ Yes ☐ No
Manufacturer's Name .....
Type ..... Model No. .....
Diam. ..... Slot size ..... Set from ..... ft. to ..... ft.
Diam. ..... Slot size ..... Set from ..... ft. to ..... ft.

(9) CONSTRUCTION:
Was well gravel packed? ☐ Yes ☐ No Size of gravel: .....
Gravel placed from ..... ft. to ..... ft.
Was a surface seal provided? ☐ Yes ☐ No To what depth? ..... ft.
Material used in seal—
Did any strata contain unusable water? ☐ Yes ☐ No
Type of water? Depth of strata
Method of sealing strata off

(10) WATER LEVELS:
Static level 60 ft. below land surface Date 1/12/66
Artesian pressure lbs. per square inch Date
Water is controlled by .....
(Cap, valve, etc.)

(11) WELL TESTS:
Drawdown is amount water level is lowered below static level
Was a pump test made? ☐ Yes ☒ No If yes, by whom?
Yield: gal./min. with ft. drawdown after hrs.
" " " "
" " " "
Recovery data (time taken as zero when pump turned off) (water level measured from well top to water level)

Time	Water Level	Time	Water Level

Date of test .....
Bailer test gal./min. with ft. drawdown after hrs.
Artesian flow g.p.m. Date
Temperature of water Was a chemical analysis made? ☐ Yes ☐ No

(12) WELL LOG:
Diameter of well 10" inches.
Depth drilled 125 ft. Depth of completed well 125 ft.
Formation: *Describe by color, character, size of material and structure, and show thickness of aquifers and the kind and nature of the material in each stratum penetrated, with at least one entry for each change of formation.*

MATERIAL	FROM	TO
Gravel with occasional boulders	0	43'
¾" gravel up to 3" gravel.	43	52
Large boulders	52'	56'
Large rocks	56'	61'
Mixture - Pea gravel up to 5" Round.	61'	75'
Coarse sand	75'	82'
¾" gravel	82'	86'
Coarse sand & gravel	86'	103'
¾" gravel up to 3" round.	103'	125'

Work started 11/9 19 65 Completed 1/12 19 66

(13) PUMP:
Manufacturer's Name PEERLESS
Type: Turbine H.P. 40

Well Driller's Statement:
This well was drilled under my jurisdiction and this report is true to the best of my knowledge and belief.

NAME ZINKGRAF WELL DRILLING
(Person, firm, or corporation) (Type or print)
Address 1606 E. SHARP
[Signed] James J. Zinkgraf
(Well Driller)
License No. 223-02-25-3600 Date Jan. 12, 1966

(USE ADDITIONAL SHEETS IF NECESSARY)

S. F. No. 7356—(Rev. 9-62)—8-62—5M. 75168.

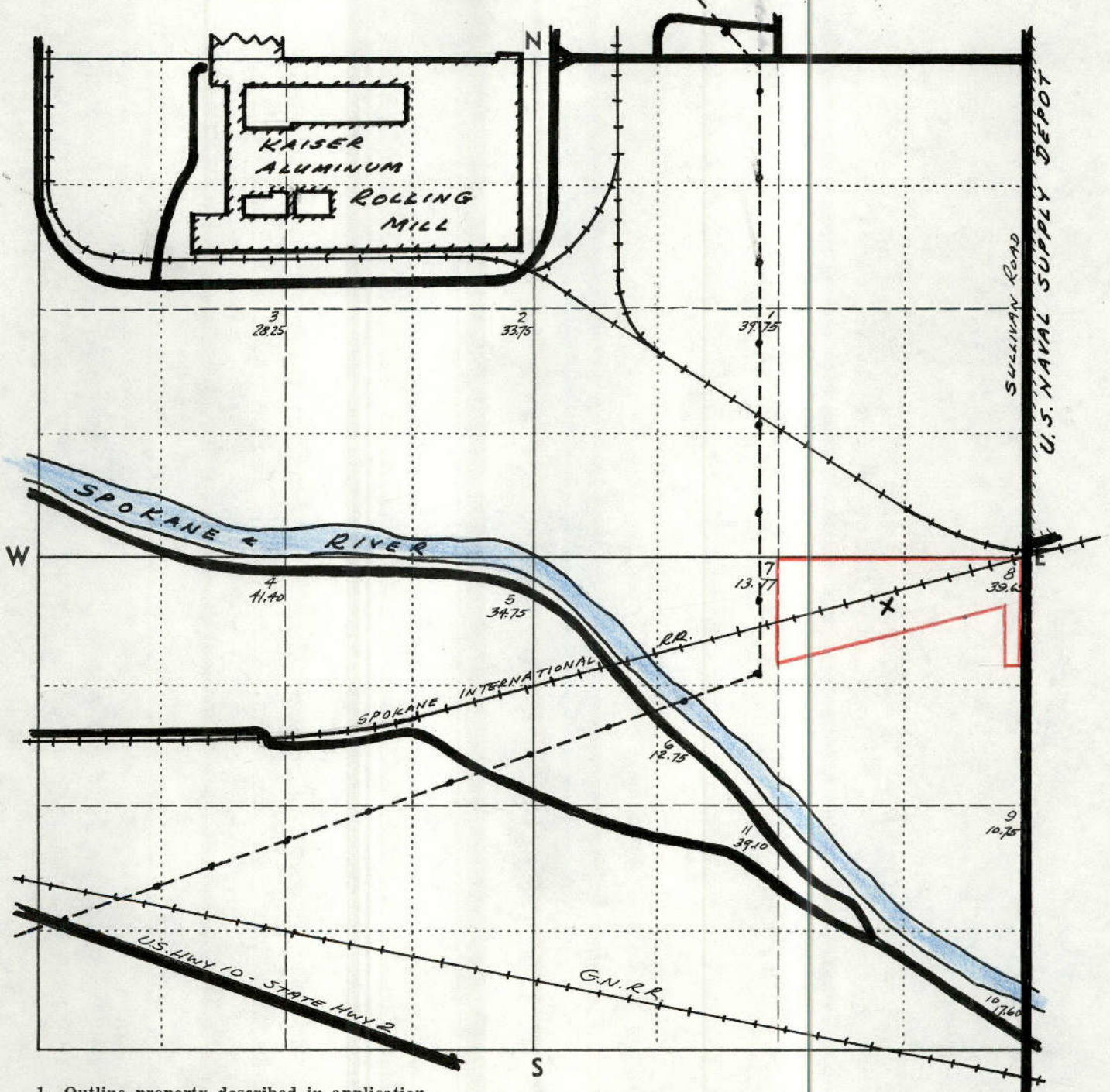
OK/WRD

S. F. No. 1854-A—OS

SECTION PLAT

GW 7886

Sec. 11 Twp. 25 N. R. 44E.



1. Outline property described in application.
2. Show by a cross (X) the location of point of diversion (surface water source) or point of withdrawal (ground water source). For ground water applications, show by a circle (O) the locations of other wells or works within a quarter of a mile.
3. Indicate traveling directions from nearest town.

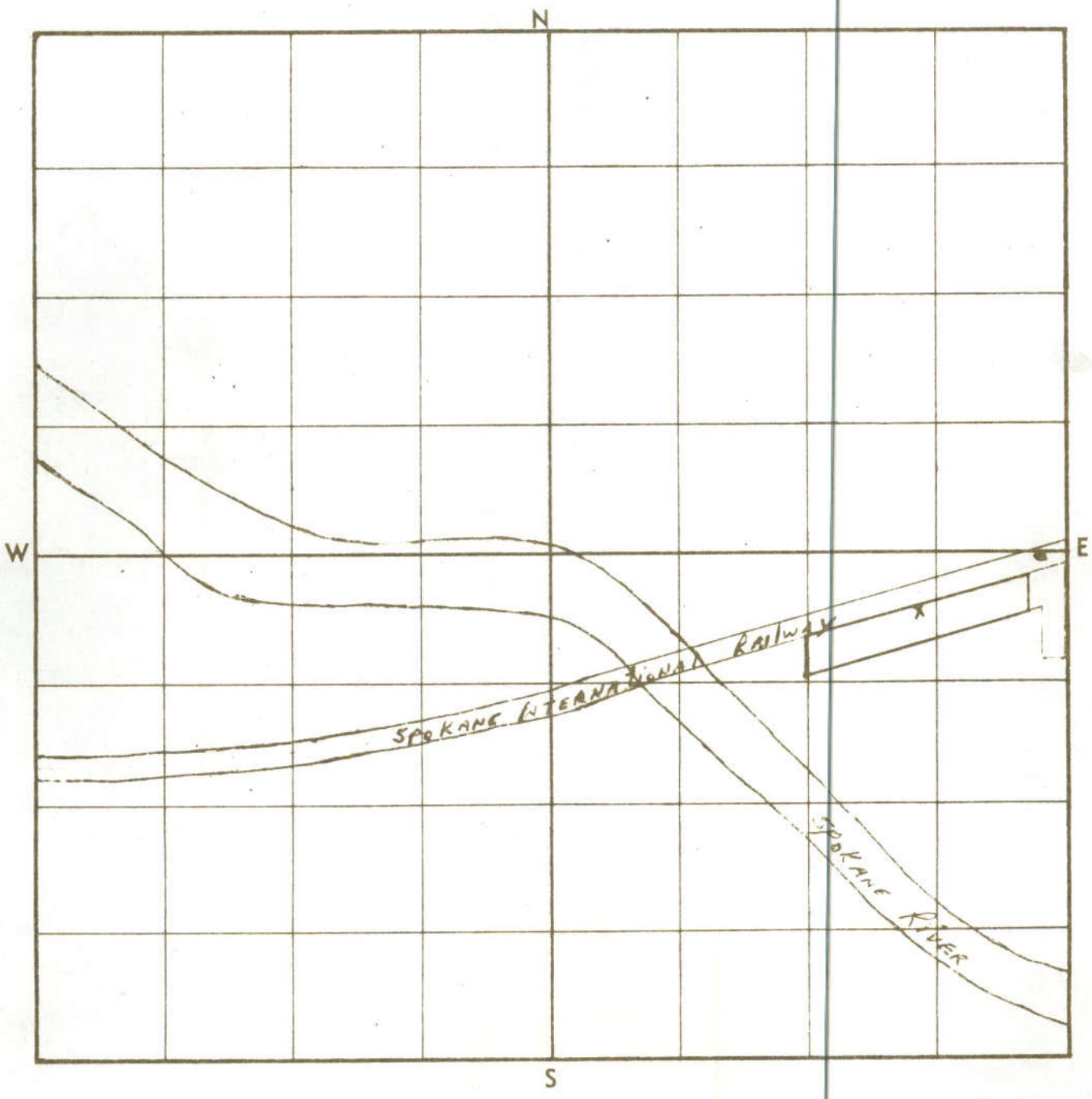
OFFICE /

Scale: 1 inch = 800 feet (each small square = 10 acres)

S. F. No. 1854-B—OS—5-69—10M.

SECTION PLAT

Sec. 11 Twp. 25 N. R. 44 West



Show by a cross (X) the location of the well or other works covered by the application. Show by circle (O) the locations of other wells or works within a quarter of a mile. Also indicate traveling directions from nearest town on main highway.

Scale: 1 inch = 800 feet.

OFFICE 2

East out of Spokane on Freeway to Sullivan Road. North on Sullivan 2000' North of Spokane River. Turn left along railroad tracks.

7886

7886

THE HILLYARD PROCESSING CO., for Spokane International Railroad Co.

Spokane, Washington December 10, 1965

a well

Government Lot 8

11 25 44 E. Spokane

600 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

continuously industrial use.

23rd December 65

M. G. WALKER

Affidavit of Publication

STATE OF WASHINGTON } ss.
County of Spokane. }

I, Flobelle Frieske do solemnly swear that I am the Principal Clerk of the Spokane Weekly Chronicle, a newspaper of general circulation established and regularly published, once each week in the English language, in the City of Spokane, Spokane County, Washington; that said newspaper has been so established and regularly published and has had said general circulation continuously for more than six (6) months prior to the 23rd day of July, 1941; that said newspaper is printed in an office maintained at its place of publication in the City of Spokane, Washington; that said newspaper was approved and designated as a legal newspaper by order of the Superior Court of the State of Washington for Spokane County on the 23rd day of July, 1941, and that said order has not been revoked and is in full force and effect; that the notice attached hereto and which is a part of the proof of publication,

APPLICATION NO. 7886
STATE OF WASHINGTON, Office of Supervisor of Water Resources, Olympia.
NOTICE OF GROUND WATER RIGHT
TAKE NOTICE: That THE HILLYARD PROCESSING CO., for Spokane International Railroad Co. of Spokane, Washington on December 10, 1965, filed application for permit to withdraw public ground waters through a well situated within Government Lot 8 of Section 11, Township 25 N, Range 44 E.W.M., in Spokane County, in the amount of 600 gallons per minute, subject to existing rights continuously, each year for the purpose of industrial use.
Any objections must be accompanied by a two dollar ($2.00) recording fee and filed with the State Supervisor of Water Resources within thirty (30) days from Jan 20, 1966.
Witness my hand and official seal this 23rd day of December, 1965.
(Seal)
M. G. WALKER,
State Supervisor of Water Resources.

RECEIVED
DEPARTMENT OF CONSERVATION
FEB 3 1966
A. M. 7 8 9 10 11 12 1 2 3 4 5 6 P. M.

was published in said newspaper two times, the publication having been made once each week from the 13th. day of January A. D. 19 66, to the 20th. day of January A. D. 19 66. That said Notice was published in the regular and entire issue of every number of the paper during the period of time of publication, and that the notice was published in the newspaper proper and not in a supplement.

Flobelle Frieske

Subscribed and sworn to before me at the City of Spokane, this 20th. day of January, 19 66.

Bernice Menard
Notary Public in and for the State of Washington, residing at Spokane, Wash.

Form G-30

No.....

IN THE

SUPERIOR COURT

OF THE

STATE OF WASHINGTON

in and for Spokane County

.....

.....

.....

.....

.....

OFFICE OF

S. F. No. 7355—7-57—5M. 49757. O.S.

Proof of Appropriation of Water

Application No. 7886 Permit No. 7409

1. Name of Permittee HILLYARD PROCESSING CO., INC.
2. Postoffice address Box 6055, Spokane, Washington
3. Source of appropriation Well
4. Name or number of works (if any)
5. For what purpose or purposes is water used? Processing aluminum dross
6. Give date of beginning of construction December 1, 1965
7. Give date of completion of construction work, including water distribution system February 2, 1966
8. Give date when water was completely applied to proposed use June 13, 1966
9. If used for irrigation:

   Give number of acres described in permit

   Give number of acres actually irrigated
10. If used for power: HP actually developed
11. LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED:

    Portion of Lot 8 in southeast quarter laying north of line drawn parallel with and 200 feet distant southerly when measured at right angle from southerly Spokane International Railway right-of-way line; also, east 100 feet of north 575 feet of Lot 8

    Section 11 Township 25 north range 44 east W. M.

Has Access Port or Airline Been Installed? Yes

12. During what months is water used? All year
13. Does map filed with your application show correctly the location of well or point of diversion for withdrawal of water, and area of land where water is used? Yes
14. If the dimensions, location or type of structure do not correspond to those described in your permit, state what changes have been made, giving dimensions, etc.
15. Actual measured discharge or diversion of permanent system: 450 GPM (gpm or cfs)

450gpm
720¢ Af (impossible) E.E.L

(Sign certification on reverse side)

STATE PRINTING PLANT OLYMPIA, WASHINGTON

STATE OF WASHINGTON,
County of Spokane } ss.

I, Paul V. Ortman, being first duly sworn, depose and say that I have read the above and foregoing proof of appropriation; that I know the contents thereof; and that the facts therein stated are true.

IN WITNESS WHEREOF, I have hereunto set my hand this 11 day of August, 1966

Paul V. Ortman

Subscribed and sworn to before me this 11 day of August, 1966

D. F. Akin

Notary Public.

STATE OF WASHINGTON
Department of Conservation
EARL COE, DIRECTOR
335 GENERAL ADMINISTRATION BUILDING
OLYMPIA

ALBERT D. ROSELLINI
GOVERNOR

DIVISIONS:
RECLAMATION
FLOOD CONTROL
WATER RESOURCES
MINES AND GEOLOGY
COLUMBIA BASIN PROJECT
POWER RESOURCES
WEATHER MODIFICATION

August 19, 1966

Spokane County Auditor
Spokane, Washington

Dear Sir:

Enclosed is Certificate of Water Right No. 5484-A and a check or money order in the amount of $ 2.00 to cover the cost of recording in your office.

When this has been done, please forward the certificate to:

The Hillyard Processing Co., for
Spokane International Railroad Co.
Box 6055
Spokane, Washington 99207

Very truly yours,

DEPARTMENT OF CONSERVATION

EARL COE, DIRECTOR

M. G. WALKER, Supervisor
Division of Water Resources

S. F. No. 370-B—OS—3-62—75C.

$10.00 examination fee should accompany each application.

STATE OF WASHINGTON
DEPARTMENT OF CONSERVATION
Division of Water Resources

Priority
Date 12-10-65
Time 9:30 am
Accepted RHR

APPLICATION FOR A PERMIT

To Appropriate Public Ground Waters
OF THE STATE OF WASHINGTON

Application No. G. W. 7886

I, The Hillyard Processing Co. for Spokane International Railroad Co.
(Name of applicant)

of Box 6055, Spokane, Washington 99207
(Complete post office address)

do hereby make application for a permit to appropriate the following described public ground waters of the State of Washington, subject to existing rights. This application is made under the provisions of Chap. 263 of the Session Laws of 1945, and amendments thereto of the State of Washington and subject to the rules and regulations of the Department of Conservation, Division of Water Resources.

1. *The proposed appropriation will be from* Well
(Well, tunnel, infiltration trench)

located 6½ miles east of Spokane
(Give approximate distance and direction from nearest city or town)

Area (Leave blank) *Sub-area* (Leave blank)

Zone (Leave blank)

Applicant's name or number of well or other works, if any Permit #3485 (Cert GW22224 - in Sec. 3, T. 25, R 43E.)

2. *The quantity of water which applicant intends to withdraw for beneficial use is* 600 *gallons per minute;* 988.2 *acre feet per year.* INDUSTRIAL USE ← use this

3. *The use or uses to which water is to be applied* Processing aluminum dross from Kaiser Aluminum & Chemical Corporation
(Domestic supply, irrigation, municipal, manufacturing, industrial use, etc.)

4. *The time during which water will be required each year* ~~All year~~ continuously

5. *Location of well or other works for withdrawal of water: In county of* Spokane

750'W & 250'S from east¼ corner of Sec. 1

(a) ~~2440 feet Northwest of Southeast corner of Sec. 11, Twp. 25, R 44 W~~
(Give distance and bearing from nearest corner of section or legal subdivision)

being within the ~~Portion of lot 8 in SE~~ Govt Lot 8 *quarter of Sec.* 11 *, Twp.* 25 *N., Rge.* 44 ~~W~~ E
(Give smallest legal subdivision) (E. or W.)

or (b) If within limits of recorded platted property, town or city: Lot , *Block* ,

of
(Give name of plat or addition) (If within town or city, give name)

(c) Show this location on accompanying section plat. Other adequate maps or drawings will be acceptable.

JK
RHR

6. DESCRIPTION OF WORKS:

(a) Well will be drilled *(Dug or drilled) and have a diameter of* 10 *inches and an estimated depth of* 120 *feet.*

(b) Tunnels or trenches to be described: (Attach additional sheets if needed for full description.)

(c) Distribution system to be described:

(d) If pumps are to be used, give size and type: 40 h.p. vertical hollow shaft motor with 6x8x16½ cast iron surface discharge head, 110' of 6"x1" water lubricated discharge column and 7 stage pumping unit.

(e) Give capacity and type of motor or engine to be used:

(f) If the location of the well, tunnel, or other works is less than one-fourth mile from a natural stream or stream channel, give the distance to the nearest point on each of such channels and the difference in elevation between the stream bed and the ground surface at the source of development:

955 feet west
65 feet lower than well

(g) Ownership of each existing well or other works from which ground water is withdrawn within a radius of one-quarter mile and the distance and direction from well or other works being reported herein:

(Name)	(Direction)	(Distance)
(Name)	(Direction)	(Distance)
(Name)	(Direction)	(Distance)

SUPPLY THE FOLLOWING INFORMATION ACCORDING TO USE PROPOSED:

7. *For Municipal Supply: To supply the city, town, or community of....., in the county of....., having a present population of....., and an estimated population of....., in 19.....*

8. *For Irrigation: Number of acres to be irrigated..... acres.*

9. *Legal Description of Property on which water is to be used for all purposes other than municipal supply:*

(Copy legal description from deed)
(If more space is required, attach separate sheet)

That portion of Govt Lot 8 in Southeast quarter laying North of a line drawn parallel with and 200' distance southerly, when measured at right angles from southerly Spokane International Railway right-of-way line, also the east 100' of the North 575' of said Govt. Lot 8.

OK
BW

(On accompanying plat show location of the existing wells or works)

10. *What interest do you have in the above described property?* Leasing from Spokane International Railroad
(Owner, lessee, contract buyer, etc.)

11. *Do you have any other water rights appurtenant to the above described property?* No

If so, from what source?

12. *Construction work will begin on or before* November 1, 1965

13. *Construction work will be completed on or before* December 15, 1965

14. *Water will be put to complete beneficial use on or before* January 1, 1966

Paul V. Ostman, Mgr.
(Signature of applicant)

15. *Name and address of owner of land on which well or works are located:*

(Spokane International Railroad Co.) — Portland, Oregon
(Name) — (Address)

G. H. Baker
(Signature of legal landowner)
General Manager

Signed in the presence of us as witnesses:

W. Gral — UPRR, Portland, Oregon
(Name) — (Address of witness)

W. C. Krowarty — UPRR, Portland, Oregon
(Name) — (Address of witness)

STATE OF WASHINGTON,
COUNTY OF THURSTON. } *ss.*

This is to certify that I have examined the foregoing application, together with the accompanying maps and data, and return the same for correction or completion as follows:

In order to retain its priority, this application must be returned to the State Supervisor of Water Resources, with corrections, on or before ....., *19*.....

WITNESS my hand this ..... *day of* ....., *19*.....

State Supervisor of Water Resources.

S. F. No. 7361—1-64—3M. 83360.

CERTIFICATE RECORD NO. 11 PAGE NO. 548-A

STATE OF WASHINGTON, COUNTY OF Spokane

Certificate of Ground Water Right

Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the State Supervisor of Water Resources thereunder.

THIS IS TO CERTIFY *That* SPOKANE INTERNATIONAL RAILROAD CO.

of Spokane, Washington, *has made proof to the satisfaction of the State Supervisor of Water Resources of Washington, of a right to the use of the ground waters of a* well

located within Government Lot 8

Sec. 11, *Twp.* 25 *N., R.* 44 E. *W.M.,*

for the purpose of industrial use (processing aluminum dross from Kaiser Aluminum and Chemical Corp.)

under and subject to provisions contained in Ground Water Permit No. 7409 *issued by the State Supervisor of Water Resources and that said right to the use of said ground waters has been perfected in accordance with the laws of Washington, and is hereby confirmed by the State Supervisor of Water Resources of Washington and entered of record in Volume* 11 *at page* 548-A; *that the right hereby confirmed dates from* December 10, 1965; *that the quantity of ground water under the right hereby confirmed for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed* 450 gallons per minute; 720 acre-feet per year, for industrial use.

Special provisions required by the Supervisor of Water Resources:

A description of the lands to which such ground water right is appurtenant:

That portion of Government Lot 8 in SE¼ lying north of a line drawn parallel with and 200 feet distance southerly, when measured at right angles from southerly Spokane International Railway right-of-way line; also the east 100 feet of the north 575 feet of said Government Lot 8, all in Sec. 11, T. 25 N., R. 44 E.W.M.

The right to the use of the ground water aforesaid hereby confirmed is restricted to the lands or place of use herein described, except as provided in Sections 6 and 7, Chapter 122, Laws of 1929.

WITNESS the seal and signature of the State Supervisor of Water Resources affixed this 18th *day of* August, 19 66

M. Walker

State Supervisor of Water Resources.

NGINEERING DATA

K

Ground Water Permit No......

CERTIFICATE OF GROUND WATER RIGHT

Recorded in the office of the State Supervisor of Water Resources, Olympia, Washington, in Book No......*of Ground Water Right Certificates, on page*....., *on the*.....*day of*..... *19*.....

STATE OF WASHINGTON,
County of ..... } *ss.*

I certify that the within was received and duly recorded by me in Volume..... *of Book of Water Right Certificates, at page*....., *on the*.....*day of* ....., *19*.....

.....

STATE PRINTING PLANT OLYMPIA, WASH., 1964

Report of Examination on Ground Water

Received date December 10, 1965 Date of exam. March 30, 1966 Appli. No. 7886

Name The Hillyard Processing Co., for/ Spokane International Railroad Co. Address Box 6055, Spokane, Washington

Type of works a well Dimensions 10" x 120'

Progress of works Completed

Quantity applied for 600 g.p.m. 988.2 acre-feet per year

Legal sub. Government Lot 8 Sec. 11 Twp. 25 N. Rge. 44 E. County Spokane

Use industrial use (processing aluminum dross from Kaiser Aluminum & Chemical Corp.)

Irrigation-acreage: Present Planned Feasible

Municipal: Population as of

Industrial

Time pump will be operated continuously

Other water rights appurtenant to this land None

Proximity to existing works, springs, wells, or streams None

Area Sub-area Zone

RECOMMENDATIONS

Approved for 600 g.p.m. 984 acre-feet per year, subject to existing water rights. (1 acre-foot 325,850 gallons.)

The installation of an access port to well as described in attached Ground Water Bulletin No. 1 is recommended.

It should be noted that use of the waters appropriated under this application will be largely non-consumptive and all or a portion of the diverted quantity will be returned to this source of supply or other public waters. Under the State's Pollution Control Law, as amended by Chapter 71, Laws of 1955, any person who conducts a commercial or industrial operation of any type which results in the disposal of solid or liquid waste material into the waters of the State shall procure a permit from the Pollution Control Commission before disposing of such waste material. In view of this provision, the applicant is advised to contact the Pollution Control Commission, Public Health Building, Olympia, with regard to the need for compliance with this portion of the act.

The water requirement for this application is calculated on a continuous withdrawal of 600 gallons per minute or 984 acre-feet annually.

Signed at Olympia, Washington
This 6th Day of April, 1966.

Ernest E. LeVasseur

ERNEST E. LeVASSEUR, Engineer
Division of Water Resources

STATE OF WASHINGTON
DEPARTMENT OF CONSERVATION
DIVISION OF WATER RESOURCES

Permit to Appropriate Public Ground Waters of the State of Washington

Book No. 15 of Ground Water Permits, on page 7409 under Application No. 7886

THE HILLYARD PROCESSING CO., FOR SPOKANE INTERNATIONAL RAILROAD CO.

of Spokane, Washington

is hereby granted a permit to appropriate the following described public ground waters of the State of Washington, subject to existing rights, and to the limitations and provisions set out herein.

Priority date of this permit is December 10, 1965

Source of the proposed ground water appropriation is a well

within ..... area, ... sub-area

..... zone. Name or number of works is .....

Quantity of water appropriated shall be limited to the amount which can be beneficially applied and not to exceed 600 gallons per minute; 984 acre-feet per year, to be used for the following purposes: industrial use (processing aluminum dross from Kaiser Aluminum and Chemical Corp.)

as more definitely set out below.

Location of the well, tunnel, or infiltration trench is 750 feet west and 250 feet south from east quarter corner of Sec. 11

being within Government Lot 8 of Sec. 11, T. 25 N., R. 44 E.W.M.

county of Spokane

Use, or uses to which water is to be applied:

For municipal supply: ..... gallons per minute; ..... acre-feet per year, to supply .....

For irrigation: ..... gallons per minute; ..... acre-feet per year, for the irrigation of ..... acres.

For miscellaneous uses: 600 gallons per minute; 984 acre-feet per year, for industrial use

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

That portion of Government Lot 8 in SE¼ lying north of a line drawn parallel with and 200 feet distance southerly, when measured at right angles, from southerly Spokane International Railway right-of-way line; also the east 100 feet of the north 575 feet of said Government Lot 8, all in Sec. 11, T. 25 N., R. 44 E.W.M.

DESCRIPTION OF WORKS FROM WHICH WATER IS TO BE WITHDRAWN

The well will be drilled and have a diameter of 10 inches, and depth of 120 feet.
(Dug or drilled)

Description of tunnel or infiltration trench:

(Please read carefully provisions below)

Particular specifications required by the Supervisor of Water Resources for the purpose of preventing waste of public waters:

Construction work shall begin on or before Started

and shall thereafter be prosecuted with reasonable diligence and completed on or before Completed

and complete application of water to proposed use shall be made on or before April 1, 1967

Given under my hand and the seal of this office at Olympia, Washington, this 14th day of April, 1966

M Grvalkus

State Supervisor of Water Resources

ENGINEERING DATA
O.K.

EXHIBIT 2

STATUS REPORT

WATER POLLUTION IN THE SPOKANE RIVER

MARCH, 1970

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
DANIEL J. EVANS
GOVERNOR
JOHN A. BIGGS
DIRECTOR
OLYMPIA, WASHINGTON

Reprint -- STATUS REPORT, March 1970, WATER POLLUTION IN THE SPOKANE RIVER. by Thomas G. Haggarty, Regional Manager, Eastern Regional Office, Washington State Department of Ecology. Originally published as Technical Report 69-1, Washington State Water Pollution Control Commission.

"It is declared to be the public policy of the State of Washington to maintain the highest possible standards to insure the purity of all waters of the state, consistent with public health and public enjoyment thereof, the propagation of wildlife, birds, game fish and other aquatic life and the industrial development of the state and to that end, require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the State of Washington."

Chapter 90.48, Revised Code of Washington.

INDUSTRIAL WASTE DISCHARGES

Any person who conducts a commercial or industrial operation of any type which results in the disposal of solid or liquid waste material into the waters of the state, including those that discharge to municipal or public sewage systems must obtain a permit from the Water Pollution Control Commission.

In the immediate Spokane area, there are 57 industries with these permits. This permit program enables the Commission to control and regulate industrial waste discharges.

The Spokane Regional Office is responsible for the 20 eastern Washington counties and has some 402 active permits issued. Statewide, there are some 965 permits in effect. These permits cover all industries - big and small - which play a role in the state's overall water pollution control programs.

Listed below are the industries with state permits which discharge wastes into the Spokane River and their current treatment process adequacy:

1. Spokane Industrial Park - upgrade existing treatment facilities by September 30, 1971.
2. Hillyard Processing Company (Sullivan Road) - upgrade existing treatment facilities by September 30, 1971.
3. Kaiser Aluminum (Trentwood) - minor modifications to existing facilities.
4. Inland Empire Paper Co. - primary treatment of waste water was required to be completed by December 31, 1969. Secondary treatment or removal of sulphite waste liquor discharge by September 30, 1971 is the second and last step in necessary corrections.
5. Thomas Cleaners (Millwood) - secondary treatment of removal of discharge by July 1970.
6. Hillyard Processing Company (Wellesley Ave.) - present treatment facilities adequate.

The remainder of the industries in the immediate Spokane area either dispose waste water on their own property by seepage and evaporation or similar means or are connected to the City of Spokane sewer system.

There are no industries discharging directly to the Spokane River without a permit and the above list is complete. The state's efforts to encourage industries to connect to the city sewer system whenever possible to discharge their industrial wastes has been successful.

Categorically speaking, industrial waste is not a major pollution problem in the Spokane River at this time. The exception to this is the Inland Empire Paper Company - discussed in another section of this report. Industries in the Spokane area are not of the type where industrial wastes pose critical problems.

WATER QUALITY STANDARDS: All surface waters of the State of Washington are classified based on present and future uses. These standards insure the purity of all waters consistent with the beneficial uses and the development of the state.

WATER QUALITY IN THE SPOKANE RIVER

The Spokane River is classified as Class A water. There are two areas where the river waters do not meet the established standards. Specifically, these areas are where dissolved oxygen standards stipulate a minimum of 8.0 ppm (parts per million) and coliform bacteria where the standards stipulate median values not to exceed 240 with less than 20% of the samples exceeding 1000.

The dissolved oxygen in the Spokane River drops below 8.0 ppm in the area below the Inland Empire Paper Company and again in the area below the Spokane Sewage Treatment Plant. Another area is in the Long Lake impoundment in the lower reaches of the Spokane River. The situation in Long Lake creates a study on its own and information about this problem can be found in a recent publication* which deals with this specific subject.

For the purposes of definition, dissolved oxygen (D.O.) is that oxygen available in water for fish and other aquatic plants and animals. It is necessary to support the more desirable forms of life people normally associate with clean water. For example, most trout cannot tolerate dissolved oxygen concentrations of less than 5.0 ppm. On the other hand, as the D.O. drops, the more objectionable forms of life such as slimes are only able to survive and become predominate in the water.

In order to establish the perspective of dissolved oxygen concentrations, the standards for the various water classifications are as follows: Class AA - 9.5 ppm, Class A - 8.0 ppm, Class B - 6.5 ppm and Class C - 5.0 ppm.

Dissolved oxygen concentrations are often used parameters in water pollution work.

Not only is it an essential property for good quality water, but also an excellent indicator of certain types of pollutants and is relatively easy to determine by analytical methods.

Certain pollutants cause dissolved oxygen concentrations to drop. One way is through a chemical reaction. Certain types of waste water discharges cause a chemical reaction which use up the available oxygen in the receiving waters.

Another example involves a biological activity in which organic material decomposes. This biological decomposition requires oxygen so that waste waters containing organic matter - domestic sewage is a typical example - further utilize the available oxygen in receiving waters.

Through testing techniques, technicians can measure the amount or degree of the above circumstances by determining the bio-chemical oxygen demand (BOD) of waste waters. Receiving waters can assimilate a certain amount of this BOD without adverse effects. When the BOD loading exceeds this inherent ability of the receiving waters, the dissolved oxygen is utilized or depleted and water pollution results. Sewage treatment plants are designed to remove part of this BOD loading then discharge an effluent that can be assimilated by the receiving waters.

The above comments refer to only one of the many phenomenons involved in water pollution, however, it is probably the most common circumstance that occurs.

As stated, the dissolved oxygen concentration in the Spokane River drops below the established standard of 8.0 ppm in the area below the Inland Empire Paper Company. Sampling efforts have detected a low of 6.4 ppm that results from the firm's waste water discharge. During this same period, the river waters contain around 9.0 ppm dissolved oxygen above their operation. This industry, in making paper pulp, produces a waste referred to as sulphite waste liquor. This material

is frequently encountered on unpaved roads in the Spokane area where it is used for dust control.

During a normal day of operation and when the sulphite waste liquor is not being used for dust control, this industry discharges up to 30,000 lbs of BOD to the Spokane River. Once in the river, the sulphite waste liquor undergoes a chemical reaction and utilizes dissolved oxygen in the stream.

By comparison, the Spokane Sewage Treatment Plant, after providing primary treatment discharges about 12,000 lbs of BOD daily to the Spokane River. Dissolved oxygen concentrations in the river drop from around 9.0 to 8.0 ppm and lower as a result of the city's discharge. The Spokane Sewage Treatment Plant, when not affectet by the overflow or storm water problem, removes an average of 62% of the BOD and 60% of the suspended solids. Textbook definitions of primary treatment state that 35 to 40% removal efficiency can be expected.

Because of slight modifications and excellent operation, the existing plant achieves a high efficiency for primary treatment. By providing secondary treatment, this efficiency should increase to a minimum removal of 85% BOD and suspended solids. Primary treatment involves only sedimentation while secondary treatment adds further treatment through the use of biological activity. In essence, this man-made biological treatment is the same organic decomposition process that would otherwise or does now occur in the river.

Another water pollution problem involves nitrates and phosphates or what is often referred to as nutrients. These nutrients are the fertilizers that promote the growth of algae, underwater weeds and similar vegetation that render many lakes and streams undesirable during the summer months. Domestic sewage is one significant source of these nutrients. They are not removed in standard primary or secondary treatment. Because of this, the terms "tertiary treatment" or "advanced waste treatment" are now being heard more frequently and refer to a process by which the nutrients are also removed or reduced.

During a study of Long Lake, it was determined that the Spokane River carries a load of 120 lbs/day of ortho-phosphate above the Spokane Sewage Treatment Plant and 3100 lbs/day directly below this discharge. The City of Spokane has indicated that its upgrading project will include facilities for reducing this source of nutrients. The City of Spokane is to be commended for taking this attitude, for the job of providing adequate treatment will not be accomplished until such facilities are in operation.

In the lower Spokane River, the nutrient problem is a most critical situation. Coliform bacteria are another frequently used parameter for water pollution. These particular bacteria are frequent inhabitants in the intestines of warm blooded animals and indicators of the presence of domestic sewage. Pathogenic or disease causing bacteria are found in the coliform group. This becomes a public health concern if they are found in high numbers.

Standards for Class A waters and the Spokane River, stipulate median values not to exceed 240 with 20% of the samples not exceeding 1000. In accordance with the characteristic uses for Class A waters these bacterial standards would permit water contact sports such as swimming, water skiing, etc., to be carried on without a hazard to public health. Bacterial standards for public swimming pools where disinfection facilities are available are considerably more strict. It is normal to detect bacterial counts in all surface waters since any number of wild animals could have access to even isolated bodies of water. However, when these counts start to exceed the 240 to 1000 range, it can be assumed that raw sewage is present.

Through survey work on the Spokane River and other monitoring efforts, it has been determined that coliforms counts exceed the Class A standards throughout that stretch of the river from below the Upriver Dam (across from Felts Field) to the Long Lake Dam in Lincoln and Stevens Counties.

The bacterial contamination, apparently in the form of sewage enters the Spokane River as it passes through the center of town.

The storm water problem and overflow situation contributes to these high counts as would any raw sewage discharge.

To illustrate this situation, the attached graph plots median values of coliform counts from the data collected since 1966 and during 1969. The attached vicinity map shows the entire Spokane River and circles that stretch where high bacteria counts are consistently detected.

There are some interesting observations to be made from these two diagrams. First, that rather sizeable area within the circle on the vicinity map should not be used for any type of water contact sports. The graph attempts to establish the density and degree of the bacterial contamination.

The graph accurately illustrates a rather significant water pollution problem in the Spokane River.

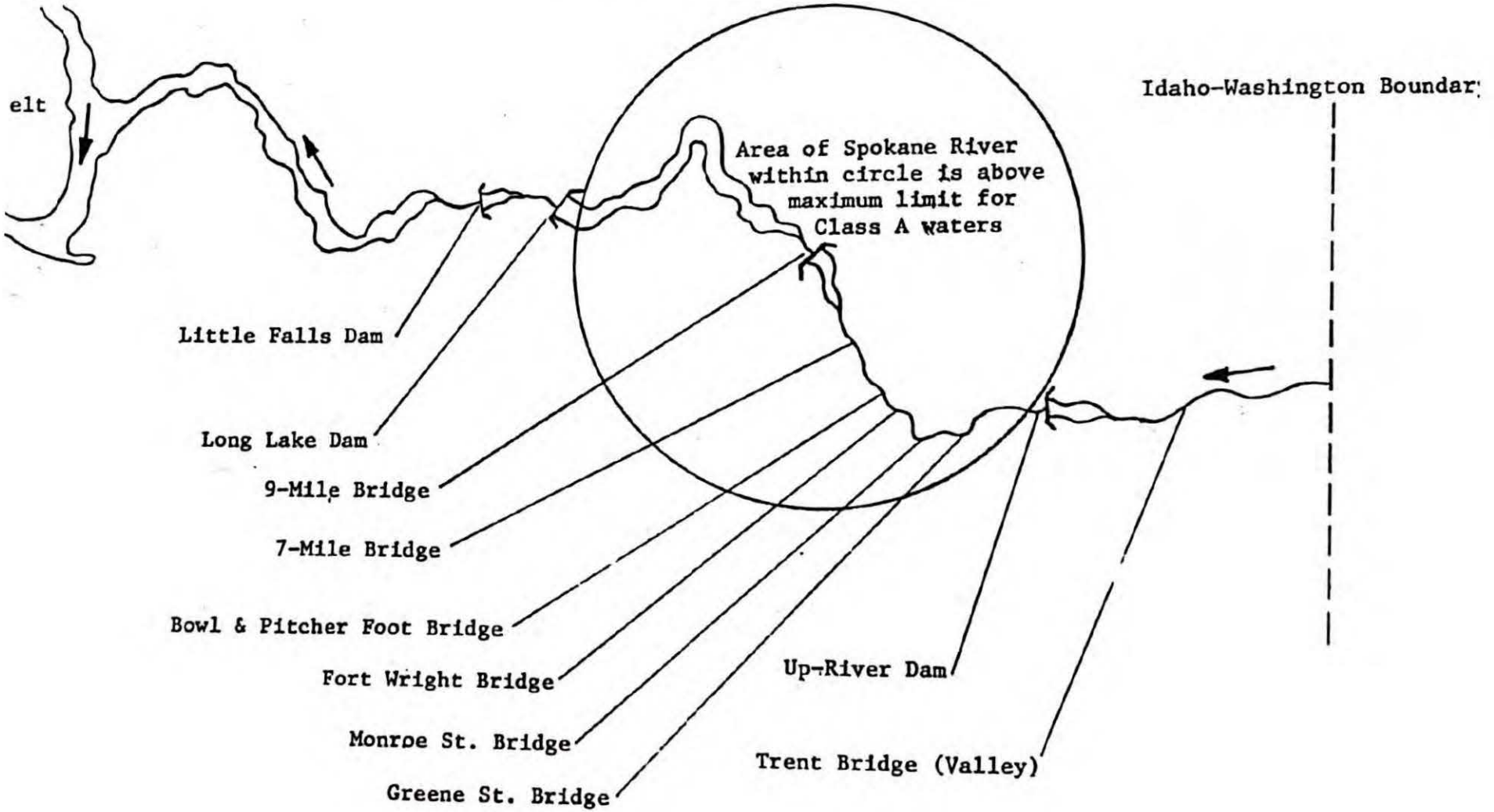
These are two of the major water quality problems in the Spokane River. These problems are not impossible to correct. The Spokane River can and must meet Class A water quality standards. This will require continued effort by Spokane area people and it appears that the effort is worthwhile.

* WPCC Technical Report No. 69-1

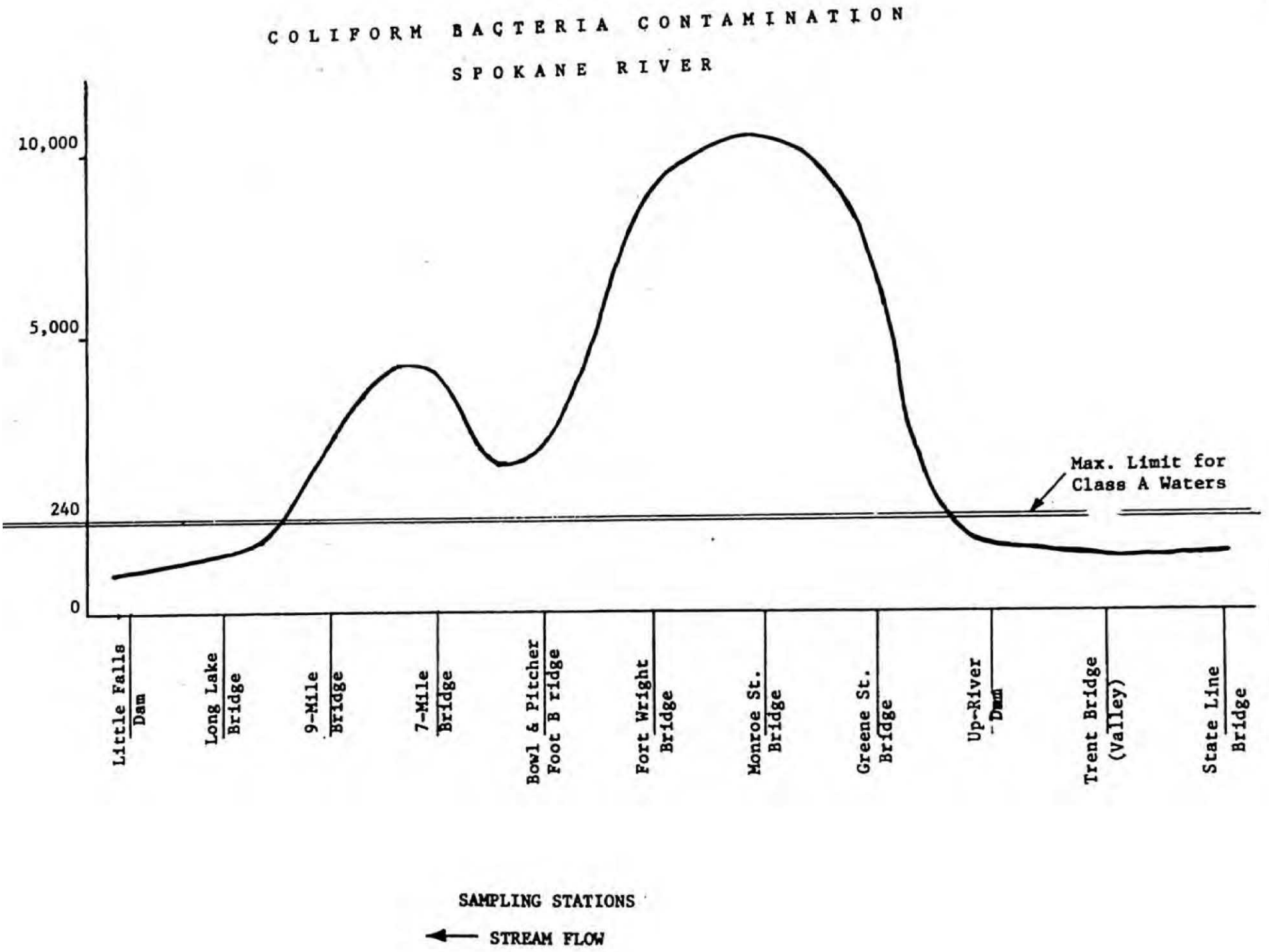
COLIFORM BACTERIA CONTAMINATION

SPOKANE RIVER

VICINITY MAP



WPCC 3/70


COLIFORM BACTERIA CONTAMINATION
SPOKANE RIVER
10,000
5,000
240
0
Max. Limit for Class A Waters
Little Falls Dam
Long Lake Bridge
9-Mile Bridge
7-Mile Bridge
Bowl & Pitcher Foot Bridge
Fort Wright Bridge
Monroe St. Bridge
Greene St. Bridge
Up-River Dam
Trent Bridge (Valley)
State Line Bridge
SAMPLING STATIONS
STREAM FLOW

It is our declared policy to require the use of all known available and reasonable methods to prevent and control the pollution of the waters of the state.
RCW 90.48.010

CITY OF SPOKANE

The Interstate Water Quality Standards outline a specific schedule for the City of Spokane to follow in order to be in compliance. The requirements placed on the City involve two situations. They must (1) upgrade their existing primary treatment plant to secondary treatment, and (2) undertake a study and develop a plan for correction of the storm water overflow problems.

Primary treatment is not adequate and secondary treatment is now the minimum acceptable degree of treatment throughout the state. This same philosophy prevails in other states and has become the national goal. This is one of the reasons for the requirement concerning the City's existing facilities. The requirement has also been made because of the effects of the existing treatment plant discharge on the Spokane River. This situation is discussed in further detail in another section.

Secondary treatment is a definable goal and does not require any unknown technical knowledge or research to accomplish. While the City has not made a reliable cost estimate for this project, it would be economically feasible for the City of Spokane. They would be eligible for the 45% grant on the total construction costs from the federal and state governments for such a project. Completion of this project is originally called for by the end of 1972.

The second portion of the requirement calls for a study and resulting engineering report identifying the problems of the storm water overflows. The problem involves the hydraulic overloading of the City sewer system.

Numerous street drains and other storm water removal facilities are connected to the City's sanitary sewer system. Rain, snow-melt, etc., enters the sanitary sewer system and causes volumes of flow beyond the capacity of the system.

As a result, overflow devices have been constructed at strategic locations along the river and at the sewage treatment plant to relieve the situation, and sewage and storm water are discharged directly to the Spokane River during the critical periods. This situation is not the result of miscalculations but rather something that has been inherited from the original sewer system when all the sewage was discharged directly to the Spokane River.

One solution to correcting this problem quite obviously is to separate the two flows, allowing the storm water to return to the river as it would if the urban development were not there, and thus, allow the treatment plant to treat the domestic sewage as it is designed to do. No doubt other alternatives or modifications of the above thoughts could be worked out. Without question, this will be a costly undertaking to correct, and it cannot be accomplished in a few short years.

First, however a great many questions must be answered. For example, the frequency of these overflows as well as the amount of water entering the system is unknown. In other words, how much does it have to rain to cause an overflow and where does the overflow occur? Answering these questions and then determining the most feasible way of effecting corrections will be the job of the consulting engineering firm the City will hire. In addition, they are to develop a feasible method of financing a stage construction program. This engineering work is to be completed by July 1972. Some time after that date, it seems reasonable to assume that actual construction, in accordance with the engineering program, will commence.

To date, the state has not required the City to do anything more than prepare a plan on how the storm water problem can be corrected and to outline their own feasible solutions to effect the necessary corrections.

The Commission however, required that they design, finance and construct modifications to the existing sewage treatment plant by the end of 1972. These requirements have not been accepted by the City with enthusiasm. Without question, the City has expressed a very real concern as they face a problem of great magnitude. By the same token, the problems needing correction are also very real and the people of Spokane must face up to them.

The Commission issued an order to the City of Spokane on January 8, 1970. It was the first such order issued to a municipality by the Water Pollution Control Commission as a result of the adoption of Water Quality Standards on Interstate and Coastal Waters. Similar action with regard to a few other municipalities are anticipated in order for the state to achieve the goal of implementation and enforcement of these standards by the end of 1972.

The City of Spokane is not unique in its problems. It might be interesting to review the progress of some of the other Eastern Washington communities who were also required to upgrade or improve their sewerage systems under the Interstate Water Quality program and examine some of the costs involved: (a) Clarkston has a secondary sewage treatment plant under construction and individual residences pay a monthly sewer charge of $1.83. (b) Pasco has a secondary sewage treatment plant under construction and individual residences pay a monthly sewer charge of $2.75. (c) The Town of Coulee Dam will advertise for bids on secondary sewage treatment plant during the spring of 1970, and they presently pay a monthly charge of $2.00. (d) Wenatchee has completed about 75% of the storm water overflow corrections and has completed an engineering report for secondary treatment facilities. The present monthly sewer charge for individual residences is $2.60. (e) Kennewick has an engineering study under way for secondary treatment and they have indicated their intent to comply with the standards. The present sewer charge is $2.00 per month.

Sewer rates vary widely from town to town and are dependent upon a number of different circumstances. It is interesting to note some of the higher rates that are paid by towns in the surrounding area such as Medical Lake - $3.00/month, Othello - $3.00/month, Kettle Falls - $3.25/month and Metaline Falls - $3.50/month. Sewer rates do not necessarily reflect the cost to individuals since financing may also be done by assessment per front foot or a combination of both front footage and monthly rate. The current monthly sewer charge for individual residences in Spokane is $1.50.

This report mentioned the status of the more sizeable towns of Eastern Washington that have been affected by the Interstate Standards. The following communities are located on interstate streams and their existing sewerage facilities are adequate: Pateros, Brewster, Bridgeport, Cusick, Ione, Metaline, Metaline Falls, Colfax, Grand Coulee and Millwood.

The following towns have secondary treatment facilities but are in the process of making adjustments or modifications as a result of the Standards: Okanogan, Omak, Tonasket, Oroville and Palouse. The Town of Asotin has been delayed in upgrading their primary plant because of their involvement with the U.S. Corps of Engineers and the construction of Lower Granite Dam. East Wenatchee (served by a Sewer District) and Newport have primary plants, however, their schedule does not call for activity toward upgrading to secondary treatment until the second quarter of 1970. All three of the above towns will be expected to have secondary treatment facilities in operation prior to the end of 1972. No other cities than those just mentioned were involved in the Interstate Standards in Eastern Washington.

The Commission cannot predict what the City of Spokane will eventually do about the requirement they face. The City Government realizes the facilities are inadequate and are desirous of correcting the situation.

The solutions are not simple and the citizens could be faced with further taxation, higher rates and other procedures to meet the needs. In the November election of 1968, the people in Spokane County voted better than 2 to 1 in favor of a state bond issue for pollution control projects. It is hoped this attitude will continue and the city will be able to resolve their problems in a timely manner.

STATE AND FEDERAL FUNDS FOR SEWER CONSTRUCTION

The most used and effective grant program for sewer construction has resulted from the federal legislation identified as Public Law 660 and enacted by the 84th Congress in 1956. This program was developed to provide incentive for municipalities and other public entities to construct sewage treatment facilities and provides grant funds for the construction of sewage treatment plants, interceptors and outfall lines under the auspices of the Federal Water Pollution Administration. It should be noted that the collection or lateral systems are not included in the program and only public entities are eligible.

While the actual law provides a number of programs for research, training, investigations and other aspects of water pollution control, this report will restrict comments to that section covering construction grants. In this area, the federal legislation stipulates a somewhat flexible program but conveys the administration of the program to a state agency through the Federal Water Pollution Control Administration. In Washington, the Water Pollution Control Commission is charged with administering this Public Law 660 program. Other states administer the program differently, and there are often conflicting reports on how much grant money is available under the 660 program.

In Washington, recipients under the 660 program receive grants from the Federal government totaling 30% of the total eligible costs of constructing sewage treatment facilities. With the passage of Referendum No. 17 on the ballot in November 1968, state monies were made available and the State of Washington now adds a 15% grant to this program. A public entity qualifying for 660 monies now receives a grant totaling 45% of the total eligible cost of constructing or modifying a sewage treatment facility. In those areas where the public entity is involved in a Regional Plan and qualifies under the criteria established by the Federal Department of Housing and Urban Development, an additional 3% federal grant can be added so that a total grant of 48% could be available.

In order to qualify for these grants, the public entity must have an approved engineering report outlining the details of its proposed project and must submit an application to the Water Pollution Control Commission. The Commission establishes a priority list and each year awards grants commensurate with the amount of funds appropriated by Congress. There are many more applicants than funds available and normally about one-third of the applicants receive grants.

While there have always been more applicants than funds available in the 660 program, grants have been made each year and a great many municipalities in the State of Washington have received funds under this program administered by the State Water Pollution Control Commission.

Other federal agencies such as the Department of Housing and Urban Development (HUD), the Farmers Home Administration and the Office of Economic Development have programs for public works projects. The HUD has been very active in the area of planning and the preparation of engineering reports. Its construction grants programs are available to entities with a population of over 5,000. On the other hand, the Farmers Home Administration has programs available to those entities of less than 5,000, and they have provided funds for comprehensive water and sewer plans in a number of counties.

The office of Economic Development is concerned only in counties of high unemployment and one of their objectives is to create better economic conditions through construction of public works projects. The details of these programs should be obtained from the offices charged with their administration.

EXHIBIT 3

INTENTIONALLY OMITTED

EXHIBIT 4

2209-B INDUSTRIAL LEASE

FORM 6

NOTE: Please indicate Folder & Form numbers before starting dictation.

"Form No. 6, Folder No. 825-08"

Name: W.L.L.

Date:

1). Audit No.:" N/A " 2). Folder No.:" 825-08 "

3). Date Prepared:" Today (Day) day of (Month), 19 (Year) "

4). Railroad Company:" SIRR Co ,

a Corporation of the State of WA "

5). Lessee:" Imperial West Chemical Co. ,

☐ an Individual ☒ a Corporation of the State of Nevada

☐ a Partnership, consisting of

☐ dba

of 2317 N. Sullivan Spokane WA 99216 " (Mailing Address)

6). Effective Date:" 15 (Day) day of 7 (Month), 19 85 " (Year)

7). Location:" Trentwood (City or Station), Spokane County, Wt (State) "

8). Purpose: to be used as a site for " aluminum recycling plant "

9). Rental (Use applicable provision):

If indefinite: " ($ 1350 00) per (annum [redacted])
payable (annually [redacted] in advance for each and every year"

If term: " ($) for the term hereof, payable in advance"

10). Special Provisions:
Dictate as follows: "Special Provision(s) entitled 'N/A
(are)(is) attached hereto and hereby made a part hereof."

EXECUTION

11). Railroad Company:" SIRR Co "

12). Corporate or Partnership Name (if applicable):" Imperial West Chemical Co[redacted] "

13). Individual and/or DBA (if applicable):"

Lease

Audit No.

Lessee Imperial West

Purpose Aluminum Recycle Plant

Location Trentwood Expiration

☐ Hazardous Commodities ☐ Trackage Evaluation Needed

I. DESCRIPTION

Land Area 125 000 ☒ Sq. Ft. ☐ Acres ☐ Front Feet

Trackage Track Feet

II. VALUE

Prior Rental 8¢ per ☐ Annum ☐ Term ☐ Month

Prior Unit Value 8¢ per ☒ Sq. Ft. ☐ Acre ☐ Front Foot

Valuation Source

New Unit Value 8¢ per ☒ Sq. Ft. ☐ Acre ☐ Front Foo

III. RENTAL COMPUTATION

Land: 125,000 (Area) X ~~[illegible]~~ 8¢ (Unit Value) X 13~~00~~ (Cap. Rate) = $1350

Trackage: (Track Feet) X $___/ft. = ___

Taxes: ☐ Centrally Assessed ☐ Locally Assessed = ___

TOTAL RENTAL $1350.00 Per ☒ Annum ☐ Term ☐

Used old rental as lease was with Aluminum Recycling Corp who was storing materials see file 74/9-20 V.2 for more

14). Title of Executing Officer of Corporation or Partnership (if applicable):

"Pres"

15). Marginal Notes:"_____"

"No. of Copies 6" TAX Dept.

EXHIBIT 5
INTENTIONALLY OMITTED

EXHIBIT 6

FILE COPY

FORM 2209

Audit No. 825-08

L E A S E

This Agreement made and entered into this 14th day of July, 1986 by and between SPOKANE INTERNATIONAL RAILROAD COMPANY, a corporation of the State of Washington (hereinafter called "Lessor"), party of the first part, and IMPERIAL WEST CHEMICAL CO., a corporation of the State of Nevada, of P. O. Box 696, Antioch, California 94509 (hereinafter called "Lessee"), party of the second part, WITNESSETH:

Lease / Term
Location / Use

Section 1. The Lessor, for and in consideration of the covenants and payments hereinafter mentioned to be performed and made by the Lessee, hereby agrees to lease and let and does hereby lease and let unto the Lessee for a term of one year beginning on the 15th day of July, 1986, the portion of the premises of the Lessor (hereinafter the "Premises") at or near Trentwood, Spokane County, Washington shown on the plat, or described in the description, or both, hereto attached and hereby made a part hereof, such Premises to be used only as a site for manufacturing and distribution of aluminum sulfate and oxides, storage and handling of sulphuric acid, a hazardous commodity.

Renewal

Thereafter, so long as neither party is in default, this Lease will renew itself without further documentation from year to year until terminated as provided in Section 16 herein. Each renewal term will be upon the same terms and conditions set forth herein, including, without limitation, the Lessor's right to reevaluate the rental as hereinafter provided.

Improvements

It is agreed that no improvements placed upon the Premises by the Lessee shall become a part of the realty.

Water Rights

The Lessee acknowledges that this Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by the Lessor which may be appurtenant to or otherwise associated with the Premises, and that all right, title, and interest in and to such water is expressly reserved unto the Lessor, its successors and assigns, and that the right to use same or any part thereof may be obtained only by the prior written consent of the Lessor.

This Lease is made without covenant of title or to give possession or for quiet enjoyment.

Rental

Section 2. The Lessee shall pay to the Lessor for the use of the Premises, rental at the rate of NINE THOUSAND FIVE HUNDRED DOLLARS ($9,500.00) per annum payable annually in advance for each and every year during the term of this Lease, or any renewal thereof, subject to reevaluation as hereinafter provided.

CODED
G.W.L. 825-08
030000
By: FEB 27 1987
Date:

Rental Reevaluation

The Lessor may annually reevaluate the rental base upon which the above rental is computed. In the event the Lessor shall determine that the rental paid is no longer representative of a fair market value rental, the Lessor may adjust the rental and shall advise the Lessee by written notice of such change. Such written notice shall be served at least thirty (30) days prior to the effective date of the new rental, it being understood however that rental adjustments shall not be made more often than once every twelve months.

Utilities

The Lessee shall arrange, secure, and be responsible for all water, gas, heat, electricity, power, sewer, telephone, and any and all other utilities and services supplied and/or furnished to the Premises in connection with the use of the Premises by the Lessee as hereinafter provided, together with any and all taxes and/or assessments applicable thereto.

In the event such utilities and services are not separately metered to Lessee, Lessee shall pay a reasonable proportion of the cost of such utilities and services, to be determined by the Lessor, of all charges jointly metered with other portions of the Lessor's property.

It is understood and agreed that none of the above utilities or services may be installed upon the Premises without first securing the written consent and approval for such installation and the location thereof by the Lessor's Chief Engineer.

Taxes

The Lessee further agrees to pay, before the same shall become delinquent, all taxes levied during the life of this Lease upon the Premises and upon any buildings and improvements thereon, or to reimburse the Lessor for sums paid by the Lessor for such taxes, except taxes levied upon the Premises as a component part of the railroad property of the Lessor in the state as a whole.

Assessments

If, during the life of this Lease, any street or other improvement, whether consisting of new construction, maintenance, repairs, renewals, or reconstruction, shall be made, the whole or any portion of the cost of which is assessed against or is fairly assignable to the Premises, the Lessee agrees to pay in addition to the other payments herein provided for:

(a) Ten and one-half per cent (10½%) per annum on the amount so assessed against or assignable to the Premises when expenditures by the Lessor for such improvements are properly chargeable to capital account under accounting rules of the Interstate Commerce Commission current at the time; and

(b) the entire amount so assessed against or assignable to the Premises when expenditures for such improvements are not properly chargeable to capital account under said accounting rules.

Use of Premises-Abandonment

Section 3. The Lessee covenants that the Premises shall not be used for any other purpose than for such use specified in Section 1 hereof and agrees that if the Lessee abandons the Premises, the Lessor may enter upon and take possession of the same, and that non-use for the purpose mentioned continuing for thirty days shall be sufficient and conclusive evidence of such abandonment.

Lessee Not To Sublet or Assign

Section 4. The Lessee agrees not to let or sublet the Premises, in whole or in part, or to assign this Lease without the consent in writing of the Lessor, and it is agreed that any transfer or assignment of this Lease, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Lessor, shall terminate this Lease.

Use for Unlawful Purposes Prohibited-Indemnity

Section 5. It is especially covenanted and agreed that the use of the Premises or any part thereof for any unlawful or immoral purposes whatsoever is expressly prohibited; that the Lessee shall indemnify, hold harmless and defend the Lessor and the Premises from any and all liens, fines, damages, penalties, forfeitures or judgments in any manner accruing by reason of the use or occupation of the Premises by the Lessee; and that the Lessee shall at all times protect the Lessor and the Premises from all injury, damage, or loss by reason of the occupation of the Premises by the Lessee or from any cause whatsoever growing out of the Lessee's use thereof.

Care of Premises and Improvements

Section 6. The Lessee hereby covenants and agrees that any and all buildings erected upon the Premises shall be painted by the Lessee a color satisfactory to the Lessor, and shall at all times be kept in good repair; that the roof of each building shall be of fire-resistive material; that the Premises shall during the continuance of this Lease be kept by the Lessee in a neat and tidy condition and free from all material which would tend to increase the risk of fire or give the Premises an untidy appearance; that none of the buildings or other structures erected on the Premises shall be used for displaying any signs or advertisements other than signs as may be connected with the business of the Lessee, and that such signs shall be neat, properly maintained and subject to approval of the Lessor. In the event any building or other improvement not belonging to the Lessor on the Premises is damaged or destroyed by fire, storm, or other casualty, the Lessee shall, within thirty days after such happening, remove all debris and rubbish resulting therefrom; and if the Lessee fails to do so, the Lessor may enter the Premises and remove such debris and rubbish, and the Lessee agrees to reimburse the Lessor, within thirty days after bill rendered, for the expense so incurred.

Liens-Indemnity

Section 7. The Lessee shall, when due and before any lien shall attach to the Premises, if the same may lawfully be asserted, pay all charges for water, gas, light, and power furnished; rental or use of sewer facilities serving the Premises; pay for all material joined or affixed to the Premises; pay for all taxes and

assessments; and shall pay in full all persons who perform labor upon the Premises, and shall not permit or suffer any mechanic's or materialman's or other lien of any kind or nature to be enforced against the Premises for any work done or materials furnished thereon at the instance or request or on behalf of the Lessee; and the Lessee agrees to indemnify, hold harmless, and defend, the Lessor and its property against and from any and all liens, claims, demands, costs, and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials or other things furnished.

Superior Rights

Section 8. This Lease is made subject to all outstanding superior rights, including, but not limited to, rights of way for highways, pipelines, and for power and communications lines, and the right of the Lessor to renew such outstanding rights and to extend the term thereof.

Clearances

Section 9. Detailed plans for all buildings, platforms, loading or unloading devices, structure and all alterations, improvements and/or additions thereto and/or upon the Premises which the Lessee shall desire to make, shall be presented to Lessor for consent in written form prior to installation upon the Premises. If the Lessor shall give its consent, the consent shall be deemed conditioned upon Lessee acquiring a permit to do such work from appropriate governmental agencies, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner.

All buildings, platforms, loading or unloading devices, structures, and/or material or obstruction of any kind erected, maintained, placed, piled, stacked, or maintained upon the Premises after the commencement of this Lease and any alterations, improvements, and/or additions thereto or to buildings, platforms, loading or unloading devices structures located on the Premises prior to the commencement of this Lease shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Lessee in strict conformity with Union Pacific Railroad Company's Standard Minimum Clearances for All New Structures and Facilities Along Industry Tracks, as in effect at the time of the placement, construction, operation, maintenance, repair, renewal, modification or reconstruction.

Buildings, platforms, loading or unloading devices, structures and/or material or obstruction of any kind located upon the Premises which are in place at the time the Lessee takes possession of the Premises or which were constructed, placed, piled, stored, stacked, or maintained upon the Premises with the express consent of the Lessor under the terms of a previous lease between Lessor and Lessee, but which are not in conformity with Union Pacific Railroad Company's Standard Minimum Clearances, shall be considered permitted for the purposes of this Section.

Compliance with such standards shall not relieve Lessee from the obligation to fully comply with the requirements of any federal, state, or municipal law or regulation; it being understood and agreed that Union Pacific Railroad Company's Standard Minimum Clearances are in addition to and supplemental of, any and all requirements imposed by applicable law or regulation and shall be complied with unless to do so would cause Lessee to violate an applicable law or regulation.

Lessor shall consider requests of the Lessee to impair clearances which are necessitated by the operational requirements of the Lessee, but Lessor shall not be obligated to consent to any impairment. Any necessary permission to impair clearances to which the Lessor has consented must be secured by the Lessee at its own expense, in advance of any impairment; and Lessee shall comply promptly and strictly with all requirements or orders issued by appropriate state or other public authority relating to such impairments.

Lessee assumes the risk of and shall indemnify, hold harmless, and defend the Lessor, its officers, agents, and employees, against and from all injury or death to persons or loss or damage to property of the parties hereto and their employees and agents and to the person or property of any other person or corporation resulting from the Lessee's noncompliance with the provision of this Section 9, or resulting directly or indirectly from any impairment of the clearances described in this Section 9, whether the Lessor had notice thereof or consented thereto, or whether authorized by applicable state or other public authority pursuant hereto, or existing without compliance with the provisions of this Section 9.

Any knowledge on the part of the Lessor of a violation of the clearance requirements of this Lease, whether such knowledge is actual or implied, shall not constitute a waiver and shall not relieve the Lessee of its obligation to indemnify and defend the Lessor, its officers, agents, and employees, for losses and claims resulting from such violation. However, the terms of this Section shall not apply to losses resulting from impairments or facilities created or constructed by the Lessor that will not benefit the Lessee.

Explosives and Inflammables

Section 10. It is further agreed that no gunpowder, gasoline, dynamite, or other explosives or flammable or hazardous materials shall be stored or kept upon the Premises. Nothing herein contained, however, shall prevent the storage of those hazardous commodities, if any, specified in Section 1, or oil or gasoline where same are to be used, as indicated by Section 1 hereof, contemplates such storage; nor the storage of oil or gasoline where same are used by the Lessee for fuel in the business carried on by the Lessee on the Premises, and are stored in quantities reasonable for such purposes; PROVIDED, however, that in all of such excepted cases, the Lessee shall store such commodities no closer than fifty (50) feet from the center line of any main track and strictly comply with all statutory and municipal regulations relating to the storage of such commodities.

No Construction by Lessee Over or Under Tracks

Section 11. The Lessee shall not locate or permit the location or erection of any poles upon the Premises, nor any beams, pipes, wires, structures or other obstruction over or under any tracks of the Lessor without the written consent of the Lessor.

Liability of Lessee for Breach

Section 12. The Lessee shall be liable for and shall defend against any and all injury or death of persons or loss of or damage to property, of whatsoever nature or kind, arising out of or contributed to by any breach in whole or in part of any covenant of this Lease.

Fire Damage Release

Section 13. It is understood by the parties hereto that the Premises are in dangerous proximity to the tracks of the Lessor, and that by reason thereof there will be constant danger of injury and damage by fire, and the Lessee accepts this Lease subject to such danger.

It is therefore agreed, as one of the material considerations for this Lease and without which the same would not be granted by the Lessor, that the Lessee assume all risk of loss or destruction of or damage to buildings or contents on the Premises, and of or to other property brought thereon by the Lessee or by any other person with the knowledge or consent of the Lessee, and of or to property in proximity to the Premises when connected with or incidental to the occupation thereof, and any incidental loss or injury to the business of the Lessee, where such loss, damage, destruction, injury, or death of persons is occasioned by fire caused by, or resulting from, the operation of the railroad of the Lessor, whether such fire be the result of defective engines, or of negligence on the part of the Lessor or of negligence or misconduct on the part of any officer, servant or employee of the Lessor, or otherwise, and the Lessee hereby agrees to indemnify and hold harmless and defend the Lessor, its officers, servants, and/or employees, against and from all liability, causes of action, claims, or demands which any person may hereafter assert, have, claim, or claim to have, arising out of or by reason of any such loss, damage, destruction, injury, or death of persons including any claim, cause of action or demand which any insurer of such buildings or other property may at any time assert, or undertake to assert, against the Lessor, its officers, servants and/or employees.

Water Damage Release

Section 14. The Lessee hereby releases the Lessor, its officers, servants, and/or employees, from all liability for damage by water to the Premises or to property thereon belonging to or in the custody or control of the Lessee, including buildings and contents, regardless of whether such damage be caused or contributed by the position, location, construction or condition of the railroad, roadbed, tracks, bridges, dikes, ditches or other structures of the Lessor.

Termination on Default

Section 15. It is further agreed that the breach of any covenant, stipulation or condition herein contained to be kept and performed by the Lessee, shall, at the option of the Lessor, forthwith work a termination of this Lease, and all rights of the Lessee hereunder; provided, however, that the Lessee shall not be deemed in default under this Lease unless the Lessor has furnished written notice to the Lessee of Lessee's default, and the Lessee has failed to begin to cure that default within seventy-two (72) hours after receipt of Lessor's default notice or after commencing a cure, has failed to proceed diligently with its cure efforts.

After a default by the Lessee, the Lessor may at once re-enter upon the Premises and repossess itself thereof and remove all persons therefrom or may resort to an action of forcible/unlawful entry and detainer, or any other action to recover the same. A waiver by the Lessor of the breach by the Lessee of any covenant or condition of this Lease shall not impair the right of the Lessor to avail itself of any subsequent breach thereof.

Upon such termination and vacation of the Premises by the Lessee, the Lessor shall refund to the Lessee on a pro rata basis, any unearned rental paid in advance.

Termination by Notice

Section 16. This Lease may be terminated by written notice given by either the Lessor or the Lessee to the other party on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date on which such notice shall be given.

Notice

Section 17. Any notice, demand, request, consent, approval or communication that either party hereto desires or is required to give to the other party under this Lease shall be in writing. Said notice may be given to the Lessee by serving the Lessee personally or by posting a copy thereof on the outside of any door in any building upon the Premises or by mailing the same, postage prepaid, to the Lessee at the last address known to the Lessor. Said notice may be given to the Lessor by mailing the same, postage prepaid to the office of the Director of Real Estate, Room 306, 1416 Dodge Street, Omaha, Nebraska, 68179.

Postal notices shall be by certified mail, return receipt requested, and such notice shall be deemed given on the date deposited with the United States Postal Service.

Consent

Section 18. Wherever the consent, approval, judgment or determination of Lessor is required or permitted under this Lease, Lessor shall exercise its good faith reasonable business judgment in granting or withholding such consent or approval or in making such judgment or determination and shall not unreasonably withhold or delay its consent, approval, judgment or determination.

Vacation of Premises

Removal of Lessee's Property

Section 19. The Lessee covenants and agrees to vacate and surrender the quiet and peaceable possession of the Premises upon the termination of this Lease howsoever. No later than the expiration or termination date of this Lease, the Lessee shall (a) remove from the Premises, at the expense of the Lessee, all structures and other property not belonging to the Lessor; and (b) restore the surface of the ground to as good condition as the same was in before such structures were erected, including, without limiting the generality of the foregoing, the removal of foundations of such structures, the filling in of all excavations and pits and the removal of all debris and rubbish, all at the Lessee's expense, failing in which the Lessor may perform the work and the Lessee shall reimburse the Lessor for the cost thereof within thirty (30) days after bill rendered.

In the case of the Lessee's failure to remove such structures and other property, the same, at the option of the Lessor, shall upon the expiration of thirty (30) days after the termination of this Lease, become and thereafter remain the property of the Lessor; and if within one (1) year after the expiration of such thirty-day period the Lessor elects to and does remove, or cause to be removed, said structures and other property from the Premises and the market value thereof or of the material therefrom on removal does not equal the cost of such removal plus the cost of restoring the surface of the ground as aforesaid, then the Lessee shall reimburse the Lessor for the deficit within thirty (30) days after bill rendered.

Successors And Assigns

Section 20. Subject to the provisions of Section 4 hereof, this Lease shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors and assigns.

Special Provisions

Section 21. Special Provisions entitled "Terms and Conditions for Use of Lessor's Water" and "Hazardous Materials-Other" are attached hereto and hereby made a part hereof.

As a further consideration for the acceptance of this Lease, the Lessee hereby grants to Circle M Construction Company, its affiliates or assigns the right to enter upon the leased premises to remove the dangerous waste now located thereon.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first herein written.

Witness:

SPOKANE INTERNATIONAL RAILROAD COMPANY

_____ By _____
Director-Real Estate

Witness:

IMPERIAL WEST CHEMICAL COMPANY

X_____ X _____
President

EXECUTED

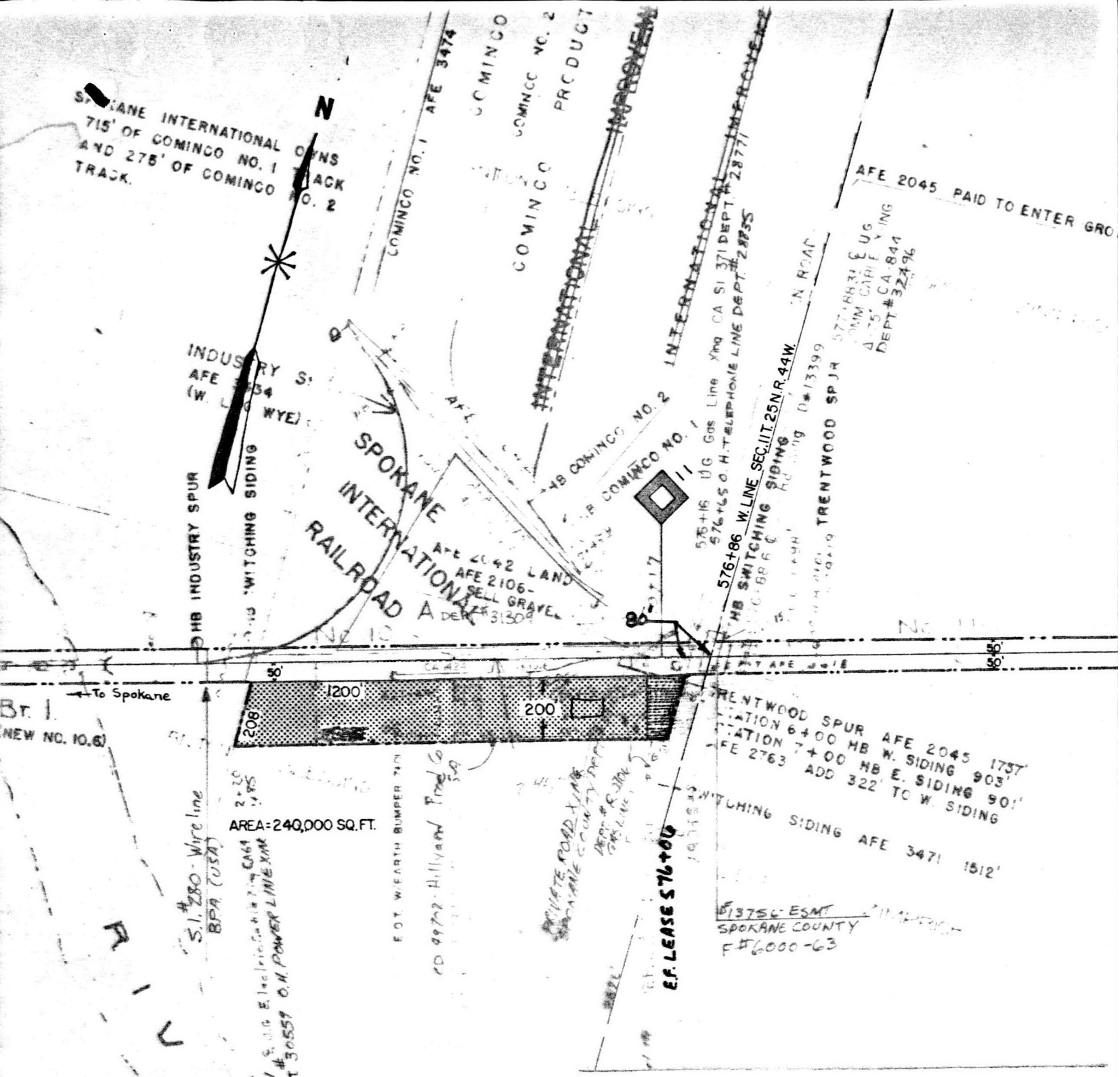


EXHIBIT "A"

SPOKANE INTERNATIONAL RAILROAD COMPANY

TRENTWOOD, SPOKANE COUNTY, WASHINGTON

M.P. 10.77 - MAIN LINE

LEASE TO IMPERIAL WEST CHEMICAL CO.

Scale 1" = 400'

Office of Director-Real Estate

Omaha, Nebraska JULY 15, 1985

· L E G E N D ·

LEASE AREA SHOWN.....

UPRRCo. R/W Outlined .....

TERMS AND CONDITIONS FOR USE OF LESSOR'S WATER

CONNECTION TO LESSOR'S WATER FACILITY. Lessor hereby grants to Lessee the right to connect and maintain a pipeline to Lessor's water facility subject to the terms and conditions stated herein.

COMPLIANCE WITH LEGAL REQUIREMENTS; INDEMNITY. Before connecting to Lessor's water facility and appropriating water therefrom, Lessee shall observe and comply with all applicable ordinances, rules and regulations, and shall apply for and obtain any and all public authority, permission and licenses required. Lessee shall obtain any and all necessary water rights in the joint name of Lessee and Lessor. Lessee shall indemnify and hold Lessor harmless from and against any loss, cost, damage, expense, liabilities, penalties, claims and forfeitures resulting from or in any manner connected with any failure of Lessee to comply with the provisions of this section, with the requirements of any public authority, license or permission obtained as aforesaid, or with any water quality regulations issued by federal, state or local government jurisdictions.

LESSOR NOT A WATER SUPPLY SYSTEM; NO WARRANTIES AS TO WATER QUALITY; INDEMNITY. It is expressly understood and agreed that Lessor IS NOT A PUBLIC, MUNICIPAL OR COMMUNITY WATER SUPPLY SYSTEM, AND HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS, PROMISES OR WARRANTIES WITH RESPECT TO THE QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSES OF THE WATER IN LESSOR'S WATER FACILITY; and Lessee assumes the risk of any and all impurities and harmful substances which may be contained in Lessor's water facility; and Lessee agrees to indemnify and save Lessor, its officers, agents and employees, harmless from and against any and all loss, cost, damage, fees, claims, demands or causes of action by persons whomsoever arising or resulting from the consumption or use of such water by Lessee or any person on Lessee's premises or off said premises through a connection or series of connections leading from said premises, regardless of whether Lessor has consented to such use. Lessee, at Lessee's sole expense, shall take any and all action necessary to maintain the water taken by Lessee from the water facility in a safe and potable condition as required by applicable federal, state and local laws and regulations.

NEEDS OF LESSOR PREFERENTIAL. The reasonable needs of Lessor shall at all times have preference over the needs of Lessee, and the judgment of Lessor's Superintendent shall be conclusive as to Lessor's reasonable needs. Lessee shall not have or assert any claim, demand or cause of action whatsoever by reason of the failure or diminution of the water in the water facility from any cause whatsoever, whether resulting from the negligence of Lessor; Lessor's agents, servants or employees, or otherwise, it being expressly understood and agreed that Lessor does not promise or assure to Lessee a continuous or uninterrupted supply of water, and that any act or thing done or expenditure of money made by Lessee is with full understanding and realization of the possibility that said water supply may at any time cease or diminish.

LESSEE NOT TO WASTE WATER. Lessee agrees not to waste or permit the waste of any water obtained under this agreement.

MAINTENANCE. Lessor shall perform such maintenance, repair, renewal or replacement of the water facility as in the judgment of its superintendent may be necessary. The cost of such maintenance, repair, renewal or replacement shall be divided equally among all users of the water facility, based upon the number of connections each has to the water facility.

HAZARDOUS MATERIALS - OTHER THAN ANHYDROUS AMMONIA, FLAMMABLES, OR CHLORINE

A. The Lessee further covenants that in the use of the leased Premises for the purpose hereinbefore mentioned the Lessee will comply with and abide by Department of Transportation regulations as set out in 49 Code of Federal Regulations, Parts 100-199, inclusive, as amended from time to time, and provisions contained in the applicable circular(s) of the Bureau of Explosives, Association of American Railroads, including any and all amendments and supplements thereto.

The Lessee, at the Lessee's own sole cost and expense, shall provide to the Lessor a Certificate of Insurance certifying to the effectiveness of insurance as follows:

General Public Liability providing bodily injury and property damage coverage with combined single limit of at least $1,000,000 each occurrence, a portion of which may be self-insured with the consent and approval of the Lessor.

Such insurance shall be endorsed to provide contractual liability assumed by the Lessee under this Agreement, and that coverage shall not be cancelled or changed without giving thirty (30) days' prior written notice to Lessor c/o Manager - Insurance, 1416 Dodge Street, Omaha, Nebraska 68179.

B. The Lessee is also granted the right, subject to the terms of this Lease, to provide, maintain and operate on the Premises, suitable unloading devices (hereinafter collectively the Device) in the location shown on the attached print, which Device shall be provided, maintained and operated in accordance with applicable federal regulations and applicable circular(s) of the Bureau of Explosives, Association of American Railroads, and the requirements of any local ordinance, or state or federal laws in effect during the term of the Lease.

The Lessor shall have the right, but shall not be obligated, to inspect the Device from time to time to determine that the Device is being maintained in a proper manner, and in the event such inspection reveals any improper condition, the Lessee shall, upon notice from the Lessor specifying such condition, promptly and at the sole expense of the Lessee remedy such condition to the satisfaction of the Lessor.

The Lessee agrees that whenever compliance with the requirements set out in the applicable circular(s) necessitates the furnishing of labor and materials by the Lessor, the cost thereof shall be paid by the Lessee to the Lessor within thirty (30) days after bill rendered.

Within thirty (30) days after the termination or expiration of this Lease howsoever, the Lessee shall, at the sole expense of the Lessee, remove the Device from the Premises and restore to the satisfaction of the Lessor such Premises to as good condition as it was in at the time of the installation of the Device; and if the Lessee fails so to do, the Lessor may do such work of removal and restoration at the expense of the Lessee.

C. In addition to all other covenants of indemnity contained in this Lease, the Lessee agrees to indemnify and hold harmless the Lessor, its officers, agents and employes, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including, but not limited to, court costs and attorneys' fees, which may result from injury to or death of persons whomsoever or damage to or loss or destruction of property whatsoever, including, but not limited to, damage to the roadbed, tracks, equipment or other property of the Lessor or property in its care or custody, when such injury, death, loss, destruction, or damage is due to or arises because of the existence of the Device regardless of any negligence on the part of the Lessor, its officers, agents and employes, or the installation, maintenance, operation, repair, renewal, modification, reconstruction, relocation or removal of the Device, or any portion thereof or accessory thereto, and the Lessee does hereby release the Lessor from all liability for damages on account of injury to or destruction of the Device from any cause whatsoever, regardless of any negligence on the part of the Lessor, its officers, agents or employes.

HAZARDOUS MATERIALS - OTHER THAN ANHYDROUS AMMONIA, FLAMMABLES, OR CHLORINE

A. The Lessee further covenants that in the use of the leased Premises for the purpose hereinbefore mentioned the Lessee will comply with and abide by Department of Transportation regulations as set out in 49 Code of Federal Regulations, Parts 100-199, inclusive, as amended from time to time, and provisions contained in the applicable circular(s) of the Bureau of Explosives, Association of American Railroads, including any and all amendments and supplements thereto.

The Lessee, at the Lessee's own sole cost and expense, shall provide to the Lessor a Certificate of Insurance certifying to the effectiveness of insurance as follows:

General Public Liability providing bodily injury and property damage coverage with combined single limit of at least $1,000,000 each occurrence, a portion of which may be self-insured with the consent and approval of the Lessor.

Such insurance shall be endorsed to provide contractual liability assumed by the Lessee under this Agreement, and that coverage shall not be cancelled or changed without giving thirty (30) days' prior written notice to Lessor c/o Manager - Insurance, 1416 Dodge Street, Omaha, Nebraska 68179.

B. The Lessee is also granted the right, subject to the terms of this Lease, to provide, maintain and operate on the Premises, suitable unloading devices (hereinafter collectively the Device) in the location shown on the attached print, which Device shall be provided, maintained and operated in accordance with applicable federal regulations and applicable circular(s) of the Bureau of Explosives, Association of American Railroads, and the requirements of any local ordinance, or state or federal laws in effect during the term of the Lease.

The Lessor shall have the right, but shall not be obligated, to inspect the Device from time to time to determine that the Device is being maintained in a proper manner, and in the event such inspection reveals any improper condition, the Lessee shall, upon notice from the Lessor specifying such condition, promptly and at the sole expense of the Lessee remedy such condition to the satisfaction of the Lessor.

The Lessee agrees that whenever compliance with the requirements set out in the applicable circular(s) necessitates the furnishing of labor and materials by the Lessor, the cost thereof shall be paid by the Lessee to the Lessor within thirty (30) days after bill rendered.

STATE OF NEBRASKA)
) ss
County of Douglas)

On this _____ day of _____, 19___, before me personally appeared _____ to me know to be the _____ Director of Real Estate of SPOKANE INTERNATIONAL RAILROAD COMPANY, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath stated he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

EXECUTED

_____
Notary Public in and for the
State of Nebraska

My commission expires _____

EXHIBIT 7

PHASE I SITE INSPECTION REPORT

ALUMINUM RECYCLING CORPORATION

TRENTWOOD

SPOKANE, SPOKANE COUNTY, WASHINGTON

WAD 980722979

DECEMBER 1987

REPORT PREPARED BY

Fred Gardner

Washington State Department of Ecology
Preliminary Assessment/Site Inspection Section
Hazardous Waste Cleanup Program

INTRODUCTION

The Aluminum Recycling Corporation (ARC) facility at N. 2317 Sullivan Road, Spokane, Washington, also known as ARC Trentwood, (hereinafter referred to as site) has been identified by the U.S. Environmental Protection Agency (EPA) Region X and the Washington State Department of Ecology (Ecology) as requiring additional information to accurately profile the nature and extent of past waste disposal activities.

The potential hazardous waste site preliminary assessment (PA) of July 17, 1985 recommended that wells in the local area be sampled for possible contamination and that air quality be maintained by preventing dust and ammonia vapors from creating a public nuisance. It also recommended that the dross materials be appropriately disposed of. The subsequent inspection, carried out under the Superfund Multi-Site Cooperative Agreement Preliminary Assessment/Site Inspection Program (PA/SI) is described in this report along with further recommendations under the following sections:

SITE NAME/ADDRESS

Aluminum Recycling Corporation
(Trentwood)
N 2317 Sullivan Road
Spokane, WA 98037

INVESTIGATION PARTICIPANTS

Fred Gardner	Washington State Department of Ecology Hazardous Waste Cleanup Program Mail Stop PV-11 Olympia, WA 98504 (206) 438-3014
Sherman Spencer	Washington State Department of Ecology Eastern Regional Office N. 4601 Monroe, Suite 100 Spokane, WA 98205-1295 (509) 456-2926
Phil Williams (telephone interview)	City of Spokane Director of Environmental Programs Municipal Building Spokane, WA 99201-3334 (509) 456-4370
John Huckaby	Imperial West Chemical N. 2315 Sullivan Road Spokane, WA 99216 (509) 922-2244
Roger Ray (interview regional office)	Washington State Department of Ecology Eastern Regional Office, Spokane N. 4601 Monroe, Suite 100 Spokane, WA 98205-1295 (509) 456-6174

PRINCIPAL SITE CONTACT

Sherman Spencer	Washington State Department of Ecology Eastern Regional Office N. 4601 Monroe, Suite 100 Spokane, WA 98205-1295 (509) 456-2926

DATE OF PHASE I INSPECTION

October 13, 1987

1.0 SITE OWNER/OPERATOR

The site real property belongs to Union Pacific Railroad who leases the property to ARC and Imperial West Chemical, an adjacent property owner. At present ARC is in bankruptcy court and the legal status of their holdings and assets have not been resolved. The firm is being represented by Joseph Esposito of Esposito, Brown, Tombari and George, Attorneys at Law, Suite 960, Paulsen Building, Spokane, Washington 99201 (509) 624-9219. The Union Pacific representative is Robert Markworth, Plant Facility Engineer, Union Pacific Railroad, Omaha, Nebraska 68179. (402) 271-1078.

The operator of the ARC plant when it was in operation was Jack Lyon, MARALCO, INC., P.O. Box 1167, Kent, WA 98032-3167.

2.0 SITE HISTORY AND BACKGROUND

The site was started in 1979 by Jack Lyon and a rotary kiln was used to recycle aluminum cans and dross into secondary aluminum which was then sold. An adjacent company, Imperial West Chemical, (IWC) also used stored aluminum dross to make aluminum sulphate for concrete.

The site owners also had another facility called Hillyard Processing (Wellesley) which used much the same technology. The end product of both processes was a "black" dross which is very high in potassium and sodium chloride salts. IWC could handle high-salt dross but not both high and low salt dross at the same time. Their operation is only set up to process low-salt dross now. Some high-salt black dross has been left on-site because of this. Black dross has also been removed from the site by Union Pacific to the Mica Landfill. A new pile of low-salt dross has been moved to the site by IWC from the Hillyard site.

IWC is attempting to obtain some of ARC's assets, such as the rotary kiln, equipment, buildings and even some of the marketable dross (which it apparently has been able to do).

A legal firm for the creditors (of which IWC is one) has asked the court for an involuntary transfer of these assets. Nothing further has transpired in the legal standing of the company except for the transfer of the low-salt dross from Wellesley (Hillyard) to Trentwood.

In the process of smelting the aluminum out, not only is a substantial amount of black dross left as a by-product, but substantial air emissions are created and if not contained, can and did result in air pollution violations.

In late 1982 and early 1983 violations of air emissions occurred from the rotary kiln as well as releases of high salt content polluting substances which had been ordered bermed and covered by Ecology and the Spokane Air Pollution Control Authority.

From 1982 to 1985 numerous correspondence between Mr. Lyon and Mr. Buescher (another partner) and Ecology discuss various options. Promises were made by ARC to correct deficiencies. ARC and Ecology

went before the Pollution Control Hearing Board, where the company's fine was substantially reduced by the Board who said they had authority to set or modify the fines assessed by Ecology.

In May 1984, the company filed for reorganization under Chapter 11. Nothing has been done since that time by the company. Esposito et al. are handling the proceedings for MARALCO/ARC. The Union Pacific Railroad removed the remaining mound of black dross on the Trentwood site in August-September of 1986 to Mica Landfill. Since that time, the neighboring company, IWC transported low-salt dross from ARC's other property on Wellesley (Hillyard processing) to the site and now another pile exists on the site.

The low-salt dross is not designated by EPA or Ecology as a hazardous waste. The high-salt dross is designated a dangerous waste due to its high salt content (up to 50-70 percent sodium and potassium salts) and the fact that there are over 400 lbs. of it on-site. This designation is based on oral rat data. The designation is a mathematically calculated one.

It is unknown exactly how much high-salt dross is located on-site. Generally, the blacker the material, the saltier it is. Both types, low and high-salt occur on-site. The total amount is in the thousands of tons, a significant amount of material. One of the characteristics of the dross is that the weathering process causes a crust to form over the dross, possibly reducing the amount of salt available for leaching. Regardless, the rain, as little as it is compared to western Washington, may cause off-site migration of the salt. One reference was made on a map sketch of the site to a fish kill (in 1973). No other data or evidence has detailed this event. The Little Spokane River is within 0.10 mile of the site and the general topography slopes toward it. A research of the newspapers of that time period may reveal more information on this alleged fish kill.

In August 1983, Jim Malm of the Eastern Regional Office (Ecology) asked Mr. Buescher to analyze the dross. The following results were received:

	Percent by Weight
Calcium, (Ca)	0.06
Sodium, (Na)	14.15
Potassium, (K)	13.35
Aluminum, (Al)	21.4
Oxides, (as AL_2O_3)	40.4
Chloride, (Cl)	43.0
Fluoride, (F)	0.13
Nitrides, (as NH_3-N)	1.4
pH	10.14
Soluble Material	64.60

Ecology lab results on samples collected on August 26, 1983 show the following for EP Tox metals in micrograms per liter (parts per billion).

Metal	Fresh Dross	Aged Dross	EPA Ep Tox Limits ppb
Silver, (Ag)	10	10	5000
Barium, (Ba)	3300	750	100000
Chrome, (Cr)	20	20	5000
Cadmium, (Cd)	40	50	1000
Lead, (Pb)	260	260	5000
Mercury, (Hg)	0.2	1.1	200
Arsenic, (As)	106.0	136.0	500
Selenium, (Se)	434.0	158.0	1000

This analysis does not show any exceedance of EPA standards by any of these metals. Fish bioassays done on three other dross samples collected at the same time showed that in one sample fresh dross killed 100% of the salmon at 100 ppm and aged dross killed none at 1000 ppm. Several fish (7%) were killed by another fresh dross sample at 100 ppm. In the third sample, of aged dross, no mortality was observed at either 100 ppm or 1000 ppm.

A fish bioassay taken in July of 1984 for baghouse dust showed 100% mortality at 1000 ppm. Sampling from the ARC well on October 3, 1985 showed chloride levels of 2.8 mg/l, sodium 3.7 mg/l, potassium 3.6 mg/l, and conductivity 250 micromhos/cm.

The various values have confirmed so far that there is no hazardous material in the dross material, but it is still designated a state dangerous waste based on salt content.

3.0 ENVIRONMENTAL SETTING

The site is located east of the City of Spokane at N 2317 Sullivan Road. The site encompasses approximately three acres in an industrial zoned portion of the County. The site is somewhat rectangular in shape. The elevation is around 2000 to 2025 ft MSL. The latitude is 47°41'1" and longitude 117°11'9". The location is in Section 11, Township 25 North, Range 44 East, Willamette Meridian.

3.1 Climate

The climate of the Spokane area is influenced by being in between the Cascades and Rockies. The Cascades provide protection from wetter coastal weather and the Rockies prevent extremes in continental weather from travelling west into the Columbia Basin.

The mean annual precipitation is around 17 inches, falling mostly from September to April in the form of rain or snow (50 inch average). The average maximum two year, 24 hour rainfall is approximately 1.4 inches. The Spokane area has a mild climate with summer temperatures ranging from 80° to 90° in the day to 45° to 60° at night. Winter temperatures range from 25° to 40° in the day to 15° to 25° at night. Extremes in temperature are 110° in summer to -45° in winter.

3.2 Geology/Hydrology

The Spokane-Rathdrum sole source aquifer lies in eastern Washington and northern Idaho, extending from Lake Pend Oreille through the Spokane Valley under the city of Spokane, and exists as springs near the Little Spokane River. The aquifer underlies approximately 350 square miles and is composed predominantly of glacio-fluvial deposits. The deposits consist mostly of poorly to moderately sorted sands and gravels, with some beds of cobbles and boulders, and a few scattered clay lenses. The sands and gravels are relatively free of fine sand and silt, except in the uppermost 3-5 ft. of the aquifer.

Because of the relatively clean sand and gravel composition of the aquifer, its permeability is high. This high permeability, coupled with the aquifer's depth and its hydraulic gradient, results in velocities of approximately 60-90 feet per day. At this point, the volume of flow is approximately 1000 cubic feet per second. Lower velocities of approximately 10-50 feet per day occur toward the middle and western edge of the aquifer. These rates are high compared with more typical aquifer velocities, which range between 5 feet per day to 5 feet per year.

The Spokane-Rathdrum aquifer is several hundred feet thick. The water surface of the aquifer is about 178 feet below the land surface at the site, and only about 50 feet near the eastern boundary of the city of Spokane.

The aquifer is so shallow in some areas of the valley that it is exposed in some pits that are used for gravel quarries and concrete operations. On the northern boundary of the city of Spokane, the water level deepens to about 180 feet. Well logs of two large Spokane production wells, near the site, show water levels between 115 to 176 feet. The well on-site is at 125 feet with the static water level at 60 feet.

The direction of ground water flow is generally east to west regionally, with local variations, mainly to the north-northwest in the vicinity of the site. A divergence around Fivemile Prairie occurs here. Ground water velocities in the site area are as high as 46 ft/day (see map).

3.3 Topography and Drainage

The surface elevation of the site is around 2000 MSL. It is a small mesa shaped structure striking NW, SE. The SW facing edge of the property slopes down to 1980 MSL until just above the rivers edge where the topography drops steeply to the river level (at approximately 1920 MSL). The lower (SW) portion of the general site area was a gravel pit at one time. It is now filled and paved over into a Department of Transportation (DOT) park and ride lot. Drainage from this low area is to the river via storm drains or ditches.

3.4 Ground Water/Surface Water Uses

The ground water in the area is obtained from the Spokane-Rathdrum aquifer (see section 3.2). Sixteen public and 87 private wells exist within three miles of the site. The nearest well is on-site and was used by ARC and Imperial West Chemical. Several of the adjacent wells are large volume industrial wells. The Spokane River is used for irrigation and is 700 feet SW of the site.

4.0 ECOLOGY SITE INSPECTION

(See Appendix D).

5.0 DISCUSSION

The objectives of the SI were to (1) determine if hazardous materials were present on-site from records and site inspection, (2) ascertain if they were migrating off-site, (3) determine any potential receptor to off-site contamination and (4) make recommendations of further action at the site.

There is no EPA designated waste on this site (based on available sample results) nor was there in the past. This would make further efforts in the PA/SI area moot. However, the wastes are designated by the state as Toxic-Dangerous using oral rat toxicity data and amounts on-site as criteria.

Due to the large volume of dross on-site, some salt may be moving off-site either in surface pathways by being dissolved via rainfall or by seeping into the ground and possibly getting into the Spokane-Rathdrum sole source aquifer.

The mitigating factors preventing salt migration are the low rainfall in the Spokane area which probably does not allow any deep penetration into the soil. Aquifer depth is from 175 to 200 feet in that area. A more probable method of off-site migration may be surface water runoff to the Spokane River or to storm drains and ditches in the area.

6.0 CONCLUSIONS AND RECOMMENDATIONS

Based on the findings of the PA/SI Phase I SI it is recommended that no further CERCLA investigation of the site is required and that the site be removed from the CERCLIS list of active potential hazardous waste sites.

The regional office of the Department of Ecology should be the focal point for any removal actions proposed by the owners.

The "conventional" pollutants (high salt) is still present in high concentrations and should be monitored if possible by sampling for conductivity in wells around the site and on-site.

EXHIBIT 8

****
****** UNION PACIFIC LEASE FILE INFORMATION *******
****

DATE: 06/24/92 USERID: LAND006

FOLDER: 82508 AUDIT : SI82508

LESSEE NAME : IMPERIAL WEST CHEMICAL CO.
PURPOSE : 455
LOCATION : TRENTWOOD, WA

PICTURE ON FILE	: Y	DATE OF PICTURE	: 1990/09/11
COPY OF PLOT PLAN	: Y	BLDGS/IMPVTS	: Y
QUESTIONAIRE	: Y	UNDERGROUND TANKS	: Y
HAZ/WASTE	: N		
BANKRUPTCY	: Y		

COMMENTS: PHOTOS SHOW THAT GROUND IS SATURATED WITH ALUMINUM OXIDE
: AND SETTLING PONDS AND BLACK DROSS

******* U S E S **********

: ACID STORAGE
: MANUFACTURING
:
:
:
:

OTHER USES : INC. ALUMINUM SULFATE/OXIDES

EXHIBIT 9

UNION PACIFIC RAILROAD COMPANY

CONTRACTS & REAL ESTATE DEPARTMENT

ROOM 1100, 1416 DODGE STREET
OMAHA, NEBRASKA 68179-1100
(402) 271-3753
FAX (402) 271-5493

File: 825-08

M E M O R A N D U M

TO: FRANK BELLISS

FROM: DOUG RICE

DATE: JUNE 29, 1992

SUBJECT: TRENTWOOD, WASHINGTON LEASE SITE

ATTACHED ARE PHOTOS TAKEN AFTER SITE SURVEYED AND STAKES SET. ALSO IS A - PRINT SHOWING ORIGINAL LEASE AREA IN YELLOW AND ADDITIONAL AREA IN PINK.

HOPE THE ATTACHED HELP AND WOULD APPRECIATE RECEIVING THE PHOTOS BACK.

825-08 RDR

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this [redacted] to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

John Huckabay
Imperial West Chemical
P.O. Box 696
Antioch, CA 94519

4a. Article Number
P 121 852 669

4b. Service Type
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

5. Signature (Addressee)

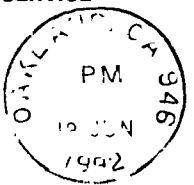
6. Signature (Agent)

ANTIOCH CA RETURN TOWN MAY 1992 USPS

PS Form **3811**, November 1990 ☆U.S. GPO: 1991—287-065 **DOMESTIC RETURN RECEIPT**

UNITED STATES POSTAL SERVICE

Official Business



PENALTY FOR PRIVATE USE, $300

Print your name, address and ZIP Code here

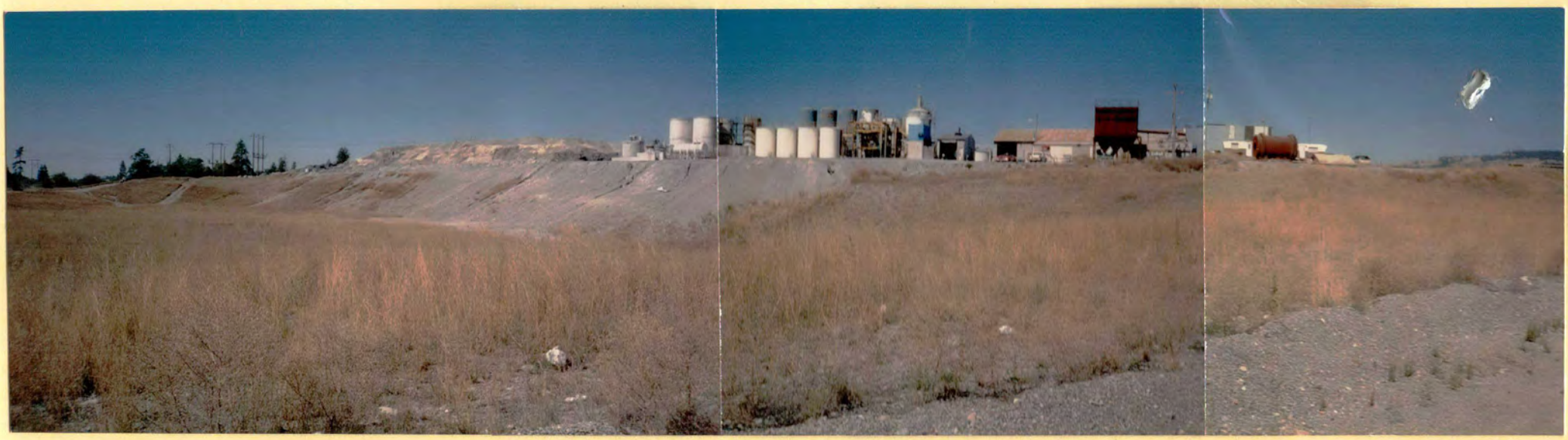
UNION PACIFIC RAILROAD COMPANY
CONTRACTS & REAL ESTATE DEPARTMENT
1416 DODGE STREET, ROOM 1100
OMAHA, NEBRASKA 68179

WEST

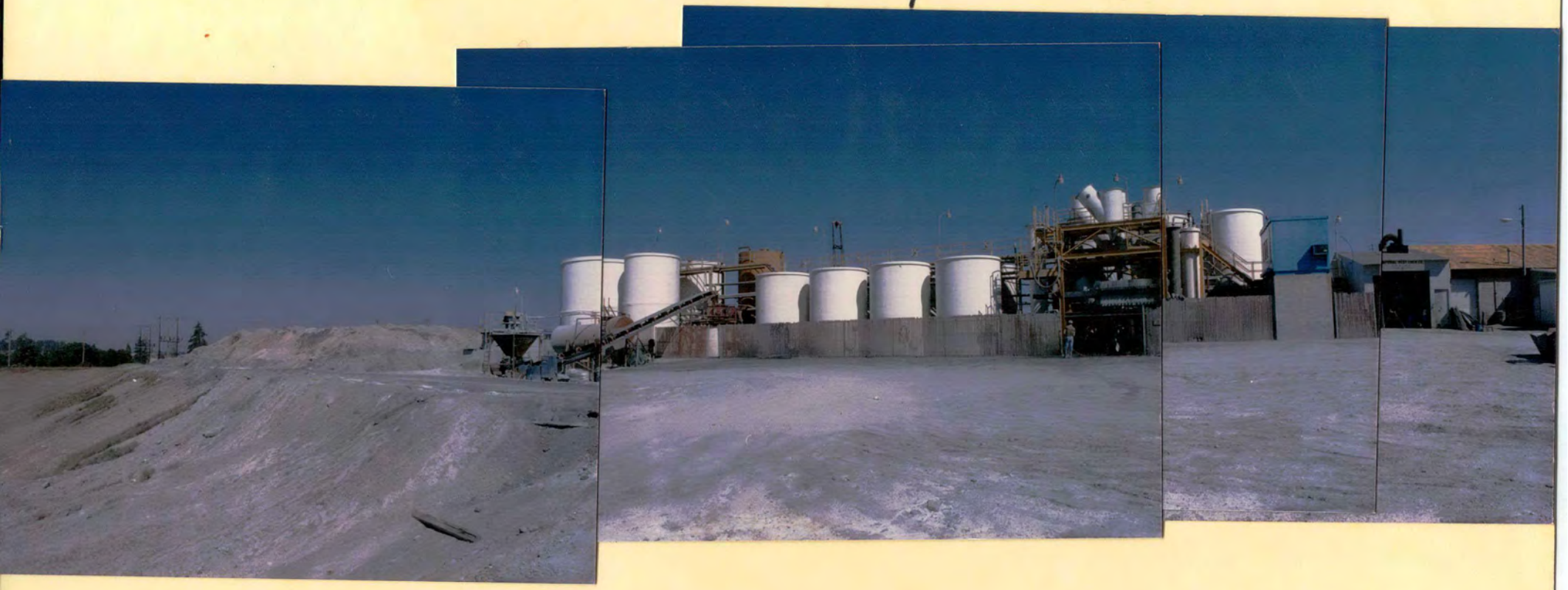
Sept 11, 1990

West

Sept 11, 1990



Imperial West Chemical Corp
(sublessee) → Looking North



Sullivan Road

Black Dross

Looking North East

Aluminum Recycling Corp.
Looking West

Facing
East - South East

Looking West

Aluminum Oxide

Settling Ponds

Looking West

Aluminum Oxide

Looking West

Imperial West Chemical Corp.

EXHIBIT 10

INTENTIONALLY OMITTED

EXHIBIT 11

Supp. 861219
Form Approved, AVP - Law

Form 20
Audit No. 825-08
Folder No. 825-08

THIS SUPPLEMENTAL AGREEMENT is made as of the 2nd day of November, 1992, by and between UNION PACIFIC RAILROAD COMPANY, a corporation of the State of Utah, (hereinafter the Lessor) and IMPERIAL WEST CHEMICAL CO. a Nevada corporation to be addressed at P.O. Box 696, Antioch, California 94509 (hereinafter the Lessee).

RECITALS:

By instrument dated July 14, 1986, the parties hereto or their predecessors in interest (if any), entered into an agreement (herein the "Basic Agreement") identified as Audit No. 825-08, covering the manufacturing and distribution of aluminum sulfate and oxides, storage and handling of sulfuric acids, a hazardous commodity located at Trentwood, Washington.

The parties now desire to modify the Basic Agreement by increasing the area covered by the above mentioned lease as shown on the new Exhibit "A" as attached hereto and increasing the rental, this as a result of the Railroad having had to purchase 4.4 acres from the State of Washington.

AGREEMENT:

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

Section I. - SUBSTITUTION OF PRINT

The print dated September 1, 1992, attached hereto as Exhibit "A", shall be and hereby is substituted for the print dated July 15, 1985 attached to the Basic Agreement, and from and after the effective date herein whenever the term Premises is used in the Basic Agreement, or any amendment or supplement thereto (if any), such reference shall be deemed to refer to the Premises as shown on Exhibit "A", hereto attached.

Section II. - INCREASE IN RENTAL

Effective as of July 15, 1992, the Lessee agrees to pay to the Lessor the sum of Fourteen Thousand Six Hundred Fifty Dollars ($14,650.00) per annum, payable annually in advance, in lieu of the rental heretofore stipulated.

Section III. - PROTECTION OF FIBER OPTIC CABLE SYSTEMS

(a) Fiber optic cable systems may be buried on the Lessor's property. Lessee shall telephone the Lessor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Lessor's premises to be used by the Lessee. If it is, Lessee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocating or other protection of the fiber optic cable prior to beginning any work on the Lessor's premises.

(b) In addition to the liability terms elsewhere in this Agreement, the Lessee shall indemnify and hold the Lessor harmless against and from

CODED
By: J.J.H.
Date: NOV 02 1992

all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of the Lessee, its contractor, agents and/or employees, that causes or in any way or degree contributes to (1) any damage to or destruction of any telecommunications system by the Lessee, and/or its contractor, agents and/or employees, on Lessor's property, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Lessor's property, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

Section IV. - EFFECTIVE DATE

This Supplemental Agreement shall be effective as of July 15, 1992.

Section V. - AGREEMENT SUPPLEMENTAL

This agreement is supplemental to the Basic Agreement, as herein and heretofore amended, and nothing herein contained shall be construed as amending or modifying the same except as herein specifically provided.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be executed as of the day and year first hereinabove written.

Witness:

UNION PACIFIC RAILROAD COMPANY

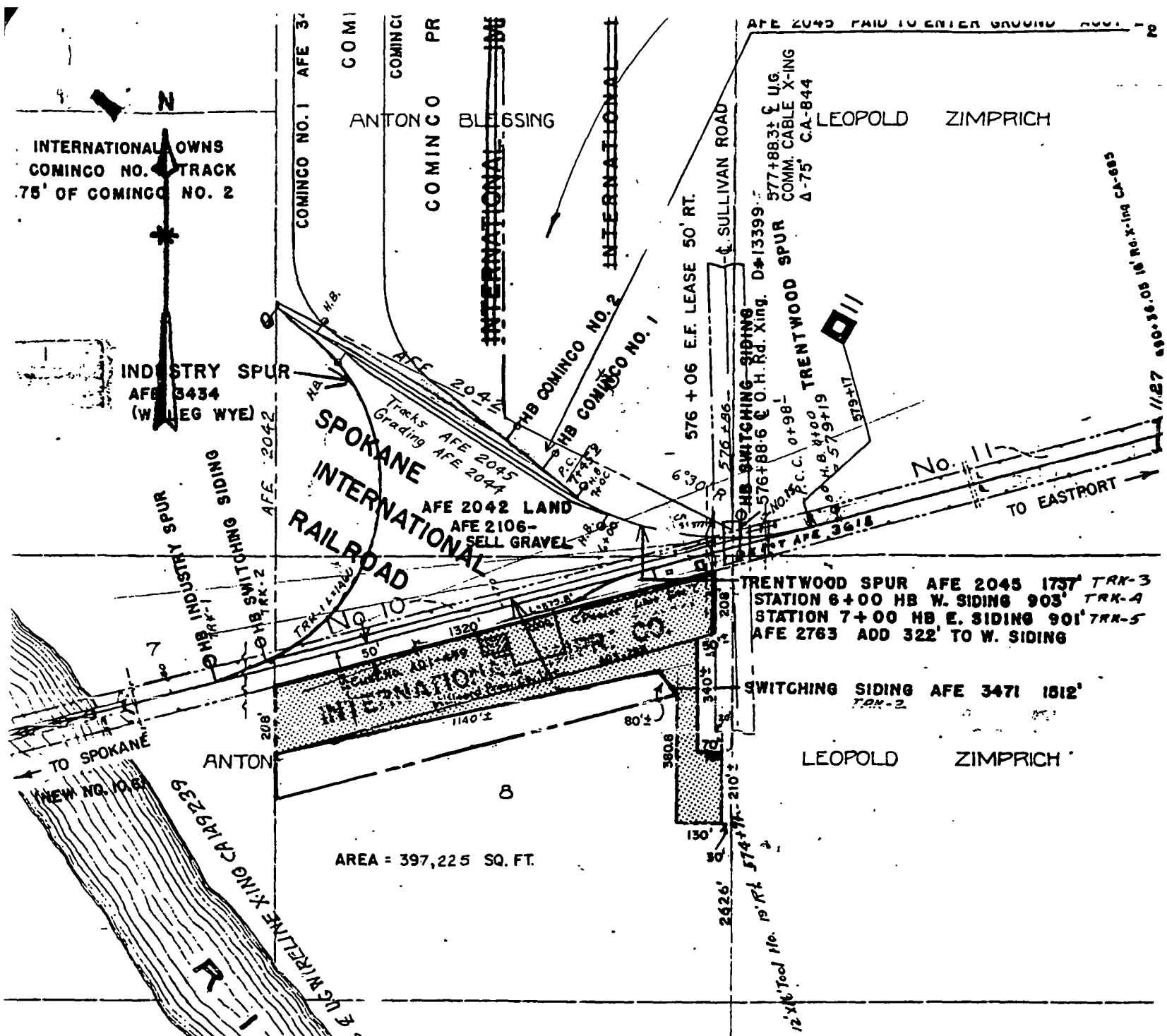
By: _____
Director-Field Operations

Witness:

IMPERIAL WEST CHEMICAL CO.

X _____

X _____
Title: Ex VP



NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

Trendwood, Spokane County, Washington
MP 10.67 - Spokane Subdivision

To accompany lease agreement with...
Imperial West Chemical Company

SCALE: 1" = 400'

OFFICE OF CONTRACTS & REAL ESTATE

OMAHA, NEBRASKA Date: 3-05-92
Revised 9-01-92

REA FILE: 825-08

* L E G E N D *

LEASE AREA SHOWN.....

UPRRCO. R/W OUTLINED.....

P. J. EMANUEL - TAX DEPT - BROOMFIELD

COPY ATTACHED FOR YOUR RECORDS.

EXHIBIT 12

Folder No: 825-08
Audit No:

LEASE OF PROPERTY

THIS LEASE ("Lease") is entered into on the 17th day of July, 1995 between UNION PACIFIC RAILROAD COMPANY ("Lessor"), and IMPERIAL WEST CHEMICAL CO., a Nevada corporation, whose address is P.O. Box ~~696~~ 606, Antioch CA 94509 ("Lessee").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

Article I. PREMISES; USE.

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises"), at Trentwood, Washington, as shown on the print dated September 1, 1992 marked Exhibit A, hereto attached and made a part hereof, subject to the provisions of this Lease and of Exhibit B attached hereto and made a part hereof. The Premises may be used for the manufacturing and distribution of aluminum sulfate and oxides, storage and handling of sulfuric acids, a hazardous commodity and purposes incidental thereto, only, and for no other purpose.

Article II. TERM.

The term of this Lease shall commence on July 15, 1995, and, unless sooner terminated as provided in this Lease, shall extend for one year and thereafter shall automatically be extended from year to year.

Article III. RENT.

A. Lessee shall pay to Lessor, in advance, rent of Fifteen Thousand Nine Hundred Sixty-Eight Dollars ($15,968.00) per annum. The rent shall be increased by Three percent (3%) annually, cumulative and compounded.

B. Not more than once every three (3) years, Lessor may redetermine the rent. In the event Lessor does redetermine the rent, Lessor shall notify Lessee of such change.

Article IV. SPECIAL PROVISION - INSURANCE.

A. At all times during the term of this Lease, Lessee shall, at Lessee's sole cost and expense, procure and maintain the following insurance coverage:

General Public Liability providing bodily injury, including death, personal injury and property damage coverage with combined single limit of at least One Million Dollars ($ 1,000,000.00) per occurrence and a general aggregate limit of at least One Million Dollars ($1,000,000.00). This insurance shall provide Broad Form Contractual Liability covering the indemnity provisions contained in this Agreement, severability of interests, and name Lessor as an additional insured. If coverage is purchased on a "claims made" basis, it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked if insurance

OLD
G.P.N.
By:
Date: JUL 26 1995

covering the time period of this Agreement is cancelled.

B. Lessee shall furnish Lessor with certificate(s) of insurance evidencing the required coverage and, upon request, a certified duplicate original of the policy. The insurance company issuing the policy shall notify Lessor, in writing, of any material alteration including any change in the retroactive date in any "claims-made" policies or substantial reduction of aggregate limits, or cancellation at least thirty (30) days prior thereto. The insurance policy shall be written by a reputable insurance company or companies acceptable to Lessor or with a current Best's Insurance Guide Rating of B and Class VII or better, and which is authorized to transact business in the state where the Premises are located.

C. Lessee hereby waives its right of subrogation under the above insurance policy against Lessor for payment made to or on behalf of employees of Lessee or its agents or for loss of its owned or leased property or property under its care, custody and control while on or near the Premises or any other property of Lessor. Lessee's insurance shall be primary with respect to any insurance carried by Lessor.

Article V. SPECIAL PROVISION - CANCELLATION.

Effective upon commencement of the term of this Lease, the Lease dated July 14, 1986, identified as Audit No. SI82508, together with any and all supplements and amendments, is cancelled and superseded by this Lease, except for any rights, obligations or liabilities arising under such prior lease before cancellation, including any consent to conditional assignment, chattel agreement, or consent to sublease.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Director - Real Estate

IMPERIAL WEST CHEMICAL CO.

By: _____

Title: President

Note: Cancels and Supersedes Lease SI82508 Dated 7/14/86

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISION.

EXHIBIT "A"
UNION PACIFIC RAILROAD COMPANY
Trentwood, Spokane County, Washington
M.P. 10.67 - Spokane Subdivision

Lease to IMPERIAL WEST CHEMICAL CO.

SCALE: 1" = 400'

OFFICE OF CONTRACTS & REAL ESTATE
OMAHA, NE Date: April 11, 1995
Folder: 825-08

* L E G E N D *

Lease Area Shown . . . . . Dot Screen
(RR) R/W Outlined . . . . . ———— — — —

IND LS 010195
APPROVED, LAW

EXHIBIT B

Section 1. IMPROVEMENTS.

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2. RESERVATIONS AND PRIOR RIGHTS.

A) Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.
B) Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.
C) This Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew such outstanding rights.

Section 3. PAYMENT OF RENT.

Rent (which includes the annual rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4. TAXES AND ASSESSMENTS.

A) Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.
B) If the Premises are specially assessed for public improvements, the annual rent will be automatically increased by 12% of the full assessment amount.

Section 5. WATER RIGHTS.

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. CARE AND USE OF PREMISES.

A) Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the Premises in a safe, neat, clean and presentable condition, and in good condition and repair. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard and all water flow shall be directed away from the tracks of the Lessor.
B) Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.
C) If any improvement on the Premises not belonging to Lessor is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.
D) Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises.

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A) Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use (i) small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises and (ii) other Hazardous Substances, other than hazardous wastes as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., as amended ("RCRA"), that are necessary for the conduct of Lessee's business at the Premises as specified in Article I. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.
B) In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C) If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.
D) Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use, or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 12), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any exceptions of the foregoing to Lessee's responsibility for Hazardous Substances applies.
E) In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Landlord reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.
F) For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under federal, state or local law.

Section 8. UTILITIES.

A) Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.
B) All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A) No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.
B) All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C) Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.
D) Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

Section 11. AS-IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

A) As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessee) and arising from or related to (i) any use of the Premises by Lessee or any invitee or licensee of Lessee, (ii) any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or (iii) any breach of this Lease by Lessee.
B) The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss caused by the sole, active and direct negligence of any Indemnified Party if the Loss (i) was not occasioned by fire or other casualty, or (ii) was not occasioned by water, including, without limitation, water damage due to the position, location, construction or condition of any structures or other improvements or facilities of any Indemnified Party.
C) Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.
D) No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. TERMINATION.

A) Lessor may terminate this Lease by giving Lessee notice of termination, if Lessee (i) fails to pay rent within fifteen (15) days after the due date, or (ii) defaults under any other obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given.
B) Notwithstanding the term of this Lease set forth in Article II.A., Lessor or Lessee may terminate this Lease without cause upon thirty (30) days' notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 15A).

Section 14. LESSOR'S REMEDIES.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as provided in Section 13 A) above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

Section 15. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A) Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, and restored the surface of the ground to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B) If Lessee has not completed such removal and restoration within thirty (30) days after termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

Section 16. FIBER OPTICS.

Lessee shall telephone Lessor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried on the Premises. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

Section 17. NOTICES.

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Contracts & Real Estate Department, Room 1100, 1416 Dodge Street, Omaha, Nebraska 68179; and to Lessee at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are personally served or sent by courier service shall be deemed served upon receipt.

Section 18. ASSIGNMENT.

A) Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.
B) Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 19. CONDEMNATION.

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee' business.

Section 20. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. ENTIRE AGREEMENT.

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction. Except for the unilateral redetermination of annual rent as provided in Article III.A, this Lease may be amended only by a written instrument signed by Lessor and Lessee.

EXHIBIT 13

KEMWATER
NORTH AMERICA COMPANY

FAXED
9/17/97
402-997-3601

G.E.L.

SEP 19 1997

September 17, 1997

Mr. George Lindsay
Union Pacific Railroad
Contracts and Real Estate
1416 Dodge St.
WP001
Omaha, Nebraska 68179

Reference: Lease

Dear Mr. Lindsay:

Confirming our telephone conversation, Kemwater North America (formerly Imperial West Chemical Company) plans to make a major investment in our plant on your site in Spokane. Kemwater North America is requesting from the Union Pacific written authorization to act as representatives of the owner of the property for the purpose of applying for the building and environmental permits necessary to construct the new facility.

As we discussed, in February of 1996 Imperial West Chemical Company bought Kemira Chemical's Savannah coagulants plant and became a licensee of the Kemira technology for all of North America. At that time we also changed our name to Kemwater North America. Ownership of the company remained the same. I apologize for not making the request to change the name on the lease sooner.

Kemwater North America also requests that the lease be renegotiated to include a longer term than one year. You indicated that the maximum time is currently five years. Since Kemwater is going to make a large capital investment at this location we would like a longer-term commitment.

We will appreciate your prompt response to this request, as Kemwater would like to pour concrete by the first part of October, due to weather considerations. I have included with this letter a plot plan of the proposed expansion.

Please let me know when your plans allow for your visiting the Spokane area so we can arrange to meet you there. Thank you again for your consideration of our request.

Sincerely,
KEMWATER NORTH AMERICA

John P. Crass
Vice President, Sales and Marketing

cc: Michael K. Espinosa

2185 NORTH CALIFORNIA BOULEVARD, SUITE 500 • WALNUT CREEK, CALIFORNIA 94596
(510) 280-2600 • (510) 280-4465 • www.kemwater.com

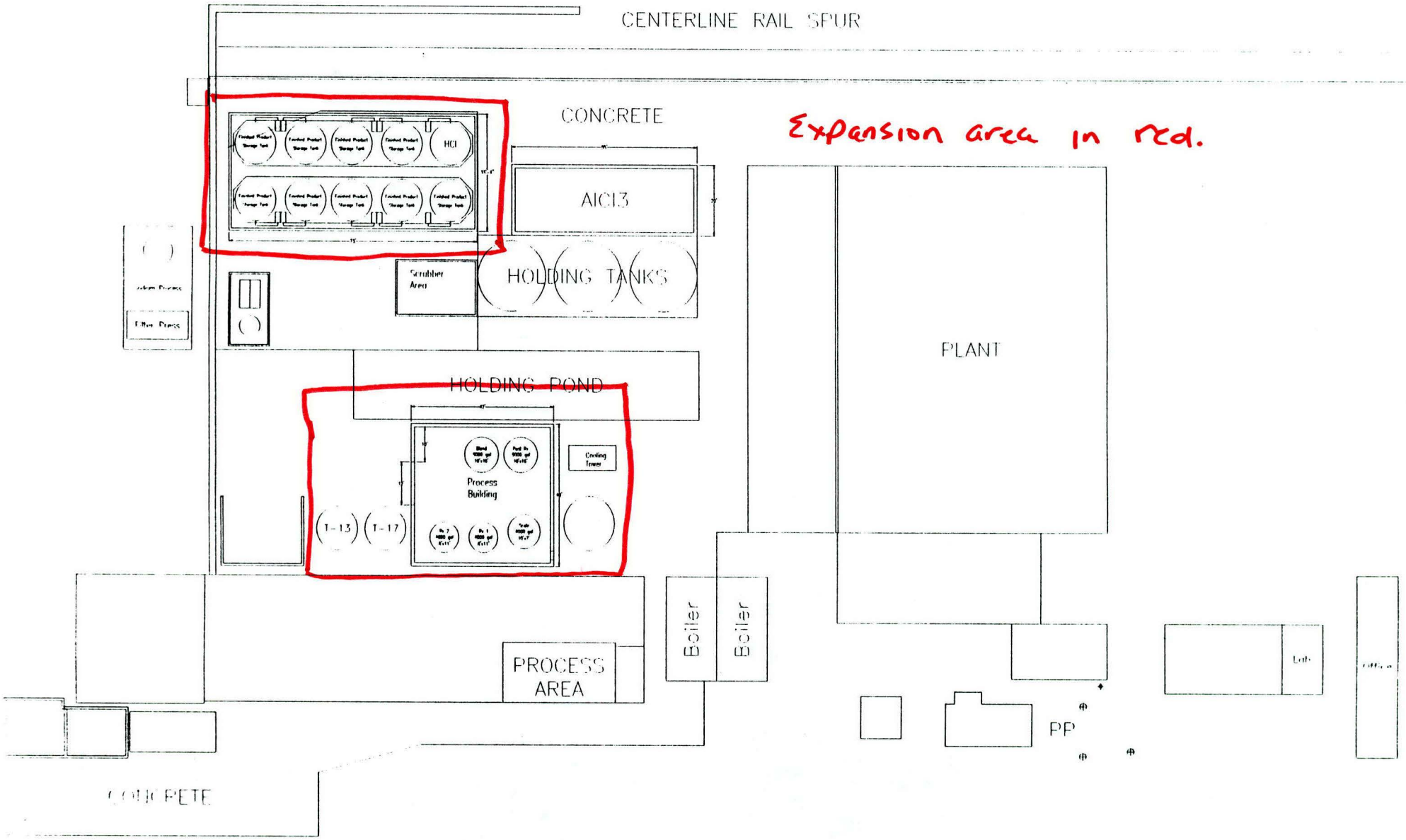

CENTERLINE RAIL SPUR
CONCRETE
Expansion area in red.
HCl
AlCl3
Scrubber Area
HOLDING TANKS
PLANT
HOLDING POND
Cooling Tower
Process Building
T-13
T-17
Boiler
Boiler
PROCESS AREA
PP
Lab
CONCRETE

EXHIBIT 14

Alcoa Reaches Deal to Buy Alumax For $2.8 Billion in Cash and Stock

By Chris AdamsStaff Reporter of The Wall Street Journal
March 10, 1998 12:01 am ET

PITTSBURGH -- Aluminum Co. of America reached an agreement to buy rival Alumax Inc. for $2.8 billion in stock and cash, allowing it to expand its global reach as well as its line of fabricated aluminum goods.

The deal, in which Alcoa is assuming $1 billion of Alumax debt, would unite the world's largest aluminum maker and the third-largest aluminum company in the U.S., sparking what could be a stringent review of Alcoa's expanded market share by U.S. antitrust regulators. But if approved, the combination would give Alcoa, a leader in the can sheet and aerospace markets, a stronger presence in construction and transportation.

The origins for the planned acquisition go back two years, when Alumax fought off a hostile takeover bid from another rival, Kaiser Aluminum Corp. At the time, Paul O'Neill, Alcoa chairman and chief executive officer, said he made a friendly call to Alumax suggesting a possible deal. "We're here if you want us to be," Mr. O'Neill told officials of Alumax, based in Atlanta.

Under terms of the definitive agreement announced Monday and approved by both company's boards, Alcoa will pay $50 a share in cash for half of Alumax's

shares outstanding. Alcoa will buy each remaining Alumax share for 0.6975 share of Alcoa stock. Alcoa said it is intended that the shares it issues will be tax-free to Alumax shareholders.

Alumax shares, which traded in the mid-30s for much of the past two years, jumped on the news, ending the day at $47, up 28%, or $10.3125 from a Friday close of $36.6875 on the New York Stock Exchange. Alcoa closed at $71.4375, down 18.75 cents. At that closing price, the stock portion of the Alcoa offer would be worth $49.83 for each Alumax share.

Analysts generally praised the acquisition plan, which will allow the combined company to cut costs at a time aluminum makers world-wide are watching aluminum prices tumble. The combined company will have 1998 revenue of about $17 billion, with 100,000 employees in 30 countries. Alcoa said it was premature to discuss any layoffs and added that attrition could take care of future work-force reductions.

Substantial Savings

Mr. O'Neill said for the deal to make financial sense, the combined company would have to find at least $80 million in after-tax cost savings a year. In a conference call, he said the savings should be "substantially more" than that, although he didn't specify when they would kick in. He said there would be overlaps in some management functions, in transportation costs, and in research and development.

Both companies are studying whether to build aluminum plants in the same area of western Canada. "It's not a big number, but I suppose we can save some money by combining our study teams in British Columbia," Mr. O'Neill quipped.

Although the merger would bring together two aluminum giants, there will be little in the way of overlapping product lines. While both companies produce primary aluminum, those so-called primary aluminum ingots are further processed into very different fabricated aluminum products.

Alcoa is a leader in producing "can sheet," which is used to make soda cans, as well as in aluminum for the aerospace industry. Alumax isn't a factor in those markets, but it is strong in aluminum used in the construction business.

Further, Alcoa is a major producer of alumina, the raw material used to make aluminum. Alumax now buys all of its alumina from Alcoa.

"There is a surprisingly small amount of overlap between the two companies," said R. Wayne Atwell, an analyst with Morgan Stanley, Dean Witter, Discover & Co. "It's almost as though they were designing themselves to be a fit someday."

Antitrust Scrutiny Expected

Even so, analysts expect the acquisition to come under tough antitrust review by the U.S. Justice Department. Just three months ago, the Justice Department opposed Alcoa's plan to buy a can sheet mill from Reynolds Metals Co., saying the transaction would let Alcoa control too much of that market. Alcoa dropped the plan a day later.

With the Alumax acquisition, Alcoa would increase its capacity by about 28% to more than three million metric tons of primary aluminum a year, or 15% of world-wide capacity. In the U.S., however, Alcoa will have 40% of primary aluminum capacity, according to Charles Bradford, an independent metals analyst.

Mr. O'Neill stressed that aluminum was a world-wide market, with prices set daily on the London Metal Exchange. He said the "idea that some of this has anything to do with concentration in the U.S. is ludicrous," and added that he was "very confident the Justice Department won't find anything to haggle about."

But "everybody also talked as though the Reynolds can sheet mill was a done deal," said Nick Mason, a London-based consultant with CRU International. "It wasn't. It was rejected. There's no such thing as a done deal, until it is all signed, sealed and approved."

Daniel Roling, a Merrill Lynch analyst, agreed with Alcoa that aluminum was a global market. But the Justice Department might not take the same view as Alcoa. "Bill Gates thought Justice was a minor problem, too," Mr. Roling said.

EXHIBIT 15

Fax To: _____ Fax No._____

LAND LEASE APPLICATION FORM – UNION PACIFIC RAILROAD COMPANY

Lease in Name of: Kemiron Northwest, Inc.

If a Corporation, State of Inc. Delaware.

Other Comments Pertinent to Lessee: Kemiron Northwest, Inc. ("KNWI") is in the process of purchasing the coagulant business from Kemwater North America Company, ("KNAC"). KNAC is the current lessee of your premises located at Trentwood, Spokane County , Washington (identified by UP as Folder: 0825-08 Audit Number SI82508. KNWI intents to continue KNAC's business activities at said location, and KNWI would like to assume the aforementioned lease contingent on the closing of the KNAC/ KNWI transaction. The tentative closing date for the KNAC, KNWI transaction is set for July 10/2000

Applicant Mailing Address 316 Bartow Municipal Airport, Bartow, Florida 33830

Applicant Billing Address (if different) _____

Name of Person to Contact Regarding this Lease J. Marker/J.Hisken

Phone No. (863) 533-5990 Fax No. (863) 533-7077 E-Mail: jhisken@gte.net

Desired Effective Date: Closing date of the agreement between KNAC and KNWI. 8-21-00 Closing

Detailed Description of Intended Use of Leased Premises. The intended use will stay the basically the same. KNWI will continue KNAC's operating activities at the Spokane site.

List All Hazardous Materials or Petroleum Products You Will be Handling on:
Leased Premises. Aluminum and Iron Sulfates, Aluminum and Iron Chlorides, Poly Aluminum Chloride, Sulfuric Acid, Hydrochloric Acid

Adjacent Premises: NA _____

Will Hazardous or Petroleum Wastes be Generated? Yes_____ No X if Yes,

Describe_____

Will Improvements be Constructed on Leased Premises? Yes_____ No X If Yes,

Describe_____

_____

Will Storage Tanks Be Installed? Yes_ No X If Yes,
Commodity Stored_____, Size_____, Above_____or Below Ground

Will Trackage be Required? Yes: X No __ If Yes, Contact the Sr. Mgr. – Track at (402) 997-3583
Note: Land Lease Does Not Include Use of Trackage

Do You Plan to Sublease to Another Party? Yes_____ No X If Yes,
Duplicate Above Information for Sublessee and Forward With Application

Provide Location (i.e.: city, street, railroad mile post) and a Drawing of the Proposed Leased Premises With Dimensions. Also, Depict Any Planned Improvements on the Leased Premises With Dimensions From Nearest Track.

Premises is located at Trentwood, Spokane County , Washington M.P. 10.67- Spokane Subdivision, (The current lease is identified by UP as Folder: 0825-08 Audit Number SI82508

This application is not to be construed as a commitment to lease property without Railroad's written consent.

FORWARD APPLICATION & PRINT TO:
Union Pacific Railroad Co
1800 Farnam St – Attn: G. E. Lindsay, Jr.
Omaha, NE 68102 or fax: (402) 997-3601

X _____
(signature of applicant)
(Title) SECRETARY
(date) 6-21-00

UNION PACIFIC RAILROAD
REAL ESTATE DEPARTMENT
INFORMATION REPORT

APPLICANT FIRM NAME: Kemiron Northwest, Inc._____ PHONE (863) 533-5990_____

COMPLETE ADDRESS: 316 Bartow Municipal Airport, (Street Name) Bartow, (City) Florida, (State) 33830 (Zip)

BANK REFERENCE Amsouth Bank (Bank Name) Tampa (City) Florida (State) (813) 226 1207 (Phone)

ARE YOU A CURRENT FREIGHT SHIPPER WITH UNION PACIFIC RAILROAD? ☒ YES ☐ NO

IF COMPANY IS LISTED WITH DUN & BRADSTREET, INSERT DUNS NUMBER_____

COMPLETE THIS SECTION IF APPLICANT IS A CORPORATION:

INCORPORATED IN STATE OF Delaware IS APPLICANT A SUBSIDIARY: ☐ NO [X] YES
IF YES, COMPLETE SUBSIDIARY SECTION

HAS BUSINESS EVER DECLARED BANKRUPTCY: [X] NO ☐ YES IF YES, DATE FILED _____ (Mo/Yr)

COMPLETE THIS SECTION IF APPLICANT IS A SUBSIDIARY:

PARENT NAME Kemiron Companies, Inc. DATE OF OWNERSHIP/CONTROL July 2000 (Mo/Yr)

COMPLETE ADDRESS: 316 Bartow Municipal Airport (Street Name) Bartow (City) FL (State) 33830 (Zip)

BUSINESS DESCRIPTION: Holding Company_____

COMPLETE THIS SECTION IF APPLICANT IS A PARTNERSHIP OR ASSOCIATION:

OWNER, GENERAL PARTNER OR GUARANTOR_____ % OWNED_____

RESIDENCE ADDRESS_____ (Street City State Zip) HOW LONG AT THIS ADDRESS_____ (Years)

HAS OWNER, GENERAL PARTNER OR GUARANTOR EVER DECLARED BANKRUPTCY: ☐ NO ☐ YES
IF YES, DATE FILED _____ (Mo/Yr)

In order to assist us in properly evaluating your application, we require a review of your latest Financial Statements.
Please ATTACH the following Financial Statements for the Current and Prior Year:

1. Balance Sheet 2. Income or Profit/Loss Statement 3. Cash Flow Statement (Source and Application of Funds).

If formal financial statements are not available, please complete the reverse side of this application.

ALL FINANCIAL STATEMENTS ARE STRICTLY CONFIDENTIAL.

SIGNATUR OF APPLICANT: _____ DATE: 6-21-00

FOR UNION PACIFIC USE ONLY:

Name of Field Mgr. _____ Phone: _____

Rental Amt: _____ Yr/Mo Folder Number: _____

FIRM NAME: Combined financial statements of: Kemiron, Inc. Kemiron Pacific, Inc., Kemiron North America, Inc. and Kemiron Trans, Inc.

BALANCE SHEET
(Rounded Actual $)

ASSETS	CURRENT PERIOD (Mo/Yr)	PRIOR PERIOD 12/31/99 (Mo/Yr)	LIABILITIES	CURRENT PERIOD (Mo/Yr)	PRIOR PERIOD 12/31/99 (Mo/Yr)
CURRENT ASSETS			CURRENT LIABILITIES		
Cash	$_____	$ 1,487,242	Accounts Payable	$_____	$ 1,726,199
Accounts Receivable	$_____	$ 4,638,156	Accrued Liabilities	$_____	$ 2,937,302
Inventory	$_____	$ 484,003	Long Term Dept	$_____	$ 3,123,965
Other Current Assets	$_____	$ 62,618	Other Current Liabilities	$_____	$ 2,806,085
Total Current Assets	$_____	$ 6,665,018	Total Current Liabilities	$_____	
			TOTAL LIABILITIES		$10,563,551
			EQUITY		
			Common Stock	$_____	$ 698,682
			Treasury Stock, etc.l	$_____	$ - 25,349
			Retained Earnings	$_____	$ 5,409,733
			TOTAL EQUITY	$_____	$ 6,083,067
TOTAL ASSETS	$_____	$16,646,619	TOTAL LIABILITIES & EQUITY	$_____	$16,646,618

NOTE: TOTAL LIABILITIES AND EQUITY MUST EQUAL TOTAL ASSETS

Income Statement
(Rounded Actual $)

	CURRENT PERIOD (Mo/Yr)	PERIOD 1/1/1999-2/31/1999 (Mo/Yr)
Revenues/Sales	$_____	$ 27,016,270
Less Depreciation	$_____	$
Less Other Operation Expenses	$_____	$
Operating Income	$_____	$ 2,111,426
Plus Other Income	$_____	$ 1,221,543
Less Other Expenses	$_____	$_____
Income Before Income Tax	$_____	$ 3,332,968
Less Income Tax		$ 2,241,603
	$_____	
Net	$_____	$ 1,091,365
	$_____	

Contemporaneously with the KNAC\KNWT transaction, we will form a new corporation, Kemiron Companies, Inc. Kemiron Companies, Inc will be the parent company of Kemwater Northwest, Inc., Kemiron, Inc. Kemiron Pacific, Inc., Kemiron North America, Inc. and Kemiron Trans, Inc. The balance sheet above is how the consolidated opening balance sheet of Kemiron Companies, Inc would have looked like if it had been in existence on 12/31/1999

The undersigned represents that the above financial statements are true and correct and are intended for use in determining whether to extend credit

Signed By: _____ **Title** SECRETARY **Date** 6-21-00

EXHIBIT 16

Folder 825-08

"Jerry Linnenbringer" <gclkiron@gte.net> on 03/15/2001 02:12:26 PM

To: <gelindsa@notes.up.com>
cc:

Subject: Transfer of Lease in Trentwood, Washington (Spokane County)

Dear Mr. Lindsay,

My name is Jerry Linnenbringer and I work for Kemiron. We recently purchased the business of Kemwater North America Company which has a production facility located in on land leased from Union Pacific Railroad.

After looking at the lease (Article VI - Special Provision - Termination) and Exhibit B, it says that Union Pacific could terminate this agreement in 2003 on thirty (30) days notice and we have 30 days to remove all our equipment. I'm not a lawyer..just a business man and this wording seems very harsh and one sided to me.

We have a multi-million dollar manufacturing facility on your site with many customers (with guaranteed supply contracts). How could we exist and maintain a viable business after the initial five (5) year term is up in August 2003 knowing that you could force us out at any time with 30 days notice?

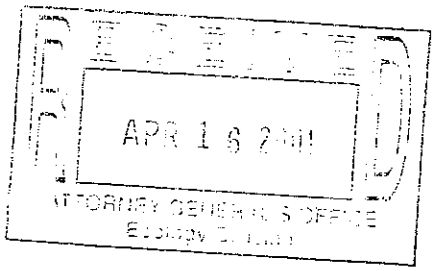
I know this agreement looks pretty much like "boilerplate". Do other companies sign these type of agreements? Am I making to big a deal of the renew and possible eviction? I'd appreciate your view.

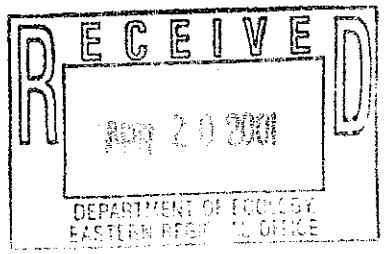
Best regards,

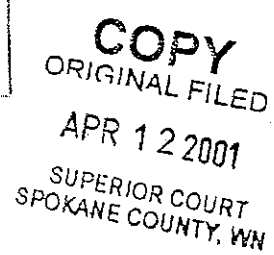
Jerry Linnenbringer

EXHIBIT 17

FS 627







IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY,

Defendant.

NO. 01202037-9

SUMMONS

TO: The Burlington Northern and Santa Fe Railway Company,

AND TO: The Clerk of the above-entitled Court:

A lawsuit has been started against you in the above-entitled court by the State of Washington, Department of Ecology, Plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this Summons.

The parties have agreed to resolve this matter by entry of a Consent Decree. Accordingly, this Summons shall not require the filing of an answer.

Respectfully submitted this 5th day of April, 2001.

CHRISTINE O. GREGOIRE
Attorney General

KEN LEDERMAN, WSBA #26515
Assistant Attorney General
Attorneys for Plaintiff
Department of Ecology
(360) 586-4607

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY,

Defendant.

NO. 01202037-9

COMPLAINT

I. JURISDICTION

1.1 This court has jurisdiction over the parties and over the subject matter under the Model Toxics Control Act, chapter 70.105D RCW.

II. PARTIES

2.1 Plaintiff State of Washington Department of Ecology (Ecology) is a state agency charged with the implementation of the Model Toxics Control Act.

2.2 Defendant is the Burlington Northern and Santa Fe Railway Company (BNSF). Defendant has agreed to enter into a Consent Decree with Ecology under the Model Toxics Control Act to remedy the release of hazardous substances on property.

III. FACTUAL ALLEGATIONS

3.1 The Facility, referred to as Aluminum Recycling Corporation, as defined in RCW 70.105D 020(4), is located at East 3412 Wellesley Avenue, Spokane, Washington. The Burlington Northern and Santa Fe Railway Company (BNSF), formerly known as Burlingto

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia WA 98504-0117
FAX (360) 586-6760

Northern Railroad Company (BN), is the owner of the property at East 3412 Wellesley Avenue, Spokane, Washington on which the Site is located. The Site is more particularly described in Exhibit A of the Consent Decree that is being submitted to settle this action.

3.2 Ecology has determined that there has been a release or threatened release of hazardous substances at the Facility. Ecology has further determined that this release or threatened release requires remedial action to protect human health, welfare, and the environment; and that Defendant is a potentially liable person with respect to this Facility.

3.3 Ecology and Defendant has entered into a Consent Decree regarding remedial actions to be taken at the Facility.

3.4 The Consent Decree has been the subject of public notice and comment under RCW 70.105D.040(4)(a). The Consent Decree is being submitted to the court along with this Complaint.

Ecology has determined that entry of the Consent Decree will lead to a more expeditious cleanup of the Facility.

IV. CAUSE OF ACTION

4.1 Plaintiff realleges all preceding paragraphs.

4.2 Plaintiff alleges that the Defendant is responsible for remedial action at the Facility pursuant to the MTCA, chapter 70.105D RCW.

V. PRAYER FOR RELIEF

5.1 Ecology and BNSF request that the court sign and enter the Consent Decree in this matter.

5.2 Ecology and BNSF further request that the court retain jurisdiction to enforce the terms of the Consent Decree.

//

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia WA 98504-0117
FAX (360) 586-6760

Respectfully submitted this 5th day of April, 2001.

CHRISTINE O. GREGOIRE
Attorney General

KEN LEDERMAN, WSBA #26515
Assistant Attorney General
Attorneys for Plaintiff
Department of Ecology
(360) 586-4607

F:ALUMINUM RECYCLING\COMPLAINT

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

JIM PENDOWSKI
Program Manager
Toxics Cleanup Program

Date: 3/23/01

CHRISTINE O. GREGOIRE
Attorney General

KEN LEDERMAN, WSBA #26515
Assistant Attorney General

Date: 4/3/01

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Title: _____

Date: _____

ATTORNEY FOR THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Date: _____

DATED this _____ day of _____, 2001.

ROYCE H. MOE
COURT COMMISSIONER

JUDGE
Spokane County Superior Court

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

FLORA GOLDSTEIN
Section Manager
Toxics Cleanup Program

Date: _____

CHRISTINE O GREGOIRE
Attorney General

KEN LEDERMAN, WSBA #26515
Assistant Attorney General

Date: _____

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Title: Vice President General Counsel

Date: Feb. 1, 2001

ATTORNEY FOR THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

CRAIG S TRUEBLOOD, WSBA #18357
PRESTON GATES & ELLIS LLP
Date: Feb 1, 2001

DATED this _____ day of _____, 2001

JUDGE
Spokane County Superior Court

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia WA 98504-0117
FAX (360) 586-6760

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY,

Defendant.

NO 01202037-9

MOTION FOR ENTRY OF CONSENT DECREE AND MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Plaintiff, Washington State Department of Ecology (Ecology), represented by Christine O. Gregoire, Attorney General, and Ken Lederman, Assistant Attorney General, brings this motion seeking entry of the attached Consent Decree. This motion is based upon the pleadings filed in this matter, including the Declaration of Ken Lederman.

II. RELIEF REQUESTED

Ecology requests that the Court approve and enter the attached Consent Decree that requires certain remedial actions at the Aluminum Recycling Corporation Site, a facility where there has been a release of hazardous substances. Ecology also requests that the Court retain jurisdiction over this action until the work required by the Consent Decree is completed and the parties request a dismissal of this action.

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

III. AUTHORITY

RCW 70.105D.030 authorizes Ecology to issue such orders as may be necessary to effectuate the purposes of the Model Toxics Control Act, chapter 70.105D RCW, and to enter into consent decrees through judicial proceedings. In addition, RCW 70.105D.040(4) authorizes the Attorney General to agree to a settlement with a potentially liable person and to request that the settlement be entered as a consent decree in the superior court of the county where a violation is alleged to have occurred.

IV. CONCLUSION

Ecology believes it is appropriate for the Court to exercise its judicial discretion and approve the attached Consent Decree, and hereby requests that the Court enter the attached Order.

DATED this 5th day of April, 2001.

CHRISTINE O. GREGOIRE
Attorney General

KEN LEDERMAN, WSBA #26515
Assistant Attorney General
Attorneys for Plaintiff
Department of Ecology
(360) 586-4607

F:ALUMINUM RECYCLING\MOTION FOR ENTRY

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY,

Defendant.

NO. 01202037-9

DECLARATION OF KEN LEDERMAN IN SUPPORT OF MOTION FOR ENTRY OF CONSENT DECREE

I, Ken Lederman, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this Declaration are from my personal knowledge.

2. I am an Assistant Attorney General assigned to represent the Washington State Department of Ecology and the Attorney General's Office on legal matters relating to the Site in Spokane, Washington referred to as Aluminum Recycling Corporation.

3. On behalf of Ecology and the Attorney General's Office, I took part in the negotiations that led to the Consent Decree that is being presented to the court.

4. The Consent Decree was the subject of public notice and public comment as required by RCW 70.105D.040(4)(a).

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia WA 98504-0117
FAX (360) 586-6760

5. Ecology has determined that the proposed remedial action will lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(e).

DATED this 5th day of April, 2001, in Olympia, Washington.

KEN LEDERMAN

F:\ALUMINUM RECYCLING\KEN LEDERMAN DEC

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY,

Defendant

NO 01-2-02037-9

ORDER ENTERING CONSENT DECREE

Having reviewed the Consent Decree signed by the parties to this matter, the Motion for Entry of the Consent Decree, the Declaration of Ken Lederman, and the file herein, it is hereby

ORDERED AND ADJUDGED that the Consent Decree in this matter is entered and that the Court shall retain jurisdiction over the Consent Decree to enforce its terms

DATED this 11th day of April, 2001

ROYCE H. MOE
COURT COMMISSIONER

JUDGE
Spokane County Superior Court

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia WA 98504-0117
FAX (360) 586-6760

Presented by:

CHRISTINE O. GREGOIRE
Attorney General

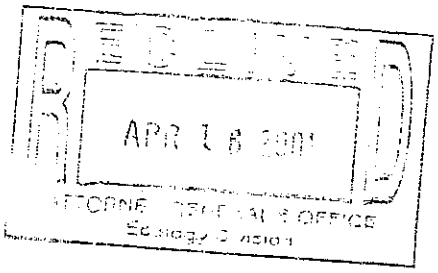
KEN LEDERMAN, WSBA #26515
Assistant Attorney General

Attorneys for Plaintiff
State of Washington
Department of Ecology
(360) 586-4607

DATED: 4/5/01

F:ALUMINUM RECYCLING\ORDER ENTERING CD

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia WA 98504-0117
FAX (360) 586-6760



COPY
ORIGINAL FILED
APR 12 2001
SUPERIOR COURT
SPOKANE COUNTY, WN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Defendant.

NO. 01202037-9

CONSENT DECREE

TABLE OF CONTENTS

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia WA 98504-0117
FAX (360) 586-6760

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology) and The Burlington Northern and Santa Fe Railway Company (BNSF) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. BNSF shall be referred to herein as the "Defendant." This Decree requires the Defendant to undertake the following remedial action(s):

(1) Regrading of dross materials on the Site;

(2) Installation of a multi-media cover system according to design specifications approved by Ecology;

(3) Groundwater monitoring through the quarterly sampling of existing wells; and

(4) Institutional controls in the form of restrictive covenants, fences, signs, and the maintenance of these controls.

Ecology has determined that these actions are necessary to protect public health and the environment.

B. The Complaint in this action is being filed simultaneously with this Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the parties wish to resolve the issues raised by Ecology's Complaint. In addition, the parties agree that settlement of these matters without litigation is reasonable and in the public interest and that entry of this Decree is the most appropriate means of resolving these matters.

C. In signing this Decree, Defendant agrees to its entry and agrees to be bound by its terms.

D By entering into this Decree, the parties do not intend to discharge nonsettling parties from any liability they may have with respect to matters alleged in the complaint. The

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

parties retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended at the Site, including but not limited to sums expended under this Decree.

E. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts; provided, however, that the Defendant shall not challenge the jurisdiction of Ecology in any proceeding to enforce this Decree.

F. The Court is fully advised of the reasons for entry of this Decree, and good cause having been shown;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

II. JURISDICTION

A. This Court has jurisdiction over the subject matter and over the parties pursuant to chapter 70 105D RCW, the Model Toxics Control Act (MTCA).

B. Authority is conferred upon the Washington State Attorney General by RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

C. Ecology has determined that a release or threatened release of hazardous substances has occurred at the Site that is the subject of this Decree.

D. Ecology has given notice to Defendant, as set forth in RCW 70.105D.020(16), of Ecology's determination that the Defendant is a potentially liable person for the Site and that there has been a release or threatened release of hazardous substances at the Site.

E. The actions to be taken pursuant to this Decree are necessary to protect public health, welfare, and the environment.

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

F Defendant has agreed to undertake the actions specified in this Decree and consents to the entry of this Decree under the MTCA.

III. PARTIES BOUND

This Decree shall apply to and be binding upon the signatories to this Decree (Parties), their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Decree and to execute and legally bind such party to comply with the Decree. Defendant agrees to undertake all actions required by the terms and conditions of this Decree and not to contest state jurisdiction regarding this Decree. No change in ownership or corporate status shall alter the responsibility of the Defendant under this Decree. Defendant shall provide a copy of this Decree to all agents, contractors and subcontractors retained to perform work required by this Decree and shall ensure that all work undertaken by such contractors and subcontractors will be in compliance with this Decree.

IV. DEFINITIONS

Except for as specified herein, all definitions in WAC 173-340-200 apply to the terms in this Decree.

A. Site: The Site, referred to as Aluminum Recycling Corporation, is located at East 3412 Wellesley Avenue, Spokane, Washington. The Site is more particularly described in Exhibit A to this Decree that is a detailed site diagram. The Site is a "facility" under RCW 70.105D.020(4).

B. Parties: Refers to the Washington State Department of Ecology and The Burlington Northern and Santa Fe Railway Company.

C. Defendant: Refers to The Burlington Northern and Santa Fe Railway Company.

D. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree and are hereby incorporated by reference. The terms "Consent Decree" or "Decree" shall

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

include all Exhibits to the Consent Decree. In the event of a conflict between an Exhibit and the Decree, the Decree shall prevail.

V. STATEMENT OF FACTS

Ecology makes the following finding of facts without any express or implied admissions by Defendant.

1. The Burlington Northern and Santa Fe Railway Company (BNSF), formerly known as Burlington Northern Railroad Company (BN), is the owner of the property at East 3412 Wellesley Avenue, Spokane, Washington on which the facility is located (Exhibit A, Figure 1).

2. Kaiser Aluminum and Chemical Corporation (Kaiser) owned or possessed hazardous substances and arranged for disposal or treatment of the hazardous substances at the facility.

3. Alumax Incorporated (Alumax) is the corporate successor to Hillyard Aluminum Recovery Corporation, which was an operator of the facility.

4. An aluminum dross reprocessing facility was operated on the land leased from BN. Aluminum reprocessing reportedly began at the Site in 1954 by the Hillyard Processing Company. This company was sold to Hillyard Aluminum Recovery Corporation in 1976, which was again sold to Aluminum Recycling Corporation in 1979. Aluminum Recycling Corporation operated the facility until 1987 when the property was abandoned. All three companies operating the facility continued the same aluminum reprocessing operations.

5. The facility processed aluminum scrap materials and aluminum skim called white dross, obtained from aluminum smelters, in a batch process. This secondary processing of aluminum dross involved addition of sodium and potassium chloride salts. Molten aluminum metal was extracted during the process, poured into ingots and sold. Spent dross process waste called black dross, along with non-reprocessed white dross waste, remain on the

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

Site. A total of 65,000 cubic yards of these wastes occur in piles A through R and an abandoned pit on-site (Exhibit A, Figure 2).

6. Ground water beneath the Site occurs in the Spokane Valley-Rathdrum Prairie Aquifer. In 1978 the United States Environmental Protection Agency (EPA) designated this aquifer as a "Sole Source" Aquifer. The aquifer serves as the main drinking water supply for approximately 400,000 people in the City and County of Spokane.

7. Ecology completed the Phase I Site Inspection Report, Aluminum Recycling Corporation, Wellesley, Spokane, Spokane County, Washington, WAD 043005651, in December 1987 (Phase I SI Report) to assess the hazards of the Site. As a result of that report the Site was evaluated through the Washington Ranking Method (WARM) and placed on the Hazardous Sites List with a ranking of 2.

8. The Phase I SI Report states that in 1955 chloride and other hazardous substances from the dross waste had contaminated a BN (now BNSF) well near the Site. Complaints of windblown particulates and ammonia odors generated from the Site were reported. The occurrence of a thermite fire in the waste materials was also noted in the report.

9. In 1988, BNSF initiated a dust suppression program to stabilize piled waste material. A fence was also constructed by BNSF around the facility to limit Site access.

10. Environmental Management Resources, Inc. (EMR) prepared a Summary Report BNRR Hillyard Aluminum Dross Site Spokane, Washington, for BNSF in June 1996. The report indicates that the dross contains high concentrations of chloride, fluoride and nitrogen compounds. The report also indicates that dross waste materials generate ammonia gas when exposed to atmospheric moisture and water.

11. Ammonia, and the decomposition products of these dross wastes including chloride, fluoride and nitrate, are hazardous substances as defined in RCW 70.105D.020(7)(a) and (7)(e).

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

12 BNSF installed a monitoring well (MW3) in June 1997, and collected groundwater samples from MW3 and from previously sampled monitoring wells. Sample results presented in the Groundwater Sampling Report Hillyard Aluminum Dross Site Spokane, Washington, 1997, indicate that a release of hazardous substances has contaminated groundwater with nitrate, fluoride, and chloride beneath the Site in concentrations exceeding drinking water standards

13 In certified correspondence dated July 29, 1997, Ecology notified BNSF of the preliminary finding of potential liability and requested comment on that finding.

14. In certified correspondence dated November 6, 1997, Ecology notified BNSF of its status as a potentially liable person with regard to the release of hazardous substances at the Site.

15. Correspondence from EMR (February 5, 1998) indicates that BNSF has made numerous and ongoing efforts beginning in 1988 to find a reuse for the dross material.

16. On November 16, 1998, Ecology and BNSF entered into Agreed Order No. 98TC-E105, under which BNSF conducted a remedial investigation to determine the extent of contamination at the Site and prepared a feasibility study of remedial alternatives for the Site.

17. In certified correspondence dated December 10, 1998, Ecology notified Kaiser of the preliminary finding of potential liability and requested comment on that finding.

18. In certified correspondence dated May 11, 1999, Ecology notified Kaiser of its status as a potentially liable person with regard to the release of hazardous substances at the Site.

19. In certified correspondence dated April 5, 2000, Ecology notified the Aluminum Company of America (Alcoa) of the preliminary finding of potential liability and requested comment on that finding. After reviewing Alcoa's responsive comments to the preliminary

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

finding, Ecology determined that Alumax was the corporation responsible for the release of hazardous substances at the Site

20 In certified correspondence dated April 25, 2000, Ecology notified Alumax of its status as a potentially liable person with regard to the release of hazardous substances at the Site.

21. Under the Agreed Order, BNSF submitted the Final Remedial Investigation/Feasibility Study for the Hillyard Dross Site, East 3412 Wellesley Avenue, Spokane, Washington (August 1999) (RI/FS). The RI/FS presents the results of soil, groundwater and dross sampling. Ecology approved the RI/FS on November 29, 1999.

22. A Cleanup Action Plan was prepared for the Site by Ecology that determined the contaminants of concern, selected the cleanup alternative, and outlined the remedial actions to be taken.

VI. WORK TO BE PERFORMED

This Decree contains a program designed to protect public health, welfare and the environment from the known release, or threatened release, of hazardous substances or contaminants at, on, or from the Site through implementation of the Cleanup Action Plan (Exhibit B).

1. Defendant shall implement the Cleanup Action Plan (Exhibit B).

2. Defendant shall perform all tasks and submit to Ecology all deliverables set forth in the Scope of Work and Schedule (Exhibit C). The Scope of Work and Schedule (Exhibit C) will serve as a detailed description of the work elements outlined in the Cleanup Action Plan.

3. The Engineering Design Report, Construction Plans and Specification, and Operations and Maintenance Plan are subject to review and approval by Ecology before the Defendant performs work under those plans. The Defendant shall incorporate Ecology's

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

comments on the drafts into the final versions of these documents. Upon approval, these documents shall become integral and enforceable parts of this Decree, and shall be complied with by the Defendant.

4. Within sixty (60) days of entry of this Decree, BNSF shall record with the Spokane County Auditor's Office the Restrictive Covenant attached to this Decree as Exhibit D and provide Ecology with proof of such recording.

5. Defendant agrees not to perform any remedial actions outside the scope of this Decree unless the parties agree to amend the scope of work to cover these actions. All work conducted under this decree shall be done in accordance with Ch. 173-340 WAC unless otherwise provided herein.

VII. DESIGNATED PROJECT COORDINATORS

The project coordinator for Ecology is:

Sandra Treccani
Department of Ecology
Eastern Regional Office
4601 N. Monroe, Suite 202
Spokane, WA 99205-1295

The project coordinator for the Defendant is:

Bruce Sheppard
The Burlington Northern And Santa Fe Railway Company
2454 Occidental Avenue, Suite 1A
Seattle, WA 98134-1451

Each project coordinator shall be responsible for overseeing the implementation of this Decree. The Ecology project coordinator will be Ecology's designated representative at the Site. To the maximum extent possible, communications between Ecology and the Defendant and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree, shall be directed through the project coordinators. The project coordinators may designate, in writing, working

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

level staff contacts for all or portions of the implementation of the remedial work required by this Decree. The project coordinators may agree to minor modifications to the work to be performed without formal amendments to this Decree. Minor modifications will be documented in writing by Ecology.

Any party may change its respective project coordinator. Written notification shall be given to the other parties at least ten (10) calendar days prior to the change.

VIII. PERFORMANCE

All work performed pursuant to this Decree shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with experience and expertise in hazardous waste site investigation and cleanup. Any construction work must be under the supervision of a professional engineer. Defendant shall notify Ecology in writing as to the identity of such engineer(s) or hydrogeologist(s), or others and of any contractors and subcontractors to be used in carrying out the terms of this Decree, in advance of their involvement at the Site.

IX. ACCESS

Ecology or any Ecology authorized representatives shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Decree; reviewing Defendant's progress in carrying out the terms of this Decree; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Decree; and verifying the data submitted to Ecology by the Defendant. All parties with access to the Site pursuant to this paragraph shall comply with approved health and safety plans.

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

X. SAMPLING, DATA REPORTING, AND AVAILABILITY

With respect to the implementation of this Decree, Defendant shall make the results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf available to Ecology and shall submit these results in accordance with Section XI of this Decree.

In accordance with WAC 173-340-840(5), sampling data shall be submitted by the Defendant in an electronic format agreeable to Ecology's site coordinator. These submittals shall be provided to Ecology in accordance with Section XI of this Decree.

If requested by Ecology, Defendant shall allow split or duplicate samples to be taken by Ecology and/or its authorized representatives of any samples collected by Defendant pursuant to the implementation of this Decree. Defendant shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples to be taken by Defendant or its authorized representative of any samples collected by Ecology pursuant to the implementation of this Decree provided it does not interfere with the Department's sampling. Without limitation on Ecology's rights under Section IX, Ecology shall endeavor to notify Defendant prior to any sample collection activity.

XI. PROGRESS REPORTS

Defendant shall submit to Ecology written progress reports that describe the actions taken during the previous month to implement the requirements of this Decree. The progress reports shall include the following:

A. A list of on-site activities that have taken place during the month;

B. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;

C Description of all deviations from the schedule (Exhibit C) during the current month and any planned deviations in the upcoming month;

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

D. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule;

E. All raw data (including laboratory analysis) received by the Defendant during the past month and an identification of the source of the sample; and

F. A list of deliverables for the upcoming month if different from the schedule.

All progress reports shall be submitted monthly from the effective date of this Decree until three (3) months after implementation of the cleanup action is completed. Thereafter, Defendant shall submit progress reports annually. All progress reports shall be submitted by the tenth (10) day of the month in which they are due after the effective date of this Decree. Progress reports shall be sent to Ecology's project coordinator by facsimile and first class U.S. mail. Unless otherwise specified, any other documents submitted pursuant to this Decree shall be sent by certified mail, return receipt requested, to Ecology's project coordinator.

XII. RETENTION OF RECORDS

Defendant shall preserve, during the pendency of this Decree and for ten (10) years from the date this Decree is no longer in effect as provided in Section XXV, all records, reports, documents, and underlying data in its possession relevant to the implementation of this Decree and shall insert in contracts with project contractors and subcontractors a similar record retention requirement. Upon request of Ecology, Defendant shall make all non-archived records available to Ecology and allow access for review. All archived records shall be made available to Ecology within a reasonable period of time.

XIII. TRANSFER OF INTEREST IN PROPERTY

No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest held by a Defendant in any portion of the Site shall be consummated without provision for continued operation and maintenance of any containment system, treatment system, and monitoring system installed or implemented pursuant to this Decree.

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

Prior to transfer of any legal or equitable interest in all or any portion of the property, and during the effective period of this Decree, Defendant shall serve a copy of this Decree upon any prospective purchaser, lessee, transferee, assignee, or other successor in interest of the property; and, at least thirty (30) days prior to any transfer, Defendant shall notify Ecology of said contemplated transfer.

XIV. RESOLUTION OF DISPUTES

A. In the event a dispute arises as to an approval, disapproval, proposed modification or other decision or action by Ecology's project coordinator, the parties shall utilize the dispute resolution procedure set forth below.

(1) Upon receipt of the Ecology project coordinator's decision, the Defendant has fourteen (14) days within which to notify Ecology's project coordinator of their objection to the decision.

(2) The parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

(3) Defendant may then request Ecology management review of the decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

(4) Ecology's Program Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute within thirty (30) days of the Defendant's request for review. The Program Manager's decision shall be Ecology's final decision on the disputed matter.

B. If Ecology's final written decision is unacceptable to Defendant, Defendant has the right to submit the dispute to the Court for resolution. The parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

under this Decree. In the event Defendant presents an issue to the Court for review, the Court shall review the action or decision of Ecology on the basis of whether such action or decision was arbitrary and capricious and render a decision based on such standard of review.

C. The parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used. Where either party utilizes the dispute resolution process in bad faith or for purposes of delay, the other party may seek sanctions.

Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule extension or the Court so orders.

XV. AMENDMENT OF CONSENT DECREE

This Decree may only be amended by a written stipulation among the parties to this Decree that is entered by the Court or by order of the Court. Such amendment shall become effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by any party to the Decree.

Defendant shall submit any request for an amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in a timely manner after the request for amendment is received. If the amendment to the Decree is substantial, Ecology will provide public notice and opportunity for comment. Reasons for the disapproval shall be stated in writing. If Ecology does not agree to any proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section XIV of this Decree.

XVI. EXTENSION OF SCHEDULE

A. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed.

An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. A requested extension shall not be effective until approved by Ecology or the Court. Ecology shall act upon any written request for extension in a timely fashion. It shall not be necessary to formally amend this Decree pursuant to Section XV when a schedule extension is granted.

B. The burden shall be on the Defendant to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to, the following.

(1) Circumstances beyond the reasonable control and despite the due diligence of Defendant including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Defendant; or

(2) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

(3) Endangerment as described in Section XVII.

However, neither increased costs of performance of the terms of the Decree nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Defendant.

C. Ecology may extend the schedule for a period not to exceed ninety (90) days, except where an extension is needed as a result of:

(1) Delays in the issuance of a necessary permit which was applied for in a timely manner; or

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

(2) Other circumstances deemed exceptional or extraordinary by Ecology; or

(3) Endangerment as described in Section XVII.

Ecology shall give Defendant written notification in a timely fashion of any extensions granted pursuant to this Decree.

XVII. ENDANGERMENT

In the event Ecology determines that activities implementing or in noncompliance with this Decree, or any other circumstances or activities, are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Defendant to stop further implementation of this Decree for such period of time as needed to abate the danger or may petition the Court for an order as appropriate. During any stoppage of work under this section, the obligations of Defendant with respect to the work under this Decree which is ordered to be stopped shall be suspended and the time periods for performance of that work, as well as the time period for any other work dependent upon the work which is stopped, shall be extended, pursuant to Section XVI of this Decree, for such period of time as Ecology determines is reasonable under the circumstances.

In the event Defendant determines that activities undertaken in furtherance of this Decree or any other circumstances or activities are creating an endangerment to the people on the Site or in the surrounding area or to the environment, Defendant may stop implementation of this Decree for such period of time necessary for Ecology to evaluate the situation and determine whether Defendant should proceed with implementation of the Decree or whether the work stoppage should be continued until the danger is abated. Defendant shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after such stoppage of work, and thereafter provide Ecology with documentation of the basis for the

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

work stoppage. If Ecology disagrees with the Defendant's determination, it may order Defendant to resume implementation of this Decree. If Ecology concurs with the work stoppage, the Defendant's obligations shall be suspended and the time period for performance of that work, as well as the time period for any other work dependent upon the work which was stopped, shall be extended, pursuant to Section XVI of this Decree, for such period of time as Ecology determines is reasonable under the circumstances. Any disagreements pursuant to the clause shall be resolved through the dispute resolution procedures in Section XIV.

XVIII. OTHER ACTIONS

Ecology reserves its rights to institute remedial action(s) at the Site and subsequently pursue cost recovery, and Ecology reserves its rights to issue orders and/or penalties or take any other enforcement action pursuant to available statutory authority under the following circumstances:

1. Where Defendant fails, after notice, to comply with any requirement of this Decree;

2. In the event or upon the discovery of a release or threatened release not addressed by this Decree;

3. Upon Ecology's determination that action beyond the terms of this Decree is necessary to abate an emergency situation which threatens public health or welfare or the environment; or

4. Upon the occurrence or discovery of a situation beyond the scope of this Decree as to which Ecology would be empowered to perform any remedial action or to issue an order and/or penalty, or to take any other enforcement action. This Decree is limited in scope to the geographic Site described in Exhibit A and to those contaminants that Ecology knows to be at the Site when this Decree is entered.

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

Ecology reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances from the Aluminum Recycling Corporation Site

Ecology reserves the right to take any enforcement action whatsoever, including a cost recovery action, against potentially liable persons not party to this Decree

XIX. INDEMNIFICATION

Defendant agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of Defendant, its officers, employees, agents, or contractors in entering into and implementing this Decree. However, the Defendant shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Decree.

XX. COMPLIANCE WITH APPLICABLE LAWS

A. All actions carried out by Defendant pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this section.

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Decree that are known to be applicable at the time of entry of the Decree have been included in Exhibit B, the Cleanup Action Plan, and are binding and enforceable requirements of the Decree. Defendant has a continuing obligation to determine whether additional permits or approvals addressed in

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia WA 98504-0117
FAX (360) 586-6760

RCW 70.105D.090(1) would otherwise be required for the remedial action under this Decree. In the event either Defendant or Ecology determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Decree, it shall promptly notify the other party of this determination. Ecology shall determine whether Ecology or Defendant shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Defendant and on how Defendant must meet those requirements. Ecology shall inform Defendant in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Decree. Defendant shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and the Defendant shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

XXI. REMEDIAL AND INVESTIGATIVE COSTS

The Defendant agrees to pay costs incurred by Ecology pursuant to this Decree. These costs shall include work performed by Ecology or its contractors for, or on, the Site under Ch.

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

70 105D RCW both prior to and subsequent to the issuance of this Decree for investigations, remedial actions, and Decree preparation, negotiations, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The Defendant agrees to pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement will result in interest charges

XXII. IMPLEMENTATION OF REMEDIAL ACTION

If Ecology determines that Defendant has failed without good cause to implement the remedial action, Ecology may, after notice to Defendant, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the Defendant's failure to comply with its obligations under this Decree, Defendant shall reimburse Ecology for the costs of doing such work in accordance with Section XXI, provided that Defendant is not obligated under this section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Decree.

XXIII. FIVE YEAR REVIEW

As remedial action, including ground water monitoring, continues at the Site, the parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of site monitoring as often as is necessary and appropriate under the circumstances. At least every five years the parties shall meet to discuss the status of the Site and the need, if any, of further remedial action at the Site. Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of the Decree.

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

XXIV. PUBLIC PARTICIPATION

Ecology shall maintain the responsibility for public participation at the Site However, Defendant shall cooperate with Ecology and, if agreed to by Ecology, shall:

A. Prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, Remedial Investigation/Feasibility Study reports and engineering design reports. Ecology will finalize (including editing if necessary) and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

B. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify Defendant prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments;

C. Participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter;

D. In cooperation with Ecology, arrange and/or continue information repositories to be located at the Hillyard Branch of Spokane Public Library at 4005 N. Cook St., Spokane WA and Ecology's Eastern Regional Office at 4601 N. Monroe, Spokane WA. At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured ground water, surface water, soil sediment, and air monitoring data; remedial actions plans, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Decree shall be promptly placed in these repositories.

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

XXV. DURATION OF DECREE

This Decree shall remain in effect and the remedial program described in the Decree shall be maintained and continued until the Defendant has received written notification from Ecology that the requirements of this Decree have been satisfactorily completed.

XXVI. CLAIMS AGAINST THE STATE

Defendant hereby agrees that it will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies; and further, that the Defendant will make no claim against the State Toxics Control Account or any Local Toxics Control Account for any costs incurred in implementing this Decree. Except as provided above, however, Defendant expressly reserves its right to seek to recover any costs incurred in implementing this Decree from any other potentially liable person.

XXVII. COVENANT NOT TO SUE / REOPENERS

A. In consideration of the Defendant's compliance with the terms and conditions of this Decree, Ecology agrees that compliance with this Decree shall stand in lieu of any and all administrative, legal, and equitable remedies and enforcement actions available to the State against the Defendant regarding all matters within the scope of this Decree.

B. Reopeners: In the following circumstances, Ecology may exercise its full legal authority to address releases of hazardous substances at the Site, notwithstanding the Covenant Not To Sue set forth above:

(1) In the event Defendant fails to comply with the terms and conditions of this Decree, including all Exhibits, and after written notice of non-compliance, such failure is not cured by Defendant within thirty (30) days of receipt of notice of non-compliance.

(2) In the event factors not known at the time of entry of this Decree and not disclosed to Ecology are discovered and such factors present a previously unknown threat to

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

human health or the environment and are not addressed by the Cleanup Action Plan, attached hereto as Exhibit B.

(3) Upon Ecology's determination that actions beyond the terms of this Decree are necessary to abate an emergency or endangerment situation which threatens public health, welfare, or the environment.

(4) In the event that the results of groundwater monitoring indicate that cleanup standards are being exceeded.

C. Applicability: The Covenant Not To Sue set forth above shall have no applicability whatsoever to:

(1) Criminal Liability;

(2) Actions against PLP's who are not parties to this Decree;

(3) Liability for damages for injury to, destruction of, or loss of natural resources;

(4) Determinations pursuant to groundwater monitoring that show that cleanup levels are being exceeded.

D. Ecology retains all of its legal and equitable rights against all persons except as otherwise provided in this Decree.

XXVIII. CONTRIBUTION PROTECTION

With regard to claims for contribution against the Defendant, the parties intend that the Defendant will obtain protection against claims for contribution for matters addressed in this Decree pursuant to RCW 70.105D.040(4)(d).

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

XXIX. EFFECTIVE DATE

This Decree is effective upon the date it is entered by the Court.

XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

This Decree has been the subject of public notice and comment under RCW 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a more expeditious cleanup of hazardous substances at the Site.

If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the option of any party and the accompanying Complaint shall be dismissed without costs and without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia WA 98504-0117
FAX (360) 586-6760

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

FLORA GOLDSTEIN
Section Manager
Toxics Cleanup Program

Date: _____

CHRISTINE O. GREGOIRE
Attorney General

KEN LEDERMAN, WSBA #26515
Assistant Attorney General

Date: _____

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Title: VP and General Counsel

Date: Feb. 1, 2001

ATTORNEY FOR THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

CRAIG S. TRUEBLOOD, WSBA #18357
PRESTON GATES & ELLIS LLP
Date: Feb. 1, 2001

DATED this _____ day of _____, 2001.

JUDGE
Spokane County Superior Court

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

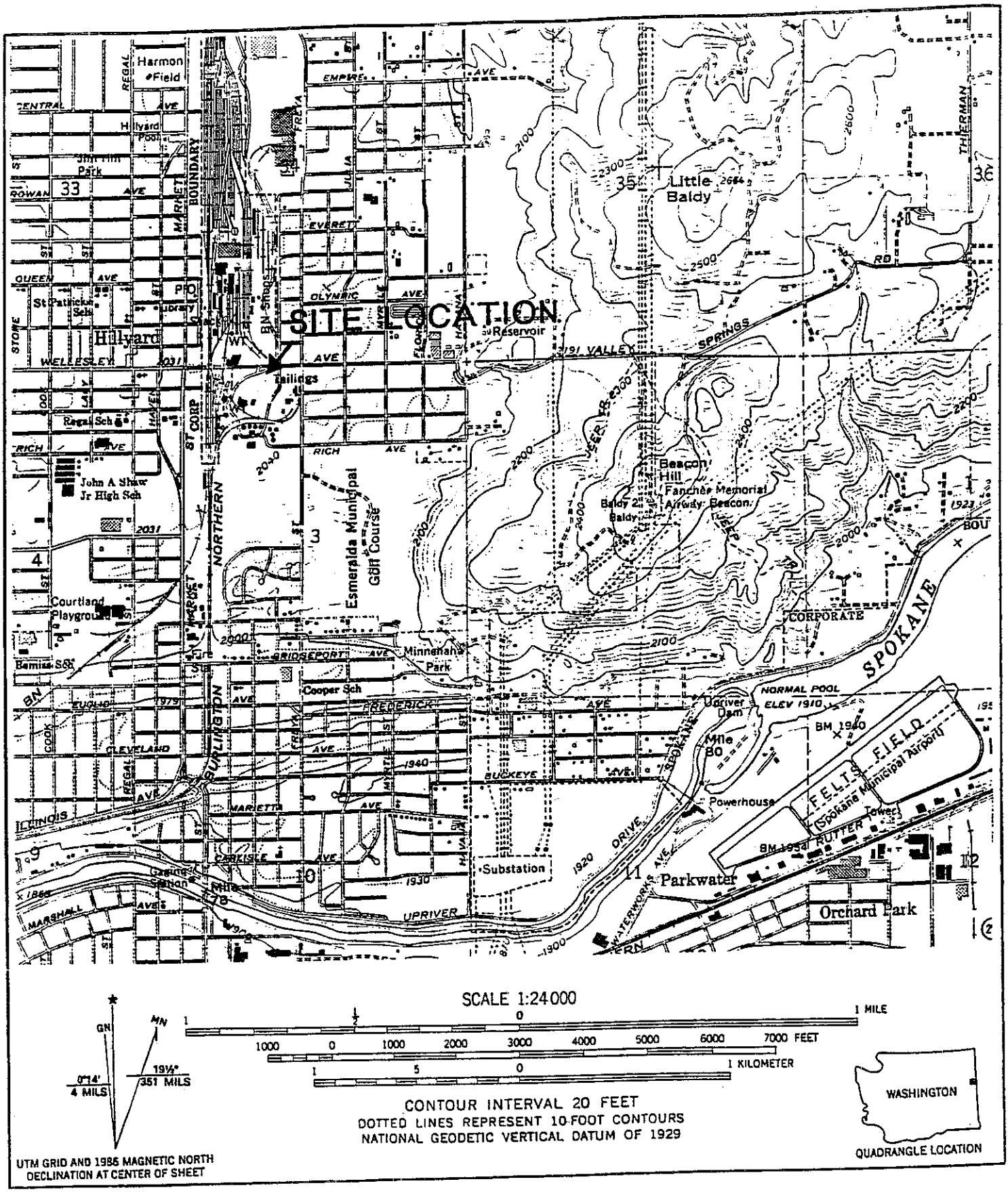


EXHIBIT A
Aluminum Recycling Corporation Site Diagram

EXHIBIT B
FINAL CLEANUP ACTION PLAN

Aluminum Recycling Corporation Site
Spokane, WA

Washington Department of Ecology
Toxics Cleanup Program
Eastern Regional Office
Spokane, WA

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

1.0 INTRODUCTION

This report presents Ecology's selected cleanup action for the Aluminum Recycling Corporation (Site), located at East 3412 Wellesley Avenue, Spokane, Washington (figure 1). This Draft Cleanup Action Plan (DCAP) is required as part of the site cleanup process established by Washington State Department of Ecology (Ecology) under Ch. 70.105D RCW Model Toxics Control Act (MTCA). The cleanup action decision is based on the Phase I Remedial Investigation/Feasibility Study (RI/FS) conducted by Environmental Management Resources (EMR) on behalf of Burlington Northern Santa Fe Railway (BNSF), the potentially liable person (PLP).

This cleanup action plan will outline the following:

- The history of operations, ownership, and disposal activities at the Site;
- The nature and extent of contamination as presented in the RI;
- Establish cleanup levels for the Site that are protective of human health and the environment; and
- Determine the appropriate remediation strategy.

1.1 DECLARATION

Ecology has selected this remedy because it will be protective of human health and the environment. Furthermore, the selected remedy is consistent with the preference of the State of Washington as stated in RCW 70.105D.030(1)(b) for permanent solutions.

1.2 APPLICABILITY

Cleanup levels specified in this cleanup action plan are applicable only to the Aluminum Recycling Corporation Site. They were developed as a part of an overall remediation process under Ecology oversight using the authority of MTCA, and should not be considered as setting precedents for other sites.

1.3 ADMINISTRATIVE RECORD

The documents used to make the decisions discussed in this cleanup action plan are on file in the administrative record for the Site. These documents are listed in the reference section. The administrative record for the Site is available for public review by appointment at Ecology's Eastern Regional Office, located at N 4601 Monroe Street, Spokane, WA 99205-1295.

2.0 SITE BACKGROUND

The information presented in this section was provided by historical site documents and BNSF or their consultants.

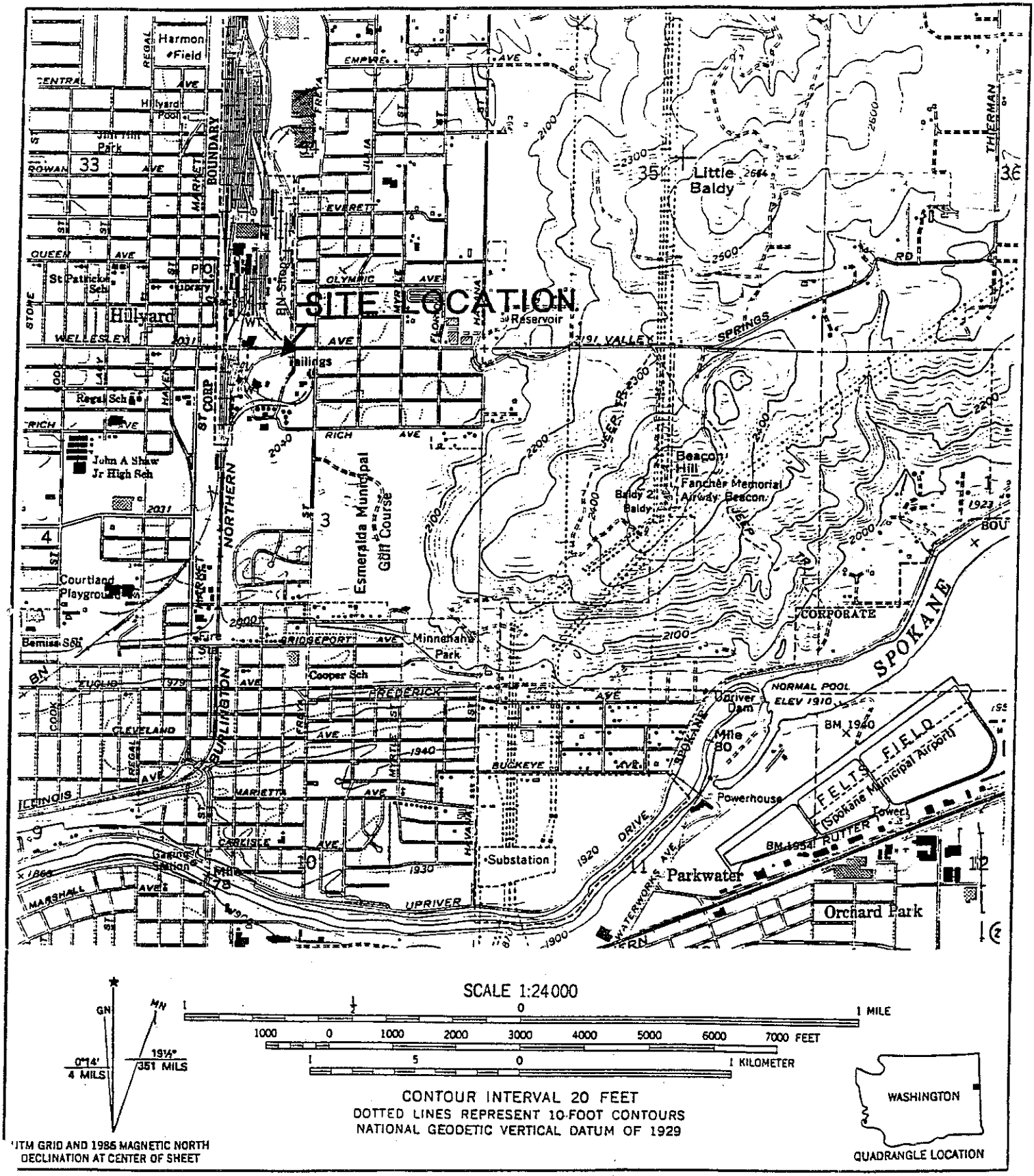


Figure 1. Location of Aluminum Recycling Corporation Site

2.1 Site History

The eight-acre Site was initially used as a gravel pit for an asphalt plant. Hillyard Processing Corporation leased the Site from BNSF in 1954 to operate an aluminum reprocessing facility using scrap aluminum and aluminum dross. A new lessee renamed the company in 1976 to Hillyard Aluminum Recovery Corporation, which continued the same operations. That company was then was sold to Aluminum Recycling Corporation in 1979. In 1987, the property was abandoned by all lessees with an estimated 65,000 cubic yards of dross material remaining on-site. BNSF still retained ownership of the property throughout that timeframe.

The facility processed white dross, which was composed of aluminum skim and other materials derived from primary smelting operations. White dross contains various oxides, aluminum metal, carbides, and nitrides. This white dross was treated in the secondary recycling plant through a batch process which, through the addition of salts, cryolite, and heat, separated out the molten aluminum metal. The metal was cast into ingots and sold. The resulting residue after the secondary treatment was high salt black dross. This material was deposited on-site in various waste piles and in the former gravel pit. Also, a volume of semi-processed white dross remained on-site.

Between 1979 and 1983, several complaints were made to the City about wind blown particulates and ammonia odors, caused when the dross became wet. Smoke and ammonia fumes were also generated by a fire in 1979 caused by heat from a metal oxide reaction. In August 1988, a polyvinyl acetate/wood fiber solution called Marloc was applied to the piles as part of a dust suppression and site characterization program by BNSF. The product forms a thin film on the surface of the piles and controls dust.

2.2 Site Investigations

On July 17, 1985, the Department of Ecology completed a Preliminary Assessment (PA) of the property, and recommended that dust and fumes be controlled, the dross materials be appropriately disposed of, and local water supply wells be sampled to ensure they hadn't been contaminated. Through an agreement with the Environmental Protection Agency, Ecology then followed up with a Preliminary Assessment/Site Inspection (PA/SI) on October 13, 1987. These investigations were limited to surficial examination and sampling of the piles. The PA/SI Phase I Site Inspection Report concluded that the Site was potentially contaminated with hazardous substances. No dangerous waste designation was completed at that time. The City of Spokane also requested improvements in dust suppression and site security.

In 1988, BNSF performed a Site characterization study. Samples of the dross were collected from deeper within the piles, groundwater samples were collected from under the piles through soil borings, and the Marloc was applied to the dross surface. Although it ultimately breaks down under ultraviolet radiation, the Marloc was estimated to remain effective for a minimum of two years. An eight-foot high chain link fence was also installed around the dross piles and former gravel pit.

In 1989, Chemical Processors, Inc (Chempro) conducted a stabilization and characterization study on the Site for BNSF. Their results showed that about 95% of the dross on-site could be considered a dangerous waste under Washington State regulations due to high concentrations of chloride, fluoride, and nitrate. Also, groundwater under the dross piles contained chloride, fluoride, and nitrate at levels exceeding state drinking water standards

In August of 1991, a Site ranking was completed by Ecology using the Washington Ranking Method (WARM); the Site received a rank of 2 on a scale of 1 to 5, with 1 representing the greatest threat to human health and the environment

In June of 1996, EMR produced a Summary Report which reviewed the information and data generated through previous work, and provided information on the physical and chemical properties of the dross. These results contradicted the work of Chempro, indicating that the dross was not a dangerous waste according to bioassay testing and that the remaining salts were encapsulated in the dross, limiting their ability to be leached.

A Work Plan for a remedial investigation at the Site was completed by EMR on behalf of BNSF in August of 1998. An agreed order was then signed between BNSF and Ecology on November 16, 1998, implementing the Work Plan. BNSF began the Remedial Investigation/Feasibility Study (RI/FS) of the Site to determine the nature and extent of contamination at the Site and suggest potential cleanup actions. The RI/FS was completed and finalized after public comment in November of 1999.

2.3 Physical Site Characteristics

2.3.1 Hydrogeology

Geology in the vicinity of the Site consists of Columbia basalts overlain by Quaternary flood deposits. The flood deposits are composed of poorly sorted boulders, cobbles, gravel and sand. The coarse nature of the deposits results in very high permeabilities. Depth to bedrock below the Site ranges from 250-300 feet below ground surface. (EMR, 1999)

The Site overlies the Spokane Valley Rathdrum Prairie Aquifer, which is the sole source of water for almost 400,000 people in the greater Spokane area. The aquifer flows from Northern Idaho to the west and southwest down the Spokane Valley at an estimated rate of 60 to 90 ft/day. In the area of the Site, the flow divides around a protrusion of basalt at Fivemile Prairie and flows to the northwest through the Hillyard Trough. The flow rate in this region is about 46 ft/day. Depth to groundwater at the Site is approximately 178 feet below ground surface.

2.3.2 Aluminum Dross

The dross varies in composition and texture across the Site, but generally appears dark to medium gray in color with a coarse sandy texture. Many piles have larger conglomerates

of material which can be as large as boulders Below the leached surface layer, the dross is often a pinkish brown color with streaks of red, black, or green from metallic oxides. These interior portions of the piles are often moist with a distinct ammonia odor Some piles contain irregularly shaped nodules of aluminum metal Within the pit, the dross is dark gray to black in color and is found consolidated into a dense, sandstone-like mass.

3.0 Nature and Extent of Contamination

3.1 Aluminum Dross

The aluminum dross is the source material for contaminants in groundwater and soils at the Site. Approximately 65,000 cubic yards of dross are present on-site in the form of large piles and deposits within the 20-ft deep gravel pit (figure 2) The dross has been the subject of numerous physical and chemical investigations to determine its characteristics. Several different laboratories tested the dross for its composition of chloride, fluoride, nitrite, nitrate, phosphate, and sulfate. In addition, sodium, potassium, and certain metals were tested to determine potential reuses of the material. Results indicated that the dross contained about 5 6% aluminum metal The results from two different labs showed maximum concentrations of 104,000 ppm and 57,000 ppm chloride, and 375 ppm and 6400 ppm fluoride. The differences are attributed to the inhomogeneous nature of the material and lab differences. Samples were also crushed in varying degrees and tested to determine the quantities of leachable metals only. No metals were detected in the leachate.

Aluminum dross samples were collected from five soil borings on and around the piles, and four test pits in the old gravel pit as a part of the RI investigation (figure 2). The concentrations of chloride, fluoride, nitrate, ammonia, and various metals were measured, and leaching tests were performed on intact samples.

3.2 Soils

Soil was also sampled as part of the RI/FS investigation. Samples were taken along with the dross from the same borings and test pits. The maximum depth of soil samples was five feet below the soil/dross interface at each sample location With the exception of chloride, concentrations were generally lower in the soils than in the dross. The presence of these contaminants in soil is due to the downward leaching of contaminants through the dross piles. Leaching has occurred throughout the lifetime of the piles, and does continue to occur.

3.3 Groundwater

Groundwater beneath the Site is contaminated through the leaching of contaminants as a result of precipitation and runoff through the dross piles and soil. The groundwater contains chloride, fluoride, and nitrate at concentrations above cleanup levels Maximum concentrations measured in investigations prior to and during the RI were 1400 ppm chloride, 14 ppm fluoride, and 83 ppm nitrate. Figure 3 shows the distribution of

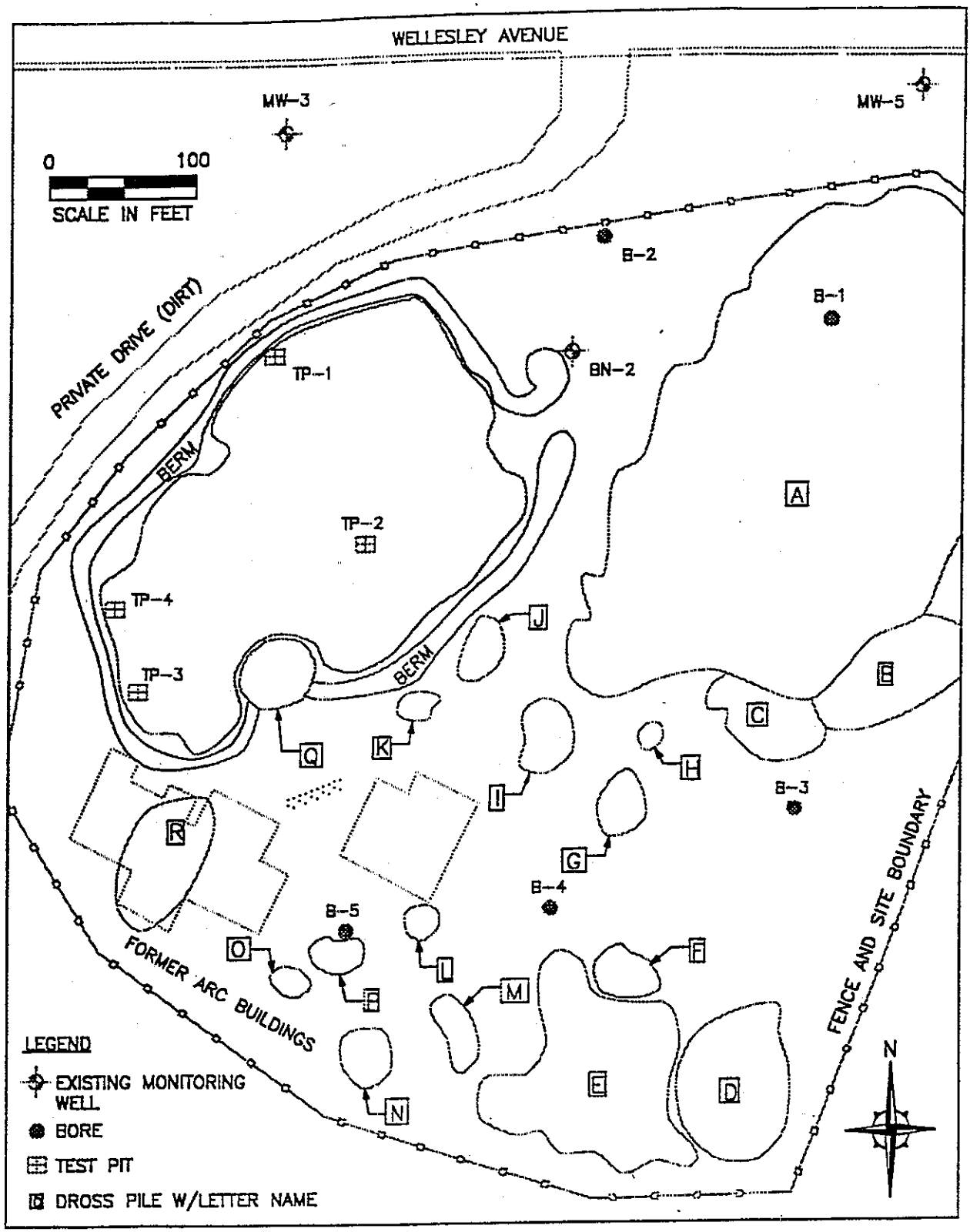


Figure 2. Locations of Aluminum Dross Piles

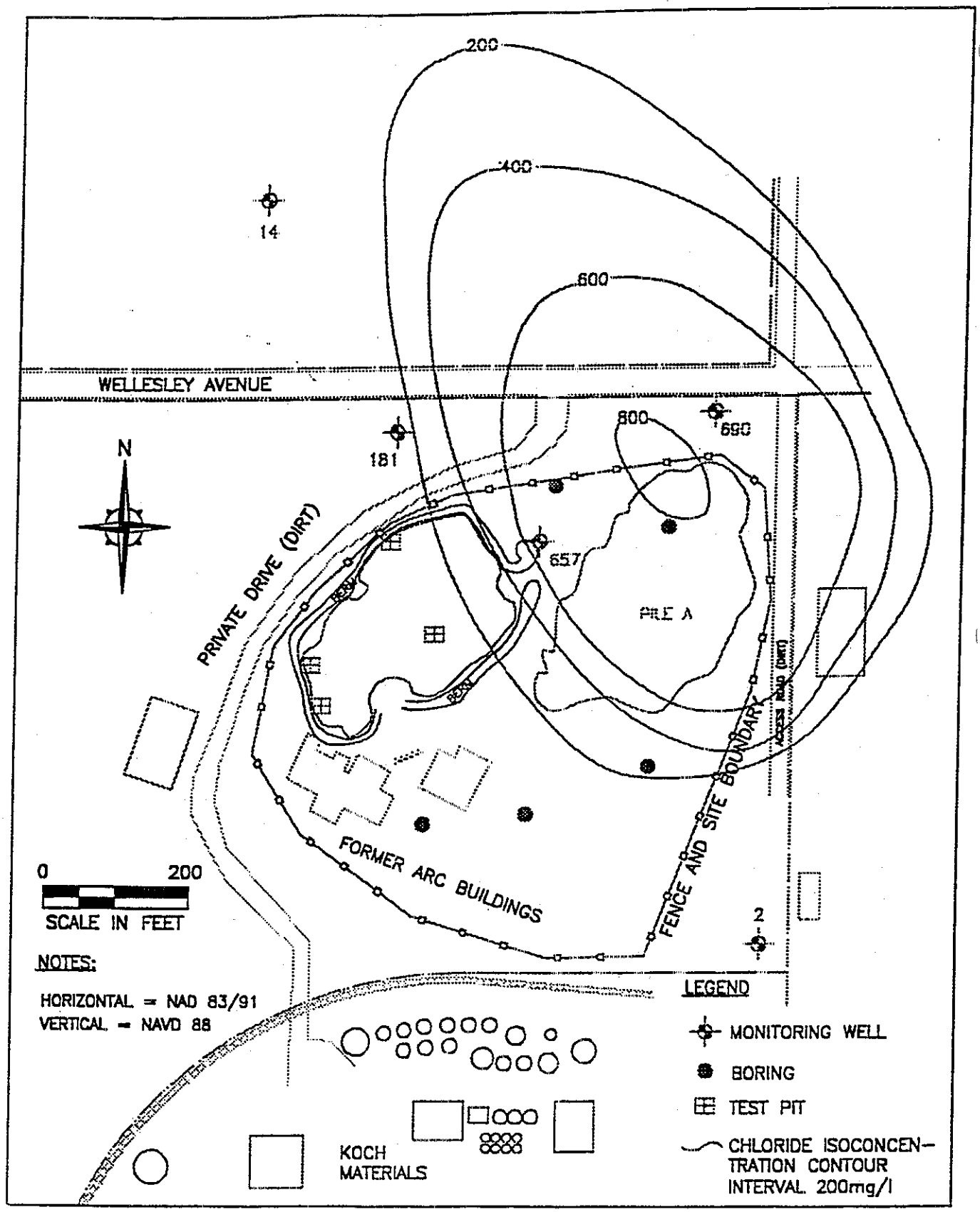


Figure 3. Isocontours of Chloride Concentrations

chloride in groundwater. Because chloride is a conservative tracer, it is expected to move readily in groudwater and represents the maximum extent groundwater contamination might occur. Therefore, other parameters are not plotted but are assumed to have the same general pattern of distribution.

3.4 Risks to Human Health and the Environment

The Spokane Valley-Rathdrum Prairie Aquifer is the drinking water supply for the greater Spokane area. Sampling has shown that the aquifer has been impacted by contaminants from the Site. Consumers of drinking water from the aquifer may potentially be exposed to these contaminants via ingestion or direct contact.

Both soil and dross pose a risk to potential on-site populations (workers, trespassers) and off-site populations (residents, passersby). These populations may be exposed to these media through accidental ingestion, inhalation or dermal contact. Air quality has also been impacted in the past through the generation of dust and ammonia from the piles. The Site is located in an area adjacent to commercial and residential properties. Although currently managed through fencing and the Marloc, these controls are only temporary and need to be permanently addressed.

4.0 Cleanup Standards

A requirement of MTCA (WAC 173-340) is the establishment of cleanup standards for individual sites. Cleanup standards are comprised of cleanup levels and the point of compliance. Cleanup level development involves the selection of indicator hazardous substances which meet the criteria of WAC 173-340-720 through 173-340-760. Cleanup levels are based on the concentrations of those indicator substances above which human health and the environment are threatened. Those concentrations are determined using risk-based exposure equations defined in MTCA (WAC 173-340-720 through 173-340-760). Three methods are available for establishing site-specific cleanup levels: Method A, Method B, and Method C. Method A is used for routine sites or sites that involve relatively few hazardous substances which have available numerical levels in the Method A tables of MTCA. Method B is the standard method for determining cleanup levels and is applicable to all sites. Method C is a conditional method used when a cleanup level under Method A or B is technically impossible to achieve or may cause greater environmental harm. Method C may also be applied to qualifying industrial properties. The point of compliance is then established as the location where the cleanup levels must be achieved before the Site is no longer considered a threat to human health and the environment.

4.1 Cleanup Levels

MTCA defines the factors used to determine whether a substance should be retained as an indicator for the Site. When defining cleanup levels at a site contaminated with several

hazardous substances, Ecology may eliminate from consideration those contaminants that contribute a small percentage of the overall threat to human health and the environment WAC 173-340-708(2)(b) outlines that a substance may be eliminated from consideration based on:

- The frequency of detection. If a compound is detected at a frequency of 5% or less, it may be appropriate to eliminate it;
- The concentration of the substance. Substances with concentrations marginally above their cleanup standards may not be important in considerations of overall hazard and risk;
- The toxicity of the substance. It may be suitable to delete substances of low toxicity;
- Environmental fate. Substances that readily degrade in the environment may not be of importance to overall hazard or risk. Conversely, those with highly-toxic degradation products should be included in an analysis of overall hazard and risk;
- The natural background levels of the substance. MTCA regulates risks due to substances found at contaminated waste sites. The risks caused by substances at background concentrations are not addressed by MTCA;
- The mobility and potential for exposure to the substance. Substances may be eliminated if the values for these factors are low.

4.2 Site Cleanup Levels

The Remedial Investigation has documented the presence of contamination in soils and groundwater at the Site. Therefore, site cleanup levels are developed for each of these contaminated media. Groundwater cleanup levels are first developed, with soil cleanup levels calculated next to ensure that levels do not violate the groundwater standard. Cleanup levels are shown in Tables 1 through 6.

4.2.1 Groundwater

Table 1 shows the applicable cleanup criteria of analytes for which Site groundwater was tested. The most stringent of these criteria is the selected Method B cleanup level for each substance. Method B is the appropriate method for groundwater cleanup levels because there are multiple contaminants and multiple pathways of exposure.

Table 2 shows the analytes detected in groundwater along with the maximum concentrations and frequencies of detection. Maximum concentrations are based on water sampling completed in 1988, 1995, 1997, and 1998. Contaminants with concentrations less than the individual cleanup level, those with 5% or less detection frequency, and those with no toxicity data are eliminated from consideration as indicator substances. Four indicator contaminants were identified for the Site: chloride, fluoride, nitrate-nitrogen, and nitrite-nitrogen.

Analyte	Federal MCL		MTCA			
	Primary MCL, ug/L	Secondary MCL, ug/L	Method A Concentration, ug/L	Basis	Method B Concentration, ug/L	Basis
alkalinity						
ammonia					**272,000**	BNCAR
arsenic	50		**5**	background	0.0583	BCAR
barium	2000				**1120**	BNCAR
bromide						
cadmium	**5**				8	BNCAR
calcium						
chloride		**250,000**				
chromium	100				**80**	BCAR
copper	1300				**592**	BNCAR
fluoride	4000				**960**	BNCAR
iron						
lead			**5**	blood levels		
magnesium						
mercury	**2**				4.8	BNCAR
nitrate-nitrogen	**10,000**				25,600	BNCAR
nitrite-nitrogen	**1000**				1600	BNCAR
organophosphate-phosphorous						
potassium						
selenium					**80**	BNCAR
silver	**50**				80	BNCAR
sodium						
sulfate		**250,000**				

bold - the selected criteria for that analyte
BNCAR - MTCA Method B non-carcinogen
BCAR - MTCA Method B, carcinogen
MCL - Federal Maximum Contaminant Level

Table 1. Applicable Groundwater Cleanup Criteria

Analyte	Frequency of Detection	Maximum Concentration, ug/L	Method B Cleanup Level, ug/L	Basis	Screening Results
alkalinity	1.0	240,000			no toxicity data
ammonia	1.0	7340	272,000	BNCAR	below cleanup level
arsenic	1.0	1.48	5	A- background	below cleanup level
barium	1.0	134	1120	BNCAR	below cleanup level
bromide	0.83	724			no toxicity data
cadmium	0.0	ND	5	MCL	<=5% detection frequency
calcium	1.0	120,000			no toxicity data
chloride	1.0	1,400,000	250,000	SMCL	**indicator**
chromium	1.0	1.54	80	BNCAR	below cleanup level
copper	0.0	ND	592	BNCAR	<=5% detection frequency
fluoride	0.45	14,000	960	BNCAR	**indicator**
iron	0.67	80,100			no toxicity data
lead	0.0	ND	5	A - blood lead	<=5% detection frequency
magnesium	1.0	72,300			no toxicity data
mercury	0.0	ND	2	MCL	<=5% detection frequency
nitrate-nitrogen	1.0	83,800	10,000	MCL	**indicator**
nitrite-nitrogen	0.09	1500	1000	MCL	**indicator**
organophosphate-phosphorous	0.0	ND			no toxicity data
potassium	1.0	255,000			no toxicity data
selenium	1.0	1.5	80	BNCAR	below cleanup level
silver	0.0	ND	50	MCL	<=5% detection frequency
sodium	1.0	420,000			no toxicity data
sulfate	1.0	74,800	250,000	SMCL	below cleanup level

BNCAR - MTCA Method B non-carcinogen
BCAR - MTCA Method B carcinogen
A - MTCA Method A
MCL - Federal Maximum Contaminant Level
SMCL - Federal Secondary Maximum Contaminant Level
ND - not detected

Table 2. Indicator Substance Screening, Groundwater

Table 3 presents the calculations of cancer risk and hazard quotient for groundwater. Final Method B cleanup levels are shown, along with the hazard quotient for each contaminant separated by its toxic effect. Each contaminant's hazard quotient is listed by its toxic effect; the total for each toxic effect must be less than or equal to one. If the hazard quotient for a toxic effect is greater than one, the cleanup level for contaminants with that toxic effect must be adjusted downward. Table 4 shows the adjusted groundwater cleanup levels. The chloride cleanup level is a secondary maximum contaminant level, which is based on aesthetics and therefore has no toxic effect. The cleanup level for nitrite was lowered so that the hemotoxicity effect hazard quotient was equal to one. These adjusted values are the groundwater cleanup levels for the four indicators.

4.2.2 Soil

Applicable soil cleanup criteria for the Site are shown in Table 5. Since the Site does not meet the requirements of an industrial property as defined in WAC 173-340-745, Method B residential cleanup levels were applied. Method A levels were used for arsenic since it is based on background levels, and for lead because of the absence of a Method B cleanup level.

Table 6 presents the screening for indicator substances in soils. All substances are either below their cleanup level, detected at a frequency of less than 5%, or have no toxicity data, except arsenic and lead. Both these contaminants exceed their respective cleanup levels. However, of the nineteen results for arsenic levels in soil, the two exceedances of 22.2 and 23.4 mg/kg are only 17% above the cleanup level. Ecology has determined that the two samples do not represent significant exceedances. Additionally, although arsenic was detected in 84% of the soil samples, the majority of the concentrations were under 10 mg/kg. Lead will be the only contaminant with a cleanup level in soil.

4.3 Point of Compliance

MTCA defines the Point of Compliance as the point or points where cleanup levels shall be attained. Once cleanup levels are met at the point of compliance, the Site is no longer considered a threat to human health or the environment. For soils, the point of compliance shall be from the ground surface to fifteen feet below ground surface. This is based on exposure through direct contact.

The point of compliance for groundwater is defined in WAC 173-340-720(6). Groundwater points of compliance are established for the entire Site from the top of the saturated zone to the lowest affected portion of the aquifer, which is bedrock at this Site.

5.0 Proposed Cleanup Actions

5.1 Remedial Action Goals

The remedial action goals are intended to protect human health and the environment by

Indicator	Method B Cleanup Level, ug/L	Basis	Hazard Quotient	
			Dental Fluorosis (sign of fluoride poisoning)	Hemotoxicity (toxic to blood)
chloride	250,000	SMCL		
fluoride	960	BNCAR	1	
nitrate-nitrogen	10,000	MCL		0.391
nitrite-nitrogen	1000	MCL		0.625
Total Hazard Quotient:			1	1.016

MCL - Federal Maximum Contaminant Level
SMCL - Federal Secondary Maximum Contaminant Level
BNCAR - MTCA Method B, non-carcinogen

Table 3. Risk/Hazard Quotient Calculations for Groundwater Indicators

Indicator	Method B Cleanup Level, ug/L	Basis	Hazard Quotient	
			Dental Fluorosis (sign of fluoride poisoning)	Hemotoxicity (toxic to blood)
chloride	250,000	SMCL		
fluoride	960	BNCAR	1	
nitrate-nitrogen	10,000	MCL		0.391
nitrite-nitrogen	974	MCL		0.609
Total Hazard Quotient:			1	1.000

MCL - Federal Maximum Contaminant Level
SMCL - Federal Secondary Maximum Contaminant Level
BNCAR - MTCA Method B, non-carcinogen

Table 4. Groundwater Cleanup Levels Adjustments

Analyte	MTCA				Protection of Groundwater, mg/kg	Background, mg/kg
	Method A, mg/kg	Basis	Method B, mg/kg	Basis		
ammonia			**2,720,000**	BNCAR		
arsenic	**20**	background	1.67	BCAR	0.5	
barium			**5600**	BNCAR		
cadmium			**80**	BNCAR		1
chloride					**25,000**	
chromium			**400**	BNCAR		18
copper			**2960**	BNCAR		22
fluoride			4800	BNCAR	**96**	
lead	**250**	blood levels				15
mercury			**24**	BNCAR		0.02
nitrate-nitrogen			128,000	BNCAR	**1000**	
nitrite-nitrogen			8000	BNCAR	**97.4**	
organophosphate-phosphorous						
potassium						
selenium			**400**	BNCAR		
silver			**400**	BNCAR		
sodium						
sulfate						

bold - the selected criteria for that analyte
BNCAR - non-carcinogen
BCAR - carcinogen

Table 5. Applicable Soil Cleanup Criteria

Analyte	Frequency of Detection	Maximum Concentration, mg/kg	MTCA Cleanup Level, mg/kg	Basis	Screening Results
ammonia	0.0	ND	2,720,000		<=5% detection frequency
arsenic	0.84	23.4*	20	A - background	below cleanup level*
barium	1.0	149	5600	BNCAR	below cleanup level
cadmium	0.32	1.46	80	BNCAR	below cleanup level
chloride	0.74	17,500	25,000	100xGW	below cleanup level
chromium	1.0	49.3	400	BNCAR	below cleanup level
copper	1.0	441	2960	BNCAR	below cleanup level
fluoride	0.89	88.2	96	100xGW	below cleanup level
lead	0.89	485	250	A	**indicator**
mercury	0.63	0.0344	24	BNCAR	below cleanup level
nitrate-nitrogen	0.67	5.29	1000	100xGW	below cleanup level
nitrite-nitrogen	0.0	ND	97.4	100xGW	<=5% detection frequency
organophosphate-phosphorous	0.0	ND			<=5% detection frequency
potassium	1.0	24,300			no toxicity data
selenium	0.21	18.2	400	BNCAR	below cleanup level
silver	0.05	5.27	400	BNCAR	<=5% detection frequency
sodium	0.95	25,900			no toxicity data
sulfate	0.0	ND			<=5% detection frequency

* - maximum value for arsenic determined not to be significantly different from cleanup level; see text for a more detailed explanation

BNCAR - MTCA Method B non-carcinogen

A - Method A

100xGW - 100 times groundwater cleanup level

Table 6. Indicator Substance Screening, Soils

eliminating, reducing, or otherwise controlling risks posed through each exposure pathway and migration route. They are developed considering the characteristics of the contaminated medium, the characteristics of the hazardous substances present, migration and exposure pathways, and potential receptor points.

Both groundwater and soil have been contaminated by the former Site activites and the continued storage of dross at the Site. Populations may be exposed to contaminated soil or dross via windblown dust or direct dermal contact. Since the aquifer is a drinking water source, contact or ingestion of groundwater is also possible. Potential populations include on-site workers, trespassers, residents of nearby neighborhoods, passersby, and off-site workers.

Given these potential exposure pathways, the following are the remedial action goals for the Site:

- Prevent direct contact, inhalation or ingestion of contaminated soil by humans
- Prevent direct contact, inhalation or ingestion of contaminated dross by humans
- Prevent direct contact or ingestion of contaminated groundwater by humans
- Prevent further contamination of soil
- Prevent further contamination of groundwater

5.2 Cleanup Action Alternatives

Cleanup alternatives are evaluated as part of the RI/FS for the Site. All contaminated media are required to be addressed as part of each cleanup alternative. The following alternatives are as proposed by BNSF.

5.2.1 Alternative 1: Limited Action/Institutional Controls

Semi-annual groundwater monitoring would take place at the four monitoring wells for chloride, fluoride, nitrate and nitrite. This data would only be used to evaluate the movement and concentration of these contaminants in groundwater. No remedial action would take place.

The chain link fence currently surrounding the property would continue to be maintained. A deed restriction would be placed on the property because indicator substances would remain in contaminated Site media above cleanup levels. Five year reviews would take place to evaluate the status of contaminated media.

5.2.2 Alternative 2: Removal and Off-Site Disposal

All dross and soil exceeding cleanup levels would be removed and transported off-site for disposal at a permitted facility. As part of this work, the fence would need to be removed and temporary roads installed. Dust and odor-suppression materials would be available to limit off-site impacts. Excavated materials would be characterized and then transported via rail car to a permitted landfill. The Site would then be filled with clean

materials, regraded, and the fence reinstalled. Semi-annual groundwater monitoring would take place at the four monitoring wells for chloride, fluoride, nitrate and nitrite, to determine the effectiveness of the remedy. Five-year reviews would also be performed by Ecology.

5.2.3 Alternative 3: On-Site Containment

Contaminated soil and dross would remain on-site, and be covered with an engineered multimedia cover system. For this remedial action, the fence would be removed and the materials regraded to specifications required for the cover. Dust and odor suppression materials would be available to limit off-site impacts. The multimedia cover would then be installed to the specifications of the engineering design, and the fence reinstalled. Deed restrictions would be imposed to limit the potential for future Site activities to break through the cover and/or expose the dross. Semi-annual groundwater monitoring would take place at the four monitoring wells for chloride, fluoride, nitrate and nitrite, to determine the effectiveness of the remedy. Long-term cover system maintenance would take place to ensure that the cover remains effective. Five-year reviews would be performed by Ecology to ensure that the remedy remains protective of human health and the environment.

6.0 CLEANUP ACTION CRITERIA

The requirements for selection cleanup actions are given in the Model Toxics Control Act (WAC 173-340-360). Outlined here are the specific criteria and hierarchy for selecting cleanup actions.

6.1 THRESHOLD REQUIREMENTS

All cleanup actions shall:

- Protect human health and the environment;
- Comply with cleanup standards;
- Comply with applicable state and federal laws; and
- Provide for compliance monitoring.

6.2 OTHER REQUIREMENTS

In addition, the cleanup action shall:

- Use permanent solutions to the maximum extent practicable, including;
  - Long-term effectiveness;
  - Short-term effectiveness;
  - Permanent reduction of toxicity, mobility, and volume;
  - Ability to be implemented;
  - Cleanup costs, and

  - Degree to which community concerns are addressed.
- Provide for a reasonable restoration time frame; and
- Consider public concerns raised during public comment on the draft cleanup action plan

6.3 Cleanup Technologies

Cleanup of contaminated sites shall be conducted using technologies which minimize the amount of untreated hazardous substances remaining at a site. The following technologies shall be considered in order of descending preference:

- Reuse or recycling;
- Destruction or detoxification;
- Separation or volume reduction followed by reuse, recycling, destruction, or detoxification of the residual hazardous substance;
- Immobilization of hazardous substances;
- On-site or off-site disposal at an engineering facility;
- Isolation or containment with attendant engineering controls; and
- Institutional controls and monitoring.

7.0 Evaluation of Proposed Remedial Alternatives

7.1 Threshold Requirements

Alternative 1 only provides for compliance monitoring; it does not meet any state or federal laws nor complies with cleanup standards. Since no cleanup would be done under this alternative, human health and the environment would not be protected. Alternatives 2 and 3 would meet all four of the threshold criteria. The removal/off-site disposal and on-site containment would meet the first three requirements, and institutional controls and monitoring would be required for both.

7.2 Other Requirements

7.2.1 Use Permanent Solutions to the Maximum Extent Practicable

Cleanup actions are selected in part by their preference for permanent solutions. A permanent solution is defined as one where cleanup levels can be met without further action being required at the Site other than the disposal of residue from the treatment of hazardous substances. The following criteria are used to determine the permanence of a cleanup action: long-term effectiveness, short-term effectiveness, permanent reduction of toxicity, mobility, or volume, implementability, and cleanup cost. The details of these criteria are presented in WAC 173-340-360(5). Ranking of the alternatives under each criteria is summarized in Table 7.

Long-term Effectiveness: Long-term effectiveness addresses the following: degree of certainty that the alternative will be successful, long-term reliability, magnitude of

	Alternative 1 Limited Action/ Institutional Controls	Alternative 2 Removal and Off-Site Disposal	Alternative 3 On-Site Containment
Threshold Requirements			
Protect human health and the environment	No	Yes	Yes
Comply with cleanup standards	No	Yes	Yes
Comply with applicable state and federal laws	No	Yes	Yes
Provide for compliance monitoring	Yes	Yes	Yes
Other Requirements*			
Use permanent solutions			
Overall protectiveness	Low	High	Medium
Long term effectiveness	Low	High	Medium-low
Short term effectiveness	Low	High	Medium
Reduction in toxicity, mobility, and volume	Low	Medium	Medium-low
Implementability	High	High	High
Cost	Low	High	Medium
Restoration time frame	>20 years	5-10 years	10-20 years
Consider public concerns	No	Yes	Yes
Cleanup Technology Preference			
Reuse or recycling	No	No	No
Destruction or detoxification	No	No	No
Separation or volume reduction	No	No	No
Immobilization	No	No	No
On-site or off-site disposal	No	Yes	No
Isolation or containment	No	Yes	Yes
Institutional controls and monitoring	Yes	Yes	Yes

* - alternatives are given a ranking in each category relative to the other alternatives

Table 7. Comparison of Proposed Cleanup Action Alternatives

residual risk, and effectiveness of management controls. Alternative 1 is ranked low because none of these measures are attained. Alternative 2 is ranked high because the removal of the dross would provide a reliable and successful long-term solution with low residual risk. Alternative 3 is given a medium-low ranking because the long-term reliability is unknown due to the dependence on cover integrity, along with an unknown amount of residual risk. The risk due to soil would be removed, but the recovery of groundwater is dependent upon the reduction of leaching and infiltration, which is again dependent on cover system integrity

Short-term Effectiveness: Criteria for short-term effectiveness include protection of human health and the environment during implementation, and the degree of risk prior to attainment of cleanup standards. Alternative 1 is ranked low because neither criteria are satisfied to any degree. Alternative 2 and 3 would rank similarly for the first criteria; both would require similar controls for dust and odor, and would require the temporary removal of the fence. However, alternative 2 would have a shorter time frame before attaining cleanup standards, so it is ranked high while alternative 3 is ranked medium.

Permanent Reduction in Toxicity, Mobility, or Volume: Alternative 1 is again ranked low since nothing will be done with the stockpiled materials. Neither alternatives 2 nor 3 have a destruction or waste treatment process involved, so the only remaining applicable criteria is the reduction or elimination of hazardous substances or sources. Since alternative 2 would remove dross materials, but still not destroy them, it receives a medium ranking, while alternative 3 ranks medium-low.

Implementability: All three alternatives are equally implementable with regard to the criteria listed in WAC 173-340-360(5)(d)(v). Therefore, all alternatives received a high ranking.

Cost: Relative to each other, alternative 1 is the least expensive, alternative 3 was intermediate, and alternative 2 was most expensive. Cost is only factored in if one

alternative has a large cost increase with only a minimal improvement in the degree of protection offered. Details on the cost of each alternative are provided in the RI/FS

7.2.2 Provide a Reasonable Restoration Time Frame

Alternative 1 would require a significant restoration time frame since no remedial action would be performed. Alternatives 2 and 3 would be shorter because they both involve the removal of contaminant transport pathways. Alternative 2 would achieve cleanup levels in the shortest time because contaminated materials would be entirely removed from the Site.

7.2.3 Consider Public Concerns

All three alternatives would be required to address public comments and concerns. A 30-day public comment period is required for the draft cleanup action plan.

7.3 Cleanup Technologies

Alternative 1 ranks the lowest because only institutional controls and monitoring would take place. Alternative 3 ranks higher because it utilizes on-site containment. The highest ranking is alternative 2 which requires off-site disposal.

8.0 Site Cleanup Action

Alternative 3 will be selected for implementation at the Site. It meets all the threshold requirements and represents an effective remedy for protection of human health and the environment while balancing costs and restoration time frame. Ecology has made some modifications to the alternative from that proposed by BNSF; the following outlines the details of the final selected alternative.

8.1 Soil and Dross

Soil and dross will be addressed through the construction of a multimedia cover system over the dross and affected soil. Components of this work include:

- Site Preparation – The existing chain link fence will be removed and the site regraded. Currently, the dross exists as large piles on-site and in a gravel pit. The land will be graded to remove these features and also to direct surface water runoff away from the covered dross. Since regrading will likely generate dust and expose moist weathered dross and ammonia, a non-water based foaming agent will be available as a control measure.
- Installation of Cover System – A cover system will be installed over the regraded dross to prevent infiltration and leaching of surface water through the dross. The cover system shall consist of an HDPE liner at the base, to act as a barrier to infiltrating water and to help distribute loading. One foot of lightly compacted gravel would cover the liner to assist in drainage and to further help prevent subsidence. A woven geotextile fabric would cover the gravel to help filter migrating soil from above and prevent clogging of the gravel layer. Finally, a three foot layer of soil would complete the cover. Details on the design and composition of the cover will be outlined in the Engineering Design Report to be completed by the PLPs. This document will undergo review by Ecology and a public comment period.
- Site Maintenance – The fence will be reinstalled and monitoring of the cover system will take place. Expected concerns would be subsidence and erosion; to repair this, the addition of soil to the cover would periodically take place. The details of such maintenance requirements will be outlined in an Operation and Maintenance Plan that will be submitted with the Engineering Design Report.

8.2 Groundwater

Concentrations of several contaminants have exceeded cleanup standards in the past, but concentrations have been decreasing steadily since the exceedances have occurred. Therefore, groundwater shall be addressed through long-term monitoring. With the

installation of the impermeable cover, leaching is expected to decrease Thus the need for active remediation of the groundwater will be significantly diminished The PLPs shall monitor groundwater on a quarterly basis for five years. At that point, a five-year review shall take place as required by MTCA.

8.3 Five Year Review

WAC 173-340-420 states that at sites where a cleanup action results in hazardous substances remaining on-site at concentrations exceeding cleanup levels, a periodic review shall be completed no less frequently than every five years. Since the contaminated soil and dross will remain on-site and the groundwater will not be actively remediated, a five year review shall take place at this Site. Groundwater monitoring data shall be reviewed to assess the effectiveness of the cover system in reducing leaching. If it is determined that concentrations of contaminants in groundwater are not decreasing, then the necessity of further remedial action will be addressed.

8.4 Institutional Controls

Under WAC 173-340-360(8)(b), institutional controls shall be required at sites where containment is the selected cleanup action. Institutional controls will be required at the Site because the integrity of the cover system must be maintained. At this site, they will take the form of fences and signs at the property, and restrictive covenants placed with the deed. The restrictive covenants will limit site use with the purpose of minimizing disturbance to the cover system, and will also prevent any excavation, well installation, or withdrawal of water for any purpose other than monitoring on the property.

9.0 Evaluation of Cleanup Action with MTCA Criteria

9.1 Evaluation with respect to Threshold Criteria

9.1.1 Protection of Human Health and the Environment

Direct contact with contaminated soil or dross and inhalation/contact with airborne dust are the major routes of exposure. By consolidating the materials and covering them with an impermeable cover, these pathways will be eliminated. The cover will also prevent further contamination of the groundwater by reducing leaching through contaminated media.

9.1.2 Compliance with Cleanup Standards

The selected cleanup action will comply with cleanup standards for both soil and groundwater through on-site containment.

9.1.3 Compliance with State and Federal Laws

The selected cleanup action will comply with applicable state and federal laws as identified in Table 8. Local laws, which may be more stringent than specified state and federal laws, will govern where applicable.

9.1.4 Provision for Compliance Monitoring

Compliance monitoring will be performed under the selected cleanup action. A compliance monitoring plan will be completed by the PLP and submitted to Ecology to meet MTCA requirements.

9.2 Evaluation with Respect to Other Requirements

9.2.1 Use of Permanent Solutions to the Maximum Extent Practicable

On-site containment represents a permanent solution as detailed in WAC 173-340-360(5).

9.2.1.1 Long-Term Effectiveness

The selected cleanup action achieves long-term effectiveness through the installation of the impermeable cover system. Long-term effectiveness remains dependent on the integrity of this cover.

9.2.1.2 Short-Term Effectiveness

Risks in the short-term would be caused by dust and odor generation from materials movement. On-site workers and surrounding populations would potentially be exposed to these materials during the construction of the cover. Mitigation of these risks would provide short-term effectiveness for the selected cleanup action.

9.2.1.3 Permanent Reduction of Toxicity, Mobility and Volume

Consolidation and covering of contaminated materials will provide a permanent reduction in toxicity, mobility and volume of hazardous substances. Groundwater monitoring will confirm that this is taking place at the Site.

9.2.1.4 Implementability

The selected cleanup action employs remedies that are readily implementable.

9.2.1.5 Cleanup Costs

The cost for the selected cleanup action is less than other alternatives, and yet provides a similar level of protection for human health and the environment. The cover system will

Cleanup Action Implementation	Ch. 18.104 RCW; WAC 173-160	Water Well Construction; Minimum Standards for Construction and Maintenance of Water Wells
	WAC 173-162	Rules and Regulations Governing the Licensing of Well Contractors and Operators
	Ch. 70.105D RCW; WAC 173-340	Model Toxics Control Act
	Ch. 43.21C RCW; WAC 197-11	State Environmental Policy Act; SEPA Rules
	29 CFR 1910	Occupational Safety and Health Act
Groundwater	42 USC 300	Safe Drinking Water Act
	33 USC 1251; 40 CFR 131	Clean Water Act of 1977; Water Quality Standards
	Ch. 70.105D RCW; WAC 173-340	Model Toxics Control Act
	40 CFR 141; 40 CFR 143	National Primary Drinking Water Standards; National Secondary Drinking Water Standards
	WAC 246-290	Department of Health Standards for Public Water Supplies
	WAC 173-154	Protection of Upper Aquifer Zones
	WAC 173-200	Water Quality Standards for Ground Waters of the State of Washington
Air	42 USC 7401; 40 CFR 50	Clean Air Act of 1977; National Ambient Air Quality Standards
	Ch. 70.94 RCW and Ch. 43.21A RCW; WAC 173-400	Washington Clean Air Act; General Regulations for Air Pollution
	WAC 173-460	Controls for New Sources of Air Pollution
	WAC 173-470	Ambient Air Quality Standards for Particulate Matter
	SCAPCA Regulation 1 Article VI	Control of Fugitive Emissions
	Ch. 70.105D RCW; WAC 173-340	Model Toxics Control Act
Soil and Dross	Ch. 70.95 RCW; WAC 173-304	Solid Waste Management Recovery and Recycling Act; Minimum Functional Standards for Solid Waste Handling
	Ch. 70.105D RCW; WAC 173-340	Model Toxics Control Act
	42 USC 9601; 40 CFR 260	CERCLA; Resource Conservation and Recovery Act
	WAC 173-216	State Waste Discharge Program

Table 8. Applicable or Relevant and Appropriate Requirements for the Selected Cleanup Action

reduce potential exposure routes and limit the migration of contaminants

9.2.2 Provision for a Reasonable Restoration Time Frame

The restoration time frame for the selected cleanup action is believed by Ecology to be reasonable according to criteria outlined in WAC 173-340-360(6).

9.2.3 Consideration of Public Concerns

The public will have an opportunity to review this Draft Cleanup Action Plan and provide comments to Ecology. These comments will be taken into account when preparing the Final Cleanup Action Plan. If needed, a Responsiveness Summary will be prepared to address comments received on this document

10.0 REFERENCES CITED

EMR, 1996, Summary Report, BNRR Hillyard Aluminum Dross Site, Spokane WA

EMR, 1997, Groundwater Sampling Report, Hillyard Aluminum Dross Site, Spokane WA

EMR, 1999, Final Remedial Investigation/Feasibility Study for the Hillyard Dross Site, East 3412 Wellesley Avenue, Spokane WA

EXHIBIT C
Scope of Work and Schedule for the Cleanup Action at the Aluminum Recycling Corporation Site, Spokane WA

This Scope of Work will be used to perform a cleanup action at the Aluminum Recycling Corporation Site (Site). This Scope of Work prepared by the Department of Ecology is to be used by the potentially liable persons (PLPs) to develop Work Plans in order to implement the Cleanup Action Plan (CAP) for the Site. The PLPs shall furnish all personnel, materials, and services necessary for, or incidental to, implementing the CAP at the Site

The cleanup action shall contain the following submittals:

A Remedial Action Plan
A work plan outlining procedures for the cleanup action shall be prepared which includes the following elements:

1. Remedial Action Work Plan Summary
The Remedial Action Work Plan shall contain the goals of the cleanup action, performance requirements, general facility information and site operational history, site characterization history, characteristics of the contaminants and contaminated media, summary of the remedial action, and schedule of deliverables

2. Institutional Controls Plan
As a component of the remedial action and as required by the Cleanup Action Plan, institutional controls will be placed on the Site. As described in WAC 173-340-440, institutional controls are to limit or prohibit activities that may interfere with the integrity of a cleanup action. This plan shall include documents listing the proposed institutional controls.

3. Engineering Design Plan
The Engineering Design Plan shall include a soil containment plan with technical specifications for the cover system, including material and design specifications and construction schedules.

4. Compliance Monitoring Plan
As described in WAC 173-340-410, compliance monitoring is required at all cleanup sites. It consists of protection monitoring, performance monitoring, and confirmational monitoring. Protection monitoring confirms that human health and the environment are adequately protected during construction and operation of a cleanup action Performance monitoring confirms that the cleanup action has attained cleanup and/or performance standards. Confirmational monitoring confirms the long-term effectiveness of the cleanup action once cleanup standards are attained.
a. Groundwater Monitoring, Sampling & Analysis Plan

Groundwater monitoring represents protection, performance, and confirmational monitoring. A reviewed and possibly revised Sampling and Analysis Plan from the RI/FS shall be applicable.

b. Soil Compliance Monitoring Plan
Soil monitoring represents protection, performance, and confirmational monitoring. A reviewed and possibly revised Sampling and Analysis Plan from the RI/FS shall be applicable.

c Air Compliance Monitoring Plan
Air monitoring represents protection and performance monitoring. An Air Compliance Monitoring Plan shall be implemented due to the dust and ammonia gas issues that need to be addressed. The document shall include:

- Sample locations and intervals;
- Sampling procedures and method of analysis;
- List of parameters to be measured; and
- Action levels triggering additional sampling or mitigative measures.

5. Quality Assurance Project Plan
The Quality Assurance Project Plan from the RI/FS shall be reviewed and revised, if necessary.

6. Data Management Plan
A Data Management Plan shall be included which lists procedures for analyzing and evaluating all collected data. Statistical procedures to be used in the analysis of data are given in WAC 173-340-410.

7. Health and Safety Plan
A Health and Safety Plan is required for all remedial actions under WAC 173-340-820. This plan shall include emergency information, characteristics of waste, levels of protection, hazard evaluation, and any other site specific information.

B. Cleanup Action Report
A final cleanup action report shall be submitted after the completion of all elements of the Remedial Action Plan. The report shall include, but not be limited to:

- all aspects of facility construction, including any drawings or design documents;
- all compliance monitoring data gathered;
- a stamped statement from a professional engineer as to whether the cleanup action was completed in substantial compliance with the plans and specifications for the site;
- copies of property deeds, documenting that institutional controls are in place; and
- long term operation & maintenance plans.

C. Remedial Action Performance and Groundwater Compliance Monitoring Report
To track the performance of the cleanup action, quarterly reports presenting the results of monitoring shall be completed and submitted to Ecology.

Schedule of Deliverables

Deliverables	Date Due
Effective date of Decree (date signed by Ecology)	Start
TASK A Draft Remedial Action Plan, including all elements listed in this Scope of Work	60 days after start
Final Remedial Action Plan, including all elements listed in this Scope of Work	30 days after Ecology approval of draft
TASK B Draft Remedial Action Report	90 days after completion of remedial action
Final Remedial Action Report	30 days after Ecology approval of draft
TASK C Completion of remedial action	Start date
Remedial Action Performance and Groundwater Compliance Monitoring Reports	60 days after completion of each quarterly monitoring event
Five Year Review	60 months after Task C start

EXHIBIT D

ALUMINUM RECYCLING CORPORATION

DRAFT
PUBLIC PARTICIPATION PLAN FOR
PROPOSED CONSENT DECREE

PREPARED BY:

WASHINGTON STATE DEPARTMENT OF ECOLOGY

JANUARY 2001

INTRODUCTION

OVERVIEW OF PUBLIC PARTICIPATION PLAN

This Public Participation Plan (Plan) is an amendment to the August, 1998 Plan which focused on the Remedial Investigation through Feasibility Study phases of cleanup at the Aluminum Recycling Corporation Site. The current Plan has been developed by the Washington Department of Ecology. The Plan complies with the Washington State Model Toxics Control Act (MTCA) regulations (Chapter 173-340-600 WAC) and outlines proposed public participation for the Aluminum Recycling Corporation for final stages of cleanup to be implemented under the Consent Decree. Ecology will determine final approval of the Plan as well as any amendments

The Site is located at 3412 East Wellsley in the City of Spokane, Spokane County, Washington. The potentially liable persons for the Site are Burlington Northern Santa Fe Railway (BNSF), Kaiser Aluminum and Chemical Corporation (Kaiser) and Alumax Inc. (Alumax). Kaiser and Alumax have declined to sign the Consent Decree.

The purpose of the Plan is to promote public understanding of the Washington Department of Ecology and BNSF's responsibilities, planning activities, and cleanup activities at hazardous waste sites. It also serves as a way of gathering information from the public that will help Ecology and BNSF complete cleanup of the Site that is protective of human health and the environment. Additionally, it provides information on how the public may be involved in the decision making process.

Documents relating to the cleanup may be reviewed at the repositories listed on Page 6 of this Plan. If individuals are interested in knowing more about the Site or have comments regarding the Public Participation Plan, please contact one of the individuals listed below:

Ms. Sandra Treccani Site Manager Washington State Department of Ecology Toxics Cleanup Program 4601 North Monroe Spokane, WA 99205 (509) 456-2740 E-mail: satr461@ecy.wa.gov	Carol Bergin Public Involvement Washington State Department of Ecology Toxics Cleanup Program 4601 North Monroe Spokane, WA 99205 (509) 456-6360 E-mail: cabe461@ecy.wa.gov
Mr. Bruce Sheppard Burlington Northern Santa Fe Railway 2454 Occidental Ave. Suite 1A Seattle, WA 98134-1451 (206) 625-6035	Johnnie Harris Public Disclosure Coordinator Washington State Department of Ecology 4601 North Monroe Spokane, WA 99205 (509) 456-2751 E-mail: johh461@ecy.wa.gov

PUBLIC PARTICIPATION AND THE MODEL TOXICS CONTROL ACT

The Model Toxics Control Act (MTCA) is a citizens' initiative which passed in the November 1988 general election. It provides guidelines for the clean up of contaminated sites in Washington State. This law sets up strict standards to make sure the cleanup of sites is protective of human health and the environment. The Department of Ecology's Toxic Cleanup Program investigates reports of contamination that may threaten human health or the environment. If an investigation confirms the presence of contaminants, the site is ranked and placed on a Hazardous Sites List. Current or former owner(s) or operator(s), as well as any other potentially liable persons (PLPs), of a site may be held responsible for cleanup of contamination according to the standards set under MTCA. The PLPs are notified by Ecology that the site has contaminants and the process of cleanup begins with Ecology implementing and overseeing the project.

Public participation is an important part of the MTCA process during cleanup of sites. The participation needs are assessed at each site according to public interest and degree of risk posed by contaminants. Individuals who live near the site, community groups, businesses, organizations and other interested parties are provided an opportunity to become involved in commenting on the cleanup process. The Public Participation Plan includes requirements for public notice such as: identifying reports about the site and the repositories where reports may be read; providing public comment periods; and holding public meetings or hearings. Other forms of participation may be interviews, citizen advisory groups, questionnaires, or workshops. Additionally, citizen groups living near contaminated sites may apply for public participation grants to receive technical assistance in understanding the cleanup process and to create additional public participation avenues.

Ecology prepared the proposed Public Participation Plan for the Aluminum Recycling Corporation and maintains responsibility for public participation at the Site.

SITE BACKGROUND

SITE DESCRIPTION AND HISTORY

The Aluminum Recycling Corporation Site is located in the City of Spokane (near the northern city limits) at 3412 East Wellsley (Appendix A, Figure 1). It is bounded on the north by Wellsley Avenue, on the east by Freya Street and Market Street on the west. The Site encompasses approximately eight acres in an industrial zoned portion of the city. The Site is somewhat circular in shape.

An aluminum dross reprocessing facility was operated by Hillyard Processing Company on the land leased from Burlington Northern Railroad Company. Hillyard Processing Company reportedly began aluminum reprocessing at the Site in 1954, and the activities continued through several operator changes. Aluminum Recycling Corporation was the latest operator of the facility until 1987 when the property was abandoned.

The facility processed aluminum skim, called white dross, in a batch process. The white dross was obtained from aluminum smelters, including Kaiser. The process involved the addition of sodium and potassium chloride salts and the extraction of molten aluminum metal, which was poured into ingots and sold. The high chloride waste resulting from this process, known as black dross, remains on site along with non-reprocessed white dross waste. An estimated 65,000 cubic yards of wastes occur in piles A through R and in an abandoned pit on Site (Appendix A, Figure 2).

Ecology completed an inspection in December 1987 and the Site was ranked using the Washington Ranking Method (WARM) in August of 1991.

CONTAMINANTS OF CONCERN

The cleanup at this Site focuses on groundwater contaminated with chloride, fluoride, nitrate and nitrite and soil containing elevated levels of metals and dross. Actions have been taken to cleanup the Site and they are outlined under Site Cleanup Process on Page 5.

COMMUNITY BACKGROUND

COMMUNITY PROFILE

Spokane is the largest city between Seattle and Minneapolis, boasting an area wide population of more than 400,000. Nestled on the northeastern boundaries of Spokane is an area called Hillyard. This area is of modest economic means and has a growing population upwards of 30,000 households. In addition to the community housing, the neighborhood has a business district which houses a handful of local businesses, antique shops, restaurants, other quaint stores and an industrial zone. Aluminum Recycling Corporation is located in the industrially zoned portion of the Hillyard neighborhood.

COMMUNITY CONCERNS

Past concerns have focused on dust emissions and ammonia odors coming from the property. Current concerns focus primarily on groundwater contamination as explained under "Contaminants of Concern." Comments received during public comment periods have been mainly from other agencies such as the Spokane County Air Pollution Control Authority (SCAPCA), lawyers, consultants, and other interested environmental and technical representatives. While no comments have been received from the general public through the formal public process at Ecology, citizens have expressed concern about groundwater contamination in local neighborhood meetings.

The public hearing on the Consent Decree will provide an additional avenue for public concerns to be heard prior to implementation of the Cleanup Action Plan.

SITE CLEANUP PROCESS

AGREED ORDER

BNSF and Ecology entered into an Agreed Order to perform a Remedial Investigation/Feasibility Study (RI/FS) on November 16, 1998. The Agreed Order is a legal document formalizing the agreement between Ecology and the potentially liable persons (PLPs) to ensure cleanup activities are conducted appropriately. The Order is completed under the authority of the Model Toxics Control Act (MTCA) Chapter 70 105D RCW.

REMEDIAL INVESTIGATION/FEASIBILITY STUDY (RI/FS)

The purpose of the RI/FS is to collect, develop and evaluate information regarding Site related contamination. The RI defines the type, extent and degree of soil and ground water contamination and the impacts to the affected areas. The FS identifies, evaluates and proposes alternative cleanup actions.

Results of the soil, dross, and groundwater sampling completed as part of the RI showed groundwater is contaminated with chloride, fluoride, nitrate, and nitrite; soil contains elevated levels of metals. Dross is the source of these contaminants. The PLPs proposed on-site containment as the preferred cleanup alternative in the FS, and Ecology agreed with that alternative. After public notice and opportunity to comment, this was the selected cleanup action.

CLEANUP ACTION PLAN (CAP)

The CAP is a document which identifies the cleanup action and specifies cleanup standards and other requirements for a particular site. After completion of a comment period on a Draft Cleanup Action Plan, Ecology issues a final Cleanup Action Plan.

Ecology finalized the CAP after a 30-day public comment period. The contaminants of concern are identified to be: chloride, fluoride, nitrate and nitrite for groundwater, and lead for soils. The levels of these contaminants in each media will determine when the Site is considered clean.

The cleanup action selected by Ecology includes the following elements:

- regrading of site materials;
- installation of a multi-media cover system to prevent infiltration through the dross;
- cover system and fence maintenance;
- quarterly monitoring of groundwater;
- institutional controls, including fences, signs, and restrictive covenants; and
- five year reviews to determine the effectiveness of the selected remedy.

CONSENT DECREE

The Consent Decree is a legal document which formalizes the agreement between Ecology and BNSF and is entered and approved by a Court. It is used to implement the Cleanup Action Plan. After a 30-day comment period the draft Consent Decree will be modified, if necessary. After the Consent Decree is finalized, an Engineering Design will be prepared and the cleanup action work will be performed. The Engineering Design report will go through a 30-day public comment period before being finalized and implemented.

PUBLIC PARTICIPATION ACTIVITIES AND TIMELINE

The following are public participation efforts which have been occurring and will continue until the cleanup actions are completed:

- A **mailing list** was developed of all individuals who reside within the potentially affected area of the Site. Homes and/or businesses within a few blocks radius of the Site were added to the mailing list. These persons receive copies of all fact sheets developed regarding the cleanup process of the Site via first class mail. Additionally, individuals, organizations, local, state and federal governments, and any other interested parties will be added to the mailing list. Other interested persons may request to be on the mailing list at any time by contacting Sandra Treccani or Carol Bergin at the Department of Ecology (see page 2 for addresses/phone and e-mail).

- **Public Repositories** have been established and documents may be reviewed at the following offices:

  Spokane Public Library
  Hillyard Branch
  4005 North Cook Street
  Spokane, WA 99207-5879

  Department of Ecology
  4601 North Monroe
  Spokane, WA 99205-1295

- During each stage of cleanup **fact sheets** are created by Ecology and distributed to individuals on the mailing list. These fact sheets explain the stage of cleanup, the Site background, what happens next in the cleanup process and ask for comments from the public. A **30-day comment period** allows interested parties time to comment on the process. The information from these fact sheets is also published in a **Site Register** which is distributed to the public. Persons interested in receiving the Site Register should contact Sherrie Minnick of Ecology at (360) 407-7200 or e-mail smin461@ecy.wa.gov.

- **Display ads or legal notices** are published in the Spokesman Review to inform the general public. These notices correlate with the 30-day comment period and associated stage of cleanup. They are also used to announce public meetings and workshops or public hearings.

- **Public meetings, workshops, open houses and public hearings** are held based upon the level of community interest. If ten or more persons request a public meeting based on the subject of the public notice, Ecology will hold a meeting and gather comments. A public hearing will be held on the Consent Decree during the 30-day comment period.

Written comments which are received during the 30-day comment period will be responded to in a **Responsiveness Summary**. The Responsiveness Summary will be sent to those who make the written comments and will be available for public review at the Repositories.

Answering Questions From The Public

Individuals in the community may have questions they want to ask so they may better understand the cleanup process. Page 2 lists the contacts for the Aluminum Recycling Corporation Site. Interested persons are encouraged to contact these persons by phone or e-mail to obtain information about the Site, the process and potential decisions.

Obtaining Community Input On Site Decisions

Community input has been sought on Site decisions via the previously mentioned public participation activities. Mailings have been sent to the Hillyard Neighborhood Council and local Advocate newsletter to encourage community input. Recently, the Chairperson of the Hillyard Neighborhood Council provided an update on community concerns. As a result of that conversation, the location of the public hearing on the Consent Decree will be changed to better accommodate the community.

Public Notice and Comment Periods

Time line

DATE	ACTION TAKEN
October 7 through November 9, 1998	Fact Sheet and 30-day public comment period on the Draft Agreed Order
October 8 through November 9, 1999	Fact Sheet and 30-day public comment period on the Draft Remedial Investigation/Feasibility Study
April 14 through May 15, 2000	Fact Sheet and 30-day public comment period on the Draft Cleanup Action Plan
To Be Determined	Public Hearing on the Consent Decree
To Be Determined	Fact Sheet and 30-day public comment period on the Consent Decree

APPENDIX A

FIGURES 1 and 2

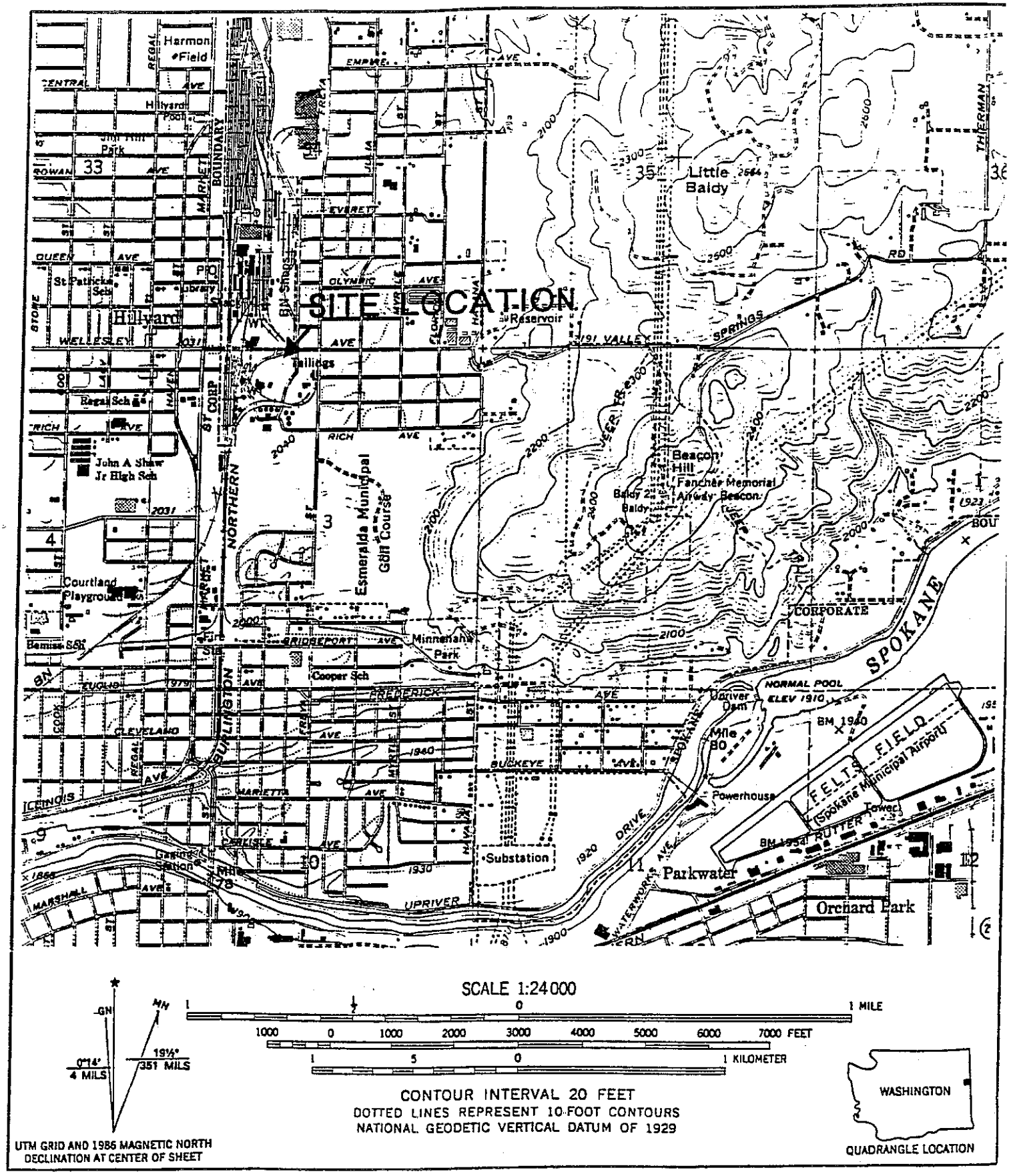


Figure 1. Location of Aluminum Recycling Corporation Site

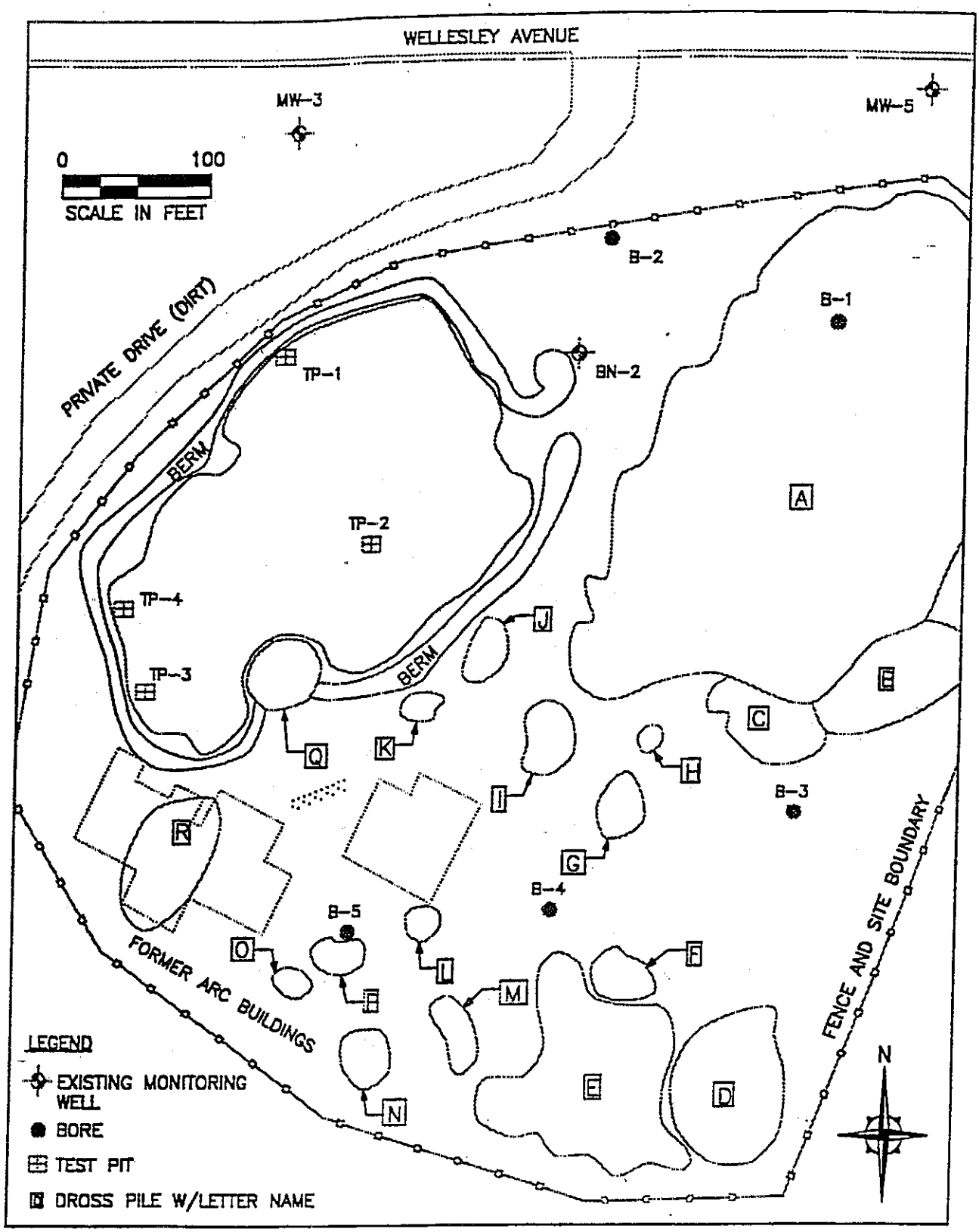


Figure 2. Locations of Aluminum Dross Piles

APPENDIX B

MAILING LIST

ALUMINUM RECYCLING CORPORATION

Aluminum Recycling Corporation Mailing Jan 2001

DALTON, OLMSTED & FUGLEVAND, INC.
11711 NORTHCREEK PKY S #D101
BOTHELL WA 98011-8224

ENVIRONMENTAL LAW CAUCUS
GONZAGA LAW SCHOOL
600 E SHARP AVENUE
SPOKANE WA 99202-1931

LEAGUE OF WOMEN VOTERS
315 W MISSION AVE #8
SPOKANE WA 99201-2325

SPOKANE COUNTY AIR POLLUTION
CONTROL AUTHORITY
1101 W COLLEGE AVE #230
SPOKANE WA 99201-2094

MR WILL ABERCROMBIE
HART CROWSER
1910 FAIRVIEW AVENUE E
SEATTLE WA 98102-3699

ASSIGNMENT EDITOR
KHQ TV
P O BOX 8088
SPOKANE WA 99203-0088

ASSIGNMENT EDITOR
KREM TV NEWS
P O BOX 8037
SPOKANE WA 99203-0037

ASSIGNMENT EDITOR
KXLY TV NEWS
500 W BOONE AVE
SPOKANE WA 99201-2497

ASSIGNMENT EDITOR
KXLY NEWSRADIO
500 W BOONE AVE
SPOKANE WA 99201-2497

ASSOCIATED PRESS
P O BOX 2173
SPOKANE WA 99210-2173

MS BETTY BINGHAM
4228 E RICH
SPOKANE WA 99217

MR WILLIAM R BLOOM
REMTECH, INC.
8924 W ELECTRIC AVE
SPOKANE WA 99224-9037

MR CHARLES BOYKEN, MANAGER
SPOKANE WATER DIST NO. 3
P O BOX 11187
SPOKANE WA 99211-1187

MR MALCOLM BOWIE
808 WEST SPOKANE FALLS BLVD
3RD FLOOR DEVELOPERS SERVICE
SPOKANE WA 99201

Aluminum Recycling Corporation Mailing Jan 2001

M[illegible]NGEL BROWN
1[illegible] ROAD 6 SE
WARDEN WA 98857-9608

HON LISA BROWN
WA STATE SENATOR
P O BOX 40482
OLYMPIA WA 98504-0482

MS DORIS CELLARIUS
WA ENVIRONMENTAL COUNCIL
1063 S CAPITOL SUITE 212
OLYMPIA WA 98501-1272

CITY EDITOR
THE SPOKESMAN REVIEW
P O BOX 2160
SPOKANE WA 99210-1615

HON LARRY CROUSE
WA STATE REPRESENTATIVE
P O BOX 40600
OLYMPIA WA 98504-0600

MR ALFRED DAINTY
2507 E WEILE AVE
SPOKANE WA 99207-7624

MS FLORANGELA DAVILA
SE[illegible]TTLE TIMES
P[illegible]OX 70
SEATTLE WA 98111

MR BILL DILLON
PUBLISHER
THE ADVOCATE
4001 N COOK
SPOKANE WA 99207

MS ANNE DUFFY
WA DEPARTMENT OF HEALTH
OFFICE OF TOXICS SUBSTANCES
P O BOX 47825
OLYMPIA WA 98504-7825

EDITOR
THE VALLEY HERALD
P O BOX 142020
SPOKANE WA 99214-2020

EDITOR
JOURNAL OF BUSINESS
112 E 1ST AVE
SPOKANE WA 99202

EDITOR
THE VALLEY VOICE
THE SPOKESMAN REVIEW
13208 E SPRAGUE
SPOKANE WA 99216-0844

EDITOR
THE ADVOCATE
NORTHEAST COMMUNITY CENTER
4[illegible]N COOK
SPOKANE WA 99207-5880

MS ESTER HOLMES
WEAVE
523 S DIVISION #C
SPOKANE WA 99202

Aluminum Recycling Corporation Mailing Jan 2001

MR. JAMES FOREMAN
3515 E BROAD
SPOKANE WA 99207-6801

MS BETTY FOWLER
SAFE WATER COALITION OF WA STATE
5615 W LYONS COURT
SPOKANE WA 99208-3874

MR ROB FUKAI
ENVIRONMENTAL AFFAIRS
AVISTA CORP
P O BOX 3727
SPOKANE WA 99220-3727

MR MARTY GILCHRIST
HEWLETT-PACKARD COMPANY
24001 E MISSION AVE
LIBERTY LAKE WA 99019-9599

HON JEFF GOMBOSKY
WA STATE REPRESENTATIVE
P O BOX 40600
OLYMPIA WA 98504-0600

MR CRAIG GRUENIG
LABORER LOCAL #238
1310 W ROWAN AVE
SPOKANE WA 99205-5445

MR PAUL HAMILTON
HILLYARD NEIGHBORHOOD COUNCIL
5921 N MARKET
SPOKANE WA 99207-6407

MR LARRY HAMPSON
SIERRA CLUB-SPOKANE
3118 S WINDSOR RD
SPOKANE WA 99224-5043

HON PHIL HARRIS
SPOKANE COUNTY COMMISSIONER
1116 W BROADWAY AVE
SPOKANE WA 99260-0100

MR TOM HECKLER
SPOKANE CITY FIRE DEPARTMENT
WEST 44 RIVERSIDE
SPOKANE WA 99201

HILLYARD BUSINES ASSOC.
NORTHEAST COMMUNITY CENTER
4001 N COOK
SPOKANE WA 99207-5880

HILLYARD CENTER
4410 N MARKET
SPOKANE WA 99207-5829

HILLYARD STEERING COMMITTEE
NORTHEAST COMMUNITY CENTER
4001 N COOK
SPOKANE WA 99207-5880

MR FRED HOBBS
ACME MATERIALS AND
CONSTRUCTION COMPANY
P O BOX 2503
SPOKANE WA 99220-2053

Aluminum Recycling Corporation Mailing Jan 2001

MR STEVE HOLDERBY
SPOKANE COUNTY HEALTH DEPT
1101 W COLLEGE AVE
SPOKANE WA 99201-2094

MR DAVID HOPPENS
P O BOX 40
MALO WA 99150-0040

MS SARAH HUBBARD-GRAY
HUBBARD-GRAY CONSULTING
6604 W IROQUOIS DRIVE
SPOKANE WA 99208

MR GERALD HUSBAND
421 "K" STREET SW
QUINCY WA 98848-1625

MR DICK JELTSCH
KAISER ALUMINUM MEAD WORKS
2111 E HAWTHORNE ROAD
MEAD WA 99021-9517

MS SADIE KARABA
4734 N FREYA
SPOKANE WA 99217

MR & MRS PETER L KELSEY
1[illegible] N HAMILTON
SPOKANE WA 99218-1771

MR DAL LAREVA
4225 E RICH
SPOKANE WA 99207-6765

MR ELMER LINDAHL
C/O VALLEY EQUIPMENT CO
3704 E BOONE AVE
SPOKANE WA 99202-4579

MS KAREN LINDHELDT
CENTER FOR JUSTICE
423 W FIRST AVE #240
SPOKANE WA 99201

MR KERMIT LOGAN
P O BOX 1354
MEAD WA 99021-1354

MR GARY LOWE, MANAGER
NORTH SPOKANE IRRIGATION
DISTRICT NO 8
7221 N REGAL
SPOKANE WA 99207-7897

MR GARY LUPFER
WHITWORTH WATER DIST NO 2
1[illegible]8 N WAIKIKI ROAD
SPOKANE WA 99218-2699

MS BONNIE MAGER
WA ENVIRONMENTAL COUNCIL
3 E 6TH AVE #B
SPOKANE WA 99202-1314

Aluminum Recycling Corporation Mailing Jan 2001

HON BOB MCCASLIN
WA STATE SENATOR
P O BOX 40482
OLYMPIA WA 98504-0482

HON KATE MCCASLIN
SPOKANE COUNTY COMMISSIONER
1116 W BROADWAY AVE
SPOKANE WA 99260-0100

MR TED S. McGREGOR, JR
EDITOR & PUBLISHER
THE INLANDER
1003 E TRENT, STE 110
SPOKANE WA 99202

MR DENNIS MCLAUGHLIN
16617 N PRIMROSE LANE
NINE MILE FALLS WA 99026-9386

MR RICH MEGALE
1820 S GRAHAM ROAD
MEDICAL LAKE WA 99022-9790

MR STAN MILLER
208 WATER QUALITY PROGRAM
SPOKANE CO ENGINEERING DEPT
811 N JEFFERSON
SPOKANE WA 9926-01080

CONTAMINANTS SPECIALIST
US FISH & WILDLIFE SERVICE
11103 EAST MONTGOMERY, SUITE 2
SPOKANE WA 99206

HON PATTY MURRAY
US SENATOR
601 W MAIN AVE #1213
SPOKANE WA 99201

THE LANDS COUNCIL
517 S DIVISION
SPOKANE WA 99202

NEEF
P O BOX 8221
SPOKANE WA 99203-0221

HON GEORGE NETHERCUTT
US REPRESENTATIVE
US COURTHOUSE
920 W RIVERSIDE STE 594
SPOKANE WA 99201-1008

NEWS DIRECTOR
KPBX FM
2319 N MONROE
SPOKANE WA 99205-4586

NEWS DIRECTOR
KGA AM
P O BOX 30013
SPOKANE WA 99223-3026

NEWS DIRECTOR
KAQQ AM
300 E 3RD AVE
SPOKANE WA 99202-1454

Aluminum Recycling Corporation Mailing Jan 2001

MR DOUGLAS PIERCE
HARO-ENVIRONMENTAL TECHNOLOGIES
54 NONSET PATH
ACTON MA 01720

MS MICHELLE PIRZAHDEH
COMMUNITY RELATIONS
EPA REGION 10 (HW 117)
1200 SIXTH AVE
SEATTLE WA 98101-3188

MR RICHARD PRETE
28415 N ELK CHATTAROY ROAD
CHATTAROY WA 99003

MS DIANE RASMUSSEN
SPOKANE HUMANE SOCIETY
6607 N HAVANA
SPOKANE WA 99207-7499

MR N BRUCE RAWLS
SPOKANE COUNTY UTILITIES DEPT
811 N JEFFERSON
SPOKANE WA 99260-0180

RESIDENT
3637 E RICH
SPOKANE WA 99207-6759

RESIDENT
3[illegible]E RICH
SPOKANE WA 99217

RESIDENT
3827 E RICH
SPOKANE WA 99217

RESIDENT
3809 E RICH
SPOKANE WA 99217

RESIDENT
4405 N REBECCA
SPOKANE WA 99207-6754

RESIDENT
3606 E PRINCETON
SPOKANE WA 99217

RESIDENT
3612 E PRINCETON
SPOKANE WA 99217

RESIDENT
3618 E PRINCETON
S[illegible]ANE WA 99217

RESIDENT
3703 E PRINCETON
SPOKANE WA 99217

Aluminum Recycling Corporation Mailing Jan 2001

RESIDENT
3715 E LONGFELLOW
SPOKANE WA 99217

RESIDENT
3704 E LONGFELLOW
SPOKANE WA 99217

RESIDENT
3721 E LONGFELLOW
SPOKANE WA 99217

RESIDENT
3817 E LONGFELLOW
SPOKANE WA 99217

RESIDENT
3824 E LONGFELLOW
SPOKANE WA 99217

RESIDENT
3714 E PRINCETON
SPOKANE WA 99217

RESIDENT
3629 E PRINCETONW
SPOKANE WA 99217

RESIDENT
4630 N FREYA
SPOKANE WA 99207-6807

RESIDENT
4704 N FREYA
SPOKANE WA 99207-6808

RESIDENT
4710 N FREYA
SPOKANE WA 99207-6808

RESIDENT
4714 N FREYA
SPOKANE WA 99207-6808

RESIDENT
4724 N FREYA
SPOKANE WA 99207-6808

RESIDENT
4730 N FREYA
SPOKANE WA 99207-6808

RESIDENT
3515 E WELLESLEY
SPOKANE WA 99207-6825

Aluminum Recycling Corporation Mailing Jan 2001

R)ENT
35z8 E BROAD
SPOKANE WA 99207-6801

RESIDENT
3524 E BROAD
SPOKANE WA 99207-6801

RESIDENT
3511 E BROAD
SPOKANE WA 99207-6801

RESIDENT
3503 E BROAD
SPOKANE WA 99207-6801

HON CHERI RODGERS
CITY OF SPOKANE
808 W SPOKANE FALLS BLVD
SPOKANE WA 99201-3326

HON JOHN ROSKELLEY
SPOKANE COUNTY COMMISSIONER
1116 W BROADWAY AVE
SPOKANE WA 99260-0100

SAFEWAY
4 N MARKET
SPOKANE WA 99207-5930

MR DAN SANDER
DEPARTMENT OF HEALTH
1500 W 4TH AVE #305
SPOKANE WA 99204-1639

HON LYNN SCHINDLER
WA STATE REPRESENTATIVE
P O BOX 40600
OLYMPIA WA 98504-0600

MR BRUCE A SHEPPARD
BNSF
2454 OCCIDENTAL AVE S #1A
SEATTLE WA 98134-1451

MS SALLY A SIMMONS
2821 E VINEYARD DRIVE
PASCO WA 99301-9669

MS BRIGHTSPIRIT
ROUTE 3, BOX 74-F
DAVENPORT WA 99122

MR ALLEN SWANSON
MEAD SCHOOL DIST
1 `S N FREYA
M D WA 99021-9606

MR CARL SWANSON
SWANSON HAY COMPANY
3421 E HAWTHORNE ROAD
MEAD WA 99021-9593

Aluminum Recycling Corporation Mailing Jan 2001

HON JOHN POWERS
MAYOR OF THE CITY OF SPOKANE
808 W SPOKANE FALLS BLVD
SPOKANE WA 99201-3333

MR JERRY THAYER
WILDER ENVIRONMENTAL
1525 EAST MARINE VIEW DRIVE
EVERETT WA 98201-1927

MS JANET TU
WALL STREET JOURNAL
2101 4TH AVENUE, SUITE 1830
SEATTLE WA 98121

MR RICHARD D WILLIAMS
1200 WASHINGTON TRUST FINANCIAL CENTER
717 W SPRAGUE AVE
SPOKANE WA 99204-0471

HON ALEX WOOD
WA STATE REPRESENTATIVE
P O BOX 40600
OLYMPIA WA 98504-0600

APPENDIX C

GLOSSARY

Agreed Order: A legal document issued by Ecology which formalizes an agreement between the department and potentially liable persons (PLPs) for the actions needed at a site. An agreed order is subject to public comment. If an order is substantially changed, an additional comment period is provided

Applicable State and Federal Law: All legally applicable requirements and those requirements that Ecology determines are relevant and appropriate requirements.

Area Background: The concentrations of hazardous substances that are consistently present in the environment in the vicinity of a site which are the result of human activities unrelated to releases from that site.

Carcinogen: Any substance or agent that produces or tends to produce cancer in humans.

Chronic Toxicity: The ability of a hazardous substance to cause injury or death to an organism resulting from repeated or constant exposure to the hazardous substance over an extended period of time.

Cleanup: The implementation of a cleanup action or interim action.

Cleanup Action: Any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with cleanup levels; utilizes permanent solutions to the maximum extent practicable; and includes adequate monitoring to ensure the effectiveness of the cleanup action.

Cleanup Action Plan: A document which identifies the cleanup action and specifies cleanup standards and other requirements for a particular site. After completion of a comment period on a Draft Cleanup Action Plan, Ecology will issue a final Cleanup Action Plan.

Cleanup Level: The concentration of a hazardous substance in soil, water, air or sediment that is determined to be protective of human health and the environment under specified exposure conditions.

Cleanup Process: The process for identifying, investigating, and cleaning up hazardous waste sites.

Consent Decree: A legal document, approved and issued by a court which formalizes an agreement reached between the state and potentially liable persons (PLPs) on the

actions needed at a site. A decree is subject to public comment. If a decree is substantially changed, an additional comment period is provided.

Containment: A container, vessel, barrier, or structure, whether natural or constructed, which confines a hazardous substance within a defined boundary and prevents or minimizes its release into the environment.

Contaminant: Any hazardous substance that does not occur naturally or occurs at greater than natural background levels.

Enforcement Order: A legal document, issued by Ecology, requiring remedial action. Failure to comply with an enforcement order may result in substantial liability for costs and penalties. An enforcement order is subject to public comment. If an enforcement order is substantially changed, an additional comment period is provided.

Environment: Any plant, animal, natural resource, surface water (including underlying sediments), ground water, drinking water supply, land surface (including tidelands and shorelands) or subsurface strata, or ambient air within the state of Washington.

Exposure: Subjection of an organism to the action, influence or effect of a hazardous substance (chemical agent) or physical agent.

Exposure Pathways: The path a hazardous substance takes or could take form a source to an exposed organism. An exposure pathway describes the mechanism by which an individual or population is exposed or has the potential to be exposed to hazardous substances at or originating from the site. Each exposure pathway includes an actual or potential source or release from a source, an exposure point, and an exposure route. If the source exposure point differs from the source of the hazardous substance, exposure pathway also includes a transport/exposure medium.

Facility: Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed or, placed, or otherwise come to be located.

Feasibility Study (FS): A study to evaluate alternative cleanup actions for a site. A comment period on the draft report is required. Ecology selects the preferred alternative after reviewing those documents.

Free Product: A hazardous substance that is present as a nonaqueous phase liquid (that is, liquid not dissolved in water).

Groundwater: Water found beneath the earth's surface that fills pores between materials such as sand, soil, or gravel. In aquifers, groundwater occurs in sufficient quantities that it can be used for drinking water, irrigation, and other purposes.

Hazardous Sites List: A list of sites identified by Ecology that requires further remedial action. The sites are ranked from 1 to 5 to indicate their relative priority for further action.

Hazardous Substance: Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) (any discarded, useless, unwanted, or abandoned substances including, but not limited to, certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes; (a) have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or (b) are corrosive, explosive, flammable, or may generate pressure through decomposition or other means,) and (6) (any dangerous waste which (a) will persist in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard and may affect the genetic makeup of man or wildlife; and is highly toxic to man or wildlife; (b) if disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment), or any dangerous or extremely dangerous waste as designated by rule under Chapter 70.105 RCW: any hazardous substance as defined in RCW 70.105.010 (14) (any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as described in rules adopted under this chapter,) or any hazardous substance as defined by rule under Chapter 70.105 RCW; petroleum products.

Hazardous Waste Site: Any facility where there has been a confirmation of a release or threatened release of a hazardous substance that requires remedial action.

Independent Cleanup Action: Any remedial action conducted without Ecology oversight or approval, and not under an order or decree.

Initial Investigation: An investigation to determine that a release or threatened release may have occurred that warrants further action.

Interim Action: Any remedial action that partially addresses the cleanup of a site.

Mixed Funding: Any funding, either in the form of a loan or a contribution, provided to potentially liable persons from the state toxics control account.

Model Toxics Control Act (MTCA): Washington State's law that governs the investigation, evaluation and cleanup of hazardous waste sites. Refers to RCW 70.105D. It was

approved by voters at the November 1988 general election and known is as Initiative 97. The implementing regulation is WAC 173-340.

Monitoring Wells: Special wells drilled at specific locations on or off a hazardous waste site where groundwater can be sampled at selected depths and studied to determine the direction of groundwater flow and the types and amounts of contaminants present.

Natural Background: The concentration of hazardous substance consistently present in the environment which has not been influenced by localized human activities.

National Priorities List (NPL): EPA's list of hazardous waste sites identified for possible long-term remedial response with funding from the federal Superfund trust fund.

Owner or Operator: Any person with any ownership interest in the facility or who exercises any control over the facility; or in the case of an abandoned facility, any person who had owned or operated or exercised control over the facility any time before its abandonment.

Polynuclear Aromatic Hydrocarbon (PAH): A class of organic compounds, some of which are long-lasting and carcinogenic. These compounds are formed from the combustion of organic material and are ubiquitous in the environment. PAHs are commonly formed by forest fires and by the combustion of fossil fuels.

Potentially Liable Person (PLP): Any person whom Ecology finds, based on credible evidence, to be liable under authority of RCW 70.105D.040.

Public Notice: At a minimum, adequate notice mailed to all persons who have made a timely request of Ecology and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the local (city or county) newspaper of largest circulation; and opportunity for interested persons to comment.

Public Participation Plan: A plan prepared under the authority of WAC 173-340-600 to encourage coordinated and effective public involvement tailored to the public's needs at a particular site.

Recovery By-Products: Any hazardous substance, water, sludge, or other materials collected in the free product removal process in response to a release from an underground storage tank.

Release: Any intentional or unintentional entry of any hazardous substance into the environment, including, but not limited to, the abandonment or disposal of containers of hazardous substances.

Remedial Action: Any action to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment, including any investigative and monitoring activities of any release or threatened release of a hazardous substance and any health assessments or health effects studies.

Remedial Investigation: A study to define the extent of problems at a site. When combined with a study to evaluate alternative cleanup actions it is referred to as a Remedial Investigation/Feasibility Study (RI/FS). In both cases, a comment period on the draft report is required.

Responsiveness Summary: A compilation of all questions and comments to a document open for public comment and their respective answers/replies by Ecology. The Responsiveness Summary is mailed, at a minimum, to those who provided comments and its availability is published in the Site Register.

Risk Assessment: The determination of the probability that a hazardous substance, when released into the environment, will cause an adverse effect in exposed humans or other living organisms.

Sensitive Environment: An area of particular environmental value, where a release could pose a greater threat than in other areas including: wetlands; critical habitat for endangered or threatened species; national or state wildlife refuge; critical habitat, breeding or feeding area for fish or shellfish; wild or scenic river; rookery; riparian area; big game winter range.

Site: See Facility.

Site Characterization Report: A written report describing the site and nature of a release from an underground storage tank, as described in WAC 173-340-450 (4) (b).

Site Hazard Assessment (SHA): An assessment to gather information about a site to confirm whether a release has occurred and to enable Ecology to evaluate the relative potential hazard posed by the release. If further action is needed, an RI/FS is undertaken.

Site Register: Publication issued every two weeks of major activities conducted statewide related to the study and cleanup of hazardous waste sites under the Model Toxics Control Act. To receive this publication, please call (360) 407-7200.

Surface Water: Lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the state of Washington or under the jurisdiction of the state of Washington.

TCP: Toxics Cleanup Program at Ecology

Total Petroleum Hydrocarbons (TPH): A scientific measure of the sum of all petroleum hydrocarbons in a sample (without distinguishing one hydrocarbon from another). The "petroleum hydrocarbons" include compounds of carbon and hydrogen that are derived from naturally occurring petroleum sources or from manufactured petroleum products (such as refined oil, coal, and asphalt).

Toxicity: The degree to which a substance at a particular concentration is capable of causing harm to living organisms, including people, plants and animals.

Underground Storage Tank (UST): An underground storage tank and connected underground piping as defined in the rules adopted under Chapter 90.76 RCW.

Washington Ranking Method (WARM): Method used to rank sites placed on the hazardous sites list. A report describing this method is available from Ecology.

EXHIBIT 18

KAISER ALUMINUM

JOHN M. DONNAN
Senior Vice President, Secretary and General Counsel

August 20, 2008

Via Federal Express

Sandra Treccani, Toxics Cleanup Program
Eastern Regional Office
WA Department of Ecology
4601 N. Monroe
Spokane, WA 99205

Re: "Aluminum Recycling – Trentwood," 2317 N Sullivan Rd, Veradale, WA 99037; July 23, 2008 Notice of Potential Liability under the Model Toxics Control Act

Dear Ms. Treccani:

On behalf of Kaiser Aluminum & Chemical Corporation LLC ("KACCLLC"), successor-in-interest to Kaiser Aluminum & Chemical Corporation ("KACC"), I am responding to your July 23, 2008 Notice of Potential Liability (the "Notice") concerning the above-referenced site (the "Site"). The Notice explains that Washington Department of Ecology has identified Kaiser Aluminum as a Potentially Liable Person ("PLP") at the Site. For the reasons outlined below, KACCLLC respectfully challenges its status as a PLP at the Site and declines to participate in the proposed process described in your Notice.

On February 12, 2002, KACC, along with several affiliated companies, filed for reorganization under chapter 11 of the United States Bankruptcy Code. As part of certain restructuring transactions consummated in connection with KACC's plan of reorganization, KACC was merged into KACCLLC in 2006 and thus KACCLLC is the successor-in-interest to KACC.

The liabilities asserted against KACC concerning the Site were discharged pursuant to the plan of reorganization (the "Plan") applicable to KACC and the February 6, 2006 order of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") confirming the Plan (the "Confirmation Order").[1] Of further note, the injunctions the Bankruptcy Court issued in connection with confirmation of the Plan permanently enjoin all entities from commencing or continuing any action or other proceeding against, *inter alia*, KACC or KACCLLC on account of any claim or liability arising on or before the July 6, 2006 effective date of the Plan (the "Effective Date"). All of the acts that allegedly caused the contamination at the Site occurred and any claims against KACC relating to the environmental conditions at the Site arose well before the Effective Date.

[1] The United States District Court for the District of Delaware entered an order affirming the Confirmation Order on May 11, 2006. The Plan became effective on July 6, 2006.

27422 Portola Parkway, Suite 350
Foothill Ranch, California 92610-2831
Tel (949) 614-1767
Fax (949) 614-1867

Further, on August 17, 2003, KACC entered into a multi-site consent decree (the "Consent Decree") with the United States, on behalf of USEPA and certain other federal agencies; certain states, including the State of Washington; and the Puyallup Tribe of Indians.[2] The Bankruptcy Court approved the Consent Decree on October 27, 2003. A copy of the Consent Decree is enclosed for your convenience.

The Consent Decree categorizes each site with respect to which KACC has been or could be alleged to be responsible for environmental contamination as either a Liquidated Site, a Discharged Site, a Debtor-Owned Site, a Reserved Site or an Additional Site (as each such term is defined in the Consent Decree). The Aluminum Recycling Site would be classified as an Additional Site. Accordingly, KACC's alleged liability for the Site was discharged under section 1141 of the United States Bankruptcy Code by the confirmation of the Plan, and KACC no longer is obligated to participate in clean-up activities or subject to orders to do so. *See* CONSENT DECREE, ¶ 7. There is a process for potential allowance of a monetary claim, which would be liquidated and satisfied in the same manner and at the same rate as were prepetition, general unsecured claims in KACC's Bankruptcy proceedings. *See id.*, ¶ 8. However, this process is different from that outlined in the Notice.

Sincerely,

John M. Donnan
Senior Vice President, Secretary, and General Counsel
Kaiser Aluminum & Chemical Corporation LLC

enclosure—as stated.

[2] The United States published notice of the proposed Consent Decree in the Federal Register at 68 Fed. Reg. 51596 (Aug. 27, 2003).

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re:	Jointly Administered
KAISER ALUMINUM CORPORATION, a Delaware corporation, et al.,	Case No. 02-10429 (JKF)
Debtors.	Chapter 11

CONSENT DECREE

WHEREAS Kaiser Aluminum Corporation ("KAC") and certain of its affiliates, including debtor-in-possession, Kaiser Aluminum & Chemical Corporation ("KACC"), (collectively the "Debtors") filed with the United States Bankruptcy Court for the District of Delaware (the "Court" or "Bankruptcy Court") voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code") on various dates as set forth in Attachment A hereto, which cases have been consolidated for procedural purposes and are being administered jointly, styled *In re Kaiser Aluminum Corporation, et al.*, Case No. 02-10429 (JKF) (the "Chapter 11 Cases");

WHEREAS the United States, on behalf of the United States Environmental Protection Agency ("EPA"), the Department of Interior ("DOI") and the National Oceanic and Atmospheric Administration ("NOAA") (collectively, the "Settling Federal Agencies"), contends that the Debtors are liable for response costs incurred and to be incurred by the United States in the course of responding to releases and threats of releases of hazardous substances into the environment for the Liquidated Sites as set forth herein and natural resource damages relating to such sites;

WHEREAS the United States, on behalf of EPA, DOI, NOAA and the Nuclear Regulatory Commission ("NRC"), has filed a proof of claim, Claim No. 7135, against the Debtors ("Claim No. 7135");

WHEREAS the States of California, Rhode Island and Washington (the "States") contend that the Debtors are liable for response costs incurred and to be incurred by the States in the course of responding to releases and threats of releases of hazardous substances into the environment for certain of the Liquidated Sites as set forth herein and natural resource damages relating to such sites;

WHEREAS the State of California has filed a proof of claim, Claim No. 7297, against KACC ("Claim No. 7297");

WHEREAS the State of Rhode Island has filed a proof of claim, Claim No. 7111, against the Debtors ("Claim No. 7111");

WHEREAS the State of Washington has filed a proof of claim, Claim No. 7181, against KAC ("Claim No. 7181");

WHEREAS the Puyallup Tribe of Indians (the "Tribe") contends that the Debtors are liable for natural resource damages relating to a certain Liquidated Site as set forth herein and has filed a proof of claim, Claim No. 1727, against KAC ("Claim No. 1727");

WHEREAS the Debtors would dispute the United States', the States', and the Tribe's contentions and would object, in whole or in part, to their proofs of claim;

WHEREAS the Debtors seek, to the maximum extent permitted by law, to obtain protection, through the resolution of environmental liabilities for the Liquidated Sites as set forth herein, from and against all Claims that have been or may in the future be asserted for response costs or natural resource damages;

WHEREAS the Debtors, the Settling Federal Agencies, the States, and the Tribe wish to resolve their differences with respect to the Liquidated Sites and with respect to the proofs of claim of the Settling Federal Agencies, the States, and the Tribe, as well as to address other issues relating to environmental matters as provided herein;

WHEREAS in consideration of, and in exchange for, the promises and covenants herein, including, without limitation, the covenants not to sue set forth in Paragraphs 18, 20 and 24 and,

subject to the provisions of Paragraphs 28-30 and intending to be legally bound hereby, the Debtors, the Settling Federal Agencies, the States and the Tribe hereby agree to the terms and provisions of this Consent Decree;

WHEREAS settlement of the matters governed by this Consent Decree is in the public interest and an appropriate means of resolving these matters and will lead to a more expeditious cleanup of hazardous substances in compliance with federal and state laws and regulations, including cleanup standards under Wash. Rev. Code § 70.105D.030(2)(e);

NOW, THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the parties to this Consent Decree by their attorneys and authorized officials, it is hereby agreed as follows:

DEFINITIONS

1. In this Agreement, the following terms shall have the following meanings:

A. "Additional Sites" means all sites and properties, including, without limitation, all facilities, as that term is defined in CERCLA, other than the Liquidated Sites, the Discharged Sites, the Debtor-Owned Sites and the Reserved Sites. An "Additional Site" shall be construed to include (i) for those sites now or hereafter included on the NPL, all areas of a site as defined by EPA for purposes of the NPL, including any later expansion of such site as may be determined by EPA, and any affected natural resources, and (ii) for those sites or portions of sites not included on the NPL, all areas and natural resources affected or potentially affected by the release or threatened release of hazardous substances.

B. "Allowed General Unsecured Claim" against a particular Debtor shall have the meaning set forth in the Plan of Reorganization.

C. "CERCLA" refers to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*, as now in effect or hereafter amended.

D. "Claims" has the meaning provided in Section 101(5) of the Bankruptcy Code.

E. "Debtors" means Kaiser Aluminum Corporation and certain of its affiliates listed on Attachment A hereto that filed voluntary petitions for relief on the respective dates set forth on Attachment A hereto, as debtors, debtors-in-possession or in a new or reorganized form as a result of the Chapter 11 Cases.

F. "Debtor-Owned Sites" means any properties, facilities or sites owned by any of the Debtors at or at any time after the confirmation of the Plan of Reorganization, except that Debtor-Owned Sites shall not include any Reserved Sites as defined below.

G. "Discharged Sites" means the following 18 sites (in alphabetical order) which shall have the Claims treatment set forth in Paragraph 17:

- American Barrel/ Utah Power & Light in Salt Lake City, UT
- Brantley Landfill in Island, KY
- Colorado School of Mines in Denver, CO
- Des Moines Barrel & Drum Site in Des Moines, IA
- Fike-Artel Chemical Site in Nitro, WV
- Hillyard Processing (aka Aluminum Recycling Corp.) in Spokane, WA (with respect to the State of Washington only)
- J.I.S. Landfill in Jamesburg, NJ
- Kaiser Center in Oakland, CA (with respect to the State of California only)
- Kin-Buc Landfill in Edison, NJ
- Lawrence County Landfill in Lawrence County, IN
- Many Diversified Interests in Houston, TX
- Marco of Iota in Iota, LA
- Metro Container in Trainer, PA
- Mexico Feed & Seed/ Pierce Waste Oil Services in Mexico, MO
- Miami County Incinerator in Troy, OH
- New Lyme Landfill in New Lyme, OH

- North American Environmental in Clearfield, UT
- Pottstown in Pottstown, PA.

A "Discharged Site" delineated above shall be construed to include (i) for those sites now or hereafter included on the NPL, all areas of a site as defined by EPA for purposes of the NPL, including any later expansion of such site as may be determined by EPA, and any affected natural resources, or (ii) for those sites or portions of sites not included on the NPL, all areas and natural resources affected or potentially affected by the release or threatened release of hazardous substances.

H. "DOI" means the Department of the Interior of the United States of America or any legal successor thereto.

I. "EPA" means the United States Environmental Protection Agency or any legal successor thereto.

J. "Effective Date" means the date on which this Consent Decree is approved by the Bankruptcy Court.

K. "Effective Date of the Plan of Reorganization" means the date on which any plan of reorganization that includes KACC and is confirmed becomes effective in accordance with its terms.

L. "KACC" means Kaiser Aluminum & Chemical Corporation as debtor, debtor-in-possession or in a new or reorganized form as a result of the Chapter 11 Cases.

M. "Liquidated Sites'' means the following 66 sites (in alphabetical order) which shall have the Claims treatment as set forth in Paragraphs 4(A), 4(B) or 4(C) below, as noted in parentheses:

- Aberdeen Pesticide Dumps Superfund Site in Aberdeen, NC (Paragraph 4(C))
- American Chemical Services in Griffith, IN (Paragraph 4(B))
- Aqua Tech Environmental Inc. in Greer, SC (Paragraph 4(B))
- ARRCOM Corporation in Kootenai County, ID (Paragraph 4(B))

- Bay Area Drum Site in San Francisco, CA (Paragraph 4(C))
- Bay Drums (aka Peak Oil Co.) in Brandon, FL (Paragraph 4(C))
- Bayou Sorrel in Bayou Sorrell, LA (Paragraph 4(C))
- Breslube Penn Superfund Site in Coroapolis, PA (Paragraph 4(C))
- Cannons Engineering Corporation in Bridgewater, MA, Plymouth, MA and Londonderry, NH and Gilson Road, aka Sylvester's in Nashua, NH (Paragraph 4(B))
- Casmalia Disposal Site in Santa Barbara County, CA (Paragraph 4(C))
- Center for Technology (aka CFT or Pleasanton Center for Technology) in Pleasanton, CA (Paragraph 4C)) (with respect to the State of California only)
- Chemical Control Superfund Site in Elizabeth, NJ (Paragraph 4(B))
- Chemical Handling Corporation in Broomfield, CO; (Paragraph 4(B))
- Coastal Radiation Services in St. Gabriel, LA (Paragraph 4(C))
- Combustion Inc. in Livingston, LA (Paragraph 4(C))
- Commencement Bay (Hylebos Waterway) in Tacoma, WA (Paragraph 4(C))
- Commercial Oil Services in Toledo, OH (Paragraph 4B))
- Custom Distribution Services in Perth Amboy, NJ (Paragraph 4(A))
- Diamond State Salvage Yard in Wilmington, DE (Paragraph 4(A))
- Doepke-Holliday in Johnson County, KS (Paragraph 4(B))
- Douglassville Disposal/ Berks Reclamation in Douglassville, PA (Paragraph 4(C))
- Dubose Oil Products Superfund Site in Cantonment, FL (Paragraph 4(C))
- Dutchtown Refinery in Dutchtown, LA (Paragraph 4(C))
- Eastern Diversified Metals Superfund Site in Hometown, PA (Paragraph 4(C))
- Ekotek (aka Petrochem Recycling) in Salt Lake City, UT (Paragraph 4(B))
- Ellis Road in Jacksonville, FL (Paragraph 4(B))

- Envirotek II in Tonawanda, NY (Paragraph 4(B))
- Ettlinger's Pit in Duval County, FL (Paragraph 4(A))
- Four County Landfill in De Long, IN (Paragraph 4(B))
- French Limited in Crosby, TX (Paragraph 4(B))
- Geigy Superfund Site in Aberdeen, NC (Paragraph 4(C))
- General Refining in Garden City, GA (Paragraph 4(A))
- Gibson Environmental, Inc. in Bakersfield, CA (Paragraph 4(C))
- Great Lakes Container in St. Louis, MO (Paragraph 4(A))
- Higgins Disposal in Somerset County, NJ (Paragraph 4(A))
- Hillsdale Drums in Hillsdale and Amite, LA (Paragraph 4(B))
- Huth Oil Services in Cleveland, OH (Paragraph 4(C))
- Laskin Poplar in Ashtabula County, OH (Paragraph 4(B))
- Liquid Disposal in Utica, MI (Paragraph 4(B))
- Liquid Dynamics in Chicago, IL (Paragraph 4(C))
- Lorentz Barrel & Drum in San Jose, CA (Paragraphs 4(B))
- Marzone in Tipton, GA (Paragraph 4(C))
- Metamora Landfill in Lapeer County, MI (Paragraph 4(A))
- Moyer's Landfill in Collegeville, PA (Paragraph 4(B))
- Operating Industries, Inc. Corporation in Monterey Park, CA (Paragraph 4(B))
- Pickettville Road Landfill Site in Jacksonville, FL (Paragraph 4(C))
- PRC Patterson in Patterson, CA (Paragraph 4(C))
- Pristine, Inc. in Reading, OH (Paragraph 4(B))
- Quicksilver Products, Inc. in Brisbane, CA (Paragraph 4(A)) (with respect to the State of California only)
- Richmond Railyard in Richmond, CA (Paragraph 4(A))

- Richmond Shipyard No. 2 (aka Marina Bay Development) in Richmond, CA (Paragraph 4(C))
- Rouse Steel Drums in Jacksonville, FL (Paragraph 4(B))
- Sadler Drum Superfund Site in Mulberry, FL (Paragraph 4(C))
- Sand Springs Petrochemical Complex in Sand Springs, OK (Paragraph 4(B))
- Sea Cliff Marina in Richmond, CA (Paragraph 4(A)) (with respect to the State of California only)
- Spokane Junkyard in Spokane, WA (Paragraph 4(C))
- Stickney Ave. Landfill & Tyler St. Dump in Toledo, OH (Paragraph 4(A))
- Tacoma Reduction Facility in Tacoma, WA (Paragraph 4(A))
- Tex-Tin in Texas City, TX (Paragraph 4(C))
- Tremont City Landfill in Clark County, OH (Paragraph 4(C))
- Tri-County and Elgin Landfills in South Elgin, IL (Paragraph 4(C))
- Waste, Inc. Landfill in Michigan City, IN (Paragraph 4(A))
- West County Landfill Site in Contra Costa County, CA (Paragraph 4(B))
- West Virginia Ordnance Works (aka Point Pleasant Landfill) in Mason County, WV (Paragraph 4(C))
- XTRON in Blanding, UT (Paragraph 4(B))
- Yellow Water Road Superfund Site in Baldwin, FL (Paragraph 4(B))

A "Liquidated Site" delineated above shall be construed to include (i) for those sites now or hereafter included on the NPL, all areas of a site as defined by EPA for purposes of the NPL, including any later expansion of such site as may be determined by EPA, and any affected natural resources, or (ii) for those sites or portions of sites not included on the NPL, all areas and natural resources affected or potentially affected by the release or threatened release of hazardous substances.

N. "NOAA" means the National Oceanic and Atmospheric Administration of the United States Department of Commerce of the United States of America or any legal successor thereto.

O. "NPL" means the National Priorities List, 40 C.F.R. Part 300.

P. "NRC" means the Nuclear Regulatory Commission of the United States or any legal successor thereto.

Q. "Plan of Reorganization" or "Plan" means any plan of reorganization that includes KACC and is confirmed and becomes effective in the Chapter 11 Cases.

R. "Prepetition" with respect to a Debtor refers to the time period on or prior to the date such Debtor filed a voluntary petition for relief under Title 11 of the Bankruptcy Code, as set forth in Attachment A hereto. "Postpetition" with respect to a Debtor refers to the time period from and after the date such Debtor filed a voluntary petition for relief under Title 11 of the Bankruptcy Code, as set forth in Attachment A hereto.

S. "RCRA" refers to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* as now in effect or hereafter amended.

T. "Reserved Sites" means the following sites: Mead Aluminum Reduction Works in Mead, WA; Spokane River (including Upriver Dam) in Spokane, WA; Mica Landfill in Spokane, WA; Tulsa Thorium Remediation Site # 9875 (aka Specialty Products Site) in Tulsa, OK; Ravenswood Aluminum Smelter and Rolled Products Facility in Ravenswood, WV; and Ohiopyle in Ohiopyle, PA.

U. "Settling Federal Agencies" means, collectively, DOI, EPA and NOAA.

V. "Similar State Laws and Tribal Laws" shall include, but not be limited to: the Hazardous Substance Account Act, Cal. Health & Safety Code section 25300 et seq.; the Rhode Island Hazardous Waste Management Act of 1978, R.I. Gen. Laws ch. 23-19.1 et seq.; the Rhode Island Groundwater Protection Act of 1985, R.I. Gen. Laws ch. 46-13.1 et seq.; the Rhode Island Water Pollution Act, R.I. Gen. Laws ch. 46-12 et seq.; the Washington State Model

Toxics Control Act, RCW 70.105D; and the Puyallup Tribal Interim Hazardous Substances Control Act, Puyallup Tribal Code, Title 10, Chapter 1.

W. State of California means, collectively, the California Department of Toxic Substances Control ("DTSC") and the California Department of Fish and Game ("DFG").

X. State of Rhode Island means the Rhode Island Department of Environmental Management.

Y. State of Washington means, collectively, the Washington State Department of Ecology and the Washington State Department of Fish & Wildlife.

Z. "States" means the State of California, the State of Rhode Island and the State of Washington.

AA. "Tribe" means the Puyallup Tribe of Indians.

BB. "United States" means the United States of America, including EPA, DOI, NOAA, NRC and all of the United States' agencies, departments and instrumentalities.

JURISDICTION

2. The Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§157, 1331, and 1334, and 42 U.S.C. §§9607 and 9613(b).

PARTIES BOUND; SUCCESSION AND ASSIGNMENT

3. This Consent Decree applies to, is binding upon, and shall inure to the benefit of the United States, the States, the Tribe, the Debtors, and the Debtors' legal successors and assigns, and any trustee, examiner or receiver appointed in the Bankruptcy Cases.

ALLOWANCE OF CLAIMS

4. In settlement and satisfaction of the Claims of the Settling Federal Agencies, the States and the Tribe under CERCLA, Section 7003 of RCRA and all Similar State Laws and Tribal Laws with respect to the Liquidated Sites, the Debtors consent to Allowed General Unsecured Claims against KACC in the amounts set forth in Paragraphs 4(A), 4(B) and 4(C) below. The Settling Federal Agencies, the States and the Tribe shall receive no distributions

from the Debtors in the Chapter 11 Cases with respect to any Debtor's liabilities and obligations under CERCLA, Section 7003 of RCRA and Similar State Laws and Tribal Laws for the Liquidated Sites other than as set forth in this Consent Decree. If no amount of allowed claim is listed below for EPA, DOI, NOAA, NRC, the Tribe, DTSC, DFG, or the State of Washington for a particular Liquidated Site, then the amount of the allowed claim for such entity for the Liquidated Site is zero.

A. With respect to the following Liquidated Sites, the following parties shall have Allowed General Unsecured Claims in the amount of zero ($ 0) because the parties agree that a settlement for no liability under CERCLA, Section 7003 of RCRA and Similar State Laws and Tribal Laws for such Liquidated Sites is appropriate:

Site Name and Location	EPA Region	Claim Recipient	Amount of Allowed General Unsecured Claim
Custom Distribution Services, Perth Amboy, NJ	2	EPA	$ 0
Diamond State Salvage Yard, Wilmington, DE	3	EPA	$ 0
Ettlinger's Pit, Duval County, FL	4	EPA	$ 0
General Refining, Garden City, GA	4	EPA	$ 0
Great Lakes Container, St. Louis, MO	7	EPA	$ 0
Higgins Disposal, Somerset County, NJ	2	EPA	$ 0
Metamora Landfill, Lapeer County, MI	5	EPA	$ 0
Quicksilver Products, Inc., Brisbane, CA (with respect to State of CA only)	9	CA	$ 0
Richmond Railyard, Richmond, CA	9	CA	$ 0

Site Name and Location	EPA Region	Claim Recipient	Amount of Allowed General Unsecured Claim
Sea Cliff Marina, Richmond, CA (with respect to State of CA only)	9	CA	$ 0
Stickney Ave. Landfill & Tyler St. Dump, Toledo, OH	5	EPA	$ 0
Tacoma Reduction Facility, Tacoma, WA	10	WA EPA	$ 0 $ 0
Waste, Inc. Landfill, Michigan City, IN	5	EPA	$ 0

B. With respect to the following Liquidated Sites, the following parties shall have Allowed General Unsecured Claims in the amount of zero ($ 0) because the parties agree that such a settlement is appropriate on account of payments previously made by KACC, including in the amounts, on the dates and to the recipients listed below:

Site Name and Location	Claim Recipient	Amount(s) of Payments Made	Date(s) of Payments	Recipient(s) of Payments
American Chemical Services, Griffith, IN	EPA	$8,726.35	1/17/95	American National Bank and Trust Company of Chicago Corporate Trust Division (cc EPA 5)
Aqua Tech Environmental Inc., Greer, SC	EPA	$4,000	11/11/93 to 9/11/95	Aqua-Tech PRP Group Trust Fund
ARRCOM Corporation, Kootenai County, ID	EPA	$234,600	4/6/92	Mellon Bank, Superfund Accounting, US EPA Region 10

Site Name and Location	Claim Recipient	Amount(s) of Payments Made	Date(s) of Payments	Recipient(s) of Payments
Cannons Engineering Corporation in Bridgewater, MA, Plymouth, MA and Londonderry, NH and Gilson Road, aka Sylvester's in Nashua, NH	EPA	$41,746.80 $4,745.88 $4,005.30	8/88	EPA, Massachusetts, New Hampshire
Chemical Control Superfund Site, Elizabeth, NJ	EPA	$250 $2,500 $1,000 $2,475 $6,000 $160,002.07 $120,886.42	5/24/89 5/24/89 5/24/89 8/26/91 8/27/90 11/22/91 11/11/98	Chemical Control Joint Admin Fund State Chem Control Joint Defense Fund Fed Chem Control Joint Defense Fund Chemical Control PRP Group Admin Fund Richard White, Esq. Of Putnam, Hayes & Bartlett, Inc. Chemical Control PRP Trust Fund, Chemical Control State Settlement Escrow Account
Chemical Handling Corporation, Broomfield, CO	EPA	$106.10	9/30/96	EPA Hazardous Substance Superfund
Commercial Oil Services, Toledo, OH	EPA	$61,064.42	6/24/88 to 3/2/94	Commercial Oil Services Steering Committee
Doepke-Holliday, Johnson County, KS	EPA	$15,000	1/17/95	Holliday Remediation Task Force
Ekotek (aka Petrochem Recycling), Salt Lake City, UT	EPA	$250	5/18/94	Ekotek Site Remediation Committee

Site Name and Location	Claim Recipient	Amount(s) of Payments Made	Date(s) of Payments	Recipient(s) of Payments
Ellis Road, Jacksonville, FL	EPA	$8,235.93	2/9/89 to 5/8/92	Ellis Road Steering Committee Trust Fund
Envirotek II, Tonawanda, NY	EPA	$250	3/18/91	Sent to Saperston & Day of Buffalo, NY - administrators of Envirotek II Escrow Fund
Four County Landfill, De Long, IN	EPA	$3,000	5/8/99	Four County Landfill Operable Unit One RD RA Group
French Limited, Crosby, TX	EPA	$540	4/27/93	FLTG, Inc. Coopers & Lybrand, Trustee
Hillsdale Drums Hillsdale and Amite, LA	EPA	$20,000 $786.87	6/27/94 6/27/94	Texas Commerce Bank Nat'l Assn Hillsdale Group Administrative Fund
Laskin Poplar, Ashtabula County, OH	EPA	$13,500 $4,034	10/27/87 11/18/94 to 6/1/00	October 1986 Laskin Settlement Trust Fund Laskin Final Remediation Trust Fund
Liquid Disposal, Utica, MI	EPA	$1,250 $17,940.01	12/19/85 to 9/21/87 2/22/90	LDI PRP Admin Fund LDI De Minimis Settlement Fund
Lorentz Barrel & Drum, San Jose, CA	EPA CA (DTSC)	$5,447.75 $2,563.65	10/18/96	Lorentz Superfund Site De minimis Escrow Acct
Moyer's Landfill, Collegeville, PA	EPA	$178,479 $33,996	11/97 11/5/97	U.S. Dept. of Justice Hazardous Sites Cleanup Fund, Commonwealth Environmental Cleanup Program

Site Name and Location	Claim Recipient	Amount(s) of Payments Made	Date(s) of Payments	Recipient(s) of Payments
Operating Industries, Inc. Corporation, Monterey Park, CA	EPA	$122,148	1/14/99	OII Fifth Partial Consent Decree Escrow Account
Pristine, Inc., Reading, OH	EPA	$2,000 $250	11/19/90 9/3/93	Pristine Facility 468B Trust Fund Pristine City Steering Committee Repository Acct
Rouse Steel Drums, Jacksonville, FL	EPA	$16,076.94	8/11/00	Rouse Steel Drum PRP Group
Sand Springs Petrochemical Complex, Sand Springs, OK	EPA	$500 $5,375	9/21/87 2/22/91	Sand Springs Superfund PRP Group Sand Springs Superfund PRP Trust
West County Landfill Site, Contra Costa County, CA	CA (DTSC)	$213,000	2/10/97	West County Landfill Premium Fund
XTRON, Blanding, UT	EPA	$20,000	8/27/91	Participating Respondents Xtron Site Account
Yellow Water Road Superfund Site, Baldwin, FL	EPA	$41,629.50	5/6/94 to 5/7/94	EPA Hazardous Substance

C. With respect to the following Liquidated Sites, the following parties shall have Allowed General Unsecured Claims in the amounts set forth below:

Site Name and Location	EPA Region	Claim Recipient	Amount of Allowed General Unsecured Claim
Aberdeen Pesticide Dumps Superfund Site, Aberdeen, NC	4	EPA	$323,613
Bay Area Drum Site, San Francisco, CA	9	EPA	$2,500
Bay Drums (aka Peak Oil Co.), Brandon, FL	4	EPA	$2,500
Bayou Sorrel, Bayou Sorrel, LA	6	EPA	$95,400
Breslube Penn Superfund Site, Coroapolis, PA	3	EPA	$3,480,000
Casmalia Disposal Site, Santa Barbara County, CA	9	EPA CA (DTSC) CA (DFG)	$633,965 $25,885 $15,818
Center for Technology (aka CFT or Pleasanton Center for Technology), Pleasanton, CA	9	CA (DTSC)	$10,000
Coastal Radiation Services, St. Gabriel, LA	6	EPA	$2,750,000
Combustion Inc., Livingston, LA	6	EPA	$100,000
Commencement Bay (Hylebos Waterway), Tacoma, WA	10	EPA NOAA, DOI, WA, and Tribe	$8,900,000 $5,500,000
Douglassville Disposal/ Berks Reclamation, Douglassville, PA	3	EPA	$5,000
Dubose Oil Products Superfund Site, Cantonment, FL	4	EPA	$3,000
Dutchtown Refinery, Dutchtown, LA	6	EPA	$24,000

Site Name and Location	EPA Region	Claim Recipient	Amount of Allowed General Unsecured Claim
Eastern Diversified Metals Superfund Site, Hometown, PA	3	EPA	$1,000,000
Geigy Superfund Site, Aberdeen, NC	4	EPA	$119,261
Gibson Environmental, Inc., Bakersfield, CA	9	CA (DTSC)	$3,813
Huth Oil Services, Cleveland, OH	5	EPA	$2,500
Liquid Dynamics, Chicago, IL	5	EPA	$2,500
Marzone, Tipton, GA	4	EPA	$2,500
Pickettville Road Landfill Site, Jacksonville, FL	4	EPA	$119,600
PRC Patterson, Patterson, CA	9	CA (DTSC)	$26,666
Richmond Shipyard No. 2 (aka Marina Bay Development), Richmond, CA	9	CA (DTSC)	$1,075,000
Sadler Drum Superfund Site, Mulberry, FL	4	EPA	$5,000
Spokane Junkyard, Spokane, WA	10	EPA	$2,500
Tex-Tin, Texas City, TX	6	EPA	$100,000
Tremont City Landfill, Clark County, OH	5	EPA	$2,500
Tri-County and Elgin Landfills, South Elgin, IL	5	EPA	$2,500
West Virginia Ordnance Works (aka Point Pleasant Landfill), Mason County, WV	3	EPA	$150,000

D. Summary of Total Allowed General Unsecured Claims Under Paragraph 4(C): Each of the following parties shall have an Allowed General Unsecured Claim against KACC under Paragraph 4(C) in the total amount listed below:

Claimant	Total Allowed General Unsecured Claim
United States on behalf of EPA	$ 17,828,839
For Commencement Bay (Hylebos Waterway), Tacoma, WA NRDA Claim: United States on behalf of DOI and NOAA, State of Washington and Tribe	$ 5,500,000
California DTSC	$ 1,141,364
California DFG	$ 15,818
TOTAL	$ 24,486,021

5. With respect to the Liquidated Sites:

A. With respect to the Allowed General Unsecured Claims set forth in Paragraph 4 for EPA, DOI, NOAA, the State of California, the State of Washington and the Tribe, only the amount of cash received by each such entity (and net cash received by each such entity on account of any non-cash distributions) from KACC under this Consent Decree for the Allowed General Unsecured Claim for a particular site, and not the total amount of the allowed claim, shall be credited by each such entity to its account for a particular site, which credit shall reduce the liability of non-settling potentially responsible parties for the particular site by the amount of the credit. Nothing in this Consent Decree shall require any agency to credit to its account for a site any distribution received by any other agency under this Consent Decree.

B. The Claims and distributions set forth in Paragraph 4 will be deemed allocated towards all past, present and future Claims with respect to response costs, natural resource damages and cleanup costs for the Liquidated Sites, whether to address matters known or unknown, for which a Claim of any kind or nature has been or could be asserted against the Debtors pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, Section 7003 of RCRA, 42 U.S.C. § 6973, or Similar State Laws or Tribal Laws by the Settling Federal

Agencies, the States, the Tribe or potentially responsible parties or potentially responsible party groups which have incurred or may incur such costs.

C. While none of the Debtors has nor shall have any obligation to pursue insurance recovery, including by virtue of this Consent Decree, and subject to the limitations set forth in this Paragraph, to the extent that at any time after the Effective Date of the Plan of Reorganization, KACC pursues from its insurers recovery for environmental costs or payments under liability coverage applicable to property damage liability and obtains insurance proceeds for such costs or payments from such coverage on account of any of the Liquidated Sites in excess of KACC's costs of pursuing such recovery ("Excess Recovery"), KACC may retain 60% of the Excess Recovery and KACC shall pay 40% of the Excess Recovery to the Settling Federal Agencies, the State of California, the State of Washington and the Tribe on a pro rata basis in accordance with the allocation set forth in Attachment B. KACC agrees to allocate in writing any Excess Recovery on a fair and equitable basis between Liquidated Sites and other sites based upon all of the facts and circumstances, including but not limited to any defenses asserted by insurers, and with deference to any allocation by a court or in an approved settlement document. In determining KACC's cost of pursuing recovery for environmental costs for the Liquidated Sites, KACC shall use the same percentage allocation of costs as is used in KACC's allocation of the Excess Recovery. To the extent that the Excess Recovery is allocable to sites other than the Liquidated Sites, no payment need be made to the government agencies and the Tribe from the Excess Recovery allocable to sites other than Liquidated Sites. The United States, the State of California, the State of Washington and the Tribe each reserves the right to petition the Court for an adjustment of KACC's allocation based upon all of the facts and circumstances. The payments required to be made under this Paragraph 5(C) shall be in addition to the payments required to be made under Paragraph 4. Under no circumstances may the payments required to be made under this Paragraph, when combined with any other consideration received by any of the government agencies and the Tribe for the Liquidated Sites under this Consent Decree,

exceed the amount of the Allowed General Unsecured Claims to be received by the applicable government agencies and the Tribe for the Allowed General Unsecured Claims for the Liquidated Sites under Paragraph 4 of this Consent Decree. In the event that the Excess Recovery sharing requirements of this Paragraph would otherwise result in such an exceedance, KACC shall retain the additional amount of the Excess Recovery necessary to avoid such an exceedance.

D. Notwithstanding the foregoing, and as an express limitation to the foregoing, the Settling Federal Agencies, the States and the Tribe acknowledge that KACC is pursuing insurance coverage for asbestos and non-asbestos bodily injury liabilities, including in litigation styled *Kaiser Aluminum & Chemical Corporation v. Certain Underwriters at Lloyds, London, et al.*, No. 312415, and *Kaiser Aluminum & Chemical Corporation v. Insurance Company of North America, et al.*, No. 322710, pending in the San Francisco County, Superior Court of California (collectively, the "California Insurance Litigation"). The Settling Federal Agencies, the States and the Tribe recognize and agree that, except as set forth in the next two sentences, they have no right or entitlement to, the provisions of this Paragraph shall not apply to, and the Settling Federal Agencies, the States and the Tribe shall not seek, in any proceeding, to assert any right or entitlement to (a) any policies at issue in the California Insurance Litigation and/or (b) any amounts paid by an insurer or insurers in settlement or otherwise where (i) the predominant liability being resolved is bodily injury liability and/or (ii) the funds are paid by an insurer or insurers on account of asbestos and/or non-asbestos bodily injury liabilities under a trust established under section 524(g) or section 105 of the Bankruptcy Code, even if the release provided to an insurer or insurers extends to environmental liabilities or costs, either expressly or impliedly. KACC (and any successor-in-interest) shall have no obligation to amend the California Insurance Litigation or to otherwise pursue from its insurers insurance recoveries for non-asbestos environmental costs or payments as to any specific Liquidated Site. In the event, however, that KACC (or any successor-in-interest) amends the California Insurance Litigation to

pursue, or otherwise specifically pursues, insurance recoveries from its insurers for non-asbestos environmental costs or payments as to any specific Liquidated Site, then KACC (or any successor-in-interest) shall allocate on a fair and equitable basis, in writing, the portion of such recoveries allocable to such specific Liquidated Sites and, then, the provisions of Paragraph 5(C) shall apply to such allocated portion only.

NON-DISCHARGEABILITY/DEBTOR-OWNED SITES/RESERVATION OF RIGHTS

6. A. The following claims of or obligations to the Settling Federal Agencies and the States shall not be discharged pursuant to this Consent Decree or Section 1141 of the Bankruptcy Code by the confirmation of a Plan of Reorganization, nor shall such claims or obligations be impaired or affected in any way in the Chapter 11 Cases or by the confirmation of a Plan of Reorganization:

(i) Claims against the Debtors by the Settling Federal Agencies or the States under Section 107 of CERCLA, 42 U.S.C. §9607, or Similar State Laws for recovery of response costs incurred Postpetition with respect to response action taken at a Debtor-Owned Site, including such response action taken to address hazardous substances that have migrated from a Debtor-Owned Site to a proximate location other than a Reserved Site;

(ii) Actions against the Debtors by the Settling Federal Agencies or the States under CERCLA, RCRA, or Similar State Laws seeking to compel the performance of a removal action, remedial action, corrective action, closure or any other cleanup action at a Debtor-Owned Site, including actions to address hazardous substances that have migrated from a Debtor-Owned Site to a proximate location other than a Reserved Site;

(iii) Claims against the Debtors by the Settling Federal Agencies or the States under Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of natural resource damages arising as a result of Postpetition releases or ongoing releases of hazardous substances at or which migrate or leach from a Debtor-Owned Site to a proximate location other than a Reserved Site; or

(iv) Claims against the Debtors by the Settling Federal Agencies or the States for recovery of civil penalties for violations of law resulting from Postpetition conduct of the Debtors at Debtor-Owned Sites.

Nothing in this Paragraph 6(A) shall limit or be deemed to waive any rights or defenses of any of the parties to this Consent Decree, except for any alleged defense of discharge of liabilities provided under the Bankruptcy Code, any plan of reorganization or order of confirmation.

B. With respect to any Liquidated Site, Additional Site or Discharged Site, this Consent Decree does not address the Debtors' Postpetition conduct which would give rise to liability under 42 U.S.C. §§9606 and 9607(a)(1)-(4) and the Settling Federal Agencies, the States, the Tribe and the Debtors reserve all rights and defenses they may have with respect to such Postpetition conduct; *provided, however,* that this reservation shall not apply to any damage which arises from or is related to Prepetition acts, omissions or conduct of the Debtors or their predecessors, including without limitation any ongoing releases of hazardous substances, exacerbation (except to the extent caused by Postpetition acts of the Debtors) of pre-existing contamination, migration or leaching of hazardous substances, and natural resource damages. Nothing in this Consent Decree shall affect or limit such rights and defenses.

C. As used in this Paragraph 6, "Postpetition conduct" shall not include a failure to satisfy or comply with any Prepetition liability or obligations, or to pay a claim (including, without limitation, a penalty claim) except as required by or resulting from the terms of the Plan of Reorganization, any provision of this Consent Decree, or a final order of the Court confirming a Plan of Reorganization.

D. The Settling Federal Agencies or the States may pursue enforcement actions or proceedings under applicable law with respect to the Claims and obligations of the Debtors to the Settling Federal Agencies or the States, respectively, under the foregoing Paragraphs 6(A) and 6(B) in the manner, and by the administrative or judicial tribunals, in which

the Settling Federal Agencies or the States could have pursued enforcement actions or proceedings if the Chapter 11 Cases had never been commenced. The Debtors reserve the right to assert any and all defenses and counterclaims available to them under applicable law with respect to any Claims and obligations of the Debtors to the Settling Federal Agencies or the States under Paragraphs A and B that are asserted by the Settling Federal Agencies or the States, respectively, except for any alleged defense of discharge of liabilities provided under the Bankruptcy Code, any plan of reorganization or order of confirmation. The Settling Federal Agencies and the States reserve all of their rights with respect to any defenses or counterclaims asserted by the Debtors under this Paragraph D.

E. This Consent Decree does not address or apply to the Reserved Sites and the United States, the States and the Debtors reserve all rights and defenses they may have with respect to the Reserved Sites, including with respect to Debtors' conduct at the Reserved Sites. Nothing in this Consent Decree shall affect, limit or waive such rights and defenses.

TREATMENT OF ADDITIONAL SITES

7. With respect to all Additional Sites, all liabilities and obligations of the Debtors to the Settling Federal Agencies and the States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§9606 and 9607, Section 7003 of RCRA, 42 U.S.C. § 6973, and Similar State Laws arising from Prepetition acts, omissions or conduct of the Debtors or their predecessors, including without limitation the Prepetition generation, transportation, disposal or release of hazardous substances, wastes or materials or dangerous wastes or the Prepetition ownership or operation of hazardous waste or hazardous substance sites and/or facilities and state counterparts, shall be discharged under Section 1141 of the Bankruptcy Code by the confirmation of a Plan of Reorganization, and the Settling Federal Agencies and the States shall receive no distributions in the Chapter 11 Cases with respect to such liabilities and obligations, but KACC may be required to distribute to the Settling Federal Agencies, the States or such other party as they may designate, such amounts as are provided for in this Paragraph and Paragraph 8. Such liabilities

and obligations shall be treated and liquidated as general unsecured Claims against KACC on the terms specified herein. If and when any Settling Federal Agencies or the States undertake(s) enforcement activities in the ordinary course with respect to any Additional Site, the Settling Federal Agencies or the States, respectively, may seek a determination of the liability, if any, of KACC and may seek to obtain and liquidate a judgment of liability of KACC or enter into a settlement with KACC with regard to any of the Additional Sites (for Prepetition acts, omissions or conduct of the Debtors or their predecessors) in the manner and before the administrative or judicial tribunal in which the Settling Federal Agencies' or the States' claims would have been resolved or adjudicated if the Chapter 11 Cases had never been commenced. However, the Settling Federal Agencies and the States shall not issue or cause to be issued any unilateral order or seek any injunction against KACC under Section 106 of CERCLA, 42 U.S.C. § 9606, Section 7003 of RCRA, 42 U.S.C. § 6973, or any Similar State Laws arising from the Prepetition acts, omissions or conduct of the Debtors or their predecessors with respect to any Additional Sites. The Settling Federal Agencies and KACC (and the States and KACC, as applicable) will attempt to settle each liability or obligation asserted by the Settling Federal Agencies (or the States, as applicable) against KACC relating to an Additional Site on a basis that is fair and equitable under the circumstances, including consideration of (i) settlement proposals made to other PRPs who are similar to KACC in the nature of their involvement with the site, (ii) the fact of KACC's bankruptcy, and (iii) the circumstances of this Agreement; but nothing in this sentence shall create an obligation of the Settling Federal Agencies or the States that is subject to judicial review. The aforesaid liquidation of liability may occur notwithstanding the terms of the Plan of Reorganization, the order confirming the Plan of Reorganization, or the terms of any order entered to effectuate the discharge received by KACC. In any action or proceeding with respect to an Additional Site, KACC, the Settling Federal Agencies and the States reserve any and all rights, claims, and defenses they would have been entitled to assert had the claim been liquidated in the ordinary course or during the course of the Chapter 11 Cases, including, without

limitation, any argument that joint and several liability should or should not be imposed upon KACC. Nothing herein shall be construed to limit the Parties' rights to assert any and all rights, claims and defenses they may have in actions or proceedings involving other parties with respect to Additional Sites.

8. In the event any Claim is liquidated pursuant to Paragraph 7 by settlement with KACC or judgment against KACC to a determined amount (the "Determined Amount"), KACC will satisfy such Claim within thirty (30) days after the date on which the settlement or judgment is final and effective (the "Settlement/ Judgment Date") by providing the holder of the Claim the "Distribution Amount." The Distribution Amount shall be the value of the consideration which would have been distributed under the Plan of Reorganization to the holder of such Claim if the Determined Amount had been an Allowed General Unsecured Claim against KACC in such amount under the Plan of Reorganization. Except as provided in Paragraph 9(B), the Distribution Amount shall be paid in the same form (e.g., stock, cash, notes, etc.) as was distributed under the Plan of Reorganization.

9. A. In the event that the Plan of Reorganization provides that Allowed General Unsecured Claims against KACC will receive consideration other than cash, for purposes of determining the value of the consideration paid to the holders of Allowed General Unsecured Claims at the time of distribution(s) under the Plan of Reorganization (i.e., the Distribution Amount), notes shall have a value equal to their face value and equity securities shall have a value equal to (a) if the security is trading, the reported closing sales price for the security on the date(s) of distribution(s) under the Plan of Reorganization (or the first date thereafter on which the security trades), (i) on the New York Stock Exchange; or (ii) if the security is not listed or admitted to trade on the New York Stock Exchange, on the principal national securities exchange on which the security is listed or admitted to trading; or (iii) if the security is not listed or admitted to trading on any national securities exchange, on all transactions on the National Association of Securities Dealers Automated Quotations National Market System; or (iv) if the

security is not listed or admitted to trading on any national securities exchange or quoted on such National Market System, on all transactions in the over-the-counter market in the United States as furnished by any New York Stock Exchange member firm selected by KACC and the Settling Federal Agencies (or the States, if applicable) for that purpose; or (b) if the security is not trading in any of the foregoing markets, the value ascribed to the security in the disclosure statement pursuant to which approval of the Plan was sought. Then, for purposes of determining the number of shares of securities that have the value of the Distribution Amount on the Settlement/Judgment Date (i.e., the number of shares to be distributed in satisfaction of the Claim as provided in Paragraph 8), the fair market value per share of securities on the Settlement/Judgment Date also shall be determined as set forth in the immediately preceding sentence. To the extent, however, that the Settling Federal Agencies (or the States, if applicable) calculate that the reported closing sales price for the security is materially different than the weighted average of the reported regular way sales prices of all transactions for the security on the date(s) of distribution(s) under the Plan of Reorganization (or the first date thereafter on which the security trades), the Settling Federal Agencies (or the States, if applicable) may present this calculation to KACC prior to the date KACC must satisfy the Claim as provided in Paragraph 8 and then the weighted average of the reported regular way sales prices of all transactions for the security shall be used to value the security instead of the reported closing sales price.

B. Further, in the event that the Plan of Reorganization provides that Allowed General Unsecured Claims against KACC will receive consideration other than cash, Debtors may, in their sole discretion, provide the non-cash portion of the Distribution Amount to the Settling Federal Agencies (or the States, if applicable) in cash that has an aggregate value as of the Settlement/Judgment Date that is equivalent to the Distribution Amount. The terms of Paragraphs 7, 8 and this Paragraph 9 of this Consent Decree shall apply to, be binding on, and inure to the benefit of any successor or assign of KACC to the extent that, and only to the extent

that, the alleged liability of the successor or assign for an Additional Site is based on its status as and in its capacity of a successor or assign of KACC.

TREATMENT OF ALLOWED CLAIMS

10. With respect to the Allowed General Unsecured Claims set forth in Paragraph 4 for EPA, DOI, NOAA, the State of California, the State of Washington and the Tribe, and regardless of the holder of such Claims, such Claims (A) will receive the same treatment under the Plan of Reorganization, without discrimination, as other Allowed General Unsecured Claims against KACC with all attendant rights provided by the Bankruptcy Code and other applicable law and (B) will not be entitled to any priority in distribution (although the provisions of Paragraph 5(C) shall apply in the event of excess insurance proceeds). With respect to any Claims as may eventually be allowed pursuant to Paragraphs 7-9 for Additional Sites, such Claims shall be governed by the terms of Paragraphs 7-9. In no event shall the General Unsecured Claims against KACC allowed or to be allowed pursuant to this Consent Decree be subordinated to any other Allowed General Unsecured Claims against KACC pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed Claims, including without limitation Sections 105 and 510 of the Bankruptcy Code.

11. The Claims allowed in this Consent Decree do not constitute, nor shall they be construed as, forfeitures, fines or penalties (or payments in lieu thereof), and nothing herein is intended, or shall be construed, as an admission by Debtors of any facts (other than the fact of distributions made referred to in Paragraph 4) or any violation of law. Notwithstanding the foregoing, Debtors do agree to comply with all terms of this Consent Decree upon the Effective Date.

12. Notwithstanding any other provision of this Consent Decree, and except as provided under applicable law, there shall be no restrictions on the ability and right of the United States on behalf of EPA or the State of California to transfer or sell all or a portion of any

securities distributed to them pursuant to the Plan of Reorganization; to sell their right to all or a portion of any distributions under the Plan to one or more third parties; or to transfer or sell to one or more third parties all or a portion of any Allowed General Unsecured Claim pursuant to this Consent Decree.

TREATMENT OF PROOFS OF CLAIM

13. The Settling Federal Agencies, the States, and the Tribe shall be deemed to have filed proofs of claim for all matters addressed in this Consent Decree, which proofs of claim are and shall be deemed satisfied in full in accordance with the terms of this Consent Decree. Accordingly, by executing this Consent Decree but without any prejudice with respect to any of the Reserved Sites, (i) the Settling Federal Agencies agree that Claim No. 7135 shall be reduced and allowed as of the Effective Date in the amounts listed for the Settling Federal Agencies in Paragraph 4(C) of this Consent Decree; (ii) the State of California agrees that Claim No. 7297 shall be reduced and allowed as of the Effective Date in the amount listed for the State of California in Paragraph 4(C) of this Consent Decree; (iii) the State of Rhode Island agrees that Claim No. 7111 shall be withdrawn pursuant to this Consent Decree as of the Effective Date and Kaiser's claims and noticing agent, Logan & Company, is authorized and empowered to withdraw Claim No. 7111 as of the Effective Date; (iv) the State of Washington agrees that Claim No. 7181 shall be reduced and allowed as of the Effective Date in the amount listed for the State of Washington in Paragraph 4(C) of this Consent Decree; and (v) the Tribe agrees that Claim No. 1727 shall be reduced and allowed as of the Effective Date in the amount listed for the Tribe in Paragraph 4(C) of this Consent Decree.

DISTRIBUTION INSTRUCTIONS

14. A. Cash distributions for the Liquidated Sites to the United States on behalf of EPA shall be made by Fed Wire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures. Payment shall be made in accordance with instructions provided to the Debtor by

the Financial Litigation Unit of the United States Attorney's Office for the District of Delaware and shall reference Case No. 02-10429 (JKF) and DOJ File Number 90-11-3-07769/1. The Debtors shall transmit written confirmation of such payments to the Department of Justice at the address specified in Paragraph 27. In the event that the United States sells or transfers its Claims, payment will be made to a transferee only at such time as the Debtors receive written instructions from the United States directing that payments be made to a transferee amid instructions as to where such payments should be directed, and, prior to the closing of the Chapter 11 Cases, after an evidence of claim transfer shall have been filed with the Court.

B. Other distributions with respect to the allowed Claims of the United States for the Liquidated Sites pursuant to this Consent Decree shall be made as follows. Non-cash Distributions to the United States on behalf of EPA shall be made to:

U.S. EPA Superfund
P.O. Box 371003M
Pittsburgh, PA 15251

Copies of all distributions and related correspondence to the United States shall be sent to:

Environmental Enforcement Division
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Ref. DOJ File No. 90-11-3-07769/1

Helena A. Healy
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. - Mail Code 2272A
Washington, D.C. 20460

C. The United States must notify the Debtors in writing of any modifications to the foregoing addresses. In the event that the United States on behalf of EPA sells or transfers its Claims, distributions will be made to a transferee only at such time as the Debtors receive

written instructions from the United States on behalf of EPA directing that payments be made to a transferee and instructions as to where such payments should be made, and, prior to the closing of the Chapter 11 Cases, after an evidence of claim transfer shall have been filed with the Court.

D. Distributions received by EPA will either be deposited in site-specific special accounts within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with those sites, or be deposited into the EPA Hazardous Substance Superfund.

E. Cash distributions for the Commencement Bay (Hylebos Waterway), Tacoma, WA Liquidated Site with respect to the Allowed General Unsecured Claims of the United States on behalf of NOAA and DOI, the State of Washington and the Tribe pursuant to this Consent Decree shall be made to:

Registry of the Court
c/o Clerk of the Court
U.S. District Court
Western District of Washington
1010 Fifth Avenue, Room 215
Seattle, WA 98104

The payment shall reference the Case Number U.S. Dist. Ct. D. Del (Bankr) Case No. 02-10429 (JKF) and shall request that the payment be deposited in the Commencement Bay Natural Resource Restoration Account established pursuant to W.D. Wash. Civil No. C93-5462B.

Non-cash distributions with respect to the Commencement Bay (Hylebos Waterway), Tacoma, WA Liquidated Site with respect to the Allowed General Unsecured Claims of the United States on behalf of NOAA and DOI, the State of Washington and the Tribe shall be made to:

United States Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
1849 C Street, NW, Mail Stop 4449
Washington, DC 20240

Copies of all distributions under this Paragraph 14(E) and related correspondence shall be sent to:

Eric G. Williams
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Ref. DOJ File No. 90-11-3-07769/1

Robert A. Taylor
NOAA GC Natural Resources/NW
7600 Sand Point Way NE
Seattle, WA 98115-0070

Steven J. Thiele
Assistant Attorney General
Office of the Attorney General, Ecology Division
P.O. Box 40117
Olympia, WA 98504-0117

Cynthia P. Lyman
Office of the Tribal Attorney
Puyallup Tribe of Indians
1850 Alexander Ave.
Tacoma, WA 98421

Bill Sullivan
Environmental Programs
Puyallup Tribe of Indians
1850 Alexander Ave.
Tacoma, WA 98421

15. A. Cash distributions for the Liquidated Sites to the California DTSC shall be made by certified check, payable to: Cashier, Department of Toxic Substances Control and shall be sent to DTSC Accounting, P.O. Box 806, Sacramento, CA 95812-0806, and shall reference the docket number of the Chapter 11 Cases. A copy of such check shall be sent to the attention of Jeff Mahan, DTSC, P.O. Box 806, Sacramento, CA 95812-0806.

B. Cash distributions for the Liquidated Sites to the California DFG shall be made by check, payable to: Office of Spill Prevention and Response, California Department of Fish & Game, and shall be sent in care of John Holland, Esquire, Department of Fish & Game, P.O. Box 160-362, Sacramento, CA 95816-0362.

C. Distributions received by DTSC for a particular site will be used by DTSC to supervise, conduct or pay for environmental response activities at or for that site, or will be credited to the unreimbursed costs that DTSC has incurred at that site.

D. In the event that the State of California sells or transfers its Claims, distributions will be made to a transferee only at such time as the Debtors receive written instructions from the State of California directing that distributions be made to a transferee and instructions as to where such distributions should be made, and, prior to the closing of the Chapter 11 Cases, after an evidence of claim transfer shall have been filed with the Court.

16. A. Distributions with respect to the Allowed General Unsecured Claims of the State of Washington and the Tribe for the Liquidated Sites pursuant to this Consent Decree shall be made in accordance with Paragraph 14(E).

B. Notwithstanding anything to the contrary in this Consent Decree, in the event that the Plan of Reorganization provides that Allowed General Unsecured Claims against KACC will receive consideration in the form of equity securities and any one of the States is precluded by law from accepting a distribution under this Consent Decree in the form of equity securities, then KACC and such State shall work to cause the equity securities that otherwise would have been distributed to such State to be sold on any applicable market and the cash proceeds from such sale, less all costs and expenses associated with such sale, shall be distributed to such State instead of the equity securities.

TREATMENT OF DISCHARGED SITES

17. With respect to all Discharged Sites, all liabilities and obligations of the Debtors to the Settling Federal Agencies, the States and the Tribe under Sections 106 and 107 of

CERCLA, 42 U.S.C. §§9606 and 9607, Section 7003 of RCRA, 42 U.S.C. § 6973, and Similar State Laws and Tribal Law arising from Prepetition acts, omissions or conduct of the Debtors or their predecessors, including without limitation the Prepetition generation, transportation, disposal or release of hazardous substances, wastes or materials or dangerous wastes or the Prepetition ownership or operation of hazardous waste or hazardous substance sites and/or facilities, shall be discharged under Section 1141 of the Bankruptcy Code by the confirmation and effectiveness of a Plan of Reorganization, and neither the Settling Federal Agencies, the States, nor the Tribe shall receive any distributions in the Chapter 11 Cases with respect to such liabilities and obligations.

COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

18. In consideration of all of the foregoing, including, without limitation, the distributions that will be made and the Claims allowed pursuant to the terms of this Consent Decree, and except as specifically provided in Paragraphs 21 through 23 (below), the Settling Federal Agencies, the States and the Tribe covenant not to file a civil action or to take any administrative or other action against the Debtors pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§9606 or 9607, Section 7003 of RCRA, 42 U.S.C. § 6973, or any Similar State Laws or Tribal Laws with respect to each of the Liquidated Sites. These covenants not to sue shall take effect on the Effective Date.

19. This Consent Decree in no way impairs the scope and effect of the Debtors' discharge under Section 1141 of the Bankruptcy Code as to any third parties or as to any Claims that are not addressed by this Consent Decree.

20. Without in any way limiting the covenant not to sue (and the reservations thereto) set forth in Paragraph 18 and notwithstanding any other provision of this Consent Decree, such covenant not to sue shall also apply to the Debtors' successors and assigns, officers, directors, employees, and trustees, but only to the extent that the alleged liability of the successor or assign,

officer, director, employee, or trustee of any Debtor is based on its status as and in its capacity as a successor or assign, officer, director, employee, or trustee of any Debtor.

21. The covenants not to sue contained in Paragraphs 18 and 20 of this Consent Decree extend only to the Debtors and the persons described in Paragraph 20 above and do not extend to any other person. Nothing in this Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than the Debtors, the United States, the States, the Tribe and the persons described in Paragraph 20. The United States, the States, the Tribe and the Debtors expressly reserve all claims, demands and causes of action either judicial or administrative, past, present or future, in law or equity, which the United States, the States, the Tribe or the Debtors may have against all other persons, firms, corporations, entities or predecessors of the Debtors for any matter arising at, or relating in any manner to, the sites or claims addressed herein.

22. Notwithstanding the foregoing, the covenants not to sue contained in this Consent Decree shall not apply to nor affect any action based on (i) a failure to meet a requirement of this Consent Decree; (ii) criminal liability; or (iii) matters addressed in Paragraph 6(A) through 6(D) above.

23. Nothing in this Consent Decree shall be deemed to limit the authority of the United States or the States to take response action under Section 104 of CERCLA, 42 U.S.C. §9604, Similar State Laws or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States or the States pursuant to that authority. Nothing in this Consent Decree shall be deemed to limit the information gathering authority of the United States or the States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§9604 and 9622, Similar State Laws or any other applicable federal law or regulation, or to excuse the Debtors from any disclosure or notification requirements imposed by CERCLA, RCRA, any Similar State Laws or any other applicable federal or state law or regulation.

24. The Debtors hereby covenant not to sue and agree not to assert or pursue any claims or causes of action against the United States, the States or the Tribe with respect to the Liquidated Sites including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substances Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, or 9613, any Similar State Laws or Tribal Laws or any other provision of law; any claim against the United States, including any department, agency or instrumentality of the United States, under Sections 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, related to the Liquidated Sites, or any claims arising out of response activities at the Liquidated Sites. The covenant not to sue set forth in this Paragraph shall not apply in the event that the Settling Federal Agencies and/or one or more of the States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 6(A) and/or 6(B), but only to the extent that the Debtors' claims arise from the same response action, response costs, or damages that the Settling Federal Agencies and/or the States is/are seeking pursuant to Paragraphs 6(A) and/or 6(B). Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. §9611, or 40 C.F.R. § 300.700(d).

CONTRIBUTION PROTECTION

25. With regard to all existing or future third-party Claims against the Debtors with respect to the Liquidated Sites, including claims for contribution, the parties hereto agree that, as of the Effective Date, the Debtors are entitled to protection from actions or Claims to the maximum extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and Similar State Laws and Tribal Laws.

26. The Debtors agree that with respect to any suit for contribution brought against any of them after the Effective Date for matters related to this Consent Decree in which a party challenges the applicability of Debtors' contribution protection provided under Paragraph 25, they will notify the United States within a reasonable time after service of the complaint upon

them. In addition, in connection with such suit, the Debtors shall notify the United States within a reasonable time after service or receipt of any Motion for Summary Judgment and within a reasonable time after receipt of any order from a court setting a case for trial (provided, however, that the failure to notify the United States pursuant to this Paragraph shall not in any way affect the protections afforded under Paragraphs 18 through 25).

NOTICES AND SUBMISSIONS

27. Whenever, under the terms of this Consent Decree, written notice is required to be given, or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change of address to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Except as otherwise provided in this Consent Decree, written notice as specified herein shall constitute complete satisfaction of any written notice requirement in this Consent Decree with respect to the United States, the States and the Debtors, respectively.

As to the United States:

Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Ref. DOJ File No. 90-11-3-07769/1

Helena A. Healy
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. - Mail Code 2272A
Washington, D.C. 20460

As to the State of California:

Kevin James, Deputy Attorney General
California Department of Justice
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

As to the State of Rhode Island:

Bret W. Jedele, Esq.
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908

As to the State of Washington:

Steven J. Thiele
Assistant Attorney General
Office of the Attorney General, Ecology Division
P.O. Box 40117
Olympia, WA 98504-0117

James Pendowski
Program Manager
Toxics Cleanup Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-76001

As to the Tribe:

Puyallup Tribe of Indians
1850 Alexander Avenue
Tacoma, WA 98421
ATTN: Cynthia Lyman

Bill Sullivan
Environmental Programs
Puyallup Tribe of Indians
1850 Alexander Ave.
Tacoma, WA 98421

As to the Debtors:

Kaiser Aluminum & Chemical Corporation
5847 San Felipe, Suite 2500
Houston, TX 77057
ATTN: General Counsel

Heller, Ehrman, White & McAuliffe, LLP
701 Fifth Avenue, Suite 6100
Seattle, WA 98104-7098
ATTN: R. Paul Beveridge

LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

28. This Consent Decree shall be subject to approval of the Bankruptcy Court. The Debtors shall promptly seek approval of this Consent Decree under Bankruptcy Rule 9019 or other applicable provisions of the Bankruptcy Code. The hearing on Debtors' request for such approval will not be held for at least thirty-eight days from the date of filing (the "Filing Date").

29. Likewise, this Consent Decree shall be lodged with the Court for public notice and comment for a period of not less than thirty days. To the extent, if any, that such lodging does not satisfy all public notice and comment requirements of the State of Washington laws and regulations, the State of Washington shall take all action necessary during such thirty-day period to satisfy all such requirements. After the conclusion of the public comment period, the United States (and, if applicable, the State of Washington) will file with the Court any comments received, as well as the United States' (and the State of Washington's, as applicable) responses to the comments, and at that time, if appropriate, the Court will be requested by motion of the United States (and the State of Washington, as applicable) to approve this Consent Decree. The United States and the State of Washington reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which

indicate that this Consent Decree is not in the public interest.

30. If for any reason (i) this Consent Decree is withdrawn by the United States or the State of Washington as provided in Paragraph 29, or (ii) the Bankruptcy Court issues a final order not approving this Consent Decree, or (iii) KACC's Chapter 11 Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code before the Effective Date of a Plan of Reorganization: (a) this Consent Decree shall be null and void and the parties shall not be bound hereunder or under any documents executed in connection herewith; (b) the parties shall have no liability to one another arising out of or in connection with this Consent Decree or under any documents executed in connection herewith; (c) this Consent Decree and any documents prepared in connection herewith shall have no residual or probative effect or value and it shall be as if they had never been executed; and (d) this Consent Decree, any statements made in connection with settlement discussions, and any documents prepared in connection herewith may not be used as evidence in any litigation between or among the parties.

31. The Debtors shall file a Plan of Reorganization that is consistent with and does not conflict with the terms and provisions of this Consent Decree. The Settling Federal Agencies and the States will not oppose any term or provision of a Plan of Reorganization filed by the Debtors that is addressed by and consistent with this Consent Decree. The parties reserve all other rights and defenses they may have with respect to any Plan of Reorganization filed by the Debtors.

AMENDMENTS/INTEGRATION AND COUNTERPARTS

32. This Consent Decree and any other documents to be executed in connection herewith shall constitute the sole and complete agreement of the parties hereto with respect to the matters addressed herein. This Consent Decree may not be amended except by a writing signed by all parties to this Consent Decree.

33. This Consent Decree may be executed in counterparts each of which shall constitute an original and all of which shall constitute one and the same agreement.

RETENTION OF JURISDICTION

34. Except as provided in Paragraphs 6 through 9 regarding proceedings in other administrative or judicial tribunals, the Court (or, upon withdrawal of the Court's reference, the U.S. District Court of the District of Delaware) shall retain jurisdiction over the subject matter of this Consent Decree and the parties hereto for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the parties to apply to the Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Consent Decree or to effectuate or enforce compliance with its terms.

[Remainder of Page Left Intentionally Blank]

THE UNDERSIGNED PARTIES ENTER INTO THIS CONSENT DECREE

FOR THE UNITED STATES OF AMERICA:

Date: 8.15.03

By: Tom Sansonetti
Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 8/18/03

By: Alan S. Tenenbaum
Alan S. Tenenbaum
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: 8/09/03

By: Eric G. Williams
Eric G. Williams
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: 8/20/03

By:
John Peter Suarez
Assistant Administrator for Enforcement
and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Date: 8/20/03

By:
John H. Wheeler
Senior Attorney
Office of Enforcement and
Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Date: 8/20/03

By:
Helena A. Healy
Attorney-Advisor
Office of Enforcement and
Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

FOR THE STATE OF CALIFORNIA
DEPARTMENT OF TOXIC SUBSTANCES
CONTROL:

Date: August 12, 2003

By: Edwin F. Lowry

Edwin F. Lowry
Director, State of California Department
of Toxic Substances Control
Post Office Box 806
Sacramento CA 95812-0806

FOR THE STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME:

Date: _____

By: _____

John A. Holland
Staff Counsel III
Office of Spill Prevention and Response
State of California Department of
Fish and Game
1700 K Street, Suite 250
Post Office Box 94420
Sacramento, CA 94244-2090

FOR THE STATE OF CALIFORNIA
DEPARTMENT OF TOXIC SUBSTANCES
CONTROL:

Date: _____

By: _____
Edwin F. Lowry
Director, State of California Department
of Toxic Substances Control
Post Office Box 806
Sacramento CA 95812-0806

FOR THE STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME:

Date: 13 August 2003

By: _____
John A. Holland
Staff Counsel III
Office of Spill Prevention and Response
State of California Department of
Fish and Game
1700 K Street, Suite 250
Post Office Box 94420
Sacramento, CA 94244-2090

FOR THE STATE OF RHODE ISLAND:

Date: 8/21/03 By: _____
Jan H. Reitsma, Director
Rhode Island Department of
Environmental Management
235 Promenade Street
Providence, RI 02908

Date: 8/21/03 By: _____
Bret W. Jedele, Esq.
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908

FOR THE PUYALLUP TRIBE OF INDIANS:

Date: _____ By: _____
Name: _____
Title: _____

FOR THE STATE OF RHODE ISLAND:

Date: _____ By: _____

Jan H. Reitsma, Director
Rhode Island Department of
Environmental Management
235 Promenade Street
Providence, RI 02908

Date: _____ By: _____

Bret W. Jedele, Esq.
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908

FOR THE PUYALLUP TRIBE OF INDIANS:

Date: 8/13/03 By: Bill Sterud

Name: Bill Sterud
Title: Chairman

FOR THE STATE OF WASHINGTON:

DEPARTMENT OF ECOLOGY

Date: 8/19/03

By: _____
Jim Pendowski
Program Manager
Washington Department of Ecology
Toxics Cleanup Program

CHRISTINE O. GREGOIRE
Attorney General

Date: 8/19/03

By: _____
Steven J. Thiele, WSBA #20275
Assistant Attorney General
Attorney for State of Washington
Department or Ecology

FOR THE DEBTORS:
Kaiser Aluminum & Chemical Corporation

Date: August 13, 2003

By: _____
John Barneson
Senior Vice President and
Chief Administrative Officer

Date: August 13, 2003

By: _____
Joseph A. Fischer, III
Assistant General Counsel

ATTACHMENT A
List of Debtors and Petition Dates

DEBTOR	PETITION DATE
Kaiser Aluminum Corporation	February 12, 2002
Kaiser Aluminum & Chemical Corporation	February 12, 2002
Akron Holding Corporation	February 12, 2002
Kaiser Alumina Australia Corporation	February 12, 2002
Kaiser Aluminum & Chemical Investment, Inc.	February 12, 2002
Kaiser Aluminium International, Inc.	February 12, 2002
Kaiser Aluminum Properties, Inc.	February 12, 2002
Kaiser Aluminum Technical Services, Inc.	February 12, 2002
Kaiser Bellwood Corporation	February 12, 2002
Kaiser Finance Corporation	February 12, 2002
Kaiser Micromill Holdings, LLC	February 12, 2002
Kaiser Sierra Micromills, LLC	February 12, 2002
Kaiser Texas Sierra Micromills, LLC	February 12, 2002
Kaiser Texas Micromill Holdings, LLC	February 12, 2002
Oxnard Forge Die Company, Inc.	February 12, 2002
Alwis Leasing, LLC	March 15, 2002
Kaiser Center, Inc	March 15, 2002
Alpart Jamaica Inc.	January 14, 2003
KAE Trading, Inc.	January 14, 2003
Kaiser Aluminum & Chemical Investment Limited (Canada)	January 14, 2003
Kaiser Aluminum & Chemical of Canada Limited (Canada)	January 14, 2003
Kaiser Bauxite Company	January 14, 2003
Kaiser Center Properties	January 14, 2003
Kaiser Export Company	January 14, 2003
Kaiser Jamaica Corporation	January 14, 2003
Texada Mines Ltd. (Canada)	January 14, 2003

ATTACHMENT B
Pro Rata Allocation of 40% Share of Excess Recovery

United States on behalf of EPA	72.81%
For Commencement Bay (Hylebos Waterway), Tacoma, WA NRDA Claim: United States on behalf of DOI and NOAA, State of Washington and Tribe	22.46%
California DTSC	4.66%
California DFG	0.07%

EXHIBIT 19

Folder No. 00825-08
Audit No. SI82508

ASSIGNMENT

THIS AGREEMENT is entered into on the 15th day of August, 2001, between UNION PACIFIC RAILROAD COMPANY ("Lessor") and KEMWATER NORTH AMERICA COMPANY, a Delaware corporation, whose address is 2185 North California Blvd., Suite 500, Walnut Creek, California 94596 ("Assignor").

RECITALS:

By instrument dated August 20, 1998, Lessor and Assignor, or their predecessors in interest, entered into an agreement ("Basic Agreement"), identified as Audit No. SI82508, at Trentwood, Washington.

AGREEMENT:

Effective August 21, 2000, Assignor assigns all of Assignor's right, title and interest in and to the Basic Agreement, including any supplement or amendment (if any), to KEMIRON NORTHWEST, INC., a Delaware corporation, whose address is 316 Bartow Municipal Airport, Bartow, Florida 33830 ("Assignee").

Assignee accepts the above Assignment and agrees to be bound by all of the terms and conditions contained in the Basic Agreement and any supplement or amendment (if any).

Lessor gives its consent to this Assignment. This consent does not authorize any further assignment of the Basic Agreement, whether voluntary or otherwise, without the prior written consent of Lessor. In the event of default by Assignee, Assignor shall be bound by and shall perform all of the obligations of the Basic Agreement.

ADMINISTRATIVE HANDLING CHARGE:

Upon execution of this Assignment, Assignor shall pay Lessor an administrative handling charge of Five Hundred Dollars ($500.00).

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Senior Manager - Real Estate

KEMWATER NORTH AMERICA COMPANY

By: _____
Title: Vice President
(Assignor)

KEMIRON NORTHWEST, INC.

By: _____
Title: Chief Operating Officer
(Assignee)

CODED
M.C.W.

By:

Date: AUG 20 2001

EXHIBIT 20

California Regional Water Quality Control Board
Santa Ana Region

Cleanup & Abatement Order No. R8-2006-0035
for
Yellow Roadway Corporation
Former Alumax Fontana Facility
San Bernardino County

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), finds that:

1. RCM Technologies, Inc. operated an aluminum recovery facility from 1957 to 1977 in the City of Fontana. The 18-acre facility was located on the northeast corner of Beech Boulevard and Santa Ana Boulevard, as shown on **Attachment 1**, which is hereby made a part of this order. In 1976, the Regional Board adopted Waste Discharge Requirements, Order No. 76-238, for aluminum recycling operations conducted at the site by RCM Technologies, Inc. and Mr. Robert Sackett. Mr. Sackett, the Board Chairman and Chief Executive Officer of RCM Technologies, Inc., owned the property and the aluminum recovery facility until July 1977 when Hillyard Aluminum Recovery Corporation (HARC), a wholly-owned subsidiary of Alumax Inc., purchased certain assets, excluding the Fontana property (hereinafter referred to as the Alumax Fontana property).

2. HARC operated the aluminum recovery facility in Fontana from 1977 to 1982, when recovery operations ceased. In August 1985, HARC purchased the Alumax Fontana property from RCM. In July of 1998, Aluminum Company of America (Alcoa) acquired all assets and facilities, including the Fontana property, from Alumax Inc. In January of 2004, USF Reddaway Inc. (USFR) acquired the Alumax Fontana property from Alcoa and began plans for site development. Prior to USFR's final acquisition of the property, Board staff approved their tentative site development plans in September 2003. In May 2005, before final construction plans were developed, Yellow Roadway Corp. (YRC, hereinafter discharger) acquired USFR and became directly involved in the property management, including development, of the Alumax Fontana site.

3. The Alumax Fontana property overlies the Chino North Groundwater Management Zone, the beneficial uses of which include:

   a. Municipal and domestic supply,
   b. Agricultural supply,
   c. Industrial service supply, and
   d. Industrial process supply.

4. On October 14, 1977, the Regional Board adopted Board Order No. 77-200, which replaced Order No. 76-238, for the storage and handling of aluminum oxide wastes at the Alumax Fontana facility. Aluminum oxide was generated as a manufacturing by-product of the aluminum recovery process. These wastes were stockpiled at the site, partly on a concrete-paved storage pad located at the southwest corner of the site, and partly on native soil. The former waste pile storage and salt-affected areas are shown on **Attachment 2**. The aluminum oxide waste contained high levels of soluble salts consisting almost entirely of sodium and potassium chloride.

5. On January 10, 1986, the Regional Board adopted Cleanup and Abatement Order (CAO) No. 86-17. This Order required Alumax Inc., Robert Sackett, and RCM Technologies, Inc. to perform a subsurface investigation, and to propose remedial measures for mitigating any water quality degradation that may have resulted from the migration of soluble salts contained in the aluminum oxide wastes. In order to facilitate investigation at the site and to eliminate a likely source of groundwater contaminants, all aluminum oxide wastes were removed from the site by March of 1992.

6. To comply with CAO No. 86-17, Alumax Inc. conducted two site investigations between 1986 and 1989 and instituted a groundwater monitoring program in April 1993. Initial groundwater monitoring indicated the presence of soluble salts in the groundwater downgradient of the site.

7. Alumax Inc. prepared to initiate a site closure in July 1993 to prevent further groundwater degradation by soluble salts known to remain in the soils beneath the former waste pile storage areas. On September 2, 1994, CAO No. 86-17 was replaced by CAO No. 94-44 to include time schedules for conducting additional groundwater investigations and for mitigating the impact of soluble salts on groundwater.

8. The additional groundwater investigation and salt load reports submitted by Alumax Inc. indicated that:

    a. The estimated quantity of salt leached to the vadose and saturated zone was 16,400 tons. This salt load is relatively minor compared to salt loads resulting from both past and present agricultural and other industrial practices existing within the Chino Basin.

b. The transport modeling results indicated that the Alumax Fontana salt plume travels in a southwesterly direction toward the Jurupa Community Services District (JCSD) production well field located in Sections 4 and 5, R6W, T2S, SBB&M (see **Attachment 1**). Due to the relatively high production rates of the JCSD wells compared to the slow rate at which the plume appeared to be migrating toward the well field, the model predicted that the impact on the quality of pumped water would be negligible. Further, the model indicated that if the salt plume reaches the JCSD well field, it would be completely captured by the JCSD wells, for as long as they remain in service.

9. On April 10, 1997, based on the findings in the salt load reports, the Executive Officer of the Regional Board determined that neither a conventional pump-and-treat system, nor a salt offset program was appropriate as a groundwater remedial alternative.

10. In July of 1998, Aluminum Company of America (Alcoa) acquired all assets and facilities, including the Fontana property, from Alumax Inc.

11. On May 21, 1999, the Regional Board adopted CAO No. 99-38, which replaced CAO No. 94-44, to require Alcoa to implement appropriate corrective measures and monitoring requirements. CAO No. 99-38 specifically required the following:

    a. Submittal and implementation of a site closure and post-closure maintenance plan for the former waste pile storage areas at the site;

    b. Installation of an offsite groundwater monitoring program, in addition to the existing on-site groundwater monitoring program, to provide early warning to JCSD regarding changes in the quality of groundwater upgradient of their well field resulting from the Alumax Fontana salt plume.

    c. Implementation of measures to remediate any adverse impacts the Alumax Fontana plume may have on the JCSD production wells.

12. As required under Item 3 of CAO No. 99-38, Alcoa installed four offsite monitoring wells, AOS #1 through #4, between 1999 and 2000, and began monitoring these wells in addition to the existing two on-site groundwater monitoring wells, MW-1 and MW-2. The locations of these monitoring wells are shown on **Attachment 1**.

13. Item 1 of CAO No. 99-38 required Alcoa to submit a site closure and post-closure maintenance plan (SCPCMP) by August 31, 1999. On August 27, 1999, Alcoa submitted a SCPCMP. After several plan revisions, the Executive Officer of the Regional Board approved the SCPCMP on March 7, 2000, conditioned upon the submittal of a revised plan incorporating three additional post-closure maintenance requirements. On June 19, 2001, Alcoa submitted a revised SCPCMP, dated April 20, 2001, which includes a copy of an unrecorded deed restriction.

14. Item 2 of CAO No. 99-38 required Alcoa to formally close the site by December 31, 1999 or an alternate date approved by the Executive Officer of the Regional Board. On May 2, 2000, Alcoa formally requested a site closure deferral from the December 31, 1999 closure date because the property was for sale, and the cap configuration would be dependent on the buyer's development of the property. On March 1, 2001, the Executive Officer of the Regional Board conditionally approved a time extension for site closure until March 1, 2006, based on the following findings:

    a. No apparent degradation of the groundwater basin due to the Alumax Fontana plume. Existing on-site and offsite water quality monitoring data indicated consistent improvement in water quality beneath and downgradient of the site;

    b. An increasing trend in water quality degradation upstream of the Alumax Fontana site; and

    c. An anticipation of the divestiture of the property for future development, and fulfillment of the capping requirement in concert with future development.

    The site closure deferral was granted conditioned upon compliance with the following water quality indices:

    a. Water Quality Index No. 1 – When a divergence, as defined in the May 2000 site closure deferral proposal, is identified in the annual moving average of chloride values between the onsite groundwater monitoring wells, MW-1 (background) and MW-2 (downgradient).

    b. Water Quality Index No. 2 – When the annual moving average of chloride in offsite Well AOS #4 exceeds the annual moving average of chloride in the onsite background well, MW-1.

    An immediate site closure could be required if any of the above water quality indices is not met.

15. In early November 2005, Alcoa notified Regional Board staff that YRC had purchased USFR, the owner of the former Alumax Fontana facility property, and had become directly involved with the property management of the Alumax Fontana site since May 2005. Prior to final acquisition by YRC, USFR intended to build a truck terminal on the Alumax Fontana property that would incorporate a closure cap for the site, and YRC supports that use. On November 11, 2005, YRC formally requested a time extension for site closure from March 1, 2006 to December 31, 2007 to allow time for a reassessment of the facility design, which may influence the design of the final closure cap. On February 24, 2006, based on the information provided and the monitoring data presented in the January 2005 Annual Groundwater Monitoring Report, the Board granted YRC the requested time extension for site closure.

16. This order is being revised to reflect the change in ownership of the Alumax Fontana property, and to require YRC to:

    a. Continue the existing on-site and offsite water quality monitoring programs;

    b. Propose and implement a site closure and post-closure maintenance plan to minimize the infiltration of water through soil, which causes mobilization of salts remaining in the vadose zone beneath the former Alumax Fontana facility;

    c. Initiate site closure without further delay if new groundwater monitoring data indicate that any of water quality indices (see Finding 13) have not been met; and

    d. Implement other necessary remedial measures to minimize the impact of the Alumax salt plume on nearby water supply wells.

17. Water Code Section 13304 allows the Regional Board to recover reasonable expenses from the responsible parties for overseeing cleanup of illegal discharges, contaminated properties, and other unregulated releases adversely affecting the state's waters. It is the Regional Board's intent to recover such costs for regulatory oversight work conducted in accordance with this order.

18. This action is being taken by a regulatory agency for the protection of the California Environmental Quality Act (Public Resources Codes, Section 21000 et seq.) in accordance with Section 15321, Division 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED THAT, pursuant to Section 13304, Division 7 of the California Water Code, YRC (hereinafter discharger) shall implement the following monitoring and corrective measures:

1. Submit a proposed closure and postclosure maintenance plan for the former waste pile storage and salt-affected areas as indicated on Attachment 2, by **December 1, 2006,** for approval by the Executive Officer of the Regional Board. This plan shall include measures to minimize infiltration of water, which causes mobilization of waste constituents remaining in the vadose zone beneath the site. At a minimum, the closure and postclosure maintenance plan shall include the following:

    a. A description, including any construction drawings, of the site redevelopment plan;

    b. Preparation of the former waste pile storage area for closure;

    c. The design of the closure cover, including the permeability data of each component of the cover, and any drainage control structures to divert water away from the cap;

d. A construction quality assurance/quality control plan for cover installation;

e. A proposed time schedule for site closure activities and final closure report submittal;

f. A discussion of any planned postclosure land use of the capped area;

g. A postclosure cover maintenance program consisting of cap inspection and maintenance, including repair of cracks or other damage, record keeping, and submittal of annual maintenance reports; and

h. A proposed deed restriction for the capped area to declare the responsibility of the property owner and its successor(s) to maintain the capped area and to notify the Regional Board of any proposed changes to the existing cap. A notarized copy of the deed restriction with any attachments for the capped area shall be submitted to the Regional Board within thirty days after it has been recorded with the County of San Bernardino.

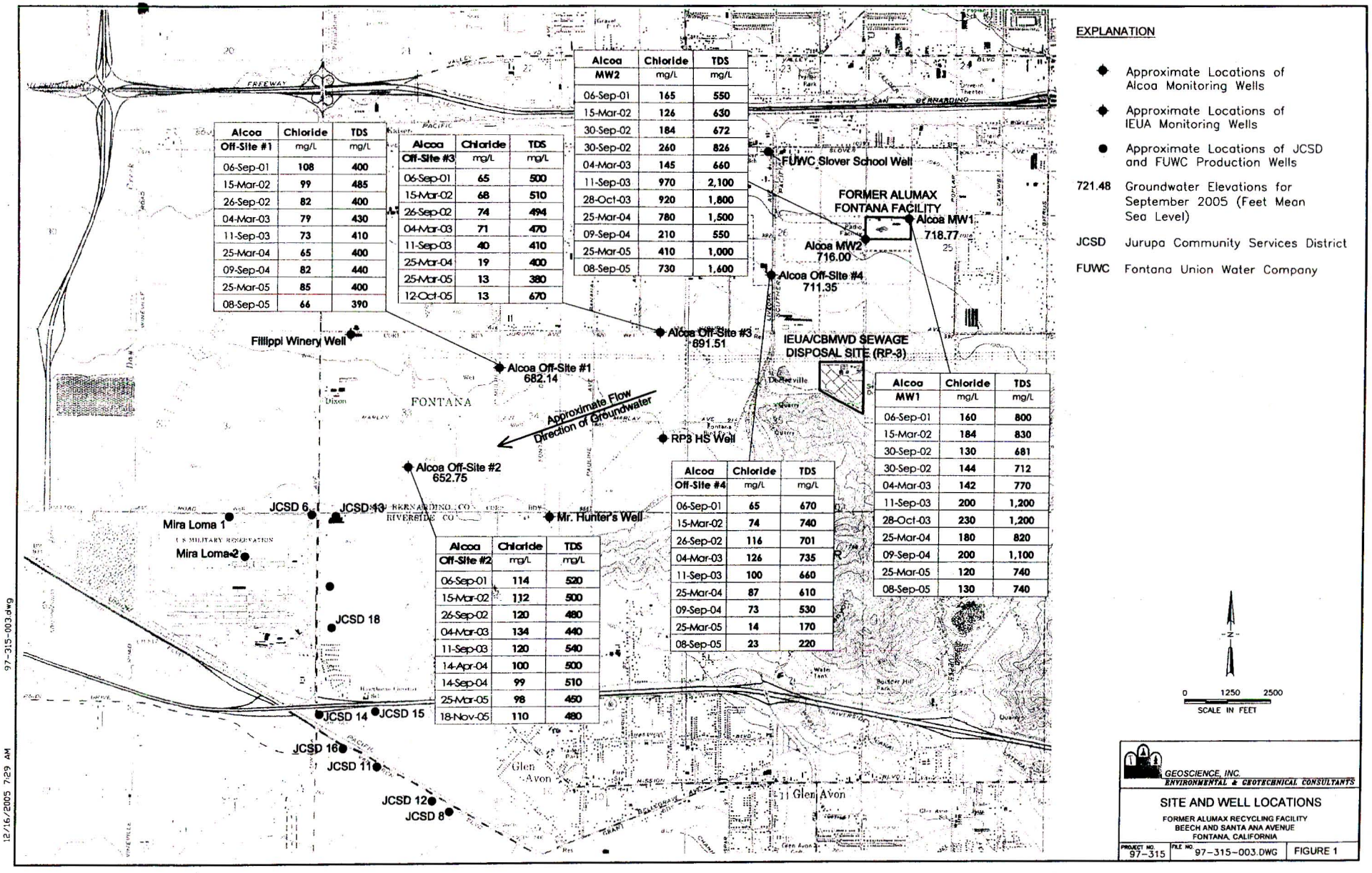
2. Complete implementation of the approved site closure plan submitted pursuant to Item 1 no later than **December 31, 2007**.

3. This order hereby rescinds Order No. 99-38.

If, in the opinion of the Executive Officer, this order is not complied with in a reasonable and timely manner, this matter will be referred to the Regional Board for the imposition of administrative civil liability or referral to the Attorney General for imposition of judicial liability, as provided by law.

Gerard J. Thibeault
Executive Officer

June 8, 2006



Alcoa Off-Site #1	Chloride mg/L	TDS mg/L
06-Sep-01	108	400
15-Mar-02	99	485
26-Sep-02	82	400
04-Mar-03	79	430
11-Sep-03	73	410
25-Mar-04	65	400
09-Sep-04	82	440
25-Mar-05	85	400
08-Sep-05	66	390

Alcoa Off-Site #3	Chloride mg/L	TDS mg/L
06-Sep-01	65	500
15-Mar-02	68	510
26-Sep-02	74	494
04-Mar-03	71	470
11-Sep-03	40	410
25-Mar-04	19	400
25-Mar-05	13	380
12-Oct-05	13	670

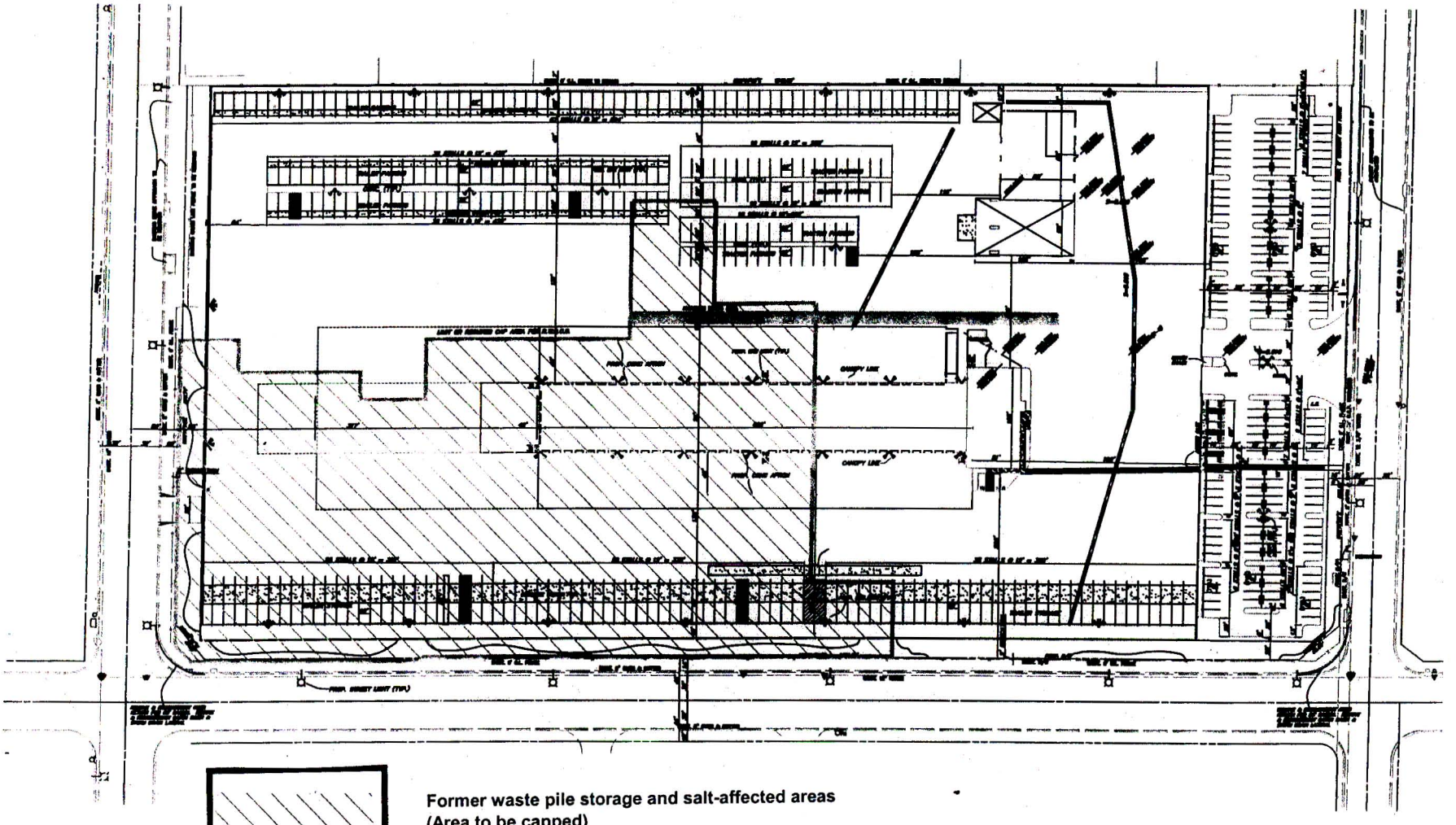
Alcoa MW2	Chloride mg/L	TDS mg/L
06-Sep-01	165	550
15-Mar-02	126	630
30-Sep-02	184	672
30-Sep-02	260	826
04-Mar-03	145	660
11-Sep-03	970	2,100
28-Oct-03	920	1,800
25-Mar-04	780	1,500
09-Sep-04	210	550
25-Mar-05	410	1,000
08-Sep-05	730	1,600

Alcoa MW1	Chloride mg/L	TDS mg/L
06-Sep-01	160	800
15-Mar-02	184	830
30-Sep-02	130	681
30-Sep-02	144	712
04-Mar-03	142	770
11-Sep-03	200	1,200
28-Oct-03	230	1,200
25-Mar-04	180	820
09-Sep-04	200	1,100
25-Mar-05	120	740
08-Sep-05	130	740

Alcoa Off-Site #4	Chloride mg/L	TDS mg/L
06-Sep-01	65	670
15-Mar-02	74	740
26-Sep-02	116	701
04-Mar-03	126	735
11-Sep-03	100	660
25-Mar-04	87	610
09-Sep-04	73	530
25-Mar-05	14	170
08-Sep-05	23	220

Alcoa Off-Site #2	Chloride mg/L	TDS mg/L
06-Sep-01	114	520
15-Mar-02	112	500
26-Sep-02	120	480
04-Mar-03	134	440
11-Sep-03	120	540
14-Apr-04	100	500
14-Sep-04	99	510
25-Mar-05	98	450
18-Nov-05	110	480

Attachment 1
CAO No. R8-2006-0035
Page 7 of 8



Former waste pile storage and salt-affected areas
(Area to be capped)

Scale 1" = 50'

CITY OF FONTANA, CALIFORNIA
ENGINEERING DIVISION
HORIZONTAL CONTROL PLAN

Attachment 2
CAO No. R8-2006-0035
Page 8 of 8

EXHIBIT 21

Pioneer prelim PLP. pdf

FILE COPY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

July 23, 2008

Certified Mail: 7003 1680 0007 1588 0334

Pioneer Companies Inc
700 Louisiana St Suite 4300
Houston, TX 77002

Re: Notice of Potential Liability under the Model Toxics Control Act for the Release of Hazardous Substances at the following Hazardous Waste Site:

- Name: Aluminum Recycling - Trentwood
- Address: 2317 N Sullivan Rd, Veradale, WA 99037
- Facility/Site No.: 628

To Whom It May Concern:

Under the Model Toxics Control Act (MTCA), chapter 70.105D RCW, which governs the cleanup of hazardous waste sites in Washington State, the Department of Ecology (Ecology) may identify persons that it finds are liable for the release of hazardous substances at a site. Before making such a finding, Ecology must provide persons with notice and an opportunity to comment on the proposed finding. Any person whom Ecology finds, based on credible evidence, to be liable is known as a "potentially liable person" or "PLP."

Proposed Finding of Liability

Based on credible evidence, Ecology is proposing to find Pioneer Companies Inc. liable under RCW 70.105D.040 for the release of hazardous substances at the Aluminum Recycling – Trentwood Site (Site). This proposed finding is based on the following evidence:

1. Pioneer Companies Inc. is the corporate successor to Imperial West Chemical Company, and the reported corporate successor to Aluminum Recycling Corporation. Imperial West Chemical Company was a generator of dross, by transport from a different site for treatment, and Aluminum Recycling Corporation was the operator of the aluminum dross reprocessing facility at the Site.

2. Ecology personnel visited the site on December 14, 2006, and observed a 2½ - 3 acre uncontained aluminum dross pile. Evidence of active erosion of the dross pile into surface water was also observed.

3. Black "high salt" dross is classified as a state-only dangerous waste due to failure of fish bioassays from high salt content, and white "low salt" dross is considered a hazardous substance due to fluoride content. Both are present in the current and historical dross piles at the Site.

Opportunity to Respond to Proposed Finding of Liability

In response to Ecology's proposed finding of liability, you may either:

1. Accept your status as a PLP without admitting liability and expedite the process through a voluntary waiver of your right to comment. This may be accomplished by signing and returning the enclosed form or by sending a letter containing similar information to Ecology;

2. Challenge your status as a PLP by submitting written comments to Ecology within thirty (30) calendar days of the date you receive this letter; or

3. Choose not to comment on your status as a PLP.

Please submit your waiver or written comments to the following address:

Sandra Treccani, Toxics Cleanup Program
Eastern Regional Office
WA Department of Ecology
4601 N Monroe
Spokane, WA 99205

After reviewing any comments submitted or after 30 days if no response has been received, Ecology will make a final determination regarding your status as a PLP and provide you with written notice of that determination.

Identification of Other Potentially Liable Persons

Ecology will be notifying the following additional persons that they may be potentially liable for the release of hazardous substances at the Site:

1. Union Pacific Railroad;

2. Kaiser Aluminum.

If you are aware of any other persons who may be liable for the release of hazardous substances at the Site, Ecology encourages you to provide us with their identities and the reason you believe they are liable. Ecology also suggests you contact these other persons to discuss how you can jointly work together to most efficiently clean up the Site.

Responsibility and Scope of Potential Liability

Please note that Ecology may either conduct or require PLPs to conduct remedial actions to investigate and clean up the release of hazardous substances at a site. PLPs are encouraged to initiate discussions and negotiations with Ecology and the Office of the Attorney General that may lead to an agreement on the remedial action to be conducted.

Please also note that each liable person is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release of hazardous substances at a site. If Ecology incurs remedial action costs in connection with the investigation or cleanup of real property and

those costs are not reimbursed, then Ecology has the authority under RCW 70.105D.055 to file a lien against that real property to recover those costs.

Next Steps in Cleanup Process

In response to the release of hazardous substances at the Site, Ecology intends to conduct the following actions under MTCA:

1. Ecology intends to negotiate an Agreed Order with all identified PLPs. The Agreed Order will require the PLPs to conduct a Remedial Investigation and Feasibility Study (RI/FS) to fully define the extent of contamination at the Site and to evaluate alternatives for remedial action;

2. Ecology will require the completion of a remedial investigation and feasibility study (RI/FS) for the Site. Ecology is aware that investigatory and remedial actions have been undertaken at the Site. These actions can be incorporated into the RI/FS.

For a description of the process for cleaning up a hazardous waste site under MTCA, please refer to the enclosed Focus sheet.

Ecology's policy is to work cooperatively with PLPs to accomplish the prompt and effective cleanup of hazardous waste sites. Please note that your cooperation in planning or conducting remedial actions at the Site is not an admission of guilt or liability.

Contact Information

If you have any questions regarding this letter or if you would like additional information regarding the cleanup of hazardous waste sites, please call me at 509/329-3412. Thank you for your cooperation.

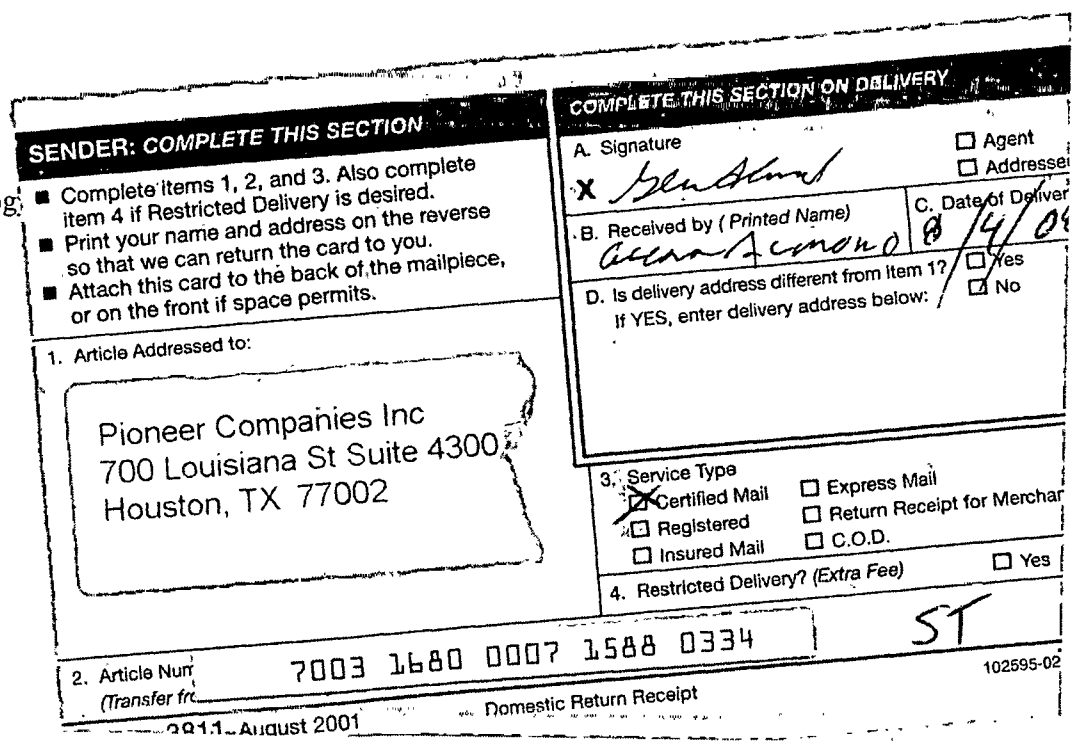
Sincerely,

Sandra Treccani

Sandra Treccani
Hydrogeologist

Enclosures: 2

Cc: Mike Hibbler, Ecology


SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Pioneer Companies Inc
700 Louisiana St Suite 4300
Houston, TX 77002

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent ☐ Addressee

X

B. Received by (Printed Name) C. Date of Deliver

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchar
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Num (Transfer fr 7003 1680 0007 1588 0334

ST

102595-02

PS Form 3811, August 2001 Domestic Return Receipt

PLP WAIVER

Pioneer Companies Inc
700 Louisiana St Suite 4300
Houston, TX 77002

Pursuant to WAC 173-340-500 and WAC 173-340-520(1)(b)(i), I (NAME) _____, a duly authorized representative of Pioneer Companies Inc, do hereby waive the right to the thirty- (30) day notice and comment period described in WAC 173-340-500(3) and accept status of Pioneer Companies Inc as a Potentially Liable Person at the following site:

- Name: Aluminum Recycling - Trentwood
- Address: 2317 N Sullivan Rd, Veradale, WA 99037
- Facility/Site No.: 628

This waiver is solely for purposes of entering into an Agreed Order. By waiving this right, Pioneer Companies Inc makes no admission of liability.

_____ _____

Signature Date

_____

Relation to the Site (i.e., owner or operator)

EXHIBIT 22

Olin
3855 North Ocoee Street
Suite 200
Cleveland, TN 37312
(423) 336-4007
cmrichards@olin.com

CURT M. RICHARDS
Corporate Vice President
Environment, Health & Safety

March 13, 2009

Sandra Treccani
Toxic Cleanup Program
Washington Department of Ecology
4601 North Monroe Street
Spokane, WA 99205-1295

Re: Comments Regarding Determination of PLP Status Former Aluminum Recycling facility - Trentwood, 2317 North Sullivan Road, Veradale, WA 99037

Dear Ms. Treccani:

Olin has received notice that the State of Washington Department of Ecology (WDE) has determined that Pioneer Companies, Inc. (Pioneer) is a potentially liable person (PLP) for the release of hazardous substances at the former Aluminum Recycling - Trentwood facility located at 2317 North Sullivan Road in Veradale, Washington. Olin Corporation is the successor to Pioneer and pursuant to WAC 173-340-500(3), Olin submits the following written comments for your review and consideration.

SUMMARY

After a 2006 investigation revealed the existence of an uncontained aluminum dross pile, approximately 2.5 - 3 acres across, located at the Aluminum Recycling - Trentwood Site in Veradale, Washington, WDE conducted a Site Hazard Assessment. The dross pile was reportedly eroding into adjacent surface water. After conducting the Site Hazard Assessment, WDE issued its finding that Pioneer is a Potentially Liable Person (PLP) for the release of hazardous substances at the Site.

Olin respectfully requests that the WDE reverse its finding that Pioneer is a PLP. Olin's review of the available information relating to Pioneer and its former subsidiaries' involvement with the former Aluminum Recycling - Trentwood site where the dross pile is located (the "Site") and the applicable law indicates that Pioneer should not be considered a PLP in relation to the Site. Neither Pioneer, nor its successor Olin, can be held liable under the Washington Model Toxics Control Act (MTCA), Title 70 RCW § 70.105D.010, et seq., for costs associated with the investigation and remediation of groundwater pollution at the Site. Pioneer was merely the successor to the former parent holding company of Kemwater North America, which in turn was the successor

to Imperial West, another former lessee and operator at the Site. As the successor with little direct involvement at the Site, neither Olin nor Pioneer should be considered a PLP.

COMMENTS ON WDE'S DESIGNATION OF PIONEER AS A PLP

A review of Pioneer's relevant corporate history does not support a finding that either Olin or Pioneer is a PLP for remediation costs at the Site. Olin Corporation acquired Pioneer in May 2007. Pioneer, a manufacturer of chlorine, caustic soda, bleach, hydrochloric acid and related products used in various applications, did not operate at the Site. Two related former Pioneer operating subsidiaries may have contributed materials to the aluminum dross pile at the Site: Imperial West Chemical and Kemwater North America. Pioneer was the successor to Pioneer Chlor Alkali, which was the parent company for Imperial West Chemical, a wholly-owned subsidiary. In 1996, Pioneer combined Imperial West with another subsidiary, Pioneer Water Technologies, to create a new wholly-owned subsidiary, Kemwater North America (KNA). In 1998, Union Pacific leased the Site to KNA. As part of its operations, KNA may have contributed to disposal on an aluminum dross pile at the Site. The extent of this disposal, if any, is unknown.

At the time the WDE early notice and the PLP notice were issued, Pioneer had already divested itself of any ownership interest in the Site. In August 2000, Pioneer transferred substantially all of the assets and operations of two former operating subsidiaries, KNA and KWT, Inc. (together with KNA, "Kemwater") to Kemiron Companies, Inc. (now known as Kemira Water Solutions, Inc.), a subsidiary of European industrial chemical manufacturer, Kemira Oyj. The transfer was part of an arms length transaction which was part of multiple asset acquisitions by Kemiron. Pioneer was never affiliated with Kemiron.

In August 2001, Union Pacific and Kemwater North America entered into an assignment of the lease to Kemiron Northwest, backdated to August 2000. Although Kemwater North American and Imperial West Chemical Company both exist as corporate entities, they do not have any known operations or assets, and no longer have any connection to the Trentwood facility. Based upon this corporate history, neither Pioneer, nor its successor Olin, should be considered a PLP for costs associated with the investigation and remediation of groundwater pollution at the Site.

Olin Should Not Be Considered A PLP

Olin does not fall into any of the categories specified under the MTCA, RCW § 70.105D.040. Pioneer transferred all of the assets and operations of KNA, including those at the Site, to Kemiron Companies, Inc. in 2000. Olin acquired Pioneer in May 2007 and Olin's acquisition was also at arms length. WDE did not find that Pioneer was a PLP until after the acquisition on September 8, 2008. Therefore, Olin is an innocent purchaser with no obligations at the Site relating to the aluminum dross pile. As a successor to Pioneer, which itself had limited involvement at the Site, Olin should not be responsible either under a direct or indirect liability theory.

There Is No Basis To Designate Pioneer as a PLP

As the parent company to a subsidiary who was a former operator of the Site, Pioneer itself should not be considered a PLP. Under the MTCA, there are five categories of liable persons: (1) the current owner or operator of the facility; (2) any person who owned or operated the facility at the time of the disposal or release; (3) any person who arranged for disposal or treatment of a substance at the facility, or who generated the substance; (4) any transporter of hazardous substances to the facility; and (5) anyone who sold the hazardous substance. *See* MTCA, RCW § 70.105D.040. Pioneer is not and has never been a direct owner or operator of the Site. In addition, Pioneer was not an arranger, transporter, generator, or seller of the hazardous substances at the Site. Thus, it does not fall within any of the expressly stated categories of potentially liable persons.

The WDE's designation of Pioneer as a PLP regarding the Site and contamination appears to be based upon Pioneer's status as the corporate successor to Imperial West Chemical Company and to Aluminum Recycling Corporation (ARC). *See* July 23, 2008 Notice of Potential Liability under the Model Toxics Control Act for the Release of Hazardous Substances.

As an initial matter, Imperial West acquired assets from the ARC only after ARC's bankruptcy. Imperial West only purchased ARC's assets as part of bankruptcy proceedings. A corporation that merely purchases the assets of another corporation is not necessarily responsible for the former corporation's liabilities. *See Katzir's Floor & Home Design, Inc. v. M-MLS.com*, 394 F.3d 1143, 1150 (9th Cir. 2004). Thus, Pioneer cannot be considered the "successor" to ARC or for ARC's liabilities.

Pioneer should not be considered liable as the successor to Imperial West Chemical Company either. The MTCA provides that a person who owned or operated the facility at the time of disposal or release can be held liable. *See* MTCA, RCW § 70.105D.040(2). It does not include successor companies among the list of categories of liable persons. Moreover, it is a deeply ingrained" principle of corporate law that a parent corporation is not liable for the acts of its subsidiaries. *See United States v. Bestfoods*, 524 U.S. 51, 61 (1998); *cf. Minton v. Ralston Purina Co.*, 47 P.3d 556, 562 (Wash. 2002) (*en banc*) (noting the "deeply ingrained" principle stated in *Bestfoods* that a parent corporation is "not liable for the acts of its subsidiaries.")[1]

[1] Washington courts have held that, because the MTCA was "heavily patterned after its federal counterpart, federal cases interpreting similar 'owner or operator' language in the federal Act are persuasive authority in determining operator liability." *Taliesen Corp. v. Razore Land Co.*, 144 P.3d 1185, 1197 (Wash. Ct. App. 2006); *see also Bird-Johnson Corp. v. Dana Corp.*, 833 P.2d 375, 377 (Wash. 1992). Washington state cases have also held that the "weight of [federal] authority" interprets an "operator" by applying the "actual-participation/exercise of control standard." *Unigard*, 983 P.2d at 1161.

The rule established in *Bestfoods* provides that a parent corporation which actively participated in and exercised control over the operations of a subsidiary cannot, without more, be held liable as an operator of a polluting facility owned and operated by the subsidiary, absent a piercing of the corporate veil or the parent corporation's direct participation in and control over the actual operations of the polluting facility itself. *Id.* at 55.

Here, there is no basis to find Pioneer liable for the actions of Imperial West Chemical or KNA. Washington courts have held that, "[t]o pierce the corporate veil and find a parent corporation liable, the party seeking relief must show that there is an overt intention by the corporation to disregard the corporate entity in order to avoid a duty owed to the party seeking to invoke the doctrine." *Minton*, 47 P.3d at 562. "Generally, a party must show that the corporation manipulated the entities in order to avoid the legal duty." *Id.*

The facts do not support a finding that Pioneer actually exercised control over the disposal operations at the Site in such a way that Pioneer should be held directly liable for contributions made by Imperial West or KNA to the dross pile. Pioneer Companies, Inc. was a holding company for the operating subsidiaries at issue. According to Pioneer Companies, Inc.'s SEC Form 10-K for the Fiscal Year ending Dec. 31, 2000, Pioneer was "a holding company with no operating assets or operations." (p. 38). A holding company, as one federal district court observed, "is nothing more than an investment mechanism, a device for diversifying risk through corporate acquisitions." *Bellomo v. Pennsylvania Life Co.*, 488 F. Supp. 744, 746 (S.D.N.Y. 1980). A holding company's subsidiaries "conduct business not as its agents but as its investments. The business of the parent is the business of investment, and that business is carried out entirely at the parent level." *Id.*

In addition, Pioneer did not extensively control Imperial West Chemical or KNA and did not manipulate either of those entities for the purpose of avoiding its own responsibilities. Additionally, Pioneer did not participate directly in or control Imperial West Chemical or KNA's conduct that contributed to the contamination. As parent to Imperial West and later to KNA, Pioneer oversaw the businesses of its subsidiaries. The distinction between Pioneer and the separate entities was maintained throughout the relevant period up until the time KNA was transferred to Kemiron.

Therefore, Pioneer cannot be held liable for costs associated with the investigation and remediation of contamination at the Site as a successor to Imperial West Chemical or ARC and should not be considered a PLP.

Accordingly, Olin respectfully requests that the WDE reverse its finding that Pioneer is a potentially liable person for the release of hazardous substances at the Site. If you require additional information, please do not hesitate to contact me.

Sincerely,

Curt M. Richards

Curt M. Richards

cc: Stuart N. Roth

EXHIBIT 23

APR 0 3 2009

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

March 30, 2009

Curt Richards
VP of Environment, Health & Safety
Olin Corporation
3855 N Ocoee St, Ste 200
Cleveland, TN 37312

Dear Mr. Richards:

RE: Update to PLP Status Determination for the Aluminum Recycling Trentwood Site

The Department of Ecology (Ecology) has reviewed your letter containing comments on Pioneer Companies' potentially liable person (PLP) status at the Aluminum Recycling Trentwood Site in Spokane, WA. Despite Ecology's issuance of its final determination on Pioneer Companies' PLP status, we decided to provide additional time for comment due to communication delays.

After reviewing the arguments provided by Olin in the comment letter dated March 13, 2009, Ecology has determined that Pioneer Companies will not be considered a PLP for the Aluminum Recycling Trentwood Site. However, Ecology reserves the right to name Pioneer Companies as a PLP at any time should additional information come forward.

If you have any questions, please feel free to contact me at 509/329-3412.

Sincerely,

Sandra L. Treccani

Sandra L. Treccani
Hydrogeologist
Toxics Cleanup Program

Cc: Gary Honeyman, Union Pacific Railroad

EXHIBIT 24

2317 North Sullivan Road

2317 North Sullivan Road

Spokane Valley, WA 99216

Inquiry Number: 6551764.11

June 24, 2021

The EDR Aerial Photo Decade Package

6 Armstrong Road, 4th floor
Shelton, CT 06484
Toll Free: 800.352.0050
www.edrnet.com

EDR Aerial Photo Decade Package

06/24/21

Site Name:

2317 North Sullivan Road
2317 North Sullivan Road
Spokane Valley, WA 99216
EDR Inquiry # 6551764.11

Client Name:

Greenberg Glusker
1900 Avenue of the Stars
Los Angeles, CA 90067
Contact: Sherry E. Jackman

Environmental Data Resources, Inc. (EDR) Aerial Photo Decade Package is a screening tool designed to assist environmental professionals in evaluating potential liability on a target property resulting from past activities. EDR's professional researchers provide digitally reproduced historical aerial photographs, and when available, provide one photo per decade.

Search Results:

Year	Scale	Details	Source
2017	1"=500'	Flight Year: 2017	USDA/NAIP
2013	1"=500'	Flight Year: 2013	USDA/NAIP
2009	1"=500'	Flight Year: 2009	USDA/NAIP
2006	1"=500'	Flight Year: 2006	USDA/NAIP
1995	1"=500'	Acquisition Date: January 01, 1995	USGS/DOQQ
1991	1"=500'	Flight Date: September 15, 1991	USGS
1982	1"=500'	Flight Date: June 23, 1982	USDA
1977	1"=500'	Flight Date: July 15, 1977	USDA
1972	1"=500'	Flight Date: August 30, 1972	USGS
1962	1"=500'	Flight Date: August 14, 1962	USGS
1953	1"=500'	Flight Date: September 11, 1953	USGS
1946	1"=500'	Flight Date: December 10, 1946	USGS
1938	1"=500'	Flight Date: August 02, 1938	USDA

When delivered electronically by EDR, the aerial photo images included with this report are for ONE TIME USE ONLY. Further reproduction of these aerial photo images is prohibited without permission from EDR. For more information contact your EDR Account Executive.

INQUIRY #: 6551764.11

YEAR: 2017

= 500'

N

EDR

INQUIRY #: 6551764.11

YEAR: 2013

= 500'

N

EDR

INQUIRY #: 6551764.11

YEAR: 2009

= 500'

N

EDR


INQUIRY #: 6551764.11
YEAR: 2006
= 500'
N
EDR

INQUIRY #: 6551764.11

YEAR: 1995

= 500'

N

EDR

INQUIRY #: 6551764.11

YEAR: 1991

= 500'

N

EDR

INQUIRY #: 6551764.11

YEAR: 1982

= 500'

N

EDR

INQUIRY #: 6551764.11

YEAR: 1977

= 500'

N

EDR

INQUIRY #: 6551764.11

YEAR: 1972

= 500'

N

EDR

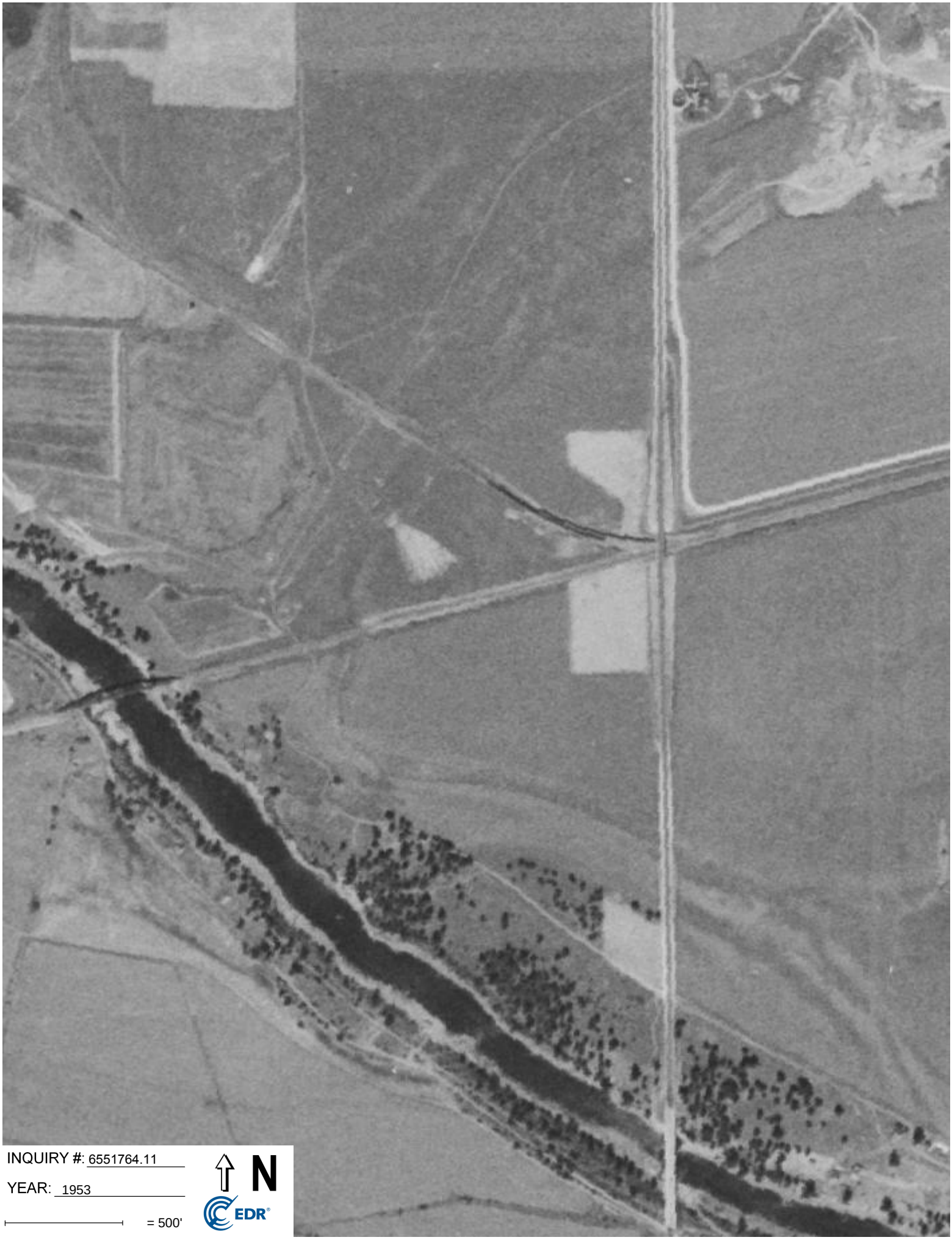
INQUIRY #: 6551764.11

YEAR: 1962

= 500'

N

EDR



INQUIRY #: 6551764.11

YEAR: 1953

= 500'

N

EDR

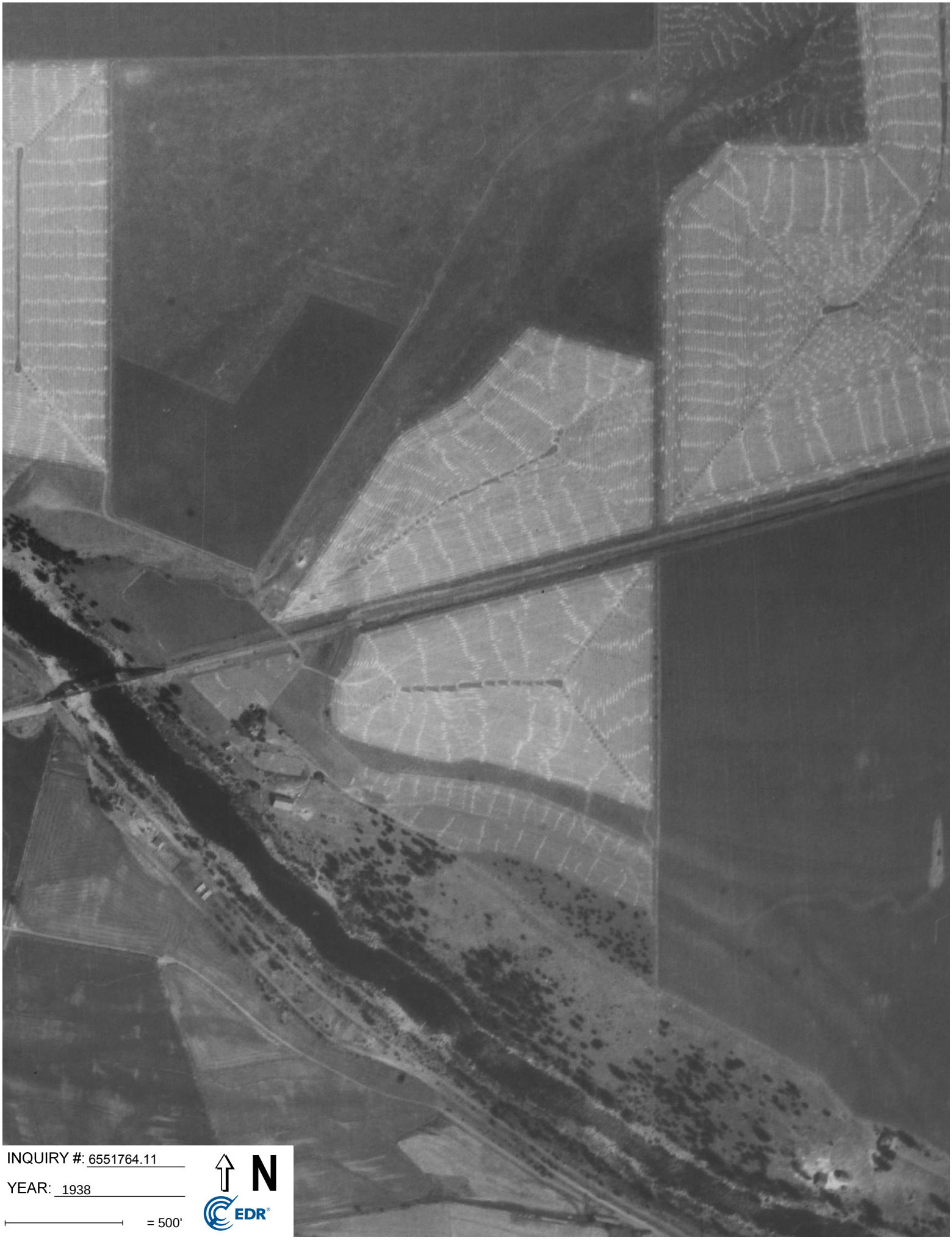
INQUIRY #: 6551764.11

YEAR: 1946

= 500'

N

EDR



INQUIRY #: 6551764.11

YEAR: 1938

= 500'

N

EDR

EXHIBIT 25

CERTIFICATE OF INCORPORATION

OF

HILLYARD ALUMINUM RECOVERY CORPORATION

* * *

FIRST. The name of the corporation is Hillyard Aluminum Recovery Corporation.

SECOND. Its registered office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its registered agent is The Corporation Trust Company, No. 100 West Tenth Street, Wilmington, Delaware.

THIRD. The nature of the business or purposes to be conducted or promoted are:

(a) To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

(b) In general, to carry on all businesses in connection with the foregoing, and do all things necessary, proper, advisable, convenient for, or incidental to the accomplishment of the foregoing purposes.

The Corporation, its directors and shareholders, shall have and may exercise all of the powers now or hereafter conferred by the laws of the State of Delaware and acts amendatory thereof or supplemental thereto upon

corporations formed under the General Corporation Law of the State of Delaware.

FOURTH. The total number of shares of stock which the corporation shall have authority to issue is four thousand (4,000), all of one class, and the par value of each of such shares is One Hundred Dollars ($100.00) amounting in the aggregate to Four Hundred Thousand Dollars ($400,000.00).

FIFTH: The names and places of residence of the incorporators are as follows:

NAMES	RESIDENCES
Marigold Cole	717 Concord Way, Burlingame, CA
Craig A. Davis	78 Deodora, Atherton, CA
Dennis P. McPenc w	2275 Broadway, San Francisco, CA

SIXTH. The corporation is to have perpetual existence.

SEVENTH. In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make, alter or repeal the by-laws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the cor-

0003

poration available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

When and as authorized by the stockholders in accordance with statute , to sell, lease or exchange all or substantially all of the property and assets of the corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property including shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors shall deem expedient and for the best interests of the corporation.

EIGHTH. Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this corporation under the provisions of section 291 of Title 8 of the Delaware Code or on the application of trustees in

00004

dissolution or of any receiver or receivers appointed for this corporation under the provisions of section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

NINTH. Elections of directors need not be by ballot unless the by-laws of the corporation shall so provide.

TENTH. The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred

00005

upon stockholders herein are granted subject to this reservation.

WE, THE UNDERSIGNED, being each of the incorporators hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set our hands this 21st day of April, 1976.

Craig A. Davis

Irving L. McVernon

Marigold Cole

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN MATEO)

On this 21st day of April A.D. 1976, before me, Dores E. Marshall, a Notary Public in and for the said County and State, all of the parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts stated therein are true.

GIVEN under my hand and seal of office this day and year aforesaid.

Dores E. Marshall

Notary Public

OFFICIAL SEAL
DORES E. MARSHALL
NOTARY PUBLIC-CALIFORNIA
SAN MATEO COUNTY
My comm. expires JUN 20, 1978

(SEAL)

00006

- 72-7133024

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

Hillyard Aluminum Recovery Corporation, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said corporation, at a meeting duly held, adopted resolutions proposing and declaring advisable the following amendments to the Certificate of Incorporation of said corporation:

RESOLVED: That a new Article ELEVENTH be added as an amendment to the Certificate of Incorporation of the Company, said Article ELEVENTH to read as follows:

ELEVENTH. A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended hereafter to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph by the stockholders of the corporation shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal for modification.

SECOND: That this amendment was duly adopted by the Board of Directors and by its stockholders in accordance with the provisions of the General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendments were duly adopted in accordance with the applicable provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said HILLYARD ALUMINUM RECOVERY CORPORATION has caused this certificate to be signed by Paul E. Drack, Vice President, and attested by Marigold Cole, Assistant Secretary this 24th day of April, 1987.

By: Paul E Drack
Paul E. Drack, Vice President

ATTEST:

By: Marigold Cole
Marigold Cole, Assistant Secretary

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 04:30 PM 12/22/1998
981497979 - 0823746

CERTIFICATE OF DISSOLUTION

OF

HILLYARD ALUMINUM RECOVERY CORPORATION

Hillyard Aluminum Recovery Corporation, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That dissolution was authorized on December 7, 1998.

SECOND: That dissolution has been authorized by the Board of Directors and stockholders of the corporation in accordance with the provisions of subsections (a) and (b) of section 275 of the General Corporation Law of the State of Delaware.

THIRD: That the names and addresses of the directors and officers of Hillyard Aluminum Recovery Corporation are as follows:

DIRECTORS

Denis A. Demblowski 201 Isabella Street, Pittsburgh, PA 15212-5858

OFFICERS

George E. Bergeron — President
3424 Peachtree Road, N.E., Suite 2100, Atlanta, GA 30326

Linda B. Burke — Vice President
201 Isabella Street, Pittsburgh, PA 15212-5858

Richard P. McCracken — Vice President
3424 Peachtree Road, N.E., Suite 2100, Atlanta, GA 30326

Joseph R. Lucot — Vice President
201 Isabella Street, Pittsburgh, PA 15212-5858

Russell W. Porter, Jr. — Vice President
201 Isabella Street, Pittsburgh, PA 15212-5858

Dolores A. Yura — Secretary
201 Isabella Street, Pittsburgh, PA 15212-5858

Robert G. Wennemer — Treasurer
201 Isabella Street, Pittsburgh, PA 15212-5858

FOURTH: This filing shall become effective on December 31, 1998.

IN WITNESS WHEREOF, said Hillyard Aluminum Recovery Corporation has caused this Certificate to be signed by Joseph R. Lucot, its Vice President, this 21st day of December 1998.

HILLYARD ALUMINUM RECOVERY CORPORATION

By _____
Joseph R. Lucot, Vice President

EXHIBIT 26

ENTITY INFORMATION

ENTITY INFORMATION

Entity Name:

IMPERIAL WEST CHEMICAL CO.

Entity Number:

C3597-1977

Entity Type:

Domestic Corporation (78)

Entity Status:

Active

Formation Date:

08/16/1977

NV Business ID:

NV19771005631

Termination Date:

Perpetual

Annual Report Due Date:

8/31/2021

REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

C T CORPORATION SYSTEM

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Commercial Registered Agent

NV Business ID:

NV20191497453

Office or Position:

Jurisdiction:

DELAWARE

Street Address:

701 S CARSON ST STE 200, Carson City, NV, 89701, USA

Mailing Address:

Individual with Authority to Act:

MATTHEW TAYLOR

Fictitious Website or Domain Name:

OFFICER INFORMATION

☐ VIEW HISTORICAL DATA

Title	Name	Address	Last Updated	Status
Other/	Frank Chirumbole	16290 Katy Frwy, Ste 600, Houston, TX, 77094, USA	08/19/2020	Active
Other/	John Sampson	16290 Katy Frwy, Ste 600, Houston, TX, 77094, USA	08/19/2020	Active
Other/	Timothy Ponsler	190 Carondelet Plaza, Suite 1530, Clayton, MO, 63105, USA	08/19/2020	Active
Other/	Nicholas Hendon	190 Carondelet Plaza, Suite 1530, Clayton, MO, 63105, USA	08/19/2020	Active
Other/	J. Matthew Martin	190 Carondelet Plaza, Suite 1530, Clayton, MO, 63105, USA	08/19/2020	Active

< Previous ... 1 2 3 ... Next > Page 1 of 3, records 1 to 5 of 11 Go to Page

CURRENT SHARES

Class/Series	Type	Share Number	Value
	Authorized	25,000	1.000000000000

Page 1 of 1, records 1 to 1 of 1

Number of No Par Value Shares:

0

Total Authorized Capital:

25,000

Filing History Name History Mergers/Conversions

Return to Search Return to Results

EXHIBIT 27

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 07/10/2000
001350871 - 3258087

CERTIFICATE OF INCORPORATION

OF

KEMIRON COMPANIES, INC.

FIRST. The name of this corporation shall be:

KEMIRON COMPANIES, INC.

SECOND. Its registered office in the State of Delaware is to be located at 1013 Centre Road, in the City of Wilmington, County of New Castle, 19805, and its registered agent at such address is CORPORATION SERVICE COMPANY.

THIRD. The purpose or purposes of the corporation shall be:

To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH. The total number of shares of stock which this corporation is authorized to issue is Two Hundred Fifty Thousand (250,000) and the par value of each such share is One Dollar ($1.00), amounting in the aggregate to Two Hundred Fifty Thousand Dollars ($250,000.00).

FIFTH. The name and mailing address of the incorporator is as follows:

Corporation Service Company
1013 Centre Road
Wilmington, DE 19805.

SIXTH. The board of directors shall have the power to adopt, amend or repeal the by-laws, provided, however, that the stockholders shall have the exclusive right to create additional directors and to elect such directors.

SEVENTH. A director of the corporation shall not be liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director of the corporation, except to the extent that such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Law as currently in effect or as the same may hereafter be amended.

IN WITNESS WHEREOF, the undersigned, being the incorporator hereinbefore named, has executed, signed and acknowledged this Certificate of Incorporation this 10th day of July, 2000.

Ronald Harris

Incorporator, RONALD HARRIS
Representative of
Corporation Service Company

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:06 PM 09/18/2006
FILED 02:00 PM 09/18/2006
SRV 060857909 - 3258087 FILE

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
KEMIRON COMPANIES, INC.

I, the undersigned, being the Vice President and General Counsel of Kemiron Companies, Inc., a Delaware corporation, hereby certify that the following Amendment to the Certificate of Incorporation was duly adopted pursuant to the procedures of 8 Del. C. §242 (b)(1):

AMENDMENT

"The Certificate of Incorporation shall be amended so that, effective upon filing of a Certificate of Amendment of the Certificate of Incorporation, the name of the corporation shall be Kemira Water Solutions, Inc.

In all other respects, the Certificate of Incorporation shall remain as it was prior to this Amendment being adopted.

IN WITNESS WHEREOF, I hereby set my hand this 15th day of September, 2006.

By: _____
Evin Netzer, Vice President & General Counsel

STATE OF FLORIDA

COUNTY OF POLK

The foregoing instrument was acknowledged before me this 15th day of September, 2006, by Evin Netzer, as Vice President & General Counsel of Kemiron Companies, Inc.

JANEEN N. HICKS
Notary Public - State of Florida
My Commission Expires Nov 17, 2009
Commission # DD 491936
Bonded By National Notary Assn.

Janeen N. Hicks
Notary Public, State of Florida

Print, Type or Stamp Name

Janeen N Hicks

Personally Known ✓ OR Produced Identification _____
Type of Identification Produced _____

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:50 PM 12/21/2006
FILED 04:50 PM 12/21/2006
SRV 061177474 - 3258087 FILE

STATE OF DELAWARE
CERTIFICATE OF MERGER OF
DOMESTIC CORPORATIONS

Pursuant to Title 8, Section 251(c) of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is Kemira Water Solutions, Inc., a Delaware Corporation, and the name of the corporation being merged into this surviving corporation is Kemiron Gulf, Inc., a Delaware Corporation.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations.

THIRD: The name of the surviving corporation is Kemira Water Solutions, Inc. a Delaware corporation.

FOURTH: The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation.

FIFTH: The merger is to become effective on 12/31/06.

SIXTH: The Agreement of Merger is on file at 808 E. Main St, Lakeland, FL 33801, the place of business of the surviving corporation.

SEVENTH: A copy of the Agreement of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

IN WITNESS WHEREOF, said surviving corporation has caused this certificate to be signed by an authorized officer, the 21st. day of December, A.D., 2006.

By: _____
Authorized Officer

Name: Evin L. Netzer
Print or Type

Title: VP & General Counsel

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:52 PM 12/21/2006
FILED 04:52 PM 12/21/2006
SRV 061177482 - 3258087 FILE

STATE OF DELAWARE
CERTIFICATE OF MERGER OF
DOMESTIC CORPORATIONS

Pursuant to Title 8, Section 251(c) of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving Delaware corporation is Kemira Water Solutions, Inc, and the name of the corporation being merged into this surviving corporation is Kemiron Atlantic, Inc., a Delaware Corporation.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations.

THIRD: The name of the surviving corporation is Kemira Water Solutions, Inc. a Delaware corporation.

FOURTH: The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation.

FIFTH: The merger is to become effective on 12/31/06.

SIXTH: The Agreement of Merger is on file at 808 E. Main St., Lakeland, FL 33801, the place of business of the surviving corporation.

SEVENTH: A copy of the Agreement of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

IN WITNESS WHEREOF, said surviving corporation has caused this certificate to be signed by an authorized officer, the 21st day of December, A.D., 2006.

By: _____
Authorized Officer

Name: Evin L. Netzer
Print or Type

Title: VP & General Counsel

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:13 PM 12/21/2006
FILED 05:13 PM 12/21/2006
SRV 061177544 - 3258087 FILE

STATE OF DELAWARE
CERTIFICATE OF MERGER OF
DOMESTIC CORPORATIONS

Pursuant to Title 8, Section 251(c) of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving Delaware corporation is Kemira Water Solutions, Inc., and the name of the corporation being merged into this surviving corporation is Kemiron North America Corporation, a Delaware corporation.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations.

THIRD: The name of the surviving corporation is Kemira Water Solutions, Inc. a Delaware corporation.

FOURTH: The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation.

FIFTH: The merger is to become effective on 12/31/06.

SIXTH: The Agreement of Merger is on file at 808 E. Main St, Lakeland, FL 33801, the place of business of the surviving corporation.

SEVENTH: A copy of the Agreement of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

IN WITNESS WHEREOF, said surviving corporation has caused this certificate to be signed by an authorized officer, the 21st. day of December, A.D., 2006.

By: _____
Authorized Officer

Name: Evin L. Netzer
Print or Type

Title: VP + General Counsel

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:56 PM 12/21/2006
FILED 05:14 PM 12/21/2006
SRV 061177513 - 3258087 FILE

STATE OF DELAWARE
CERTIFICATE OF MERGER OF
DOMESTIC CORPORATIONS

Pursuant to Title 8, Section 251(c) of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving Delaware corporation is Kemira Water Solutions, Inc., and the name of the corporation being merged into this surviving corporation is Eaglebrook Inc., a Delaware corporation.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations.

THIRD: The name of the surviving corporation is Kemira Water Solutions, Inc., a Delaware corporation.

FOURTH: The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation.

FIFTH: The merger is to become effective on 12/31/06.

SIXTH: The Agreement of Merger is on file at 808 E. Main St, Lakeland, FL 33801, the place of business of the surviving corporation.

SEVENTH: A copy of the Agreement of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

IN WITNESS WHEREOF, said surviving corporation has caused this certificate to be signed by an authorized officer, the 21st. day of December, A.D., 2006.

By: _____
Authorized Officer

Name: Evin L. Netzer
Print or Type

Title: VP + General Counsel

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:58 PM 12/21/2006
FILED 05:15 PM 12/21/2006
SRV 061177518 - 3258087 FILE

STATE OF DELAWARE
CERTIFICATE OF MERGER OF
DOMESTIC CORPORATIONS

Pursuant to Title 8, Section 251(c) of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is Kemira Water Solutions, Inc., and the name of the corporation being merged into this surviving corporation is Eaglebrook International Group, Ltd., a Delaware corporation.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations.

THIRD: The name of the surviving corporation is Kemira Water Solutions, Inc. a Delaware corporation.

FOURTH: The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation.

FIFTH: The merger is to become effective on 12/31/06.

SIXTH: The Agreement of Merger is on file at 808 E. Main St, Lakeland, FL 33801, the place of business of the surviving corporation.

SEVENTH: A copy of the Agreement of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

IN WITNESS WHEREOF, said surviving corporation has caused this certificate to be signed by an authorized officer, the 21st day of December, A.D., 2006.

By: _____
Authorized Officer

Name: Evin L. Netzer
Print or Type

Title: VP + General Counsel

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:05 PM 12/21/2006
FILED 05:16 PM 12/21/2006
SRV 061177529 - 3258087 FILE

STATE OF DELAWARE
CERTIFICATE OF MERGER OF
DOMESTIC CORPORATIONS

Pursuant to Title 8, Section 251(c) of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving Delaware corporation is Kemira Water Solutions, Inc., and the name of the corporation being merged into this surviving corporation is Kemiron Northwest, Inc., a Delaware Corporation.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations.

THIRD: The name of the surviving corporation is Kemira Water Solutions, Inc. a Delaware corporation.

FOURTH: The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation.

FIFTH: The merger is to become effective on 12/31/06.

SIXTH: The Agreement of Merger is on file at 808 E. Main St, Lakeland, FL 33801, the place of business of the surviving corporation.

SEVENTH: A copy of the Agreement of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

IN WITNESS WHEREOF, said surviving corporation has caused this certificate to be signed by an authorized officer, the 21st. day of December, A.D., 2006.

By: _____
Authorized Officer

Name: Evin L. Netzer
Print or Type

Title: VP + General Counsel

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:43 PM 12/28/2006
FILED 05:43 PM 12/28/2006
SRV 061197712 - 3258087 FILE

STATE OF DELAWARE
CERTIFICATE OF OWNERSHIP

SUBSIDIARY INTO PARENT
Section 253

CERTIFICATE OF OWNERSHIP
MERGING

Kemiron Pacific, Inc., a California Corporation

INTO

Kemira Water Solutions, Inc., a Delaware Corporation

(Pursuant to Section 253 of the General Corporation Law of Delaware)

Kemira Water Solutions, Inc., a corporation incorporated on the 10 day of July, 2000 A.D., pursuant to the provisions of the General Corporation Law of the State of Delaware;

DOES HEREBY CERTIFY that this corporation owns 100% of the capital stock of Kemiron Pacific, Inc., a corporation incorporated on the 7th day of June, 1993 A.D., pursuant to the provisions of the Corporation Code of the State of California, and that this corporation, by a resolution of its Board of Directors duly adopted at a meeting held on the 15th day of December, 2006 A.D., determined to and did merge into itself said Kemiron Pacific, Inc., which resolution is in the following words to wit:

WHEREAS this corporation lawfully owns 100% of the outstanding stock of Kemiron Pacific, Inc, a corporation organized and exiting under the laws of California, and

WHEREAS this corporation desires to merge into itself the said Kemiron Pacific, Inc., and to be possessed of all the estate, property, rights, privileges and franchises of said corporation,

NOW, THEREFORE, BE IT RESOLVED, that this corporation merge into itself said Kemiron Pacific, Inc. and assumes all of its liabilities and obligations pursuant to the Delaware Corporate Code and Section 1110 of the California Corporation Code, and

FURTHER RESOLVED, that an authorized officer of this corporation be and he/she is hereby directed to make and execute a certificate of ownership setting forth a copy of the resolution to merge said Kemiron Pacific, Inc. and assume its liabilities and obligations, and the date of adoption thereof, and to file the same in the office of the Secretary of State of Delaware and in the office of the State of California, and a certified copy thereof in the office of the Recorder of Deeds of any County necessary to effectuate such merger; and

FURTHER RESOLVED, that the officers of this corporation be and they hereby are authorized and directed to do all acts and things whatsoever, whether within or without the State of Delaware or the State of California; which may be in any way necessary or proper to effect said merger.

IN WITNESS WHEREOF, said parent corporation has caused its corporate seal to be affixed and this certificate to be signed by an authorized officer this 22nd day of December, 2006 A.D.

By: _____
Authorized Officer

Name: Evin L. Metzer
Print or Type

Title: VP + General Counsel

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:46 PM 12/28/2006
FILED 05:46 PM 12/28/2006
SRV 061197737 - 3258087 FILE

STATE OF DELAWARE
CERTIFICATE OF MERGER OF
DOMESTIC LIMITED LIABILITY COMPANY
INTO A
DOMESTIC CORPORATION

Pursuant to Title 8, Section 264(c) of the Delaware General Corporation Law and Title 6, Section 18-209 of the Delaware Limited Liability Company Act, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is Kemira Water Solutions, Inc., a Delaware Corporation, and the name of the limited liability company being merged into this surviving corporation is Kemiron Great Lakes, LLC, a Delaware limited liability company.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by the surviving corporation and the merging limited liability company.

THIRD: The name of the surviving corporation is Kemira Water Solutions, Inc.

FOURTH: The merger is to become effective on 12/31/06.

FIFTH: The Agreement of Merger is on file at 808 E. Main St., Lakeland, FL 33801, the place of business of the surviving corporation.

SIXTH: A copy of the Agreement of Merger will be furnished by the corporation on request, without cost, to any stockholder of any constituent corporation or member of any constituent limited liability company.

SEVENTH: The Certificate of Incorporation of the surviving corporation shall be it's Certificate of Incorporation

IN WITNESS WHEREOF, said Corporation has caused this certificate to be signed by an authorized officer, the 22nd day of December, A.D., 2006.

By: _____
Authorized Officer

Name: Evin L. Netzer
Print or Type

Title: VP + General Counsel

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:52 PM 12/28/2006
FILED 05:52 PM 12/28/2006
SRV 061197812 - 3258087 FILE

STATE OF DELAWARE
CERTIFICATE OF MERGER OF
FOREIGN CORPORATION INTO
A DOMESTIC CORPORATION

Pursuant to Title 8, Section 252 of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is Kemira Water Solutions, Inc., a Delaware corporation, and the name of the corporation being merged into this surviving corporation is Midland Resources, Inc, a Missouri corporation.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations pursuant to Title 8 Section 252 of the General Corporation Law of the State of Delaware.

THIRD: The name of the surviving corporation is Kemira Water Solutions, Inc., a Delaware corporation.

FOURTH: The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation. (If amendments are affected please set forth)

FIFTH: The authorized stock and par value of the non-Delaware corporation is 30,000 Common shares with par value of $1.00.

SIXTH: The merger is to become effective on 12/31/06.

SEVENTH: The Agreement of Merger is on file at 808 E. Main St, Lakeland, FL 33801, an office of the surviving corporation.

EIGHTH: A copy of the Agreement of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

IN WITNESS WHEREOF, said surviving corporation has caused this certificate to be signed by an authorized officer, the 22nd day of December, A.D., 2006.

By: _____
Authorized Officer

Name: Evin L. Netzer
Print or Type

Title: VP + General Counsel

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:53 PM 12/28/2006
FILED 05:53 PM 12/28/2006
SRV 061197818 - 3258087 FILE

STATE OF DELAWARE
CERTIFICATE OF MERGER OF
FOREIGN CORPORATION INTO
A DOMESTIC CORPORATION

Pursuant to Title 8, Section 252 of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is Kemira Water Solutions, Inc., a Delaware corporation, and the name of the corporation being merged into this surviving corporation is Kemiron, Inc., a Florida corporation.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations pursuant to Title 8 Section 252 of the General Corporation Law of the State of Delaware.

THIRD: The name of the surviving corporation is Kemira Water Solutions, Inc., a Delaware corporation.

FOURTH: The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation. (If amendments are affected please set forth)

FIFTH: The authorized stock and par value of the non-Delaware corporation is 6,000 shares of Class A Common stock, no par value, 270 shares of Class B Common stock, no par value

SIXTH: The merger is to become effective on 12/31/06

SEVENTH: The Agreement of Merger is on file at 808 E. Main St., Lakeland, FL 33801, an office of the surviving corporation.

EIGHTH: A copy of the Agreement of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

IN WITNESS WHEREOF, said surviving corporation has caused this certificate to be signed by an authorized officer, the 22nd day of December, A.D., 2006.

By: _____
Authorized Officer

Name: Evin L. Netzer
Print or Type

Title: V/P + General Counsel

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:05 PM 12/26/2007
FILED 04:58 PM 12/26/2007
SRV 071362533 - 3258087 FILE

STATE OF DELAWARE
CERTIFICATE OF OWNERSHIP AND MERGER
MERGING
KEMIRA WATERCHEMICALS, INC.
INTO
KEMIRA WATER SOLUTIONS, INC.

Pursuant to Section 253 of the General Corporation Law of the State of Delaware, **KEMIRA WATERCHEMICALS, INC.**, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), does hereby certify the following:

FIRST: That it was organized pursuant to the provisions of the General Corporation Law of the State of Delaware on the 14th day of June, 2002.

SECOND: That it owns 100% of the outstanding shares of the capital stock of **KEMIRA WATER SOLUTIONS, INC.**, a corporation organized pursuant to the provisions of the General Corporation Law of the State of Delaware on the 10th day of July, 2000.

THIRD: That all members of the Corporation's Board of Directors by Action by Written Consent dated December 5, 2007, determined to merge the Corporation into said **KEMIRA WATER SOLUTIONS, INC.** pursuant to the Agreement of Merger and Plan of Reorganization dated effective as of December 31, 2007 ("Agreement of Merger"), and did adopt the following resolutions (the "Merger Resolutions"):

RESOLVED, that effective as of 11:59 P.M. (EST) on December 31, 2007, the Corporation merge itself into **KEMIRA WATER SOLUTIONS, INC.**, and that **KEMIRA WATER SOLUTIONS, INC.** assume all of the obligations of the Corporation; and it is

FURTHER RESOLVED, that the terms and conditions of the merger are as follows: Upon completion of the merger, **KEMIRA OYJ,** a business entity organized in Finland and the sole holder of the outstanding shares of capital stock of the Corporation, shall receive an equivalent number of shares of the capital stock of **KEMIRA WATER SOLUTIONS, INC.** determined in accordance with the Agreement of Merger, and shall have no further claims of any kind or nature; and all of the outstanding shares of capital stock of the Corporation held by **KEMIRA OYJ** shall be surrendered and canceled; and it is

FURTHER RESOLVED, that the Merger Resolutions and the Agreement of Merger be submitted to the sole stockholder of the Corporation at a meeting to be called and held after twenty days notice of the purpose thereof mailed to the last known address of the sole stockholder or, in lieu of such meeting, by Action by Written Consent and, in the event that the holder of 100% of the outstanding shares of the capital stock of the Corporation votes in favor of the Merger Resolutions, that the merger, and the Agreement of Merger shall be deemed approved.

FOURTH: That this merger and the Agreement of Merger have been approved by the holder of 100% of the outstanding shares of capital stock of the Corporation by Action by Written Consent dated December 5, 2007.

[Signature on Next Page]

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by an authorized officer as of this 6th day of December, 2007.

By: _____
Authorized Officer

Printed Name: Mats Jungar

Title: President Kemira Waterchemicals, INC.

By: _____
Authorized Officer

Printed Name: Lennart Albertson

Title: SVP Kemira Waterchemicals, INC.

KEMIRA WATERCHEMICALS, INC.

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:24 PM 04/29/2009
FILED 03:03 PM 04/29/2009
SRV 090410154 - 3258087 FILE

STATE OF DELAWARE
CERTIFICATE OF CHANGE
OF REGISTERED AGENT AND/OR
REGISTERED OFFICE

The Board of Directors of Kemira Water Solutions, Inc.,
a Delaware Corporation, on this 13th day of
April, A.D. 2009, do hereby resolve and order that the
location of the Registered Office of this Corporation within this State be, and the
same hereby is Corporation Trust Center
1209 Orange Street, in the City of Wilmington,
County of New Castle Zip Code 19801.

The name of the Registered Agent therein and in charge thereof upon whom
process against this Corporation may be served, is
THE CORPORATION TRUST COMPANY.

The Corporation does hereby certify that the foregoing is a true copy of a
resolution adopted by the Board of Directors at a meeting held as herein stated.

IN WITNESS WHEREOF, said Corporation has caused this certificate to be
signed by an authorized officer, the 13th day of April,
A.D., 2009.

By: _____
Authorized Officer

Name: Joseph Richey
Print or Type

Title: President

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:01 PM 02/01/2010
FILED 12:42 PM 02/01/2010
SRV 100092861 - 3258087 FILE

KEMIRA WATER SOLUTIONS, INC.
CERTIFICATE OF AMENDMENT
TO
CERTIFICATE OF INCORPORATION

Kemira Water Solutions, Inc., a corporation duly organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Code"), does hereby certify:

FIRST: That by written consent of the members of the board of directors (the "Board") has authorized and recommended to the sole shareholder of the Corporation (the "Stockholder") that the Certificate of Incorporation of the Corporation be amended as follows:

1. This amendment effects a reverse stock split pursuant to which, at and as of the effective date of this amendment, every Two Hundred (200) shares of common stock of the Corporation issued and outstanding immediately prior to the time this amendment becomes effective shall be converted into and constitute One (1) share of fully paid and non-assessable common stock of the Corporation, without further action of any kind. In addition, the Corporation's authorized but unissued shares of common stock shall simultaneously undergo a reduction.

2. Article FOURTH is hereby deleted in its entirety and replaced with the following:

"FOURTH. The total number of shares of stock that the Corporation shall have the authority to issue is 1,000 shares. All such shares are to be common stock, par value $1.00, and are to be of one class."

SECOND: That said amendment was adopted in accordance with the provisions of Section 228 and Section 242 of the Code by written consent of the Stockholder.

THIRD: This amendment shall be effective upon filing with the Office of the Secretary of State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed this 30th day of January 2010.

KEMIRA WATER SOLUTIONS, INC.

By: /s/ Belinda Rosario
Vice President and Treasurer

CERTIFICATE OF MERGER OF
WATER ELEMENTS, LLC, RIVERSIDE DEVELOPMENT PARTNERS, LLC
AND CHESAPEAKE AGRO-IRON, LLC
(Delaware limited liability companies)
WITH AND INTO
KEMIRA WATER SOLUTIONS, INC.
(a Delaware corporation)
STATE OF DELAWARE

Pursuant to Title 8, Section 264(c) of the Delaware General Corporation Law and Title 6, Section 18-209 of the Delaware Limited Liability Act (the "Limited Liability Company Act"), the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is **Kemira Water Solutions, Inc.**, a Delaware corporation (the "Surviving Entity"), and the names of the limited liability companies being merged into this surviving corporation are **Water Elements, LLC**, a Delaware limited liability company, **Riverside Development Partners, LLC**, a Delaware limited liability company and **Chesapeake Agro-Iron, LLC**, a Delaware limited liability company (collectively, the "Merged Entities").

SECOND: The Agreement and Plan of Merger has been approved, adopted, certified, executed and acknowledged by the Surviving Entity and by the Merged Entities.

THIRD: The name of the surviving corporation is Kemira Water Solutions, Inc.

FOURTH: The Certificate of Incorporation of the Surviving Entity in effect immediately prior to the Effective Date (as defined below) shall be its Certificate of Incorporation.

FIFTH: The merger shall become effective as of 6:01 p.m. EST on December 31, 2015 (the "Effective Time").

SIXTH: The executed Agreement of Merger is on file at 1000 Parkwood Circle, Suite 500, Atlanta, Georgia 30339, the principal place of business of the Surviving Entity.

SEVENTH: A copy of the Agreement and Plan of Merger will be furnished by the Surviving Entity on request, without cost, to any stockholder of the Surviving Entity or any member of the constituent limited liability companies.

[Remainder of page intentionally left blank.]
[Signature page follows.]

IN WITNESS WHEREOF, said surviving corporation has caused this certificate to be signed by an authorized person, the 23 day of December, 2015.

Kemira Water Solutions, Inc.

BY: _____

NAME: Carolina Den Brok-Perez

TITLE: President

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:19 PM 03/23/2016
FILED 12:19 PM 03/23/2016
SR 20161823725 - File Number 3258087

CERTIFICATE OF MERGER
OF
KEMIRA LOGISTICS, INC.
(a Delaware corporation)
INTO
KEMIRA WATER SOLUTIONS, INC.
(a Delaware corporation)

* * * * * * *

Pursuant to Title 8, Section 252 of the Delaware General Corporation Law (the "DGCL"), the undersigned corporation executed the following Certificate of Merger:

FIRST: The name and state of incorporation of each of the constituent corporations are **Kemira Water Solutions, Inc.**, a Delaware corporation (the "Surviving Corporation") and **Kemira Logistics, Inc.**, a Delaware corporation (the "Merged Corporation").

SECOND: The Agreement and Plan of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations pursuant to Title 8, Section 252 of the DGCL.

THIRD: The name of the surviving corporation is **Kemira Water Solutions, Inc.**, a Delaware corporation.

FOURTH: The articles of incorporation of the Surviving Corporation in effect immediately prior to the Effective Time (as defined below) shall be its articles of incorporation following the Effective Time.

FIFTH: The merger shall become effective as of March 31, 2016 (the "Effective Time").

SIXTH: The executed Agreement and Plan of Merger is on file at 1000 Parkwood Circle, Suite 500, Atlanta, Georgia 30339, the principal place of business of the Surviving Corporation.

SEVENTH: A copy of the Agreement and Plan of Merger will be furnished by the Surviving Corporation on request, without cost, to any stockholder of either of the constituent corporations.

EIGHTH: The Surviving Corporation agrees that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of the Merged Corporation, as well as for enforcement of any obligation of the Surviving Corporation arising from this merger, including any suit or other proceeding to enforce the rights of any stockholder as determined in appraisal proceedings pursuant to the provisions of Title 8, Section 262 of the DGCL, and irrevocably appoints the Secretary of State of the State of Delaware (the "Secretary of State") as its agent to accept service of process in any such suit or proceeding. The Secretary of State shall mail any such process to the Surviving Corporation at 1000 Parkwood Circle, Suite 500, Atlanta, GA 30339, Attention: Legal Department.

IN WITNESS WHEREOF, said Surviving Corporation has caused this Certificate to be signed by an authorized officer, the 23 day of March, 2016.

By: _____
Name: Carolina Den Brok-Perez
Title: President

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
KEMIRA WATER SOLUTIONS, INC.

Kemira Water Solutions, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

A. The name of the Corporation is Kemira Water Solutions, Inc. and the name under which the Corporation was originally incorporated was Kemiron Companies, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on July 10, 2000 and amended on September 18, 2006 and February 1, 2010 (collectively, the "Certificate of Incorporation").

B. This Amended and Restated Certificate of Incorporation was duly adopted by unanimous written consent of the Board of Directors of the Corporation and the stockholders of the Corporation in accordance with the applicable provisions of Sections 141(f), 228, 242 and 245 of the Delaware General Corporation Law ("DGCL").

C. The text of the Certificate of Incorporation is hereby amended and restated in its entirety as set forth below:

1. The name of the Corporation is Kemira Water Solutions, Inc.

2. The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

3. The nature of the business or purposes for which the Corporation is organized is to engage in any lawful act or activity for which corporations may be organized under the DGCL, and the Corporation shall have all powers necessary to engage in such acts or activities, including, but not limited to, the powers enumerated in the DGCL or any amendment thereto.

4. The total number of shares of stock which the Corporation shall have authority to issue is One Thousand (1,000), all of which shall be common stock of $1.00 par value per share.

5. The Corporation is to have perpetual existence.

6. The business affairs of the Corporation shall be managed by the Board of Directors of the Corporation. In addition to the powers and authority expressly conferred upon them by statute or by this Amended and Restated Certificate of Incorporation or by the bylaws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:41 PM 08/22/2016
FILED 06:41 PM 08/22/2016
SR 20165468990 - File Number 3258087

7. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, amend, alter or repeal the bylaws of the Corporation. The affirmative vote of at least a majority of the Board of Directors then in office shall be required in order for the Board of Directors to adopt, amend, alter or repeal the Corporation's bylaws. The Corporation's bylaws may also be adopted, amended, altered or repealed by the stockholders of the Corporation. No bylaw hereafter legally adopted, amended, altered or repealed shall invalidate any prior act of the directors or officers of the Corporation that would have been valid if such bylaw had not been adopted, amended, altered or repealed.

8. Election of directors need not be by written ballot unless required by the bylaws of the Corporation.

9. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred upon the stockholders herein are granted subject to this reservation.

10. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived any improper personal benefit. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

11. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to any action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, she, his or her testator or intestate is or was a director, officer, employee or agent at the request of the Corporation or any predecessor to the Corporation or serves or served at any other enterprise as a director, officer, employee or agent at the request of the Corporation or any predecessor to the Corporation.

IN WITNESS WHEREOF, Kemira Water Solutions, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by the undersigned duly authorized officer, this 19th day of August, 2016.

KEMIRA WATER SOLUTIONS, INC.,
a Delaware corporation

By: Susan B. Radcliffe
Name: Susan B. Radcliffe
Title: Vice President and Secretary

EXHIBIT 28
EXCERPT

<DOCUMENT>
<TYPE>EX-99.T3E
<SEQUENCE>25
<FILENAME>h90985ex99-t3e.txt
<DESCRIPTION>AMENDED JOINT DISCLOSURE STATEMENT
<TEXT>
<PAGE> 1

EXHIBIT T3E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	:	CHAPTER 11
PIONEER COMPANIES, INC.,	:	
PIONEER CORPORATION OF AMERICA,	:	
IMPERIAL WEST CHEMICAL CO.,	:	
KEMWATER NORTH AMERICA CO.,	:	
PCI CHEMICALS CANADA INC./PCI	:	Case No. 01-38259-H3-11
CHIMIE CANADA INC.,	:	
PIONEER AMERICAS, INC.,	:	
PIONEER (EAST), INC.,	:	
PIONEER WATER TECHNOLOGIES, INC.,	:	
PIONEER LICENSING, INC., and	:	
KWT, INC.,	:	
	:	
Debtors.	:	JOINTLY ADMINISTERED
	:	

DEBTORS' JOINT DISCLOSURE STATEMENT
PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE

WEIL, GOTSHAL & MANGES LLP
Attorneys for the Debtors
700 Louisiana, Suite 1600
Houston, Texas 77002
(713) 546-5000

and

100 Crescent Court, Suite 1300
Dallas, Texas 75201
(214) 746-7700

Dated: Houston, Texas
September 21, 2001

<PAGE> 2

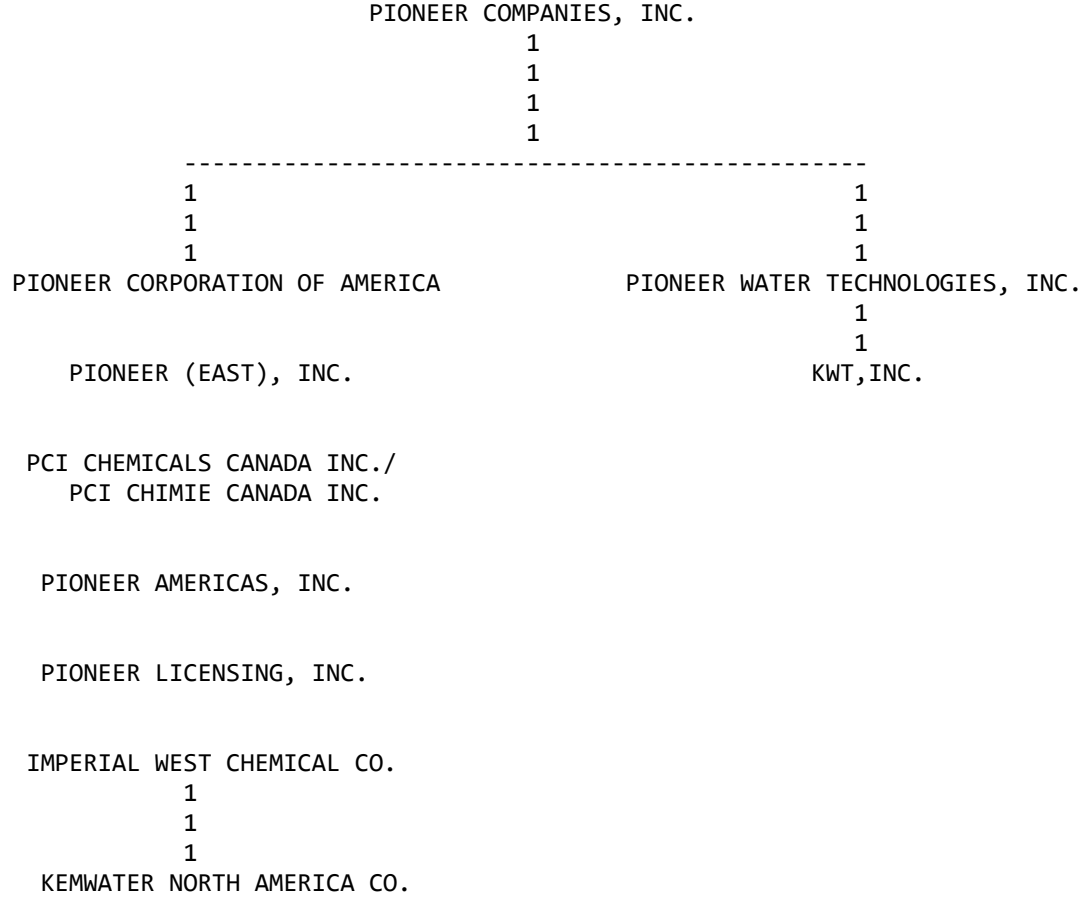
<TABLE>

After a plan of reorganization has been filed, the holders of claims against or interests in a debtor are permitted to vote to accept or reject the plan. Before soliciting acceptances of the proposed plan, however, section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. The Debtors are submitting this Disclosure Statement to holders of Claims against and Equity Interests in the Debtors to satisfy the requirements of section 1125 of the Bankruptcy Code.

B. Description and History of Business.

1. The Debtors

Pioneer conducts its primary business through its wholly-owned direct and indirect operating subsidiaries, PAI and PCICC. The following is an organizational chart of the Debtors.



2. History

Pioneer's current operations as a chlor-alkali producer began in 1988 with the acquisition of facilities in Henderson, Nevada and St. Gabriel,

Louisiana. In 1989, Pioneer acquired bleach production and chlorine repackaging operations in Tracy and Santa Fe Springs, California. The existing operations were acquired by the predecessor to PCI in 1995. A bleach production and chlorine repackaging facility in Tacoma, Washington was acquired in 1996. In 1997, Pioneer acquired its Tacoma chlor-alkali manufacturing facilities, as well as its Canadian operations, consisting of chlor-alkali manufacturing facilities in Becancour, Quebec and Dalhousie, New Brunswick, a bleach and pulping additive manufacturing facility in Cornwall, Ontario and a research laboratory in Mississauga, Ontario.

Pioneer no longer owns certain operations that were acquired during the period since 1988, including an iron chloride, aluminum sulfate and polyaluminum chloride manufacturing business that operated plants in Antioch and Pittsburg, California, Spokane, Washington and Savannah, Georgia, and bleach production and chlorine repackaging operations in Marysville and City of Industry, California and Kalama, Washington.

3. Business

Pioneer manufactures and markets chlorine and caustic soda and several related products. Pioneer owns and operates five chlor-alkali plants and several related product manufacturing facilities in North America with aggregate production capacity of approximately 850,000 electrochemical units ("ECUs", each consisting of 1 ton of chlorine and 1.1 tons of caustic soda). Approximately 60% of Pioneer's source of electricity, a major raw material in chlor-alkali production, is hydro-power based, currently the cheapest source in North America. In addition, over 22% of Pioneer's ECU capacity employs membrane cell technology, the most efficient technology. Pioneer is one of the six largest chlor-alkali producers in North America, with approximately 6% of North American production capacity.

As of December 31, 2000, Pioneer had 895 employees, although as a result of an organizational restructuring Pioneer has approximately 815 employees at the current time. As of December 31, 2000, 90 of Pioneer's employees at the Henderson, Nevada plant were covered by collective bargaining agreements with the United Steelworkers of America and with the International Association of Machinists and Aerospace Workers that are in effect until March 13, 2004, and 112 of Pioneer's employees at the Tacoma facility were covered by collective bargaining agreements with the International Chemical Workers and the Operating Engineers that are in effect until June 11, 2003. At Pioneer's Becancour facility, 137 employees were covered by collective bargaining agreements with the Energy and Paper Workers Union that are in effect until April 30, 2006, and 32 employees at Pioneer's Cornwall facility were represented by the United Steelworkers Union, with a collective bargaining agreement that expires on October 31, 2002. Ten employees at Pioneer's Tacoma bleach and chlorine repackaging facility were covered by a collective bargaining agreement with the Teamsters Union that is in effect until December 1, 2002. Pioneer's other employees are not covered by union contracts or collective bargaining agreements. Pioneer considers its relationship with its employees to be good, and it has not experienced any strikes or work stoppages.

Pioneer manufactures and markets chlorine, caustic soda, hydrochloric acid and related products used in a variety of applications, including water treatment, plastics, pulp and paper, detergents, agricultural chemicals, pharmaceuticals, and medical disinfectants.

Chlorine and caustic soda are the seventh and sixth most commonly produced chemicals, respectively, in the United States, based on volume, and are used in a wide variety of applications and chemical processes. Caustic soda and chlorine are co-products, concurrently produced in a ratio of approximately 1.1 to 1, through the electrolysis of salt water.

event of default under the terms of the facility. Accordingly, the default interest rate is in effect and the amount outstanding under the facility has been classified as a current liability on the Consolidated Balance Sheet at December 31, 2000.

In September 1999, PCA entered into a $50.0 million three-year revolving credit facility with Congress Financial Corporation (Southwest) (the "Revolving Facility") that replaced an existing $50.0 million revolving facility (the "Bank Credit Facility"). The Revolving Facility provides for revolving loans in an aggregate amount up to $50.0 million, subject to borrowing base limitations related to the level of accounts receivable and inventory, which, together with certain other collateral, secure borrowings under the facility. The total borrowing base at December 31, 2000 of $45.8 million was subject to a reserve of $5.0 million until the ratio of EBITDA to fixed charges, as defined in the Revolving Facility, exceeds 1.15:1 for a period of two consecutive quarters. As of December 31, 2000, there were letters of credit outstanding of $3.5 million and loans outstanding of $27.6 million. Based on the cross default provisions contained in the Revolving Facility Agreement, the Revolving Facility is currently in default, may be subject to the default interest rate and is classified as a current liability on the Consolidated Balance Sheet at December 31, 2000.

Various unsecured notes totaling $17.7 million are in default at December 31, 2000 as these notes contain cross default provisions which were triggered when Pioneer defaulted on the senior notes and term facilities. These notes have been classified as a current liability on Pioneer's Consolidated Balance Sheet.

Pioneer's cash obligations include payment of interest on the notes issued in connection with the acquisition of the Predecessor Company. PCA is restricted in paying dividends to the Company or funding cash to unrestricted subsidiaries, as defined, to the sum of $5.0 million plus 50% of the cumulative consolidated net income of PCA since June 1997. As of December 31, 2000, no distributions were allowable under this covenant. Pioneer does not expect to be able to pay dividends in 2001.

PCA's ability to enter into new debt agreements is restricted by a debt covenant requiring a minimum interest coverage ratio (as defined) of at least 2.0 to 1.0 for the prior four fiscal quarters. Currently, PCA is unable to incur additional indebtedness as a result of this covenant, other than borrowing available under its revolving credit facility. Pioneer's debt agreements contain other restrictions on PCA's subsidiaries, which, among other things, limit the ability of PCA's subsidiaries to acquire or dispose of assets or operations.

Annualized cash interest of approximately $60.1 million is payable on Pioneer's debt. To the extent that Pioneer draws additional funds under the Revolving Facility, due to adverse business conditions or for other corporate purposes, Pioneer's aggregate interest expense would be increased.

The Company believes that cash generated from operations together with the amounts available under the Revolving Facility will be adequate to meet its capital expenditure and working capital needs, excluding debt service, although no assurance can be given in this regard.

Dispositions. In March 2000 Pioneer sold its alum coagulant business at Antioch, California, and recorded a $0.9 million loss on the sale.

On August 21, 2000, Pioneer sold its remaining coagulant business and transferred to the buyer fixed assets, including plants in Spokane, Washington, and Savannah, Georgia, certain technology-related assets

and liabilities associated with the Spokane operations, and all assets and liabilities of the Savannah operations, including $1.9 million of cash and notes payable of $8.0 million. Pioneer received cash of $0.9 million as payment for

Spokane. This transaction did not have a material impact on Pioneer's statements of operations or cash flows.

Capital and Environmental Expenditures. Total capital expenditures were approximately $18.7 million, $28.3 million and $34.8 million for the years ended December 31, 2000, 1999 and 1998, respectively. Capital expenditures for environmental-related matters at existing facilities were approximately $1.8 million, $1.2 million and $2.5 million for the years ended December 31, 2000, 1999 and 1998, respectively. Pioneer anticipates that capital expenditures for 2001, excluding any acquisitions, will be approximately $25.7 million, including $4.9 million for environmental compliance matters.

Pioneer routinely incurs operating expenditures associated with hazardous substance management and environmental compliance matters in ongoing operations. These operating expenses include items such as outside waste management, fuel, electricity and salaries. The amounts of these operating expenses were approximately $2.7 million, $2.8 million and $3.4 million in 2000, 1999 and 1998, respectively. Pioneer does not anticipate an increase in these types of expenses during 2001. Pioneer classifies these types of environmental expenditures within cost of sales.

Net Operating Loss Carryforward. At December 31, 2000, Pioneer had, for income tax purposes, approximately $224 million of U.S. net operating loss carryforwards ("NOLs") which expires in 2009 through 2020, and $20 million (U.S.) of Canadian NOLs available expiring in 2004 through 2008. The NOLs are available for offset against future taxable income generated during the carryforward period. In 2000, a valuation allowance of $67.8 million was recorded reducing the deferred tax asset relating to net operating loss carryforwards. (See Note 16 to the Consolidated Financial Statements included elsewhere herein.)

Foreign Operations and Exchange Rate Fluctuations. Pioneer, through PCI Canada, has operating activities in Canada and Pioneer engages in export sales to various countries. International operations and exports to foreign markets are subject to a number of risks, including currency exchange rate fluctuations, trade barriers, exchange controls, political risks and risks of increases in duties, taxes and governmental royalties, as well as changes in laws and policies governing foreign-based companies. In addition, earnings of foreign subsidiaries and intracompany payments are subject to foreign taxation rules.

A portion of Pioneer's sales and expenditures are denominated in Canadian dollars, and accordingly, Pioneer's results of operations and cash flows may be affected by fluctuations in the exchange rate between the U.S. dollar and the Canadian dollar. In addition, because a portion of Pioneer's revenues, cost of sales and other expenses are denominated in Canadian dollars, Pioneer has a translation exposure to fluctuation in the Canadian dollar against the U.S. dollar. Due to the significance of PCI Canada's U.S. dollar-denominated long-term debt (and related accrued interest payable) and certain other U.S. dollar-denominated assets and liabilities, the entity's functional accounting currency is the U.S. dollar. Currently, Pioneer is not engaged in forward foreign exchange contracts, but may enter into such hedging activities in the future.

Preferred Stock. During 1997, 55,000 shares of the Company's Convertible Redeemable Preferred Stock, par value $0.01 per share, were issued in connection with the acquisition of the Tacoma facility. Each share of preferred stock is convertible at the option of the shareholder into 9.8 shares of the Company's Class A Common Stock. In addition, the stock may be redeemed at varying premiums either at the Company's option or upon the occurrence of certain designated events.

Working Capital. At December 31, 2000, Pioneer's working capital deficiency was $600.9 million, representing a decrease in working capital of $611.6 million from December 31, 1999. The decrease was due primarily to outstanding debt that was classified as a current liability at December 31,

either at the Company's option or upon the occurrence of certain designated events. Because of the preferred stock's mandatory redemption characteristics, the stock is excluded from stockholders' equity.

Foreign Currency Translation

Following SFAS No. 52, "Foreign Currency Translation," the functional accounting currency for Canadian operations is the U.S. dollar; accordingly, gains and losses resulting from balance sheet translations are included in the consolidated statement of operations.

Reclassifications

Certain amounts have been reclassified in prior years to conform to the current year presentation. All reclassifications have been applied consistently for the periods presented.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from the estimates and judgments made in preparing these financial statements, which include assumptions made concerning the amounts owed to creditors and realizable values of assets. Management has reviewed Pioneer's long-lived assets and intangibles such as goodwill, to assess whether the events and changes in circumstances described in Note 1 indicate that the carrying amount of the asset may not be recoverable. In making these estimates, management has utilized the assessments, calculations, and determinations made in preparing analyses utilized in discussions with creditors, including estimates of overall enterprise value.

3. DIVESTITURES

In March 2000 Pioneer sold its coagulant business at Antioch, California, and recorded a $0.9 million loss on the sale.

On August 21, 2000, Pioneer sold its remaining coagulant business and transferred to the buyer fixed assets, including plants in Spokane, Washington, and Savannah, Georgia, certain technology-related assets

and liabilities associated with the Spokane operations, and all assets and liabilities of the Savannah operations, including $1.9 million of cash and notes payable of $8.0 million. Pioneer received cash of $0.9 million as payment for Spokane. This transaction did not have a material impact on Pioneer's financial statements.

4. CASH FLOW INFORMATION

The net effect of changes in operating assets and liabilities are as follows:

<Table>
<Caption>

	YEAR ENDED DECEMBER 31,		
	2000	1999	1998
<S>	<C>	<C>	<C>
Accounts receivable.....	$ 844	$(2,800)	$ 21,418

EXHIBIT 29

CERTIFICATE OF INCORPORATION

OF

DEMAX REALTY CORPORATION

FIRST. The name of the Corporation is DEMAX REALTY CORPORATION.

SECOND. Its registered office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD. The nature of the business or purposes to be conducted or promoted are:

(a) To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

(b) In general, to carry on all businesses in connection with the foregoing, and do all things necessary, proper, advisable, convenient for, or incidental to the accomplishment of the foregoing purposes.

The Corporation, its directors and shareholders, shall have and may exercise all of the powers now or hereafter conferred by the laws of the State of Delaware and acts amendatory thereof or supplemental thereto upon corporations formed under the General Corporation Law of the State of Delaware.

FOURTH. The total number of shares of stock which the Corporation shall have authority to issue is one thousand ~~(1,000)~~ and the par value of each of such shares is One Hundred Dollars ($100) amounting in the aggregate to One Hundred Thousand Dollars ($100,000).

FIFTH. The name and mailing address of the incorporator is as follows:

NAME	MAILING ADDRESS
Raymond J. Cooke	1270 Avenue of the Americas New York, New York 10020

SIXTH. The board of directors is expressly authorized to make, alter or repeal the by-laws of the Corporation.

SEVENTH. Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this Corporation under the provisions of section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs.

If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

EIGHTH. Elections of directors need not be by ballot unless the by-laws of the Corporation shall so provide.

I, THE UNDERSIGNED, being the incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly had hereunto set my hand and seal this 16th day of October A.D. 1973.

(SEAL)

STATE OF NEW YORK)
: SS:
COUNTY OF NEW YORK)

BE IT REMEMBERED that on this 16th day of October A.D. 1973, personally came before me, a Notary Public for the State of New York, Raymond J. Cooke, the party to the foregoing Certificate of Incorporation, known to me personally to be such, and acknowledged the said Certificate of Incorporation to be his act and deed and that the facts therein stated are truly set forth.

GIVEN under my hand and seal of office the day and year aforesaid.

Rafele DeLuzio

RAFELE DELUZIO
NOTARY PUBLIC, State of New York
No. 41-5964105
Qualified in Queens County
Cert. Filed in New York County
Commission Expires March 30, 1974

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

BEFORE PAYMENT OF CAPITAL

OF

DEMAX REALTY CORPORATION

* * * * *

DEMAX REALTY CORPORATION, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That Article "FIRST" of the Certificate of Incorporation be and it hereby is amended to read as follows:

"FIRST. The name of the corporation is DEMAX CORPORATION."

SECOND: That the corporation has not received any payment for any of its stock.

THIRD: That the amendment was duly adopted in accordance with the provisions of Section 241 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said DEMAX REALTY CORPORATION has caused this certificate to be signed by ERWIN A. WEIL its

Vice-President and attested by RAYMOND J. COOKE, its Assistant Secretary, this 28th day of November, 1973.

DEMAX REALTY CORPORATION

By _____
Erwin A. Weil,
Vice-President

ATTEST:

By _____
Raymond J. Cooke,
Assistant Secretary

RESTATED CERTIFICATE OF INCORPORATION

of

DEMAX CORPORATION

(Originally incorporated under the name Demax Realty Corporation on October 17, 1973)

FIRST: The name of the corporation is Amax Aluminum Company, Inc.

SECOND: The address of the corporation's registered office in the State of Delaware is No. 100 West Tenth Street in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: (a) The total number of shares which the corporation shall have authority to issue is 1,000 shares of Common Stock, the par value of each of such shares being $100 per share, divided into two equal classes of 500 shares of Class A Common Stock, $100 par value, and 500 shares of Class B Common Stock, $100 par value.

(b) The shares of each class shall be identical in every respect, except as provided in this Restated Certificate of Incorporation, and each share of each class shall participate equally, share and share alike, in all dividends and other distributions on or with respect to the corporation's Common Stock, including distributions in liquidation or dissolution, and such dividends or other distributions as may be duly declared by the Board of Directors. Subject to the other provisions of this Restated Certificate of Incorporation, each share of Class A Common Stock and of Class B Common Stock shall be entitled to one vote per share.

(c) At each meeting of stockholders, except a meeting of a class of stockholders, the holders of a majority of the outstanding shares of each of the Class A Common Stock and of

the Class B Common Stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum. An affirmative vote of the holders of a majority of the outstanding shares of each of the Class A Common Stock and Class B Common Stock shall be required to effect any action of the stockholders. At each meeting of a class of stockholders, the holders of a majority of the outstanding shares of that class of stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum. At each meeting of a class of stockholders, an affirmative vote of the holders of a majority of the outstanding shares of that class of Common Stock shall be required to effect any action of that class of stockholders. In the absence of a quorum at a meeting of stockholders or of a class of stockholders, the stockholders present may make, by majority vote of those present, voting in the aggregate and not by classes, a reasonable adjournment of the meeting from time to time until a quorum shall attend.

(d) Except as otherwise provided herein, there shall be 12 directors of the corporation. The Directors of the corporation shall be divided into three classes, Class A Directors, Class B Directors and Special Class Directors consisting of five each of Class A and B Directors and, except as otherwise provided herein, two Special Class Directors. Except as provided herein, all Directors shall be of equal rank and have the same rights, powers, duties and obligations. The authorized number of Class A Directors and the authorized number of Class B Directors shall always be equal.

(i) *Class A Directors.* The holders of Class A Common Stock shall exclusively (except as herein provided), by affirmative vote of holders of at least a majority of the shares of Class A Common Stock at the time outstanding and entitled to vote, elect, remove with or without cause, accept resignations of, and fill vacancies in the office of Class A Directors.

(ii) *Class B Directors.* The holders of Class B Common Stock shall exclusively (except as herein provided), by affirmative vote of holders of at least a majority of the shares of Class B Common Stock at the time outstanding and entitled to vote,

elect, remove with or without cause, accept resignations of, and fill vacancies in the office of Class B Directors.

(iii) *Special Class Directors.* The holders of Class A and Class B Stock shall exclusively (except as herein provided), by affirmative vote of a majority of each such Class, elect, remove with or without cause, accept resignations of, fill vacancies in the offices of Special Class Directors and increase or decrease the number of Special Class Directors.

Holders of one Class of Common Stock may not vote upon the election, removal, acceptance of resignations, or filling of vacancies in the office of Directors of the other Class of Common Stock. Any vacancy occurring in the Board of Directors with respect to Directors of either Class A or Class B shall be filled by the remaining Directors of the same Class and the person so chosen to fill such vacancy shall hold office until the next annual meeting of the stockholders and until a successor is chosen and qualified or until he is removed, except that the stockholders of either Class may, at any special meeting called at least in part for the purpose, by a majority vote of the shares of the Class at the time outstanding and entitled to vote, choose a successor to a Director chosen by the stockholders of the same Class whose office is vacant, or has been vacant or has been filled by the remaining Directors of the same Class, and any person so chosen shall hold office until the next annual meeting of stockholders and until his successor is chosen and qualified or until he is removed. Any vacancy occurring in the Board of Directors with respect to Special Class Directors shall be filled by the affirmative vote of a majority of each of the Class A and Class B Directors present at the meeting and the person so chosen to fill such vacancy shall hold office until the next annual meeting of stockholders and until a successor is chosen and qualified or until he is removed, except that the holders of a majority of each of the Class A and Class B Common Stock, at any special meeting called at least in part for the purpose, may choose a successor to a Special Class Director whose office is vacant, or has been vacant and filled by the Class A and Class B Directors, and any person so chosen shall hold office until the next annual meeting of stockholders and until his successor is chosen and qualified or until he is removed.

FIFTH: At each meeting of the Board of Directors a majority of each of the Class A Directors and Class B Directors shall be necessary and sufficient to constitute a quorum for the transaction of business. Except as herein provided, an affirmative vote of a majority of each of the Class A and Class B Directors present and voting shall be required to effect any action by the Board of Directors, provided, however, that any number of Directors, whether or not constituting a quorum, present at any meeting or any adjourned meeting may make, by majority vote of those present, voting in the aggregate and not by classes, any reasonable adjournment thereof.

SIXTH: Except as herein provided, the Restated Certificate of Incorporation of the corporation shall not be amended, modified or repealed except by the affirmative action of a majority of the outstanding shares of each Class of Common Stock of the corporation.

SEVENTH: Except as herein provided, by-laws of the corporation may not be made, amended or repealed in whole or in part except by the affirmative action of a majority of the holders of each Class of Common Stock of the corporation.

EIGHTH: Elections of Directors need not be by written ballot except and to the extent provided in the By-Laws of the corporation.

NINTH: Any one or more of the Directors of either Class A or Class B Directors may be removed, either with or without cause, at any time by vote of the stockholders holding a majority of shares entitled to vote for Directors of such Class, at any special meeting of stockholders of that Class called for the purpose, and thereupon the term of any such Director so removed shall forthwith terminate and the vacancy or vacancies in the Board of Directors thereby occurring shall be filled by the stockholders entitled to vote for the Class of Directors of the vacancy being filled at such special meeting. Any Special Class Director

may be removed, either with or without cause, at any time by the affirmative vote of a majority of the holders of each of the Class A and Class B Common Stock, at any special meeting of stockholders called at least in part for the purpose, and thereupon the term of any such Director so removed shall forthwith terminate and the vacancy or vacancies in the Board of Directors shall be filled by the affirmative vote of a majority of the holders of each of the Class A and Class B Common Stock. Except as as otherwise provided herein, all vacancies occurring in the Board shall be filled by election at an annual meeting or at a special meeting of stockholders of the relevant class called for that purpose.

TENTH: If (a) any two or more stockholders or subscribers to stock of the corporation shall enter into any agreement abridging, limiting or restricting the rights of any one or more of them to sell, assign, transfer, mortgage, pledge or hypothecate any or all of the stock of the corporation held by any one or more of them and if a copy of said agreement shall be filed with the corporation, or if (b) the incorporators or the stockholders entitled to vote shall adopt any by-law provision abridging, limiting or restricting the aforesaid rights of any stockholders, then and in either of such events, all certificates for shares of stock subject to such abridgements, limitations or restrictions shall have a reference thereto endorsed thereon by an officer of the corporation and such stock shall not thereafter be transferred on the books of the corporation except in accordance with the terms and provisions of such agreement or by-law, as the case may be.

ELEVENTH: The following provisions are inserted for the regulation of the business and the conduct of the affairs of the corporation, and it is expressly provided that the same are intended to be in furtherance and not in limitation or exclusion of the powers conferred by statute:

(a) All corporate powers shall be exercised by the Board of Directors, except as otherwise expressly provided by law, in the Restated Certificate of Incorporation or the By-Laws.

(b) Any Director or officer may be a party to or may be interested in any contract or transaction of or with this corporation or in which this corporation is interested; and no contract, act or transaction of this corporation with any person, firm, association or corporation shall be affected or invalidated by the fact that any Director or officer of this corporation is a party to or interested in such contract, act or transaction or is interested in or is a director or officer of such other corporation, or is in any way connected with such person, firm, association or corporation, and each and every person who may become a Director or officer of the corporation is hereby relieved, so far as is legally permissible, from any disability which might otherwise prevent him from contracting with the corporation for the benefit of himself, or of any firm, association or corporation in which he may be in anywise interested or with which he may in anywise be connected. The fact that any Director is so interested or connected shall not disqualify him from being counted in determining the existence of a quorum at any meeting of the Board of Directors at which any such contract, act or transaction is considered or acted on or from voting with respect thereto. Nothing in this provision shall be deemed to relieve a Director or officer of any duty which he may otherwise have to disclose the existence of any such interest or connection.

4. This Restated Certificate of Incorporation was duly adopted by the stockholders in accordance with Section 245 of the General Corporation Law of Delaware.

Immediately after the restatement and amendment of the corporation's Certificate of Incorporation provided for above shall take effect, one-half of the 500 shares, of the par value of $100 per share, of the corporation issued and outstanding immediately before such amendment shall take effect shall be changed and reclassified into 250 shares of Class A Common Stock, $100 par value, and one-half of such shares issued and outstanding immediately before such amendment shall take effect shall be changed and classified into 250 shares of Class B Com-

mon Stock, $100 par value. Such change and reclassification shall be effected as follows: until exchanged as hereafter provided each certificate registered on the books of the corporation in the name of Amax Realty Corp., Bemax Realty Corp., and Cemax Corporation, each a Delaware corporation, representing a share of such Common Stock, par value $100 per share, issued and outstanding immediately prior to the time said amendment shall take effect shall be deemed to represent one share of Class A Common Stock, $100 par value, and of the certificates registered on the books of the corporation in the name of American Metal Climax, Inc., a New York corporation, representing 320 shares of such Common Stock, par value $100 per share, issued and outstanding immediately prior to the time of said amendment, such certificates shall be deemed to represent 70 shares of Class A Common Stock, $100 par value, and 250 shares of Class B Common Stock, $100 par value. Upon presentation and surrender of certificates representing shares of Common Stock, of the par value of $100 per share, which were changed and reclassified in consequence of the foregoing amendment, to the corporation for exchange, the corporation shall issue or cause to be issued a new certificate or certificates representing the appropriate number of shares of Class A Common Stock and Class B Common Stock, each $100 par value, in accordance with the terms of such reclassification.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation which restates and further amends the provisions of the corporation's Certificate of Incorporation, as heretofore amended, and which has been duly adopted by the Board of Directors of the corporation and by its stockholders in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware has been executed on the 15th day of January, 1974.

DEMAX CORPORATION

By Malcolm B. Bergh
Vice President (Title)

(CORPORATE SEAL)

Attest: Victor Abert
Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

BE IT REMEMBERED that on this 14th day of January, 1974, personally came before me, a Notary Public for the State of New York, Malcolm S Duglas, Vice President of Demax Corporation, a Delaware corporation, and he duly executed the foregoing Restated Certificate of Incorporation before me and acknowledged the said Certificate to be his act and deed and the act and deed of Demax Corporation and that the facts stated therein are true; and that the seal affixed to said Certificate and attested by the Secretary of Demax Corporation in the corporate seal of the corporation.

GIVEN under my hand and seal of office the day and year aforesaid.

Rafaela de Meuzo
Notary Public

RAFAELA DEMUZIO
NOTARY PUBLIC, State of New York
No. 41-5[illegible]05
Qualified in Queens County
Cert. Filed in New York County
Commission Expires March 30, 1974

000043

CERTIFICATE OF AMENDMENT

OF

RESTATED CERTIFICATE OF INCORPORATION

* * * * *

AMAX ALUMINUM COMPANY, INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY,

FIRST: That the Board of Directors of said corporation, at a meeting duly held, adopted resolutions proposing and declaring advisable the following amendments to the Restated Certificate of Incorporation of said corporation:

RESOLVED, that the Restated Certificate of Incorporation of AMAX ALUMINUM COMPANY, INC., be amended by changing the first paragraph of subparagraph (d) of Article FOURTH so that, as amended, said paragraph shall be and read as follows:

"Except as otherwise provided herein, there shall be 15 directors of the corporation. The Directors of the corporation shall be divided into three classes, Class A Directors, Class B Directors and Special Class Directors consisting of six each of Class A and B Directors and, except as otherwise provided herein, three Special Class Directors. Except as provided herein, all Directors shall be of equal rank and have the same rights, powers, duties and obligations. The authorized number of Class A Directors and the authorized number of Class B Directors shall always be equal."

FURTHER RESOLVED, that the Restated Certificate of Incorporation of AMAX ALUMINUM COMPANY, INC., be amended by changing the Article thereof numbered "FIFTH" so that, as amended, said Article shall be and read as follows:

"At each meeting of the Board of Directors three Class A and three Class B Directors shall be necessary and sufficient to constitute a quorum for the transaction of business. Except as herein provided, an affirmative vote of a majority of each of the Class A and Class B Directors present and voting shall be required to effect any action by the Board of Directors, provided, however, that any number of Directors, whether or not constituting a quorum, present at any meeting or any adjourned meeting may make, by majority vote of those present, voting in the aggregate and not by classes, any reasonable adjournment thereof."

FURTHER RESOLVED, that the Restated Certificate of Incorporation of AMAX ALUMINUM COMPANY, INC., be amended by changing the Article thereof numbered "NINTH" so that, as amended, said Article shall be and read as follows:

"Any one or more of the Directors of either Class A or Class B Directors may be removed, either with or without cause, at any time by vote of the stockholders holding a majority of shares entitled to vote for Directors of such Class, at any special meeting of stockholders of that Class called for the the purpose, and thereupon the term of any such Director so removed shall forthwith terminate and the vacancy or vacancies in the Board of Directors thereby occurring shall be filled by the stockholders entitled to vote for the Class of Directors of the vacancy being filled at such special meeting. Any Special Class Director may be removed, either with or without cause, at any time by the affirmative vote of the holders of a majority of each of the Class A and Class B Common Stock, at any special meeting of stockholders called at least in part for the purpose, and thereupon the term of any such Director so removed shall forthwith terminate and the vacancy or vacancies in the Board of Directors shall be filled by the affirmative vote of the holders of a majority of each of the Class A and Class B Common Stock. Except as otherwise provided herein, all vacancies occurring in the Board shall be filled by election at an annual meeting or at a special meeting of stockholders of the relevant class called for that purpose."

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given unanimous written consent to said amendment in accordance with the provisions of section 228 of The General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendments were duly adopted in accordance with the applicable provisions of Sections 242 and 228 of The General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said AMAX ALUMINUM COMPANY, INC., has caused this certificate to be signed by David Mayers, its President, and attested by Craig A. Davis, its Secretary, this 29th day of April, 1974.

AMAX ALUMINUM COMPANY, INC.

By _____
David Mayers, President

ATTEST:

By _____
Craig A. Davis, Secretary

CERTIFICATE OF OWNERSHIP AND MERGER

MERGING

AMAX ALUMINUM TRADING CORPORATION

INTO

AMAX ALUMINUM COMPANY, INC.

* * * * *

AMAX ALUMINUM COMPANY, INC., a corporation organized and existing under the laws of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That this corporation was incorporated on the 17th day of October, 1973, pursuant to the General Corporation Law of the State of Delaware.

SECOND: That this corporation owns all of the outstanding shares of the stock of AMAX ALUMINUM TRADING CORPORATION, a corporation incorporated on the 23rd day of October, 1968, pursuant to the General Corporation Law of the State of Delaware.

THIRD: That this corporation by the following resolutions of its Board of Directors, duly adopted at a meeting held on the 30th day of January, 1974, determined to and did merge into itself said AMAX ALUMINUM TRADING CORPORATION:

> RESOLVED, that Amax Aluminum Company, Inc. merge, and it hereby does merge into itself Amax Aluminum Trading Corporation, and does assume all of the liabilities and obligations of Amax Aluminum Trading Corporation.
>
> RESOLVED FURTHER, that the merger shall be effective upon the date of filing of a Certificate of Ownership and Merger in the Office of the Secretary of State of the State of Delaware.

RESOLVED FURTHER, that the President or any Vice President, and the Secretary or any Assistant Secretary of this corporation be and they are hereby authorized and directed to make and execute a Certificate of Ownership and Merger, setting forth a copy of the resolutions to merge Amax Aluminum Trading Corporation and assume its liabilities and obligations, and the date of adoption thereof, and to cause the same to be filed with the Secretary of State of the State of Delaware and a certified copy thereof to be recorded in the office of the Recorder of Deeds of Newcastle County, Delaware, and to do all acts and execute and deliver any and all documents whatsoever, whether with or without the State of Delaware, which may be necessary or desirable in order to effectuate the merger.

FOURTH: Anything herein or elsewhere to the contrary notwithstanding, this merger may be terminated and abandoned by the Board of Directors of AMAX ALUMINUM COMPANY, INC. at any time prior to the date of filing the merger with the Secretary of State.

IN WITNESS WHEREOF, said AMAX ALUMINUM COMPANY, INC. has caused this certificate to be signed by its Vice President and attested by its Secretary, this 20th day of May, 1974.

AMAX ALUMINUM COMPANY, INC.

By _____
Vice President

ATTEST:

By _____
Secretary

000024

RESTATED CERTIFICATE OF INCORPORATION

OF

AMAX ALUMINUM COMPANY, INC., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is AMAX ALUMINUM COMPANY, INC., and the name under which the corporation was originally incorporated is DEMAX REALTY CORPORATION.

The date of filing its original Certificate of Incorporation with the Secretary of State was October 17, 1973.

2. This Restated Certificate of Incorporation restates and integrates and further amends the Restated Certificate of Incorporation of this corporation by changing the name of the corporation to Alumax Inc.

3. The text of the Restated Certificate of Incorporation as amended or supplemented heretofore is further amended hereby to read as herein set forth in full:

FIRST: The name of the corporation is Alumax Inc.

SECOND: The address of the corporation's registered office in the State of Delaware is No. 100 West Tenth Street in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: (a) The total number of shares which the corporation shall have authority to issue is 1,000 shares of Common Stock, the par value of each of such shares being $100 per share, divided into two equal classes of 500 shares of Class A Common Stock, $100 par value, and 500 shares of Class B Common Stock, $100 par value.

(b) The shares of each class shall be identical in every respect, except as provided in this Restated Certificate of Incorporation, and each share of each class shall participate equally, share and share alike, in all dividends and other distributions on or with respect to the corporation's Common Stock, including distributions in liquidation or dissolution, and such dividends or other distributions as may be duly declared by the Board of Directors. Subject to the other provisions of this Restated Certificate of Incorporation, each share of Class A Common Stock and of Class B Common Stock shall be entitled to one vote per share.

(c) At each meeting of stockholders, except a meeting of a class of stockholders, the holders of a majority of the outstanding shares of each of the Class A Common Stock and of

the Class B Common Stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum. An affirmative vote of the holders of a majority of the outstanding shares of each of the Class A Common Stock and Class B Common Stock shall be required to effect any action of the stockholders. At each meeting of a class of stockholders, the holders of a majority of the outstanding shares of that class of stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum. At each meeting of a class of stockholders, an affirmative vote of the holders of a majority of the outstanding shares of that class of Common Stock shall be required to effect any action of that class of stockholders. In the absence of a quorum at a meeting of stockholders or of a class of stockholders, the stockholders present may make, by majority vote of those present, voting in the aggregate and not by classes, a reasonable adjournment of the meeting from time to time until a quorum shall attend.

(d) Except as otherwise provided herein, there shall be 15 directors of the corporation. The Directors of the corporation shall be divided into three classes, Class A Directors, Class B Directors and Special Class Directors consisting of six each of Class A and B Directors and, except as otherwise provided herein, three Special Class Directors. Except as provided herein, all Directors shall be of equal rank and have the same rights, powers, duties and obligations. The authorized number of Class A Directors and the authorized number of Class B Directors shall always be equal.

(i) *Class A Directors.* The holders of Class A Common Stock shall exclusively (except as herein provided), by affirmative vote of holders of at least a majority of the shares of Class A Common Stock at the time outstanding and entitled to vote, elect, remove with or without cause, accept resignations of, and fill vacancies in the office of Class A Directors.

(ii) *Class B Directors.* The holders of Class B Common Stock shall exclusively (except as herein provided), by affirmative vote of holders of at least a majority of the shares of Class B Common Stock at the time outstanding and entitled to vote, elect, remove with or without cause, accept resignations of, and fill vacancies in the office of Class B Directors.

(iii) *Special Class Directors.* The holders of Class A and Class B Stock shall exclusively (except as herein provided), by affirmative vote of a majority of each such Class, elect, remove with or without cause, accept resignations of, fill vacancies in the offices of Special Class Directors and increase or decrease the number of Special Class Directors.

Holders of one Class of Common Stock may not vote upon the election, removal, acceptance of resignations, or filling of vacancies in the office of Directors of the other Class of Common Stock. Any vacancy occurring in the Board of Directors with respect to Directors of either Class A or Class B shall be filled by the remaining Directors of the same Class and the person so chosen to fill such vacancy shall hold office until the next annual meeting of the stockholders and until a successor is chosen and qualified or until he is removed, except that the stockholders of either Class may, at any special meeting called at least in part for the purpose,

by a majority vote of the shares of the Class at the time outstanding and entitled to vote, choose a successor to a Director chosen by the stockholders of the same Class whose office is vacant, or has been vacant or has been filled by the remaining Directors of the same Class, and any person so chosen shall hold office until the next annual meeting of stockholders and until his successor is chosen and qualified or until he is removed. Any vacancy occurring in the Board of Directors with respect to Special Class Directors shall be filled by the affirmative vote of a majority of each of the Class A and Class B Directors present at the meeting and the person so chosen to fill such vacancy shall hold office until the next annual meeting of stockholders and until a successor is chosen and qualified or until he is removed, except that the holders of a majority of each of the Class A and Class B Common Stock, at any special meeting called at least in part for the purpose, may choose a successor to a Special Class Director whose office is vacant, or has been vacant and filled by the Class A and Class B Directors, and any person so chosen shall hold office until the next annual meeting of stockholders and until his successor is chosen and qualified or until he is removed.

FIFTH: At each meeting of the Board of Directors, three Class A Directors and three Class B Directors shall be necessary and sufficient to constitute a quorum for the transaction of business. Except as herein provided, an affirmative vote of a majority of each of the Class A and Class B Directors present and voting shall be required to effect any action by the Board of Directors, provided, however, that any number of Directors, whether or not constituting a quorum, present at any meeting or any adjourned meeting may make, by majority vote of those present, voting in the aggregate and not by classes, any reasonable adjournment thereof.

SIXTH: Except as herein provided, the Restated Certificate of Incorporation of the corporation shall not be amended, modified or repealed except by the affirmative action of a majority of the outstanding shares of each Class of Common Stock of the corporation.

SEVENTH: Except as herein provided, by-laws of the corporation may not be made, amended or repealed in whole or in part except by the affirmative action of a majority of the holders of each Class of Common Stock of the corporation.

EIGHTH: Elections of Directors need not be by written ballot except and to the extent provided in the By-Laws of the corporation.

NINTH: Any one or more of the Directors of either Class A or Class B Directors may be removed, either with or without cause, at any time by vote of the stockholders holding a majority of shares entitled to vote for Directors of such Class, at any special meeting of stockholders of that Class called for the purpose, and thereupon the term of any such Director so removed shall forthwith terminate and the vacancy or vacancies in the Board of Directors thereby occurring shall be filled by the stockholders entitled to vote for the Class of Directors of the vacancy being filled at such special meeting. Any Special Class Director

may be removed, either with or without cause, at any time by the affirmative vote of the holders of a majority of each of the Class A and Class B Common Stock, at any special meeting of stockholders called at least in part for the purpose, and thereupon the term of any such Director so removed shall forthwith terminate and the vacancy or vacancies in the Board of Directors shall be filled by the affirmative vote of the holders of a majority of each of the Class A and Class B Common Stock. Except as otherwise provided herein, all vacancies occurring in the Board shall be filled by election at an annual meeting or at a special meeting of stockholders of the relevant class called for that purpose.

TENTH: If (a) any two or more stockholders or subscribers to stock of the corporation shall enter into any agreement abridging, limiting or restricting the rights of any one or more of them to sell, assign, transfer, mortgage, pledge or hypothecate any or all of the stock of the corporation held by any one or more of them and if a copy of said agreement shall be filed with the corporation, or if (b) the incorporators or the stockholders entitled to vote shall adopt any by-law provision abridging, limiting or restricting the aforesaid rights of any stockholders, then and in either of such events, all certificates for shares of stock subject to such abridgements, limitations or restrictions shall have a reference thereto endorsed thereon by an officer of the corporation and such stock shall not thereafter be transferred on the books of the corporation except in accordance with the terms and provisions of such agreement or by-law, as the case may be.

ELEVENTH: The following provisions are inserted for the regulation of the business and the conduct of the affairs of the corporation, and it is expressly provided that the same are intended to be in furtherance and not in limitation or exclusion of the powers conferred by statute:

(a) All corporate powers shall be exercised by the Board of Directors, except as otherwise expressly provided by law, in the Restated Certificate of Incorporation or the By-Laws.

(b) Any Director or officer may be a party to or may be interested in any contract or transaction of or with this corporation or in which this corporation is interested; and no contract, act or transaction of this corporation with any person, firm, association or corporation shall be affected or invalidated by the fact that any Director or officer of this corporation is a party to or interested in such contract, act or transaction or is interested in or is a director or officer of such other corporation, or is in any way connected with such person, firm, association or corporation, and each and every person who may become a Director or officer of the corporation is hereby relieved, so far as is legally permissible, from any disability which might otherwise prevent him from contracting with the corporation for the benefit of himself, or of any firm, association or corporation in which he may be in anywise interested or with which he may in anywise be connected. The fact that any Director is so interested or connected shall not disqualify him from being counted in determining the existence of a quorum at any meeting of the Board of Directors at which any such contract, act or transaction is considered or acted on or from voting with respect thereto. Nothing in this provision shall be deemed to relieve a Director or officer of any duty which he may otherwise have to disclose the existence of any such interest or connection.

4. This Restated Certificate of Incorporation was duly adopted by unanimous written consent of the stockholders in accordance with the applicable provisions of Sections 228, 242, and 245, of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said AMAX ALUMINUM COMPANY, INC., has caused this certificate to be signed by David Mayers, its President, and attested by Craig A. Davis, its Secretary this 23rd day of January, 1975

AMAX ALUMINUM COMPANY, INC.

By _____
David Mayers, President

ATTEST:

By _____
Craig A. Davis, Secretary

CERTIFICATE OF AMENDMENT

OF

RESTATED CERTIFICATE OF INCORPORATION

* * * * *

Alumax Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said corporation, by unanimous written consent adopted resolution proposing and declaring advisable the following amendment to the Restated Certificate of Incorporation of said corporation:

> RESOLVED: That the Board of Directors of Alumax Inc. does hereby declare it advisable that so much of subparagraph (d) of Article FOURTH of the Restated Certificate of Incorporation of the corporation as now reads "Except as otherwise provided herein, there shall be 15 directors of the corporation. The Directors of the corporation shall be divided into three classes, Class A Directors, Class B Directors and Special Class Directors consisting of six each of Class A and B Directors and, except as otherwise provided herein, three Special Class Directors", be amended to read:
>
> "Except as otherwise provided herein, there shall be 13 directors of the corporation. The Directors of the corporation shall be divided in three classes, Class A Directors, Class B Directors and Special Class Directors consisting of five each of Classes A and B Directors and, except as otherwise provided herein, three Special Class Directors."

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given unanimous written consent to said amendment in accordance with the provisions of section 228 of The General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendment were duly adopted in accordance with the applicable provisions of Sections 242 and 228 of The General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said Alumax Inc. has caused this certificate to be signed by David Mayers, its President, and attested by Craig A. Davis, its Secretary this 27th day of August, 1976.

ALUMAX INC.

By David Mayers
David Mayers, President

ATTEST:

By Craig A. Davis
Craig A. Davis, Secretary

CERTIFICATE OF AMENDMENT

OF

RESTATED CERTIFICATE OF INCORPORATION

* * * * *

Alumax Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said corporation, by unanimous written consent adopted a resolution proposing and declaring advisable the following amendment to the Restated Certificate of Incorporation of said corporation:

> RESOLVED: That the Board of Directors of Alumax Inc. does hereby declare it advisable that so much of subparagraph (d) of Article FOURTH of the Restated Certificate of Incorporation of the corporation as now reads "Except as otherwise provided herein, there shall be 13 directors of the corporation. The Directors of the corporation shall be divided into three classes, Class A Directors, Class B Directors and Special Class Directors consisting of five each of Class A and B Directors and, except as otherwise provided herein, three Special Class Directors", be amended to read:
>
> "Except as otherwise provided herein, there shall be 12 directors of the corporation. The Directors of the corporation shall be divided into three classes, Class A Directors, Class B Directors and Special Class Directors consisting of five each of Classes A and B Directors and except as otherwise provided herein, two Special Class Directors."

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given unanimous written consent to said amendment in accordance with the provisions of section 228 of the General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Sections 242 and 228 of The General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said Alumax Inc. has caused this certificate to be signed by David Mayers, its President, and attested by Marigold Cole, its Assistant Secretary this 4th day of October 1977.

ALUMAX INC.

By David Mayers
David Mayers, President

ATTEST:

By Marigold Cole
Marigold Cole, Assistant Secretary

FILED

OCT 15 1982 10AM

SECRETARY OF STATE

CERTIFICATE OF AMENDMENT

OF

RESTATED CERTIFICATE OF INCORPORATION

* * * * *

Alumax Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said corporation, by unanimous written consent adopted a resolution proposing and declaring advisable the following amendment to the Restated Certificate of Incorporation of said corporation:

RESOLVED (1): That so much of Subparagraph (d) of Article FOURTH of the Restated Certificate of Incorporation of the Corporation as now reads "Except as otherwise provided herein, there shall be 12 directors of the Corporation. The Directors of the Corporation shall be divided into three classes, Class A Directors, Class B Directors and Special Class Directors consisting of five each of Class A and B Directors and, except as otherwise provided herein, two Special Class Directors.", be amended to read:

"The Directors of the Corporation shall be divided into three classes, Class A Directors, Class B Directors and Special Class Directors, consisting of (a) not less than three each nor more than six each of the Class A and Class B Directors, provided that the authorized number of Class A and Class B Directors shall always be equal, and (b) except as provided herein, not more than three Special Class Directors. Subject to the limitations set forth above, the exact number of Directors shall be determined from time to time by resolution of the Board of Directors. Except as provided herein, all Directors shall be of equal rank and have the same rights, powers, duties and obligations."

RESOLVED (2): That so much of Article FIFTH of the Restated Certificate of Incorporation of the Corporation as now reads "At each meeting of the Board of Directors three Class A Directors and three Class B Directors shall be necessary and sufficient to constitute a quorum for the transaction of business.", be amended to read:

"At each meeting of the Board of Directors two Class A and two Class B Directors shall be necessary and sufficient to constitute a quorum for the transaction of business."

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given unanimous written consent to said amendment in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Sections [illegible] and 228 of The General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said Alumax Inc. has caused this certificate to be signed by Robert Marcus, its President and attested by Marigold Cole, its Assistant Secretary this 7th day of October 1982.

ALUMAX INC.

By Robert Marcus
Robert Marcus, President

ATTEST:

By Marigold Cole, Assistant Secretary

8400690352

FILED
3:30 P.M.
MAR 9 1984

RESTATED CERTIFICATE OF INCORPORATION

of

ALUMAX INC.

Alumax Inc. (the "corporation") was originally incorporated under the name Demax Realty Corporation, and its original certificate of incorporation was filed with the Secretary of State of the State of Delaware on October 17, 1973. The certificate of incorporation of the corporation is amended and restated to read in its entirety as follows:

FIRST: The name of the corporation is Alumax Inc.

SECOND: The address of the corporation's registered office in the State of Delaware is No. 100 West Tenth Street in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: (a) The total number of shares which the corporation shall have authority to issue is 750 shares of Common Stock, the par value of each of such shares being $100 per share, divided into three classes of 250 shares of Class A Common Stock, $100 par value per share, 250 shares of Class B Common Stock, $100 par value per share, and 250 shares of Class C Common Stock, $100 par value per share; provided,

however, that no share of Class A Common Stock shall be issued and outstanding at any time that any share of Class C Common Stock is issued and outstanding, and no share of Class C Common Stock shall be issued and outstanding at any time that any share of Class A Common Stock is issued and outstanding.

(b) The shares of each class shall be identical in every respect except as otherwise provided in this Restated Certificate of Incorporation, and except as otherwise provided in Article FIFTH of this Restated Certificate of Incorporation each share of Common Stock outstanding from time to time shall participate equally, share and share alike, in all dividends and other distributions on or with respect to the corporation's Common Stock, including distributions in liquidation or dissolution and such dividends or other distributions as may be duly declared by the Board of Directors. Except as otherwise provided in this Restated Certificate of Incorporation or required by applicable law, each share of Class A Common Stock and of Class B Common Stock shall be entitled to one vote per share, and each share of Class C Common Stock shall be entitled to four votes per share, on each matter submitted to the stockholders.

(c) Except as provided in the next sentence, upon the occurrence of any of the events identified in the subparagraphs of this paragraph (c), all (and not less than all)

D3

shares of Class C Common Stock then outstanding shall immediately and automatically be converted, share for share, into fully paid and nonassessable shares of Class A Common Stock without further action by the corporation or any other person or entity, and any certificate then duly representing a share or shares of outstanding Class C Common Stock shall be deemed to represent a like number of outstanding shares of Class A Common Stock, and all shares of Class C Common Stock shall be deemed to be cancelled and retired; provided, however, that without affecting the foregoing the corporation may in its discretion at any time after such conversion require the holder of any such certificate to surrender such certificate to the corporation, duly endorsed for transfer to the corporation, in which event the holder of such certificate shall be entitled to receive in exchange for such surrendered certificate a certificate representing the number of shares of Class A Common Stock the surrendered certificate is then deemed to represent. All shares of Class C Common Stock shall cease to be convertible immediately upon the purchase of shares of Class C Common Stock pursuant to the right to purchase such shares set forth in Article IV of the Stockholders Agreement dated as of January 16, 1974 by and among AMAX Inc., a New York corporation ("Amax"), Amax Realty Corp., a Delaware corporation ("Amax Realty"), Bemax Realty Corp., a Delaware corporation ("Bemax"), Cemax Corporation, a

04

Delaware corporation ("Cemax"), Amax Securities, Inc., a Delaware corporation ("Amax Securities"), Mitsui & Co., Ltd., a Japanese corporation, Mitsui & Co. (U.S.A.), Inc., a New York corporation, Nippon Steel Corporation, a Japanese corporation, and the corporation, as such Agreement has been amended and restated as of January 1, 1984 and may from time to time be amended (the "Stockholders Agreement"). A copy of the Stockholders Agreement is on file and available for examination by any stockholder of the corporation at the principal office of the corporation. No share of Class C Common Stock shall be issued or reissued at any time after any share of Class C Common Stock shall have been converted into Class A Common Stock. The events referred to in the first sentence of this paragraph (c) are the following:

(i) The delivery to the corporation, by the holder or holders of record of the then outstanding shares of Class C Common Stock, of a written notice stating that all holders of Class C Common Stock elect to convert their shares of Class C Common Stock pursuant to this paragraph (c) and signed by all such holders at any time after (x) December 31, 1988, or (y) the holder or holders of a majority of the then outstanding Class B Common Stock, or a corporation owning, directly or indirectly, at least 50% of the voting securities of any such holder of Class B Common Stock, shall have given to

05

the holders of Class C Common Stock, and not theretofore duly revoked, a notice of exercise of its or their right to purchase Class C Common Stock pursuant to Article IV of the Stockholders Agreement; or

(ii) The entry of a decree or order by a court having jurisdiction in the premises adjudging Amax, Amax Realty, Bemax, Cemax or Amax Securities a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution or composition of or in respect of any such corporation under any existing or future law of the United States or any political subdivision thereof, or appointing a receiver, liquidator, assignee, trustee, sequestrator or other similar official of any such corporation or of any substantial part of the property of any such corporation, or ordering the winding-up or liquidation of the affairs of any such corporation, or ordering the issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of the property of any such corporation, and the continuance of any such decree or order unstayed and in effect for a period of 60 days; or

(iii) The institution by Amax, Amax Realty, Bemax, Cemax or Amax Securities of proceedings to be

tlo

adjudicated a bankrupt or insolvent, or the consent by any such corporation to the institution of bankruptcy or insolvency proceedings against it, or the filing by any such corporation of a petition or answer or consent seeking reorganization or relief or arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts under any existing or future law of the United States or any political subdivision thereof, or the consent by any such corporation to the filing of such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or similar official of it or of any substantial part of its property, or the making by any such corporation of an assignment for the benefit of creditors, or any such corporation's failure, or the admission by any such corporation in writing of its inability, to pay its debts generally as they become due, or the taking of corporate action by any such corporation in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such action.

(d) The number of shares of Common Stock required to be present at a meeting of stockholders to constitute a quorum at the meeting shall be as specified in the applicable provision of Article FIFTH of this Restated Certificate of

07

Incorporation. The affirmative vote required to effect any action of the stockholders shall be as specified in the applicable provision of Article FIFTH of this Restated Certificate of Incorporation. At each meeting of a class of stockholders, the holders of a majority of the outstanding shares of that class of stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum. At each meeting of a class of stockholders, an affirmative vote of holders of a majority of the outstanding shares of that class of stock shall be required to effect any action of that class of stockholders. In the absence of a quorum at a meeting of stockholders or of a class of stockholders, the stockholders present and entitled to vote thereat may make, by majority vote of those present, voting in the aggregate and not by classes, a reasonable adjournment of the meeting from time to time until a quorum shall attend. Any action required by law to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of not less than 90% or, at any time that the holder or holders of a majority of the then outstanding shares of Class B Common Stock own any shares of Class C Common Stock, 70% of the outstanding shares

08

that would be entitled to vote thereon at a meeting at which all shares entitled to vote thereon were present and voted. Any action required to be taken at any annual or special meeting of a class of stockholders, or any action which may be taken at any annual or special meeting of a class of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

(e) The Directors of the corporation shall be divided into three classes, Class A Directors or Class C Directors, as the case may be, Class B Directors and Special Class Directors, as provided in Article FIFTH of this Restated Certificate of Incorporation.

(i) Class A Directors. The holders, if any, of Class A Common Stock shall exclusively (except as herein provided otherwise), by affirmative vote of holders of at least a majority of the shares of Class A Common Stock at the time outstanding and entitled to vote, elect, remove with or without cause, accept resignations of, and fill vacancies in the office of, Class A Directors; provided, however, that upon the exchange of Class

09

A Common Stock into Class C Common Stock, the four Class A Directors then in office shall immediately and automatically become Class C Directors and be deemed to have been duly elected by the holders of Class C Common Stock; and provided, further, that upon the conversion of Class C Common Stock into Class A Common Stock pursuant to paragraph (c) of this Article FOURTH, the Class C Directors then in office shall immediately and automatically become Class A Directors and be deemed to have been duly elected by the holders of Class A Common Stock, except that if, pursuant to a resolution of the Board of Directors, upon such conversion the Board of Directors shall include only three Class A Directors, one of the four Class C Directors, as designated by the holders of Class A Common Stock, shall be deemed to have resigned.

(ii) Class B Directors. The holders of Class B Common Stock shall exclusively (except as herein provided otherwise), by affirmative vote of holders of at least a majority of the shares of Class B Common Stock at the time outstanding and entitled to vote, elect, remove with or without cause, accept resignations of, and fill vacancies in the office of, Class B Directors; provided, however, that upon the exchange of Class A Common Stock into Class C Common Stock, two of the Class

C/C

B Directors then in office, as designated by the holders of Class B Common Stock, shall be deemed to have resigned. Upon the conversion of Class C Common Stock into Class A Common Stock pursuant to paragraph (c) of this Article FOURTH, the holders of Class B Common Stock shall elect such number of additional Class B Directors as shall be necessary in order for the number of Class B Directors to equal the number of Class A Directors then in office.

(iii) Class C Directors. Except as otherwise provided in subparagraph (i) of this paragraph (e), the holders, if any, of Class C Common Stock shall exclusively (except as herein provided otherwise), by affirmative vote of holders of at least a majority of the shares of Class C Common Stock at the time outstanding and entitled to vote, elect, remove with or without cause, accept resignations of, and fill vacancies in the office of, Class C Directors.

(iv) Special Class Directors. Special Class Directors shall be elected as provided in Article FIFTH of this Restated Certificate of Incorporation.

Holders of one class of Common Stock may not as such vote upon the election, removal, acceptance of resignations, or filling of vacancies in the office, of Directors of another class of Common Stock. Any vacancy occurring in the Board of

Directors with respect to Directors of any class of Common Stock shall be filled by the remaining Directors of the same Class, and the person so elected to fill such vacancy shall hold office until the next annual meeting of stockholders and until his successor is elected and qualified or until he earlier resigns or is removed, except that the holders of any class of Common Stock may, at any special meeting called at least in part for the purpose, by the affirmative vote of holders of a majority of the shares of such class of Common Stock at the time outstanding and entitled to vote, elect a successor to a Director elected by the holders of such class of Common Stock whose office is vacant, or has been vacant and has been filled by the remaining Directors of the same Class, and any person so elected shall hold office until the next annual meeting of stockholders and until his successor is elected and qualified or until he earlier resigns or is removed. Any vacancy occurring in the Board of Directors with respect to Special Class Directors shall be filled as provided in the applicable provision of Article FIFTH of this Restated Certificate of Incorporation.

FIFTH: (a) With respect to any period during which any share of Class A Common Stock is outstanding:

(i)(A) Each share of Common Stock outstanding shall participate equally, share and share alike, in all dividends and other distributions on or with

respect to the corporation's Common Stock, including distributions in liquidation or dissolution and such dividends or other distributions as may be duly declared by the Board of Directors, except as provided otherwise in subparagraph (B) of this subparagraph (i).

(B) With respect to any fiscal quarter of the corporation during which any shares of Class C Common Stock are converted into shares of Class A Common Stock, the Board of Directors shall during the fiscal quarter immediately following such quarter declare and pay a dividend the amount of which shall be calculated in accordance with the provisions of subparagraph (b)(i)(B) of this Article FIFTH and which shall be payable in accordance with the schedule of dividend payment and record dates set forth in subparagraph (b)(i)(A) of this Article FIFTH. The aggregate amount of any dividend declared pursuant to this subparagraph (B) shall be apportioned between the holders of Class B Common Stock and Class A Common Stock in such amounts as will provide (r) to the holders of Class B Common Stock in the aggregate an amount equal to the sum of (1) 50% of the aggregate amount of the dividend then being declared for the

period during which Class A Common Stock shall have been outstanding during the fiscal quarter with respect to which such dividend is declared, plus (2) 80% of the aggregate amount of the dividend then being declared for the period during which Class C Common Stock shall have been outstanding during such fiscal quarter, and (s) to the holders of Class A Common Stock in the aggregate an amount equal to the remaining amount of the dividend then being declared. For purposes of this subparagraph (B), the day on which Class C Common Stock is converted into Class A Common Stock pursuant to paragraph (c) of Article FOURTH of this Restated Certificate of Incorporation shall be deemed to be a day on which Class A Common Stock shall have been outstanding. The amount of any such dividend shall be rounded off to the nearest dollar ($1.00) per share. If (x) the aggregate amount of any dividend that shall be declared pursuant to this subparagraph (B) shall by reason of applicable law be less than the amount otherwise prescribed by this subparagraph (B), or (y) the fiscal quarter with respect to which such dividend shall have been declared was the fiscal quarter during which all shares of Class C Common Stock ceased to be

outstanding and the net income of the corporation on which the amount of such dividend shall have been based subsequently shall be increased by reason of an adjustment made in accordance with an audit of the corporation's accounts for a fiscal year for any reason at any time after such dividend shall have been declared, then during the immediately subsequent fiscal quarter or quarters the Board of Directors shall to the fullest extent then permitted by applicable law declare such dividends as shall be required in order to provide to the holders of Class A Common Stock and Class B Common Stock as soon as practicable the respective aggregate amounts such holders would have received pursuant to this subparagraph (B) if applicable law had imposed no limitation on any dividend and such adjustment of such net income had been made prior to the declaration of such previous dividend.

(ii) At each meeting of stockholders, except a meeting of a class of stockholders, the holders of a majority of the outstanding shares of each of the Class A Common Stock and Class B Common Stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum. At each meeting of stockholders, except a meeting of a class of stockholders, an affirma-

tive vote of the holders of a majority of the outstanding shares of each of the Class A Common Stock and Class B Common Stock, voting by classes and not in the aggregate, shall be required to effect any action of the stockholders.

(iii) The Board of Directors of the corporation shall consist of (A) not less than three each nor more than six each of the Class A and Class B Directors, provided that the authorized number of Class A and Class B Directors shall always be equal, and (B) not more than three Special Class Directors. Subject to the limitations set forth above and except as otherwise provided in this subparagraph (iii), the exact number of Directors shall be determined from time to time by resolution of the Board of Directors. Except as otherwise provided herein, all Directors shall each have one vote on any matter presented to the Board of Directors, be of equal rank and have the same rights, powers, duties and obligations. The holders of Class A Common Stock and Class B Common Stock shall exclusively (except as herein provided otherwise), by affirmative vote of a majority of each such class of Common Stock, voting by classes and not in the aggregate, elect, remove with or without cause, accept resignations of, and fill vacancies in the offices of, Special Class Directors, and increase or

decrease the number of Special Class Directors. Upon conversion of Class C Common Stock into Class A Common Stock, the Special Class Directors then in office shall be deemed to have been duly elected Special Class Directors by the holders of Class A Common Stock and Class B Common Stock; provided, however, that if, pursuant to a resolution of the Board of Directors, upon such conversion the Board of Directors shall include only one Special Class Director, one of the two Special Class Directors then in office, as designated by a majority of each of the Class A and Class B Directors, voting by classes and not in the aggregate, shall be deemed to have resigned. Any vacancy occurring in the Board of Directors with respect to Special Class Directors shall be filled by the affirmative vote of a majority of each of the Class A and Class B Directors present at the meeting, voting by classes and not in the aggregate, and the person so elected to fill such vacancy shall hold office until the next annual meeting of stockholders and until his successor is elected and qualified or until he earlier resigns or is removed, except that the holders of a majority of each of the Class A Common Stock and Class B Common Stock, voting by classes and not in the aggregate, at any special meeting called at least in part for the purpose, may elect a

successor to a Special Class Director whose office is vacant, or has been vacant and has been filled by the Class A and Class B Directors, and any person so elected shall hold office until the next annual meeting of stockholders and until his successor is elected and qualified or until he earlier resigns or is removed.

(iv) At each meeting of the Board of Directors two Class A and two Class B Directors and, if necessary in order for the number of Directors present to equal at least one-third (1/3) of the total number of Directors, one other Director of any Class, shall be necessary and sufficient to constitute a quorum for the transaction of business. Except as herein provided, a majority of each of the Class A and Class B Directors present and voting, voting by classes and not in the aggregate, shall be required to effect any action by the Board of Directors; provided, however, that any number of Directors, whether or not constituting a quorum, present at any meeting or any adjourned meeting may make, by majority vote of those present, voting in the aggregate and not by classes, any reasonable adjournment thereof.

(b) With respect to any period during which any share of Class C Common Stock is outstanding:

(i) Except as provided otherwise in subparagraph (a)(i)(B) of this Article FIFTH:

218

(A) Dividends shall be declared on Class B Common Stock or Class C Common Stock only if and when dividends are declared on both such classes of Common Stock at the same time and such declared dividends are payable on both classes of Common Stock on the same date to holders of record on the same dividend record date. Except when prohibited by applicable law, the Board of Directors shall declare dividends payable on or before each February 15, May 15, August 15, and November 15 to stockholders of record at the close of business on the preceding December 31, March 31, June 30, and September 30, respectively. Dividends on Class C Common Stock shall be declared and paid at a rate per share equal to one-quarter (1/4) the rate per share then declared on Class B Common Stock.

(B) During the fiscal quarter of the corporation ending June 30, 1984, the Board of Directors shall declare and pay a dividend in an amount equal to 35% of the net income (if any) after taxes of the corporation for its fiscal quarter ending March 31, 1984. During each fiscal quarter after June 30, 1984, the Board of Directors shall declare and pay a dividend in an amount equal to the excess of (r) 35% of the net income (if any)

after taxes of the corporation for the entire portion of the corporation's fiscal year that shall have elapsed up to and including the last day of the immediately preceding fiscal quarter, over (s) the aggregate amount of all dividends theretofore declared and paid by the corporation on the basis of the net income of the corporation for such portion of such fiscal year. Any dividend declared pursuant to this subparagraph (B) may by reason of applicable law be declared in an amount less than the amount otherwise prescribed by this subparagraph (B), so long as such lesser amount shall be the maximum amount of dividends the corporation may then declare and pay in accordance with applicable law. Any calculation made in accordance with this subparagraph (B) that results in a negative number shall be deemed to result in the number zero, and no holder of any share of Common Stock shall by reason of any such negative number be required to return any amount it theretofore shall have received as a dividend duly declared and paid by the corporation in accordance with this Restated Certificate of Incorporation. If (x) the aggregate amount of any such dividend shall by reason of applicable law be less than the

020

amount otherwise prescribed by this subparagraph (B), or applicable law shall then prohibit the declaration of a dividend by the Board of Directors, or (y) the amount of such dividend shall have been determined on the basis of the net income of the corporation for a complete fiscal year and such net income subsequently shall be increased or decreased by reason of an adjustment made in accordance with an audit of the corporation's accounts for such fiscal year for any reason at any time after such dividend shall have been declared, then during the immediately subsequent fiscal quarter or quarters the Board of Directors shall to the fullest extent then permitted by applicable law declare such dividends as shall be required in order to provide to the holders of Class B Common Stock and Class C Common Stock as soon as practicable the respective aggregate amounts such holders would have received pursuant to this subparagraph (B) if applicable law had imposed no limitation on any dividend and such adjustment of such net income had been made prior to the declaration of such previous dividend. For purposes of this subparagraph (B), "net income" shall mean net income as calculated in accordance with

generally accepted accounting principles as used by, and applied on a basis consistent with the application of such principles by, the corporation on December 31, 1983; provided, however, that such net income shall be calculated as if the corporation and its consolidated subsidiaries were not included in the consolidated group of Amax for income tax or any other purpose, any requirement under such generally accepted accounting principles that the effects of such consolidation be included in the calculation of the net income of the corporation notwithstanding.

(C) Except as otherwise provided in this subparagraph (i), each share of Common Stock outstanding shall participate equally, share and share alike, in all dividends and other distributions on or with respect to the corporation's Common Stock, including distributions in liquidation or dissolution.

(ii) At each meeting of stockholders, or a class of stockholders, the holders of a majority of the outstanding shares of Common Stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum. At each meeting of stockholders, except as otherwise provided in this Restated Certifi-

022

cate of Incorporation, the affirmative vote of a majority of the votes cast at the meeting in person or represented by proxy and entitled to be cast on the subject shall be required to effect any action of the stockholders; provided, however, that an affirmative vote of holders of a majority of the outstanding shares of each of the Class B Common Stock and Class C Common Stock, voting by classes and not in the aggregate, shall also be required to effect any action of the stockholders on any of the following matters:

(A) Any merger of the corporation, any acquisition or disposition (or any series of transactions which are contemplated or arranged by the corporation as a single plan constituting an acquisition or disposition) of material assets, or any partial or complete liquidation or dissolution of the corporation. For purposes of this subparagraph (A), "material" shall mean assets then having, or that upon acquisition by the corporation will have, in the aggregate a net book value on the corporation's books equal to or greater than 5% of the corporation's net worth as shown on the corporation's consolidated balance sheet as of the last day of the fiscal quarter completed not more than 120 days prior to the date action on the

acquisition or disposition is taken; provided, however, that such balance sheet shall have been, or for purposes of this subparagraph (A) shall be revised to provide a balance sheet as of such date, prepared in accordance with generally accepted accounting principles as used by, and applied on a basis consistent with the application of such principles by, the corporation on December 31, 1983; and provided, further, that such balance sheet shall be prepared as if the corporation and its consolidated subsidiaries were not included in the consolidated group of Amax for income tax or any other purpose, any requirement under such generally accepted accounting principles that the effects of such consolidation be reflected in such balance sheet notwithstanding.

(B) Any capital appropriation (or series of capital appropriations contemplated or arranged by the corporation as a single plan), or asset disposition request (or series of asset disposition requests contemplated or arranged by the corporation as a single plan), of $30 million or more;

(C) The election or any other selection, or dismissal, of any chief executive officer of the corporation;

(D) Any transaction involving the corporation and any affiliate of the corporation (a) in which a loan is made to the affiliate by the corporation, or (b) that is not in the ordinary course of the corporation's business. For purposes of this subparagraph (D), "affiliate" means any stockholder of the corporation, any holder, beneficially or of record, directly or indirectly, of a 20% or greater equity interest in any stockholder of the corporation, and any corporation, partnership or other entity in which any stockholder of the corporation or any such holder holds, beneficially or of record, directly or indirectly, a 20% or greater equity interest;

and provided, further, that if the stockholders shall take any action over the express objections of the holder or holders of a majority of the outstanding shares of Class B Common Stock, such action shall not take effect for 14 calendar days. If within such 14-day period the Board of Directors of the holder of a majority of the then outstanding shares of Class B Common Stock (or, if such holder is not a publicly held

corporation and the publicly held corporation then owning, directly or indirectly, 50% of the voting securities of such holder then owns any share or shares of outstanding Class B Common Stock, the Board of Directors of such publicly held corporation) shall review such action and shall adopt a resolution stating that it has determined that such action could have a material and adverse impact on the value of such stockholder's stockholding in the corporation if it were to become effective, then such action shall not become effective if, as a result of such objection and resolution, shares of Class C Common Stock shall be purchased pursuant to Article IV of the Stockholders Agreement or be converted into shares of Class A Common Stock pursuant to paragraph (c) of Article FOURTH of this Restated Certificate of Incorporation.

(iii) The Board of Directors of the corporation shall consist of two Class B Directors, four Class C Directors and two Special Class Directors. At any meeting of the Board of Directors, except as otherwise provided in this Restated Certificate of Incorporation or required by law, each Class B Director shall have one vote, each Class C Director shall have two votes and each Special Class Director shall have no vote, on any matter. The holders of a majority of the

Class B Common Stock may appoint not more than two observers who shall be entitled to notice of, and to attend and participate in all discussions at, each meeting of the Board of Directors, but shall have no vote on any matter. Except as otherwise provided in this Restated Certificate of Incorporation, all Directors shall in all other respects be of equal rank and have the same rights, powers, duties and obligations. The position of one Special Class Director shall be filled by the chief executive officer of the corporation automatically, without any requirement that he be elected a Special Class Director by the other Directors or any stockholder; he shall be removed from the office of Special Class Director immediately and automatically upon, and only upon the occurrence of, his ceasing to hold the office of chief executive officer of the corporation, including upon his being duly removed from the office of chief executive officer of the corporation in accordance with the provisions of the By-Laws of the corporation with or without cause. Such chief executive officer may resign from the office of Special Class Director at any time that any share of Class C Common Stock is outstanding only by simultaneously also resigning from the office of chief executive officer of the corporation. The Class B and

Class C Directors, voting in the aggregate and not by classes, shall elect any other full-time employee of the corporation to the office of the other Special Class Director and may at any time remove, with or without cause, and replace any Special Class Director so elected; provided, however, that any person holding this office of Special Class Director shall be removed from such office immediately and automatically upon his ceasing to be a full-time employee of the corporation; the person holding this office of Special Class Director shall not be elected, removed or replaced by the stockholders at any time that any share of Class C Common Stock is outstanding.

(iv) At each meeting of the Board of Directors a majority of the total number of Directors shall be necessary and sufficient to constitute a quorum for the transaction of business. Except as otherwise provided in this Restated Certificate of Incorporation, an affirmative vote of a majority of the votes cast by the Directors present and voting at a meeting at which a quorum is present and voting throughout and entitled to vote thereat, voting in the aggregate and not by classes, shall be required to effect any action by the Board of Directors; provided, however, that the affirmative vote of the majority of each of the Class B

Directors and Class C Directors present at the meeting, voting by classes and not in the aggregate, shall also be required to effect any action of the Board of Directors on any of the matters referred to in clauses (A) through (D) of subparagraph (b)(ii) of this Article FIFTH; and provided, further, that if the Board of Directors shall take any action over the express objections of any Class B Director, such action shall not take effect for 14 calendar days. If within such 14-day period the Board of Directors of the holder of a majority of the then outstanding shares of Class B Common Stock (or, if such holder is not a publicly held corporation and the publicly held corporation then owning, directly or indirectly, 50% of the voting securities of such holder then owns any share or shares of outstanding Class B Common Stock, the Board of Directors of such publicly held corporation) shall review such action and shall adopt a resolution stating that it has determined that such action could have a material and adverse impact on the value of such stockholder's stockholding in the corporation if it were to become effective, then such action shall not become effective if, as a result of such objection and resolution, shares of Class C Common Stock shall be purchased pursuant to Article IV of the Stockholders

Agreement or be converted into shares of Class A Common Stock pursuant to paragraph (c) of Article FOURTH of this Restated Certificate of Incorporation. Any number of Directors, whether or not constituting a quorum, present at any meeting or any adjourned meeting may, by majority vote of those present, voting in the aggregate and not by classes, make any reasonable adjournment thereof.

SIXTH: This Restated Certificate of Incorporation shall not be amended, modified or repealed except by the affirmative action of holders of a majority of the then outstanding shares of each class of Common Stock of the corporation, voting by classes and not in the aggregate.

SEVENTH: By-Laws of the corporation may not be made, amended or repealed, in whole or in part, except by the affirmative action of holders of a majority of the then outstanding shares of each class of Common Stock of the corporation, voting by classes and not in the aggregate.

EIGHTH: Elections of Directors need not be by written ballot except as and to the extent provided in the By-Laws of the corporation.

NINTH: If (i) any two or more stockholders or subscribers to stock of the corporation shall enter into any

agreement abridging, limiting or restricting the rights of any one or more of them to sell, assign, transfer, mortgage, pledge or hypothecate any or all of the stock of the corporation held by any one or more of them and if a copy of said agreement shall be filed with the corporation, or (ii) the stockholders entitled to vote on the matter shall adopt any By-Law provision abridging, limiting or restricting the aforesaid rights of any stockholder, then and in either of such events, all certificates for shares of stock subject to such abridgements, limitations or restrictions shall have a reference thereto endorsed thereon by an officer of the corporation and such stock shall not thereafter be transferred on the books of the corporation except in accordance with the terms and provisions of such agreement or By-Law, as the case may be.

TENTH: The following provisions are inserted for the regulation of the business and the conduct of the affairs of the corporation, and it is expressly provided that the same are intended to be in furtherance and not in limitation or exclusion of the powers conferred by statute:

(a) All corporate powers shall be exercised by the Board of Directors, except as otherwise expressly provided by law, in this Restated Certificate of Incorporation or the By-Laws of the corporation.

D31

(b) Any Director or officer may be a party to or may be interested in any contract or transaction of or with the corporation or in which the corporation is interested; and no contract, act or transaction of the corporation with any person, firm, association or corporation shall be affected or invalidated by the fact that any Director or officer of this corporation is a party to or interested in such contract, act or transaction or is interested in or is a director or officer of such other corporation, or is in any way connected with such person, firm, association or corporation, and each and every person who may become a Director or officer of the corporation is hereby relieved, so far as is legally permissible, from any disability which might otherwise prevent him from contracting with this corporation for the benefit of himself, or of any firm, association or corporation in which he may be in anywise interested or with which he may in anywise be connected. The fact that any Director is so interested or connected shall not disqualify him from being counted in determining the existence of a quorum at any meeting of the Board of Directors or committee at which any such contract, act or transaction is considered or acted on or from voting with respect thereto. Nothing in this provision shall be deemed to relieve a Director or offi-

cer of any duty which he may otherwise have to disclose the existence of any such interest or connection.

This Restated Certificate of Incorporation was duly adopted by the stockholders in accordance with Section 245 of the General Corporation Law of Delaware.

Immediately after the amendment and restatement of the corporation's Certificate of Incorporation provided for above takes effect, all shares of Class A Common stock issued and outstanding immediately before such amendment takes effect shall automatically be exchanged for shares of Class C Common Stock at the rate of one share of Class C Common Stock for one share of Class A Common Stock. All shares of such Class A Common Stock shall be retired and shall resume the status of authorized and unissued shares. Such exchange shall be effected as follows: until exchanged as hereafter provided, each certificate registered on the books of the corporation and representing any share of shares of Class A Common Stock issued and outstanding immediately prior to the time such amendment takes effect shall upon such amendment taking effect be deemed to represent a like number of shares of Class C Common Stock. Upon presentation and surrender to the

corporation of certificates representing shares of Class A Common Stock that were thus exchanged, the corporation shall issue or cause to be issued a new certificate or certificates representing the appropriate number of shares of Class C Common Stock in accordance with the terms of such exchange.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation which restates and further amends the provisions of the corporation's Certificate of Incorporation, as heretofore amended, and which has been duly adopted by the Board of Directors of the corporation and by its stockholders in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, has been executed on the 9th day of March, 1984.

Alumax Inc.

By _____
Group Vice President

(Corporate Seal)

Attest: _____
Secretary

7361920#2

FILED

JUL 11 1989 1 P.M.

SECRETARY OF STATE

CERTIFICATE OF AMENDMENT

of

RESTATED CERTIFICATE OF INCORPORATION

* * *

ALUMAX INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY.

FIRST: That the Board of Directors of said corporation, acting by unanimous written consent, adopted resolutions proposing and declaring advisable the following amendment to the Restated Certificate of Incorporation of said corporation:

> RESOLVED: that the Restated Certificate of Incorporation of ALUMAX INC., be amended by changing the last sentence of paragraph (b) (i) (A) of Article FIFTH so that, as amended, said sentence shall be and read as follows:
>
> "Dividends on Class C Common Stock pursuant to subparagraph (B) below shall be declared and paid at a rate per share equal to one-quarter (1/4) the rate per share then declared and paid on Class B Common Stock."

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given the required written consent to said amendment in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendments were duly adopted in accordance with the applicable provisions of Sections 242 and 228 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said ALUMAX INC. has caused this certificate to be signed by Lawrence B. Frost, its Vice President and Treasurer, and attested by Dennis P. McPencow, its Assistant Secretary, this 10th day of July, 1986.

ALUMAX INC.

By _____
Lawrence B. Frost
Vice President and Treasuer

ATTEST:

By _____
Dennis P. McPencow
Assistant Secretary

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO) ss.:

On the 10th day of July, 1986, before me personally came Lawrence B. Frost, to me known, who, being by me duly sworn, did depose and say that he is Vice President and Treasurer of Alumax Inc. the corporation described in and which executed the foregoing instrument; that the foregoing instrument is the act and deed of said corporation; that the facts stated therein are true; and that he signed his name thereto by authority of the Board of Directors of said corporation.

Diane Spiteri

OFFICIAL SEAL
DIANE SPITERI
NOTARY PUBLIC - CALIFORNIA
SAN MATEO COUNTY
My comm. expires APR 29, 1988

8603240104

FILED 10 AM
NOV 20 1986

SECRETARY OF STATE

CERTIFICATE OF AMENDMENT

OF

RESTATED CERTIFICATE OF INCORPORATION

* * * * * * * *

ALUMAX INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of the Corporation, acting by unanimous written consent, adopted resolutions proposing and declaring advisable the following amendment to the Restated Certificate of Incorporation of the Corporation:

> RESOLVED, that the Restated Certificate of Incorporation of the Corporation be amended by inserting a new paragraph (b)(i)(D) to Article FIFTH so that, as amended, said Article FIFTH, paragraph (b)(i)(D) shall be and read in its entirety as follows:
>
> > (D) Anything contained in this Article FIFTH to the contrary notwithstanding, a dividend of $4,532 per share for each share outstanding of Class B Common Stock and a dividend of $1,133 per share for each share outstanding of Class C Common Stock shall be declared payable on or before the day which is seven (7) days after the Closing Date (as defined in the Recapitalization and Stock Purchase Agreement, dated as of November 13, 1986, by and among AMAX Inc., Mitsui & Co. (U.S.A.), Inc., Nippon Steel U.S.A., Inc. and the corporation) to stockholders of record at the close of business on the business day immediately preceding such Closing Date in respect of the portion of the corporation's fiscal quarter ending on

December 31, 1986 that shall have elapsed up to and including such Closing Date."

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given the required written consent to said amendment in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendments were duly adopted in accordance with the applicable provisions of Sections 242 and 228 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by Paul E. Drack , its [redacted] President, and attested by Marigold Cole, its Assistant Secretary, this 18th day of November, 1986.

ALUMAX INC.

By Paul E. Drack
Paul E. Drack
[redacted] President

ATTEST:

By Marigold Cole
Marigold Cole
Assistant Secretary

8603280352

FILED

NOV 24 1986 10:45 AM

SECRETARY OF STATE

ALUMAX INC.
RESTATED CERTIFICATE OF INCORPORATION

Pursuant to Sections 242 and 245
of the General Corporation Law of the
State of Delaware

We, the undersigned, Paul E. Drack and Marigold Cole, the [redacted] President and the Assistant Secretary, respectively, of Alumax Inc., a corporation originally organized under the name of Demax Realty Corporation pursuant to a Certificate of Incorporation filed with the Secretary of State of the State of Delaware on October 17, 1973 (the "Corporation"), DO HEREBY CERTIFY:

ARTICLE I. This Restated Certificate of Incorporation was adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation having duly adopted resolutions by unanimous written consent dated as of November 21, 1986, setting forth this Restated Certificate of Incorporation, declaring its advisability and directing that it be considered by the holders of voting common stock of the Corporation, and the holders of all of the voting common stock of the Corporation having duly approved this Restated Certificate of Incorporation by unanimous written consent dated as of November 21, 1986.

ARTICLE II. The capital of the Corporation will not be reduced under or by this Restated Certificate of Incorporation.

ARTICLE III. This Restated Certificate of Incorporation reads as follows:

"FIRST. The name of this Corporation is: ALUMAX INC. (the "Corporation").

SECOND. The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations

00000

may be organized under the General Corporation Law of Delaware.

FOURTH: (a) The aggregate number of shares of stock which the Corporation shall have the authority to issue is 10,000,750, of which 750 shares of the par value of $100 per share shall be designated as Common Stock and 10,000,000 shares of the par value of $25 per share shall be designated as Preferred Stock.

The rights, preferences and limitations of said classes of stock are as follows:

1. The Preferred Stock may be issued from time to time by the Board of Directors as shares of one or more series of Preferred Stock, and the Board of Directors is expressly authorized, prior to issuance, in the resolution or resolutions providing for the issue of shares of each particular series, to fix the following, subject, however, to the rights, preferences and limitations of any series of Preferred Stock any shares of which are then outstanding:

(A) The distinctive serial designation of such series which shall distinguish it from other series;

(B) The number of shares included in such series, which number may be increased or decreased from time to time unless otherwise provided in this Restated Certificate of Incorporation or by the Board of Directors in

creating the series; provided, however, that the number of shares of any series may not be reduced below the number of shares of such series then outstanding;

(C) The annual dividend rate (or method of determining such rate) for shares of such series and the date or dates upon which such dividends shall be payable;

(D) Whether dividends on the shares of such series shall be cumulative, and, in the case of shares of any series having cumulative dividend rights, the date or dates or method of determining the date or dates from which dividends on the shares of such series shall be cumulative;

(E) The amount or amounts which shall be paid out of the assets of the Corporation to the holders of the shares of such series upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

(F) The price or prices at which, the period or periods within which and the terms and conditions upon which the shares of such series may be redeemed, in whole or in part, at the option of the Corporation;

(G) The obligation, if any, of the Corporation to purchase or redeem shares of such series pursuant to a sinking fund or otherwise and the price or prices at which, the period or periods within which and the terms and conditions upon which the shares of such series shall be redeemed, in whole or in part, pursuant to such obligation;

(H) The period or periods within which and the terms and conditions, if any, including the price or prices or the rate or rates of conversion or exchange and the terms and conditions of any adjustments thereof, upon which the shares of such series shall be convertible or exchangeable at the option of the holder into shares of any class of stock or into any other securities or other property or into shares of any other series of Preferred Stock; provided, however, that no such shares may be convertible into or exchangeable for shares of the Series A $25 Cumulative Exchangeable Preferred Stock of the Corporation;

(I) The voting rights, if any, of the shares of such series in addition to those required by law, including the number of

votes per share and any requirement for the approval by the holders of up to 66 2/3% of all Preferred Stock, or of the shares of one or more series, or of both, as a condition to specified corporate action or amendments to this Restated Certificate of Incorporation;

(J) The ranking of the shares of the series as compared with shares of other series of the Preferred Stock in respect of the right to receive dividends and the right to receive payments out of the assets of the Corporation upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation; and

(K) Any other relative rights, preferences or limitations of the shares of the series not inconsistent herewith or with applicable law.

2. All Preferred Stock shall rank senior to the Common Stock in respect of the right to receive dividends and the right to receive payments out of the assets of the Corporation upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation. The shares of any one series of the Preferred Stock shall be identical in all respects except as to the dates from and after which dividends thereon shall be cumulative. All Preferred Stock

redeemed, purchased or otherwise acquired by the Corporation (including shares surrendered for conversion or exchange) shall be cancelled and thereupon restored to the status of authorized but unissued Preferred Stock undesignated as to series.

3. No holder of Common Stock or of Preferred Stock shall be entitled as a matter of right to subscribe for or purchase, or have any preemptive right with respect to, any part of any new or additional issue of stock of any class whatsoever, or of securities convertible into any stock of any class whatsoever, whether now or hereafter authorized and whether issued for cash or other consideration or by way of dividend.

4. Except as provided in subsection (b) of this Article FOURTH below and as otherwise provided by the Board of Directors in accordance with paragraph 1 of this paragraph (a) in respect of any series of the Preferred Stock, all voting rights of the Corporation shall be vested exclusively in the holders of the Common Stock who shall be entitled to one vote per share.

(b) The designation, powers, preferences, privileges, rights, qualifications, limitations and restrictions of the initial series of the Preferred Stock of the Corporation are as follows:

Series A $25 Cumulative Exchangeable Preferred Stock. Four million (4,000,000), and no more, of the shares of the Preferred Stock of the Corporation shall be designated

00007

"Series A $25 Cumulative Exchangeable Preferred Stock", which shall have a par value of $25 per share. All shares of Series A $25 Cumulative Exchangeable Preferred Stock (hereinafter called the "$25 Preferred") shall be identical in every respect and shall have the powers, preferences, rights, qualifications, limitations and restrictions set forth below.

(i) Dividends. The holders of shares of $25 Preferred shall be entitled to receive, when and as declared by the Board of Directors of the Corporation, dividends in cash in the amount of $2.125 per share per annum, and no more, payable in equal quarterly installments on March 15, June 15, September 15 and December 15 in each year, commencing with a payment on March 15, 1987 (which shall include dividends accrued from November 24, 1986). (Each of the quarterly periods ending on the fifteenth day of such months is hereinafter called a "dividend period".) Such dividends shall accrue and be cumulative from November 24, 1986 whether or not declared and whether or not there shall be net profits or net assets of the Corporation legally available for the payment of such dividends. Dividends accrued on $25 Preferred in any prior dividend periods and unpaid may be declared and paid at any time, without reference to any regular dividend payment date. All dividends on $25 Preferred shall be preferential and shall be paid in full with respect to all prior dividend periods and paid or declared and set apart for payment in full with respect to the then current dividend period before (x) any dividend or other distribution shall be declared, paid, set apart for payment, ordered or made on or with respect to Common Stock or any other Junior Stock (as defined below in this subparagraph (i)), other than a dividend or distribution payable solely in Common Stock or any other Junior Stock, and (y) any shares of Common Stock or other Junior Stock are redeemed, purchased or otherwise acquired by the Corporation for consideration other than by conversion into or exchange for Common Stock or any other Junior Stock. Accumulations of dividends on the $25 Preferred shall not bear interest. For purposes of this paragraph (b), "Junior Stock" shall mean any class or series of stock of the Corporation ranking junior to the $25 Preferred with respect to all dividends and distributions.

(ii) Liquidation. Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (herein called a "Liquidation"), the holders of the $25 Preferred shall be entitled to receive out of the assets of the Corporation available for distribution to stockholders of the Corporation the sum of $25 per share, together with the amount of all dividends accrued and unpaid on the $25

Preferred to the date such payment is made available to such holders, before any payment or distribution is made or declared and set apart for payment on or in respect of any shares of Junior Stock or any other class or series of the stock of the Corporation ranking junior to the $25 Preferred as to distributions upon a Liquidation. If upon any Liquidation the assets of the Corporation distributable among the holders of $25 Preferred and the holders of all other classes and series of stock of the Corporation ranking on a parity with the $25 Preferred as to distributions upon a Liquidation shall be insufficient to pay in full the preferential amounts payable to all such holders upon a Liquidation, then such assets shall be distributed among all such holders ratably in proportion to the respective amounts that would be payable to such holders if all amounts then payable to them on the basis of the Liquidation were being paid in full. Neither the merger or consolidation of the Corporation with or into any other corporation or corporations, nor the sale, lease or other conveyance by the Corporation of all or any part of the assets of the Corporation, nor the reduction in the capital stock of the Corporation, shall be deemed to be a Liquidation of the Corporation for purposes of this subparagraph (ii).

(iii) Exchange Rights. Each share of $25 Preferred shall be exchangeable at the option of the holder thereof at any time and from time to time for fully paid and non-assessable shares of the common stock, par value $1.00 per share ("Amax Common Stock"), of AMAX Inc., a New York corporation ("Amax"), on the following terms and conditions:

(A) Exchange Price. Each share of $25 Preferred shall be exchangeable for the number of shares of Amax Common Stock that equals the quotient of (x) $25, divided by (y) the "Exchange Price" then in effect. The initial Exchange Price shall be $16.5052 and shall be adjusted from time to time as provided below in this subparagraph (iii); provided, that any adjusted Exchange Price shall be rounded to the nearest whole cent. In any such exchange, no allowance or adjustment shall be made for accumulated unpaid dividends on the shares of $25 Preferred surrendered for exchange or for dividends on the Amax Common Stock delivered upon such exchange.

(B) No Fractional Shares. No fractional shares of Amax Common Stock shall be delivered pursuant to any exchange of $25 Preferred pursuant to this subparagraph (iii). In lieu of any fractional share of Amax Common Stock that except for this subparagraph (B) would be deliverable in respect of the aggregate number

of shares of $25 Preferred surrendered for exchange at one time by the same holder, the Corporation shall pay to the person or entity otherwise entitled to such fractional share an amount in cash equal to the product of (1) such fraction, multiplied by (2) the Market Price (as defined below in subparagraph (E)(13)(a) of this subparagraph (iii)) of a share of Amax Common Stock on the date on which in accordance with subparagraph (D) of this subparagraph (iii) the exchange of such shares of $25 Preferred is deemed to have been effected.

(C) Taxes. The Corporation shall pay all taxes and other charges in respect of the issuance and delivery of shares of Amax Common Stock upon any exchange of shares of $25 Preferred hereunder; provided, however, that the Corporation shall not be required to pay any transfer or other tax or charge which may be payable by reason of the issuance or delivery of such shares of Amax Common Stock in a name other than that in which the shares of $25 Preferred so exchanged were registered.

(D) Procedures. In order to exchange shares of $25 Preferred hereunder, the holder thereof shall deliver and surrender to the Corporation at its principal executive office, to the attention of the Secretary of the Corporation (or to such other office or person as the Corporation shall have designated as its transfer agent in respect of the $25 Preferred in a written notice delivered to all holders of $25 Preferred), (1) the certificate or certificates representing the shares of $25 Preferred to be exchanged, duly endorsed or accompanied by duly executed stock powers to the Corporation or in blank, and (2) a written notice of the holder's election to exchange such shares hereunder. Such notice shall state the names and addresses of the persons or entities to whom the resulting shares of Amax Common Stock are to be registered and delivered if different from the name and address of the exchanging stockholder on the Corporation's stock records. The exchange shall be deemed to have been effected, and the persons or entities in whose names the certificate or certificates representing the shares of Amax Common Stock deliverable upon such exchange shall be deemed to have become the record holders of such Amax Common Stock, at the close of business on the day the certificate or certificates representing the shares of $25 Preferred to be exchanged and the stockholder's notice of election to exchange the shares are delivered to the Corporation in

accordance with this subparagraph (D) (or, if they are so delivered on different days, the later of such days); provided, that if such certificate or certificates and notice are not so delivered to the Corporation by 10:00 a.m. (in the time zone in which the principal executive office of the Corporation or the designated office of such transfer agent in respect of the $25 Preferred, as the case may be, is then located) on such day or such day is not a Business Day (as defined below in this subparagraph D), the exchange shall be deemed to have been effected, and such persons and entities shall be deemed to have become the record holders of such Amax Common Stock, at the close of business on the first Business Day following such day. Upon receiving such certificate or certificates and notice, the Corporation shall deliver or cause to be delivered to the exchanging stockholder (or, if applicable, the persons or entities designated therefor in the exchanging stockholder's notice of election to exchange) as promptly as possible (x) a certificate or certificates representing in the aggregate the number of full shares of Amax Common Stock deliverable upon such exchange, which shares shall be validly issued, fully paid and non-assessable, (y) the cash payment, if any, due hereunder in lieu of a fractional share of Amax Common Stock, and (z) a certificate or certificates representing the shares, if any, of $25 Preferred which were represented by the certificate or certificates surrendered to the Corporation in connection with the exchange but which were not to be exchanged. For purposes of this subparagraph D, Business Day means any day other than Saturdays, Sundays and days on which commercial banks are not open for business in any of the States in which the principal executive offices of the Corporation and Amax, the transfer agent in respect of Amax Common Stock and, if any, such transfer agent in respect of the $25 Preferred, are located.

(E) Adjustment. The Exchange Price (and, if applicable, the kind of securities of Amax or any other corporation and any other property into which each share of $25 Preferred shall be exchangeable), whether initially or following any adjustment required by this subparagraph (E), shall be adjusted from time to time as follows:

(1) Stock Dividends, Splits, Etc. Whenever Amax (w) takes a record of the holders of Amax Common Stock for the purpose of determining the holders entitled to receive a dividend or

distribution on shares of Amax Common Stock payable in shares of Amax Common Stock or securities convertible into or exchangeable for Amax Common Stock ("Amax Convertible Securities"), (x) subdivides then outstanding shares of Amax Common Stock, (y) combines then outstanding shares of Amax Common Stock into a smaller number of shares, or (z) otherwise issues any shares of capital stock of Amax by reclassification of then outstanding Amax Common Stock, then the Exchange Price and other exchange terms hereunder shall be adjusted so that the holder of any share of $25 Preferred surrendered for exchange after such record date for the dividend or distribution or the effective date of the subdivision, combination or reclassification shall be entitled to receive upon such exchange the number and kind of shares of stock which he would have owned or been entitled to receive if such share of $25 Preferred had been exchanged immediately prior to such record date or effective date.

(2) Issuance or Sale of Amax Common Stock. (a) Whenever Amax issues or otherwise sells (or pursuant to subparagraph (11) of this subparagraph (E) is deemed to issue or sell) any shares of Amax Common Stock other than Excluded Shares (as defined below in subparagraph (b) of this subparagraph (2)) for a consideration per share having a then present value less than the Market Price of a share of Amax Common Stock on the date of such issuance or sale, then the Exchange Price shall be adjusted so that the number of shares of Amax Common Stock for which each share of $25 Preferred surrendered for exchange after such issuance or sale shall be exchangeable shall equal the product of (x) the number of shares of Amax Common Stock into which a share of $25 Preferred was exchangeable immediately prior to such issuance or sale, multiplied by (y) a fraction, the numerator of which is the sum of (i) the total number of shares of Amax Common Stock outstanding immediately prior to such issuance or sale and (ii) the number of shares of Amax Common Stock being issued or sold, and the denominator of which is the sum of (1) the total number of shares of Amax Common Stock outstanding immediately prior to such issuance or sale and (2) the number of

shares of Amax Common Stock which the aggregate consideration received for the total number of shares of Amax Common Stock so issued or sold would purchase at the Market Price of a share of Amax Common Stock on the date of such issuance or sale.

(b) For purposes of this subparagraph (2), "Excluded Shares" shall mean any shares of Amax Common Stock issued or otherwise sold by Amax (i) pursuant to the Dividend Reinvestment and Stock Purchase Plan of Amax or Employees Dividend Reinvestment and Stock Purchase Plan of Amax, (ii) pursuant to Amax's Thrift Plan for Salaried Employees, Payroll Based Employee Stock Ownership Plan or Stock Option Plan for Key Employees or any other employee stock option, thrift or stock purchase plan, (iii) in a transaction or upon an event in respect of which an adjustment to the Exchange Price is made pursuant to any provision of this subparagraph (E) other than this subparagraph (2), (iv) pursuant to the exercise of any option, warrant or similar right, or upon conversion or exchange of any Amax Convertible Securities, in respect of which an adjustment to the Exchange Price shall have been made pursuant to any provision of this subparagraph (E) other than this subparagraph (2), or (v) in any transaction, upon any event or under any circumstance of the type in respect of which an adjustment in the Exchange Price would be required pursuant to any provision of this subparagraph (E) other than this subparagraph (2) except for the fact that (x) such transaction, event or circumstance is expressly excluded from the scope of such other provision or (y) the financial terms of such transaction, event or circumstance are such that no adjustment in the Exchange Price is required in respect thereof pursuant to the terms of such other provision.

(3) Options, Convertible Securities. (a) Whenever Amax in any manner (x) issues, grants or sells any option, warrant or other right to acquire any shares of Amax Common Stock or any Amax Convertible Securities (such options, warrants or other rights are

hereinafter called "Options") other than Excluded Options (as defined below in subparagraph (e) of this subparagraph (3)), whether or not such Options are immediately exercisable, or (y) issues or otherwise sells any Amax Convertible Securities other than upon exercise of any Option, whether or not the rights to convert or exchange such Amax Convertible Securities are immediately exercisable, and in either event the price per share (as determined pursuant to subparagraph (b) of this subparagraph (3)) at which shares of Amax Common Stock are issuable upon the exercise of any such Options or the conversion or exchange of any such Amax Convertible Securities is less than the Market Price of a share of Amax Common Stock on the date of such issuance, grant or sale of such Options or Amax Convertible Securities, then the Exchange Price shall be adjusted so that the number of shares of Amax Common Stock for which each share of $25 Preferred surrendered for exchange after such issuance, grant or sale shall be exchangeable shall equal the product of (x) the number of shares of Amax Common Stock into which a share of $25 Preferred was exchangeable immediately prior to such issuance, grant or sale, multiplied by (y) a fraction, the numerator of which is the sum of (i) the total number of shares of Amax Common Stock outstanding immediately prior to such issuance, grant or sale, plus (ii) the total number of shares of Amax Common Stock issuable upon the exercise of all such Options and upon the conversion or exchange of all such Amax Convertible Securities, and the denominator of which is the sum of (1) the total number of shares of Amax Common Stock outstanding immediately prior to such issuance, grant or sale and (2) the number of shares of Amax Common Stock which the Aggregate Price (as defined below in subparagraph (b) of this subparagraph (3)) would purchase at the Market Price of a share of Amax Common Stock on the date of such issuance, grant or sale.

(b) For purposes of subparagraph (a) of this subparagraph (3), the price per share at which shares of Amax Common Stock are issuable upon the exercise of an

Option or the conversion or exchange of Amax Convertible Securities shall be determined by dividing (i) the sum of (x) the total amount received or receivable by Amax as consideration for issuing, granting or selling such Options and Amax Convertible Securities, plus (y) the minimum aggregate amount of any additional consideration payable to Amax upon the exercise of such Options, plus (z) the minimum aggregate amount of any additional consideration payable to Amax upon the conversion or exchange of such Amax Convertible Securities (including Amax Convertible Securities issuable upon the exercise of such Options) (such sum is herein referred to as the "Aggregate Price"), by (ii) the total number of shares of Amax Common Stock issuable upon the exercise of all such Options and upon the conversion or exchange of all such Amax Convertible Securities (including Amax Convertible Securities issuable upon the exercise of such Options).

(c) No further adjustment of the Exchange Price shall be made upon the actual issuance of shares of Amax Common Stock or Amax Convertible Securities upon exercise of such Options or the conversion or exchange of such Amax Convertible Securities, except as otherwise provided in subparagraph (4) or (5) of this subparagraph (E).

(d) If Amax shall take a record of the holders of Amax Common Stock for the purpose of determining holders entitled to receive any Options in respect of which an adjustment of the Exchange Price is to be made pursuant to this subparagraph (3), then such record date shall be deemed to be the date of the issuance, grant or sale of such Options, provided that such issuance, grant or sale is thereafter made.

(e) For purposes of this subparagraph (3), "Excluded Options" shall mean Options granted pursuant to any employee stock option plan.

(f) For purposes of this subparagraph (3), whenever any Option or Amax Convertible Security is issued, granted or

sold together with other securities of Amax in any manner constituting one integrated transaction in which no specific consideration is allocated to such Option or Amax Convertible Security by the parties to the transaction, the Option or Amax Convertible Security shall be deemed to have been issued for such consideration as is attributed thereto on the financial records of Amax in accordance with generally accepted accounting principles applied on a basis consistent with the application of such principles by Amax on September 30, 1986.

(4) Changes in Options or Convertible Securities. Whenever any change shall occur in (x) the purchase or exercise price provided for in any Option to which subparagraph (3) of this subparagraph (E) applies, or (y) the additional consideration, if any, payable to Amax upon the conversion or exchange of any Amax Convertible Securities to which such subparagraph (3) applies, or (z) the rate at which any such Amax Convertible Securities are convertible into or exchangeable for Amax Common Stock, then the Exchange Price shall be readjusted, as of the effective date of such change, to the Exchange Price which would then have been in effect pursuant to such subparagraph (3) if (to the extent outstanding immediately prior to such change) all of such changed Options and Amax Convertible Securities outstanding at such effective time had initially been issued, granted or sold as so changed; provided, however, that if such readjustment results in an increase of the Exchange Price, such readjustment shall not be effective until 30 days after the Corporation has given written notice of the readjusted Exchange Price to all record holders of $25 Preferred, except that if such change in purchase or exercise price, additional consideration or conversion or exchange rate is temporary or for a limited period and thereafter returns to its original level or amount on the date specified therefor when the change is made, no such notice to the holders of $25 Preferred shall be required and the readjustment in the Exchange Price shall be effective as of the date the price, additional consideration or rate returns to its original level or amount.

(5) Expiration or Termination of Options or Convertibility. Whenever any Option, or any right to convert or exchange any Amax Convertible Securities, in respect of which the Exchange Price shall have been adjusted pursuant to subparagraph (3) of this subparagraph (E) shall expire or terminate, then the Exchange Price shall be adjusted as of the date of such expiration or termination to the Exchange Price which would then have been in effect if (to the extent outstanding immediately prior to such expiration or termination) such expired or terminated Option or Amax Convertible Securities had never been issued, granted or sold.

(6) Distribution of Debt or Assets. Whenever Amax takes a record of the holders of Amax Common Stock for the purpose of determining holders entitled to receive (x) any distribution of evidences of its indebtedness or any assets, other than any dividend or distribution of cash and any dividend or distribution in respect of which the Exchange Price may be subject to adjustment pursuant to any other provision of this subparagraph (E), or (y) any rights to subscribe for or purchase any evidences of Amax's indebtedness or assets, then in either event the Exchange Price shall be adjusted so that the number of shares of Amax Common Stock for which each share of $25 Preferred surrendered for exchange after such record date shall be exchangeable shall equal the product of (i) the number of shares of Amax Common Stock for which a share of $25 Preferred was exchangeable immediately prior to such record date, multiplied by (ii) a fraction, the numerator of which is the Market Price of a share of Amax Common Stock on such record date and the denominator of which is such Market Price of a share of Amax Common Stock less the fair value of the portion of the assets or evidences of indebtedness to be so distributed on, or of such subscription or purchase rights applicable to, one share of Amax Common Stock.

(7) Consolidation, Merger, Etc. In the event of any (x) consolidation or merger of Amax with any other corporation, other than a consolidation or merger in which Amax is the continuing or surviving corporation and which does not result in any change in the outstanding Amax Common Stock, or (y) sale or transfer of all or substan-

tially all the assets of Amax, or (z) binding exchange in which all the then outstanding shares of Amax Common Stock are changed into cash, stock or other securities or property, then the Exchange Price and exchange terms hereunder shall be adjusted so that any holder of any share of $25 Preferred surrendered for exchange after such consolidation, merger, sale, transfer or change shall be entitled to receive upon such exchange the number, kind and amount of shares of stock or other securities or property or cash, as the case may be, which he would have been entitled to receive upon such consolidation, merger, sale, transfer or change if such share of $25 Preferred had been exchanged immediately prior to such consolidation, merger, sale, transfer or change. The provisions of this subparagraph (7) shall apply to successive consolidations, mergers, sales, transfers or changes of or by the issuer of the securities into which the $25 Preferred shall then be exchangeable.

(8) Deferral of Adjustment; Reversal of Certain Adjustments. (a) Whenever any adjustment of the Exchange Price is required to be made as of the taking of a record of holders of Amax Common Stock, the Corporation may elect to defer delivering to the holder of any shares of $25 Preferred exchanged after such record date and before the occurrence of the event with respect to which such record is taken the shares of Amax Common Stock deliverable upon such exchange to the extent the number of shares so deliverable exceeds the number deliverable pursuant to the Exchange Price in effect immediately prior to the effectiveness of such adjustment, and may defer paying to such holder any amount in cash payable hereunder in lieu of a fractional share of Amax Common Stock, provided that no such deferral shall extend beyond the occurrence of the event with respect to which the record of holders is taken. In lieu of the shares the delivery of which is so deferred, the Corporation shall cause to be issued due bills or other appropriate evidence of the right to receive such shares. The number of shares of Amax Common Stock outstanding at any time shall for purposes of this subparagraph (iii) be deemed to include shares of Amax Common Stock

issuable pursuant to all such due bills and other evidences of such right then outstanding.

(b) If an adjustment of the Exchange Price is made as of the taking of a record of holders of Amax Common Stock and Amax subsequently determines that the event with respect to which such record was taken shall not occur, then (i) the Exchange Price shall be readjusted to the Exchange Price that then would be in effect if such adjustment had not been made, (ii) any due bills or other evidences of the right to receive Amax Common Stock referred to in subparagraph (a) of this subparagraph (8) shall be cancelled to the extent (but only to the extent) they were issued on the basis of such adjustment of the Exchange Price, and (iii) the amount of any cash payable in lieu of a fractional share of Amax Common Stock the payment of which was deferred pursuant to such subparagraph (a) shall be reduced to the extent (but only to the extent) it was payable on the basis of such adjustment of the Exchange Price.

(9) De Minimis Adjustments. At any time that there are more than four record holders of Preferred Stock, the Exchange Price shall not be adjusted as required by this subparagraph (E) if the aggregate effect of all adjustments then required to be made would not result in an adjustment of the Exchange Price in an amount in excess of one percent (1%) of the Exchange Price as in effect immediately prior to making such adjustments; provided, however, that any adjustment that by reason of this subparagraph (9) is not made when it otherwise would be required pursuant to this subparagraph (E) to be made shall be carried forward and taken into account when any other adjustment of the Exchange Price is made or is calculated for purposes of determining the applicability of this subparagraph (9) thereto.

(10) Notices. (a) Whenever any adjustment of the Exchange Price or in any other exchange term hereunder is required to be made pursuant to this subparagraph (E), the Corporation shall promptly mail to the record holders of $25 Preferred a statement describing in reasonable detail the

adjustment and, where applicable, the calculation used to determine such adjustment, and setting forth where applicable the adjusted Exchange Price.

(b) Promptly upon receiving a written request therefor from a holder of $25 Preferred, the Corporation shall furnish to such holder a certificate, signed by a proper officer of the Corporation, setting forth the Exchange Price then in effect and the number of shares of Amax Common Stock and other securities, and the amount, if any, of other Property, then receivable upon the exchange of a share of $25 Preferred.

(11) Treasury and Subsidiary Shares. For purposes of this subparagraph (E), shares of Amax Common Stock or Amax Convertible Securities held by or for the account of Amax (or any entity of which Amax then holds directly or indirectly an equity interest entitled to cast a majority of the votes in an election of directors or comparable managers of such entity) shall not constitute outstanding shares of Amax Common Stock or Amax Convertible Securities. The disposition of any such shares of Amax Common Stock or Amax Convertible Securities, other than a disposition thereof to Amax or any such entity or any cancellation of shares of Amax Common Stock or Amax Convertible Securities so held, shall be deemed to be an issuance or sale of such shares of Amax Common Stock or Amax Convertible Securities by Amax.

(12) Valuations. The Board of Directors of the Corporation shall determine the present value of any non-cash consideration or the fair value of any assets or evidences of indebtedness for purposes of subparagraphs (2) and (6), respectively, of this subparagraph (E); provided, however, that if, within 30 days following his or its receipt of a notice referred to in subparagraph 10(a) of this subparagraph (E) pertaining to an adjustment of the Exchange Price in the calculation of which such present value or fair value is used, any record holder of any shares of $25 Preferred delivers to the Corporation at its principal executive office written notice that such record holder disputes such present value or fair value determination, the Corporation shall promptly submit the question of the present value

of such consideration or the fair value of such assets or evidences of indebtedness (valued as of the effective date of the related original adjustment in the Exchange Price) to an independent firm of certified public accountants or investment bankers of recognized national standing selected by the Board of Directors of the Corporation and request such firm's promptest practicable determination thereof. The determination of such present value or fair value by such independent firm, as communicated to the Corporation in writing, shall be conclusive and binding upon the Corporation and all holders of $25 Preferred. Promptly upon receiving such written determination from such independent firm, the Corporation shall readjust the Exchange Price to the Exchange Price that would have been in effect if the present value or fair value determined by such independent firm had been used originally in calculating the related adjustment of the Exchange Price. Such readjustment shall be effective retroactively to the date the related original adjustment was made effective and the Corporation shall deliver to each person or entity that shall have exchanged any shares of $25 Preferred on or after such date such additional shares of Amax Common Stock and such other securities and other property, if any, and pay such additional amounts of cash in lieu of fractional shares, if any, as shall be necessary to cause such person or entity to have received in the aggregate the same number of shares of Amax Common Stock and such other securities and other property and cash, if any, as he or it would have received in such exchange if the Exchange Price as so readjusted had been in effect when such exchange was made. The Corporation shall have the right to require any person or entity that shall have exchanged any shares of $25 Preferred after the date such original adjustment of the Exchange Price was made to return to the Corporation any shares of Amax Common Stock, or any other securities, property or cash, if any, which the Corporation shall have delivered pursuant to such exchange but which the Corporation would not have so delivered if the Exchange Price as so readjusted had been in effect when such exchange was made.

(13) Certain Definitions. For purposes of this subparagraph (E):

(a) "Market Price" of a share of Amax Common Stock shall mean the average of the daily closing prices of Amax Common Stock for the 30 Trading Days ending three Trading Days prior to the day as of which the Market Price is to be stated; provided, however, that in the case of an underwritten public offering of Amax Common Stock, "Market Price" shall mean the agreed initial offering price in such underwritten offering. The closing price of Amax Common Stock each Trading Day shall be (x) the last sale price regular way or, if no sale takes place on such day, the average of the closing bid and asked prices, in either case as reported on the New York Stock Exchange Composite Transaction Tape or, if Amax Common Stock is not then so reported, as reported on the principal securities exchange in the United States on which Amax Common Stock is then traded, or (y) if Amax Common Stock is not then traded on any such securities exchange, the last sale price of Amax Common Stock in the over-the-counter market reported by the National Association of Securities Dealers Automated Quotations System or, if not reported by such System, the average of the high bid and low asked quotations for Amax Common Stock in the over-the-counter market as reported by the National Quotation Bureau, Incorporated, or a similar organization, or (z) if no such quotations are available, the fair market value of Amax Common Stock as determined by an independent investment banking firm of recognized national standing selected by the Board of Directors of the Corporation. "Trading Day" means a day on which the New York Stock Exchange is open for trading.

(b) "Amax Common Stock" shall mean Amax Common Stock as defined above and any other securities for which $25 Preferred shall then be exchangeable pursuant to the provisions of this subparagraph (E).

(iv) Voting. (A) The $25 Preferred shall not have any voting powers, either general or special, except as required by applicable law and as set forth in this subparagraph (iv). In any matter on which the holders of $25 Preferred shall be entitled to vote, they shall be entitled to one vote for each share of

such stock. At any meeting at which holders of the $25 Preferred have the power to vote separately as a class, the presence in person or by proxy of the holders of a majority of the number of shares of $25 Preferred then outstanding shall be sufficient to constitute a quorum of the holders of the $25 Preferred.

(B) Whenever accrued dividends on $25 Preferred shall be in arrears for four consecutive dividend periods or in an aggregate amount equal to the amount payable in respect of six dividend periods on all shares of $25 Preferred then outstanding, the number of directors constituting the Board of Directors of the Corporation shall be increased by two (2) or such higher number (rounded to the next higher whole number) as shall constitute 15% of the total number of directors constituting the Board of Directors of the Corporation as so increased, and the holders of the $25 Preferred shall have the exclusive right, voting separately as a class, to elect persons to fill the director positions thereby created. Whenever such voting right of the holders of the $25 Preferred shall have vested, it may be exercised initially either at a special meeting of such holders called as provided below, or at any annual meeting of stockholders of the Corporation, and thereafter it may be exercised at annual meetings of stockholders of the Corporation. Such right of the holders of the $25 Preferred shall continue until such time as all dividends accumulated on all shares of $25 Preferred then outstanding shall have been paid in full, at which time such voting right of the holders of $25 Preferred shall terminate, subject to revesting upon the same terms and conditions.

(C) At any time when such voting power shall have vested in the holders of $25 Preferred, any proper officer of the Corporation may call a special meeting of the holders of the $25 Preferred for the purpose of electing directors. The Secretary of the Corporation shall call such a meeting upon the written request of the holders of record of at least 10% of the number of shares of $25 Preferred then outstanding, addressed to the Secretary of the Corporation at its principal executive office. Such meeting shall be held at the earliest practicable date and at the principal executive office of the Corporation. If such meeting shall not be called by a proper officer of the Corporation within 10 days after personal service of such written request upon the Secretary of the Corporation, or within 15 days after such written request shall have

been mailed, postage prepaid, within the United States, addressed to the Secretary of the Corporation at its principal executive office address, then the holders of record of at least 10% of the number of shares of $25 Preferred then outstanding may designate in writing one of their number to call such meeting at the expense of the Corporation, and such meeting may be called by such designated person upon the notice required for annual meetings of stockholders of the Corporation and shall be held at the principal executive office of the Corporation. The person so designated to call such meeting shall have access to the stock books and records of the Corporation for such purpose.

(D) Each director elected by holders of the $25 Preferred shall hold office until the next annual meeting of stockholders of the Corporation and until his successor shall have been elected by holders of the $25 Preferred and shall have qualified, or until he earlier resigns or is removed; provided, however, that the terms of office of the directors elected by holders of the $25 Preferred shall terminate as of the close of business on the day on which the right of the holders of the $25 Preferred to elect directors of the Corporation shall terminate (whereupon the number of directors constituting the Board of Directors of the Corporation shall be reduced accordingly). Any vacancy occurring in the Board of Directors of the Corporation in respect of a director elected by holders of the $25 Preferred shall be filled only by the vote of a majority of the other director or directors then in office who have been elected by holders of the $25 Preferred, except that the holders of the $25 Preferred, voting separately as a class, at any special meeting called at least in part for the purpose in accordance with the provisions of subparagraph (C) of this subparagraph (iv), may elect a director to fill such vacancy or to replace a director elected to fill such vacancy by other directors elected by holders of the $25 Preferred. A director elected by holders of the $25 Preferred or by the other director(s) elected by such holders may be removed from office only by a vote of holders of the $25 Preferred; a special meeting of such holders for such purpose may be called in accordance with subparagraph (C) of this subparagraph (iv).

(E) At any time when such voting power shall have vested in the holders of the $25 Preferred, such holders as a class shall be entitled to designate a representative who shall be permitted by the Corporation to inspect the Corporation's books and records.

(v) Optional Redemption.

(A) General. The Corporation, at the option of its Board of Directors, may redeem the shares of $25 Preferred, in whole or in part, at any time (or, if in part, from time to time) after November 24, 1989, upon not less than 15 days' nor more than 60 days' prior written notice to the then record holders of $25 Preferred, at the following prices (the "Redemption Prices") per share:

If redeemed on any date during the period	Redemption Price per share
November 25, 1989 through November 24, 1990	$27.125
November 25, 1990 through November 24, 1991	$26.700
November 25, 1991 through November 24, 1992	$26.275
November 25, 1992 through November 24, 1993	$25.850
November 25, 1993 through November 24, 1994	$25.425
After November 24, 1994	$25.000,

plus in each case all accrued (whether or not earned) and unpaid dividends on the shares of $25 Preferred being redeemed to and including the date of redemption.

(B) Pro Rata Redemption. If fewer than all of the shares of $25 Preferred then outstanding are to be redeemed pursuant to this subparagraph (v), the shares to be redeemed shall be selected pro rata so that the number of shares of $25 Preferred to be redeemed from each record holder of $25 Preferred shall bear the same ratio to the total number of shares of $25 Preferred then held of record by such record holder as the total number of shares of $25 Preferred to be redeemed bears to the total number of shares of $25 Preferred then outstanding; provided, however, that if

the number of shares of $25 Preferred thus to be redeemed from a record holder of $25 Preferred would not be a whole number, the number of shares of $25 Preferred to be redeemed from such holder shall be rounded to the nearest whole number.

(C) Redemption Notice. The notice referred to in subparagraph (A) of this subparagraph (v) (the "Redemption Notice") shall be sent by first class mail, postage prepaid, to each record holder of $25 Preferred at the address of such holder as it appears on the Corporation's stock register. The Redemption Notice shall specify (i) the date fixed for redemption (the "Redemption Date"), (ii) the place where certificates representing the shares of $25 Preferred to be redeemed are to be surrendered and paid for (the "Redemption Location"), (iii) if fewer than all of the $25 Preferred are to be redeemed, the number of shares of $25 Preferred to be redeemed from such holder, (iv) the Redemption Price (including the amount of all dividends on $25 Preferred accrued to the Redemption Date and unpaid) per share at which the shares are being redeemed, and (v) the terms of, or make reference to, the exchange rights set forth in subparagraph (iii) of this paragraph (b) and state the Exchange Price then in effect.

(D) Redemption. Unless the Corporation shall default in making available on and after the Redemption Date at the Redemption Location funds sufficient for the payment of all amounts necessary to redeem in accordance with this subparagraph (v) all shares of $25 Preferred called for redemption pursuant to the Redemption Notice, from and after the Redemption Date the shares of $25 Preferred so called for redemption shall no longer be deemed outstanding and the holders of the certificate or certificates representing such shares shall have with respect to such shares no rights (including any exchange rights) in or with respect to such shares except the right to receive upon surrender of such certificate or certificates the amount payable in redemption thereof as of the Redemption Date, without interest. If fewer than all of the shares of $25 Preferred represented by a certificate surrendered pursuant to this subsection (v) are redeemed, the Corporation shall issue to the holder of the surrendered certificate a new certificate representing the number of shares of $25 Preferred that were represented by the surrendered certificate and not redeemed.

(vi) Certain Prohibited Actions. At any time that any shares of $25 Preferred are outstanding, the Corporation shall not without the prior written consent of the holders of a majority of the shares of $25 Preferred then outstanding:

(A) authorize, create or issue any class or series of capital stock of the Corporation, or any securities convertible into any class or series of capital stock of the Corporation, having any preference or priority as to any dividend or any distribution superior to any such preference or priority of the $25 Preferred;

(B) declare, set apart for payment or pay any dividend or distribution on shares of its common stock or any other class or series of the capital stock of the Corporation other than the $25 Preferred at any time dividends on the $25 Preferred are in arrears, except that the Corporation may declare, set apart for payment and pay any such dividend or distribution that is payable solely in shares of common stock of the Corporation;

(C) advance, lend or otherwise make available any funds to any stockholder of the Corporation at any time dividends on the $25 Preferred are in arrears;

(D) amend this Restated Certificate of Incorporation or the By-Laws of the Corporation in any manner which could adversely affect the powers, preferences, rights, qualifications, limitations and restrictions of the $25 Preferred;

(E) sell, lease or otherwise convey all or substantially all of its assets, whether in a single transaction or a series of transactions contemplated or arranged by the Corporation as a single plan; or

(F) merge or consolidate with any other corporation or other entity, unless the corporation resulting from such merger or consolidation shall have thereafter no class of stock, either authorized or outstanding, ranking as to any dividends or any distribution superior to or on a parity with shares corresponding to the $25 Preferred, except the same number of shares with no greater rights and preferences than the shares of $25 Preferred authorized immediately preceding such merger or consolidation, and unless each holder of $25 Preferred immediately preceding such consolidation or merger shall receive in such merger or

consolidation the same number of shares of the resulting corporation, with substantially the same rights and preferences, as the $25 Preferred such holder held immediately prior to such merger or consolidation; provided, however, that the resulting corporation may have authorized and outstanding such number of additional shares of stock having preferences or priorities on a parity with the $25 Preferred as the number of shares the Corporation shall have had authorized and outstanding immediately prior to such merger or consolidation that had rights and preferences on a parity with the $25 Preferred.

(vii) Amax Information. At any time that any shares of $25 Preferred are outstanding, the Corporation shall cause Amax to furnish to the record holders of $25 Preferred then outstanding, when they are mailed to the holders of Amax Common Stock, copies of all proxy statements, financial statements, notices and other communications Amax furnishes to the holders of Amax Common Stock.

(viii) Cancellation. Shares of $25 Preferred reacquired by the Corporation, whether by exchange, redemption, repurchase or otherwise, shall be retired and shall not be reissued.

(c) (i) Each share of Common Stock shall be identical in every respect and each share of Common Stock outstanding from time to time shall participate equally, share and share alike, in all dividends and other distributions on or with respect to the Corporation's Common Stock, including distributions in liquidation or dissolution and such dividends or other distributions as may be duly declared by the Board of Directors. Except as otherwise provided in this Restated Certificate of Incorporation or by law, each share of Common Stock shall be entitled to one vote per share on any and all matters presented to the stockholders of the Corporation for their action or consideration.

(ii) At each meeting of stockholders or of a class of stockholders, the holders of a majority of the outstanding shares entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum. At each meeting of stockholders or of a class of stockholders, respectively, an affirmative vote of holders of a majority of the outstanding shares entitled to vote at the meeting, present in person or by proxy, shall be required to effect any action of the stockholders or of that class of stockholders, respectively. In the absence of a quorum at a meeting of stockholders or of a class of stockholders, the stockholders present in person or by proxy and entitled to vote thereat may make, by majority vote of those so present, a reasonable adjournment of the meeting from time to time until a quorum shall attend. Any action required by law to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of a class of stockholders, may be taken without a meeting, without prior notice and without a vote, if consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

FIFTH: (a) The Board of Directors of the Corporation shall consist of not less than one (1) Director.

Subject to the applicable provisions set forth in Article FOURTH hereof, the exact number of Directors shall be determined from time to time by resolution of the Board of Directors. All Directors shall each have one vote on any matter presented to the Board of Directors, be of equal rank and have the same rights, powers, duties and obligations.

(b) At each meeting of the Board of Directors, a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business. Except as otherwise provided in this Restated Certificate of Incorporation, an affirmative vote of a majority of the votes cast by the Directors present at a meeting at which a quorum is present and voting throughout and entitled to vote thereat, shall be required to effect any action by the Board of Directors.

SIXTH: Except as otherwise provided in this Restated Certificate of Incorporation or by law, this Restated Certificate of Incorporation shall not be amended, modified or repealed except by the affirmative action of holders of a majority of the then outstanding shares of Common Stock of the Corporation.

SEVENTH: Except as otherwise provided in this Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors shall have the power to make, alter, amend or repeal the By-Laws of the

Corporation by a vote of the Directors as provided in the By-Laws.

EIGHTH: Elections of Directors need not be by written ballot except as and to the extent provided in the By-Laws of the Corporation.

NINTH: If (i) any two or more stockholders or subscribers to stock of the Corporation shall enter into any agreement abridging, limiting or restricting the rights of any one or more of them to sell, assign, transfer, mortgage, pledge or hypothecate any or all of the stock of the Corporation held by any one or more of them and if a copy of said agreement shall be filed with the Corporation, or (ii) the stockholders entitled to vote on the matter shall adopt any By-Law provision abridging, limiting or restricting the aforesaid rights of any stockholder, then and in either of such events, all certificates for shares of stock subject to such abridgements, limitations or restrictions shall have a reference thereto endorsed thereon by an officer of the Corporation and such stock shall not thereafter be transferred on the books of the Corporation except in accordance with the terms and provisions of such agreement or By-Law, as the case may be.

TENTH: The following provisions are inserted for the regulation of the business and the conduct of the affairs of the Corporation, and it is expressly provided

that the same are intended to be in furtherance and not in limitation or exclusion of the powers conferred by statute:

(a) All corporate powers shall be exercised by the Board of Directors, except as otherwise expressly provided by law, in this Restated Certificate of Incorporation or the By-Laws of the Corporation.

(b) Any Director or officer may be a party to or may be interested in any contract or transaction of or with the Corporation or in which the Corporation is interested; and no contract, act or transaction of the Corporation with any person, firm, association or corporation shall be affected or invalidated by the fact that any Director or officer of this Corporation is a party to or interested in such contract, act or transaction or is interested in or is a director or officer of such other corporation, or is in any way connected with such person, firm, association or corporation, and each and every person who may become a Director or officer of the Corporation is hereby relieved, so far as is legally permissible, from any disability which might otherwise prevent him from contracting with this

Corporation for the benefit of himself, or of any firm, association or corporation in which he may be in anywise interested or with which he may in anywise be connected. The fact that any Director is so interested or connected shall not disqualify him from being counted in determining the existence of a quorum at any meeting of the Board of Directors or committee at which any such contract, act or transaction is considered or acted on or from voting with respect thereto. Nothing in this provision shall be deemed to relieve a Director or officer of any duty which he may otherwise have to disclose the existence of any such interest or connection."

This Restated Certificate of Incorporation was duly adopted by the stockholders in accordance with Section 245 of the General Corporation Law of Delaware.

Immediately after the amendment and restatement of the Corporation's Restated Certificate of Incorporation provided for above takes effect, all shares of Class B Common Stock and Class C Common Stock of the Corporation issued and outstanding immediately before such amendment

takes effect shall automatically be converted into Common Stock undesignated as to class at the rate of one share of Class B Common Stock for one share of Common Stock and one share of Class C Common Stock for one share of Common Stock. Such conversion shall be effected as follows: until converted as hereafter provided, each certificate registered on the books of the Corporation and representing any share or shares of Class B Common Stock or Class C Common Stock issued and outstanding immediately prior to the time such amendment takes effect shall upon such amendment taking effect be deemed to represent a like number of shares of Common Stock undesignated as to class. Upon presentation and surrender to the Corporation of certificates representing shares of Class B Common Stock or Class C Common Stock that were thus converted, the Corporation shall issue or cause to be issued a new certificate or certificates representing the appropriate number of shares of Common Stock undesignated as to class in accordance with the terms of such conversion.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation which restates and further amends the provisions of the Corporation's Restated Certificate of Incorporation, as heretofore amended, and which has been duly adopted by the Board of Directors of the Corporation

and by its stockholders in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, has been executed on the 21st day of November, 1986.

Alumax Inc.

By _____ President

(Corporate Seal)

Attest: _____ Assistant Secretary

727180106

FILED

JUN 29 1987

10 AM

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

Alumax Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said corporation, at a meeting duly held, adopted resolutions proposing and declaring advisable the following amendments to the Certificate of Incorporation of said corporation:

RESOLVED: That a new Article ELEVENTH be added as an amendment to the Certificate of Incorporation of the Company, said Article ELEVENTH to read as follows:

ELEVENTH. A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended hereafter to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

Any repeal or modification of the foregoing paragraph by the stockholders of the corporation shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal for modification.

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given unanimous written consent to said amendment in accordance with the provisions of Sections 228 of The General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendments were duly adopted in accordance with the applicable provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said ALUMAX INC.has caused this certificate to be signed by Paul E. Drack, President, and attested by Marigold Cole, Assistant Secretary this 29th day of April, 1987.

By: Paul E. Drack
Paul E. Drack, President

ATTEST:

By: Marigold Cole
Marigold Cole, Assistant Secretary

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 08:30 AM 11/15/1993
933195008 - 795503

RESTATED CERTIFICATE OF INCORPORATION
OF
ALUMAX INC.

ALUMAX INC., a Delaware corporation, hereby certifies as follows:

ONE. The name of the Corporation is Alumax Inc. and it was originally incorporated under the name Demax Realty Corporation. The date of filing of its original certificate of incorporation with the Secretary of State was October 17, 1973.

TWO. This Restated Certificate of Incorporation amends, restates and integrates the provisions of the Restated Certificate of Incorporation as currently in effect of said Corporation and has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware by written consent of the holder of all of the outstanding stock entitled to vote thereon in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THREE. The text of the Restated Certificate of Incorporation as currently in effect is hereby amended and restated to read herein as set forth in full:

FIRST. The name of the Corporation is Alumax Inc.

SECOND. The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 250,000,000, of which 200,000,000 shares of the par value of $0.01 per share shall be designated as Common Stock and 50,000,000 shares of the par value of $1.00 per share shall be designated as Preferred Stock. The 443 outstanding shares of the Corporation's Common Stock, $100 par value per share, issued and outstanding at the time of the filing of this Restated Certificate of Incorporation shall be changed and reclassified into 44,353,966 shares of the Corporation's Common Stock, $0.01 par value per share (with each such outstanding share accordingly changed and reclassified into approximately 100,121.8195 shares of the Corporation's Common Stock, $0.01 par value per share), upon such

filing and without further action by the Corporation or the holders thereof. Shares of Preferred Stock may be issued in series from time to time by the Board of Directors, and the Board of Directors is expressly authorized to fix by resolution or resolutions the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, of the shares of each series of Preferred Stock, including without limitation the following:

(a) the distinctive serial designation of such series which shall distinguish it from other series;

(b) the number of shares included in such series, which number may be increased or decreased from time to time unless otherwise provided by the Board of Directors in the resolution or resolutions providing for the issue of such series;

(c) the rate of dividends (or method of determining such dividends) payable to the holders of the shares of such series, any conditions upon which such dividends shall be paid and the date or dates or the method for determining the date or dates upon which such dividends shall be payable;

(d) whether dividends on the shares of such series shall be cumulative and, in the case of shares of any series having cumulative dividend rights, the date or dates or method of determining the date or dates from which dividends on the shares of such series shall be cumulative;

(e) the amount or amounts which shall be payable out of the assets of the Corporation to the holders of the shares of such series upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

(f) the price or prices (or the method of determining such price or prices) at which, the form of payment of such price or prices for which, the period or periods within which and the terms and conditions upon which the shares of such series may be redeemed, in whole or in part, at the option of the Corporation or at the option of the holder or holders thereof or upon the happening of a specified event or events;

(g) the obligation, if any, of the Corporation to purchase or redeem shares of such series pursuant to a sinking fund or otherwise and the price or prices at which, the period or periods within which and the terms and conditions upon which the shares of such series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(h) provisions, if any, for the conversion or exchange of the shares of such series, at any time or times at the option

of the holder or holders thereof or at the option of the Corporation or upon the happening of a specified event or events, into shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation, and the price or prices or rate or rates of exchange or conversion and any adjustments applicable thereto; and

(i) the voting rights, if any, of the holders of the shares of such series.

$4.00 Series A Convertible Preferred Stock

The Corporation is authorized to issue a series of Preferred Stock consisting of up to 2,333,334 shares, which number of shares may be increased or decreased from time to time by the Board of Directors, and such series shall have the following designations, preferences, privileges and voting powers, and restrictions and qualifications thereof:

1. *Designation*. The distinctive serial designation of this series of Preferred Stock is $4.00 Series A Convertible Preferred Stock (the "Series A Convertible Preferred Stock").

2. *Dividends*. The holders of Series A Convertible Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, but only out of funds legally available for the payment of dividends, cumulative cash dividends at the annual rate of $4.00 per share, and no more, payable quarter-yearly in arrears, on the first days of March, June, September and December in each year, to stockholders of record on the respective dates, not exceeding fifty days preceding such dividend payment dates, fixed for the purpose by the Board of Directors in advance of payment of each particular dividend. The amount of dividends payable per share of Series A Convertible Preferred Stock for each quarterly dividend period shall be computed by dividing the annual dividend amount by four. The amount of dividends payable for any period shorter than a full quarterly dividend period shall be computed on the basis of a 360-day year of twelve 30-day months. No interest shall be payable in respect of any dividend payment on the Series A Convertible Preferred Stock which may be in arrears. So long as any shares of the Series A Convertible Preferred Stock remain outstanding, but not thereafter, dividends on the Series A Convertible Preferred Stock shall accrue and shall be cumulative from and after dates determined, as follows:

(i) if issued prior to the record date for the first dividend on shares of such series, then from September 1, 1993;

(ii) if issued during the period commencing immediately after a record date for a dividend on such series and ending on the payment date for such dividend, then from and after such dividend payment date; and

(iii) otherwise from and after the first day of March, June, September or December next preceding the date of issue of such shares.

So long as any shares of the Series A Convertible Preferred Stock remain outstanding, but not thereafter, no dividend whatever shall be paid, and no distribution made, on any junior stock (which shall mean the Common Stock and any other class of stock of the Corporation hereafter authorized over which the Series A Preferred Stock has preference or priority in the payment of dividends or in the distribution of assets on any dissolution, liquidation or winding up of the Corporation), other than a dividend payable in junior stock, nor shall any shares of junior stock be acquired for a consideration by the Corporation or by any subsidiary, unless all dividends on the Series A Convertible Preferred Stock accrued for all past dividend periods shall have been paid or declared and set aside for payment, and the full dividends thereon for the then current quarter-yearly dividend period shall have been paid or declared. Subject to the foregoing, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors may be declared and paid on any junior stock from time to time out of the remaining funds of the Corporation legally available therefor, and the Series A Convertible Preferred Stock shall not be entitled to participate in any such dividends, whether payable in cash, stock or otherwise.

3. *Liquidation Preference.* In the event of any voluntary liquidation, dissolution or winding up of the Corporation, the holders of the Series A Convertible Preferred Stock then outstanding shall be entitled to receive the amount per share which such holders would have been entitled to receive had such shares been redeemed on the date fixed for payment, or if redemption on such date is not provided for, an amount equal to the maximum price at which such shares are thereafter redeemable, plus in respect of each such share a sum computed at the rate of $4.00 per annum from and after the date on which dividends on such share became cumulative to and including the date fixed for such payment, less the aggregate of dividends theretofore paid thereon, but computed without interest. In the event of any involuntary liquidation, dissolution or winding up of the Corporation, the holders of the Series A Convertible Preferred Stock then outstanding shall be entitled to receive out of the assets of the Corporation, before any distribution or payment shall be made to the holders of any junior stock, an amount equal to $50 per share, plus in respect of each such share a sum computed at the rate of

$4.00 per annum from and after the date on which dividends on such share became cumulative to and including the date fixed for such payment, less the aggregate of dividends theretofore paid thereon, but computed without interest. For purposes of this Section 3, a consolidation, merger or sale of all or substantially all assets of the Corporation with any other corporation shall not be deemed to constitute a liquidation, dissolution or winding up of the Corporation.

4. *Redemption at Option of the Corporation.* The Corporation may, at the option of the Board of Directors, at any time on or after December 18, 1996, but not prior thereto, redeem the whole or any part of the then outstanding Series A Convertible Preferred Stock, subject to the limitations, if any, imposed by applicable law, at a redemption price of $52.40 per share if redeemed prior to December 18, 1997, and at the following prices per share if redeemed during the twelve-month period ending December 17 of the year indicated:

Year	Price
1998	$52.00
1999	$51.60
2000	$51.20
2001	$50.80
2002	$50.40

and $50.00 per share if redeemed at any time thereafter; together in each case with a sum, for each share so to be redeemed, computed at the rate of $4.00 per annum from and after the date on which dividends on such share became cumulative to and including such date fixed for redemption, less the aggregate of the dividends theretofore and on such redemption date paid thereon, but computed without interest (such amount being hereinafter referred to as the "Redemption Price").

Notice of every such redemption of the Series A Convertible Preferred Stock shall be given by publication at least once in a newspaper printed in the English language and customarily published on each business day and of general circulation in the Borough of Manhattan, The City of New York, such publication to be at least thirty (30) days prior to the date fixed for such redemption. Notice of every such redemption shall also be mailed not more than sixty (60) nor less than thirty (30) days prior to the date fixed for such redemption to the holders of record of the shares so to be redeemed at their respective addresses as the same shall appear on the books of the Corporation; but no failure to mail such notice nor any defect therein or in the mailing thereof shall affect the validity of the proceeding for the redemption of any shares so to be redeemed.

In case of redemption of a part only of the Series A Convertible Preferred Stock at the time outstanding, the redemption may be either pro rata or by lot. The Board of Directors shall have full power and authority to prescribe the manner in which the drawings by lot or the pro rata redemption shall be conducted and, subject to the provisions herein contained, the terms and conditions upon which the Series A Convertible Preferred Stock shall be redeemed from time to time.

No fractional shares of Series A Convertible Preferred Stock shall be issued upon redemption of less than all Series A Convertible Preferred Stock. If more than one certificate evidencing shares of Series A Convertible Preferred Stock shall be held at one time by the same holder, the number of full shares issuable upon redemption of less than all of such shares of Series A Convertible Preferred Stock shall be computed on the basis of the aggregate number of shares of Series A Convertible Preferred Stock so held. Instead of any fractional share of Series A Convertible Preferred Stock that would otherwise be issuable to a holder upon redemption of less than all shares of Series A Convertible Preferred Stock, the Corporation shall pay a cash adjustment in respect of such fractional share in an amount equal to the same fraction of the fair market value per share of Series A Convertible Preferred Stock (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) at the close of business on the date fixed for redemption.

If such notice of redemption shall have been duly given by publication, and if, on or before the redemption date specified therein, all funds necessary for such redemption shall have been set aside by the Corporation, separate and apart from its other funds, in trust for the pro rata benefit of the holders of the shares so called for redemption, so as to be and continue to be available therefor, then, notwithstanding that any certificate for shares so called for redemption shall not have been surrendered for cancellation, all shares so called for redemption shall no longer be deemed outstanding on and after such redemption date, and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on redemption thereof, without interest.

If such notice of redemption shall have been duly given by publication or if the Corporation shall have given to the bank or trust company hereinafter referred to irrevocable authorization promptly to give or complete such notice by publication, and if on or before the redemption date specified therein the funds necessary for such redemption shall have been deposited by the Corporation with a bank or trust company in good standing, designated in such notice, organized under the laws of the United States of America or

of the State of New York, doing business in the Borough of Manhattan, The City of New York, having a capital, surplus and undivided profits aggregating at least $5,000,000 according to its last published statement of condition, in trust for the pro rata benefit of the holders of the shares so called for redemption, then, notwithstanding that any certificate for shares so called for redemption shall not have been surrendered for cancellation from and after the time of such deposit, all shares of the Series A Convertible Preferred Stock so called for redemption shall no longer be deemed to be outstanding and all rights with respect to such shares shall forthwith cease and terminate, except only the right of the holders thereof to receive from such bank or trust company at any time after the time of such deposit the funds so deposited, without interest, and the right to exercise on or before the date fixed for redemption, privileges of exchange or conversion, if any, not theretofore expiring. Any interest accrued on such funds shall be paid to the Corporation from time to time.

Any funds so set aside or deposited by the Corporation which shall not be required for such redemption because of the exercise of any right of conversion or exchange subsequent to the date of such deposit shall be released or repaid to the Corporation forthwith. Any funds so set aside or deposited, as the case may be, and unclaimed at the end of six years from such redemption date shall be released or repaid to the Corporation, after which the holders of the shares so called for redemption shall look only to the Corporation for payment thereof.

So long as any shares of the Series A Convertible Preferred Stock remain outstanding, but not thereafter, if at any time the Corporation shall fail to pay dividends in full on the Series A Convertible Preferred Stock for any past quarter-yearly dividend period, thereafter and until all accrued dividends for all past quarter-yearly dividend periods shall have been paid or declared and funds set aside for their payment, the Corporation shall not redeem (for sinking fund or otherwise) less than all of the Series A Convertible Preferred Stock at the time outstanding, and neither the Corporation nor any subsidiary shall purchase (for sinking fund or otherwise) less than all of the Series A Convertible Preferred Stock unless such purchase shall be pursuant to tenders called for on at least twenty (20) days previous notice by mail to the holders of record of the Series A Convertible Preferred Stock at their respective addresses as the same shall appear on the books of the Corporation, and the shares so purchased shall be those tendered at the lowest prices, pursuant to such call for tenders.

5. *Conversion Privilege.*

(a) *Right of Conversion.* Each share of Series A Convertible Preferred Stock shall be convertible at the option of

the holder thereof, at any time prior to the close of business on the tenth business day prior to the date fixed for redemption of such share as herein provided, into fully paid and nonassessable shares of Common Stock, at the rate of that number of shares of Common Stock for each full share of Series A Convertible Preferred Stock that is equal to $50 divided by the conversion price applicable per share of Common Stock, or into such additional or other securities, cash or property and at such other rates as required in accordance with the provisions of this Section 5. For purposes of the terms of the Series A Convertible Preferred Stock, the "conversion price" applicable per share of Common Stock shall initially be equal to $12.151 and shall be adjusted from time to time in accordance with the provisions of this Section 5.

(b) *Conversion Procedures*. Any holder of shares of Series A Convertible Preferred Stock desiring to convert such shares into Common Stock shall surrender the certificate or certificates evidencing such shares of Series A Convertible Preferred Stock at the office of the transfer agent for the Series A Convertible Preferred Stock, which certificate or certificates, if the Corporation shall so require, shall be duly endorsed to the Corporation or in blank, or accompanied by proper instruments of transfer to the Corporation or in blank and shall be accompanied by irrevocable written notice to the Corporation that the holder elects so to convert such shares of Series A Convertible Preferred Stock and specifying the name or names (with address or addresses) in which a certificate or certificates evidencing shares of Common Stock are to be issued.

Subject to Section 5(j) hereof, no payments or adjustments in respect of dividends on shares of Series A Convertible Preferred Stock surrendered for conversion or on account of any dividend on the Common Stock issued upon conversion shall be made upon the conversion of any shares of Series A Convertible Preferred Stock.

The Corporation shall, as soon as practicable after such deposit of certificates evidencing shares of Series A Convertible Preferred Stock accompanied by the written notice and compliance with any other conditions herein contained, deliver at such office of such transfer agent to the person for whose account such shares of Series A Convertible Preferred Stock were so surrendered, or to the nominee or nominees of such person, certificates evidencing the number of full shares of Common Stock to which such person shall be entitled as aforesaid, together with a cash adjustment in respect of any fraction of a share of Common Stock as hereinafter provided. Such conversion shall be deemed to have been made as of the date of such surrender of the shares of Series A Convertible Preferred Stock to be converted, and the person or persons entitled to receive the Common Stock deliverable upon conversion of such Series

A Convertible Preferred Stock shall be treated for all purposes as the record holder or holders of such Common Stock on such date.

(c) *Adjustment of Conversion Price.* The conversion price at which a share of Series A Convertible Preferred Stock is convertible into Common Stock shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall pay or make a dividend or other distribution on its Common Stock exclusively in Common Stock or shall pay or make a dividend or other distribution on any other class or series of capital stock of the Corporation which includes Common Stock, the conversion price in effect at the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such conversion price by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination and the denominator shall be the sum of such number of shares and the total number of shares of Common Stock included in such dividend or other distribution or exchange, such reduction to become effective immediately after the opening of business on the day following the date fixed for such determination. For the purposes of this subparagraph (i), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation and the number of shares of Common Stock included in such dividend or other distribution or exchange shall be deemed not to include any shares issued or distributed in respect of shares held in the treasury of the Corporation.

(ii) In case the Corporation shall pay or make a dividend or other distribution on its Common Stock consisting exclusively of, or shall otherwise issue to all holders of its Common Stock, rights or warrants entitling the holders thereof to subscribe for or purchase shares of Common Stock at a price per share less than the current market price per share (determined as provided in subparagraph (vii) of this Section 5(c)) of the Common Stock on the date fixed for the determination of stockholders entitled to receive such rights or warrants, the conversion price in effect at the opening of business on the day following the date fixed for such determination shall be reduced by multiplying such conversion price by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock which the aggregate of the offering price of the total number of shares of Common Stock so offered for subscription or purchase would purchase at such current

market price and the denominator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock so offered for subscription or purchase, such reduction to become effective immediately after the opening of business on the day following the date fixed for such determination. For the purposes of this subparagraph (ii), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation. The Corporation shall not issue any rights or warrants in respect of shares of Common Stock held in the treasury of the Corporation. For purposes of this subparagraph (ii), the issuance of rights or warrants to subscribe for or purchase stock or securities convertible into shares of Common Stock shall be deemed to be the issuance of rights or warrants to purchase the shares of Common Stock into which such stock or securities are convertible at an aggregate offering price equal to the aggregate offering price of such stock or securities plus the minimum aggregate amount (if any) payable upon conversion of such stock or securities into Common Stock. In case any rights or warrants referred to in this subparagraph (ii) in respect of which an adjustment shall have been made shall expire unexercised within forty-five (45) days after the same shall have been distributed or issued by the Corporation, the conversion price shall be readjusted at the time of such expiration to the conversion price that would have been in effect if no adjustment had been made on account of the distribution or issuance of such expired rights or warrants.

(iii) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the conversion price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and conversely, in case outstanding shares of Common Stock shall each be combined into a smaller number of shares of Common Stock, the conversion price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(iv) Subject to the penultimate sentence of this subparagraph (iv), in case the Corporation shall, by dividend or otherwise, distribute to all holders of its Common Stock evidences of its indebtedness, shares of any class or series of capital stock, cash or assets (including securities, but excluding any rights or warrants referred to in subparagraph

(ii) of this Section 5(c), any dividend or distribution paid exclusively in cash and any dividend or distribution referred to in subparagraph (i) of this Section 5(c)), the conversion price shall be reduced so that such price shall equal the price determined by multiplying the conversion price in effect immediately prior to the effectiveness of the conversion price reduction contemplated by this subparagraph (iv) by a fraction of which, except to the extent provided in the second succeeding sentence of this subparagraph (iv), the numerator shall be the current market price per share (determined as provided in subparagraph (vii) of this Section 5(c)) of the Common Stock on the date fixed for the payment of such distribution (the "Reference Date") less the fair market value (as determined, subject to the last sentence of this subparagraph (iv), in good faith by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors), on the Reference Date, of such number or amount of the evidences of indebtedness, shares of capital stock, cash and assets that is so distributed to a holder of one share of Common Stock and the denominator shall be such current market price per share of the Common Stock, such reduction to become effective immediately prior to the opening of business on the day following the Reference Date. If the Board of Directors determines the fair market value of any distribution for purposes of this subparagraph (iv) by reference to the actual or when issued trading market for any securities comprising such distribution, it shall in doing so consider the prices in such market over the same period used in computing the current market price per share of Common Stock pursuant to subparagraph (vii) of this Section 5(c). Notwithstanding the first sentence of this subparagraph (iv), to the extent the fair market value of any shares of capital stock distributed to all holders of Common Stock shall be determined by the Board of Directors by reference to the trading market of securities listed or admitted to trading or quoted (other than on a subject to notice of issuance or when issued basis) on a Stock Exchange as of (but not prior to) the Reference Date, the conversion price shall be reduced so that such price shall equal the price determined by multiplying the conversion price in effect immediately prior to the effectiveness of the conversion price reduction contemplated by this subparagraph (iv) by a fraction of which the numerator shall be the current market price per share (determined as provided in subparagraph (viii) of this subparagraph 5(c)) of the Common Stock on the Reference Date and the denominator shall be such current market price per share of the Common Stock plus the fair market value (as determined in good faith by the Board of Directors in accordance with the last sentence of this subparagraph (iv)), of such number of shares of capital stock that is so distributed to a holder of one share of Common

Stock, such reduction to become effective retroactively immediately prior to the opening of business on the day following the Reference Date. For purposes of this subparagraph (iv), any dividend or distribution that includes (but is not limited to) shares of Common Stock or rights or warrants to subscribe for or purchase shares of Common Stock shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, cash, assets or shares of capital stock other than such shares of Common Stock or such rights or warrants (so that any conversion price reduction required by this subparagraph (iv) is made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights or warrants (so that there is made any further conversion price reduction required by subparagraph (i) or (ii) of this Section 5(c), except (A) the Reference Date of such dividend or distribution as defined in this subparagraph (iv) shall be substituted as "the date fixed for the determination of stockholders entitled to receive such rights or warrants" and "the date fixed for such determination" within the meaning of subparagraphs (i) and (ii) of this Section 5(c) and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of subparagraph (i) of this Section 5(c)). Notwithstanding any other provision of this subparagraph (iv), if any shares of capital stock distributed to all holders of Common Stock are listed or admitted to trading on a Stock Exchange for the five (5) consecutive Trading Days (as defined in Section 5(h)) prior to and including the Reference Date, or will be listed or admitted to trading on a Stock Exchange as of (but not prior to) the Reference Date for the ten (10) consecutive Trading Days subsequent to and including the Reference Date, then, the Board of Directors, in making its determination of the fair market value of such number of shares of capital stock that is so distributed to a holder of one share of Common Stock, shall make such determination by reference to the current market price (as determined pursuant to subparagraphs (vii) and (viii) of this Section 5(c)) of such shares of capital stock.

(v) In case the Corporation shall pay or make a dividend or other distribution on its Common Stock exclusively in cash (excluding, in the case of any quarterly cash dividend on the Common Stock, the portion of such quarterly cash dividend that does not exceed the per share amount of the next preceding quarterly cash dividend on the Common Stock (as adjusted to appropriately reflect any of the events referred to in subparagraph (iii) of this Section 5(c)), or, all of such quarterly cash dividend if the amount thereof per share of Common Stock multiplied by four does not exceed 12.5% of the current market price per share (determined as provided in

subparagraph (vii) of this Section 5(c)) of the Common Stock on the Trading Day next preceding the date of declaration of such dividend), the conversion price shall be reduced so that such price shall equal the price determined by multiplying the conversion price in effect immediately prior to the effectiveness of the conversion price reduction contemplated by this subparagraph (v) by a fraction of which the numerator shall be the current market price per share (determined as provided in subparagraph (vii) of this Section 5(c)) of the Common Stock on the date fixed for the making of such distribution less the amount of cash so distributed and not excluded as provided above applicable to one share of Common Stock and the denominator shall be such current market price per share of the Common Stock, such reduction to become effective immediately prior to the opening of business on the day following the date fixed for the making of such distribution.

(vi) In case a tender or exchange offer made by the Corporation or any subsidiary of the Corporation for all or any portion of the Corporation's Common Stock shall expire and result in the acquisition by the Corporation of shares of Common Stock pursuant thereto and such tender or exchange offer shall involve the payment by the Corporation or such subsidiary of consideration per share of Common Stock having a fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) at the last time (the "Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it shall have been amended) that exceeds the current market price per share (determined as provided in subparagraph (vii) of this Section 5(c)) of the Common Stock on the Trading Day next succeeding the Expiration Time, the conversion price shall be reduced so that such price shall equal the price determined by multiplying the conversion price in effect immediately prior to the effectiveness of the conversion price reduction contemplated by this subparagraph (vi) by a fraction of which the numerator shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by the current market price per share (determined as provided in subparagraph (vii) of this Section 5(c)) of the Common Stock on the Trading Day next succeeding the Expiration Time and the denominator shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders as a result of the Corporation's or subsidiary's acceptance (up to any maximum specified in the terms of the tender or exchange offer) of shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares so accepted, up to any such maximum, being referred to as the "Purchased

Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the current market price per share (determined as provided in subparagraph (vii) of this Section 5(c)) of the Common Stock on the Trading Day next succeeding the Expiration Time, such reduction to become effective immediately prior to the opening of business on the day following the Expiration Time.

(vii) For the purpose of any computation under subparagraphs (ii) and (v) and, except as otherwise provided in subparagraph (viii) of this Section 5(c), subparagraph (iv), the current market price per share of Common Stock or per share of capital stock the fair market value of which is to be determined as provided in the last sentence of subparagraph (iv) of this Section 5(c) or pursuant to clause (ii) of Section 5(g) ("Distributed Stock") on any date in question shall be deemed to be the average of the daily Closing Prices (as defined in Section 5(h)) for the five (5) (or, with respect to clause (ii) of Section 5(g), ten (10)) consecutive Trading Days prior to and including the date in question; *provided, however,* that (1) if the "ex" date (as hereinafter defined) for any event (other than the issuance or distribution requiring such computation) that requires (or, in the case of Distributed Stock, would require if such Distributed Stock were Common Stock) an adjustment to the conversion price pursuant to subparagraph (i), (ii), (iii), (iv), (v) or (vi) above or Section 5(g) ("Other Event") occurs after the fifth (or, with respect to Section 5(g), tenth) Trading Day prior to the day in question and prior to the "ex" date for the issuance or distribution requiring such computation (the "Current Event"), the Closing Price for each Trading Day prior to the "ex" date for such Other Event shall be adjusted by multiplying such Closing Price by the same fraction by which the conversion price is so required (or, in the case of Distributed Stock, would be so required if such Distributed Stock were Common Stock) to be adjusted as a result of such Other Event, (2) if the "ex" date for any Other Event occurs after the "ex" date for the Current Event and on or prior to the date in question, the Closing Price for each Trading Day on and after the "ex" date for such Other Event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the conversion price is so required (or, in the case of Distributed Stock, would be so required if such Distributed Stock were Common Stock) to be adjusted as a result of such Other Event, (3) if the "ex" date for any Other Event occurs on the "ex" date for the Current Event, one of those events shall be deemed for purposes of determining which of clauses (1) and (2) of this proviso to apply to have an "ex" date occurring prior to the "ex" date for the other event but in applying such clause the actual

"ex" date of the other event shall be utilized, and (4) if the "ex" date for the Current Event is on or prior to the date in question, the Closing Price for each Trading Day on or after such "ex" date shall be adjusted after taking into account any adjustment required pursuant to clause (2) of this proviso, by adding thereto the amount of any cash and the fair market value on the date in question (as determined in good faith by the Board of Directors in a manner consistent with any determination of such value for purposes of paragraph (iv) or (v) of this Section 5(c), whose determination shall be conclusive and described in a resolution of the Board of Directors) of such number or amount of the rights, warrants, evidences of indebtedness, shares of capital stock or assets being distributed to a holder of one share of Common Stock. For the purpose of any computation under subparagraph (vi) of this Section 5(c), the current market price per share of Common Stock or Distributed Stock on any date in question shall be deemed to be the average of the daily Closing Prices for such date in question and the next two (2) succeeding Trading Days; *provided, however,* that if the "ex" date for any Other Event occurs after the Expiration Time for the tender or exchange offer requiring such computation and on or prior to the second Trading Day following the date in question, the Closing Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the conversion price is so required (or, in the case of Distributed Stock, would be so required if such Distributed Stock were Common Stock) to be adjusted as a result of such other event. For purposes of this subparagraph and subparagraph (viii) of this Section 5(c), the term "ex" date, (1) when used with respect to any issuance or distribution, means the first date on which the Common Stock or Distributed Stock trades regular way on the relevant exchange or in the relevant market from which the Closing Price was obtained without the right to receive such issuance or distribution, (2) when used with respect to any subdivision or combination of shares of Common Stock or Distributed Stock, means the first date on which the Common Stock or Distributed Stock trades regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective, and (3) when used with respect to any tender or exchange offer means the first date on which the Common Stock or Distributed Stock trades regular way on such exchange or in such market after the Expiration Time of such offer.

(viii) Notwithstanding the provisions of subparagraph (vii) of this Section 5(c), for the purpose of any computation under subparagraph (iv) of this Section 5(c) when the Distributed Stock will be listed or admitted to trading or quoted on a Stock Exchange as of (but not prior to) the

Reference Date, the current market price per share of Common Stock or shares of capital stock the fair market value of which is to be determined as provided in the last sentence of subparagraph (iv) of this Section 5(c) on any date in question shall be deemed to be the average of the daily Closing Prices (as defined in Section 5(h)) for the ten (10) consecutive Trading Days subsequent to and including the date in question; *provided, however,* that (1) if the "ex" date for any Other Event occurs prior to the tenth Trading Day after the day in question and after the Reference Date, the Closing Price for each Trading Day on and after the "ex" date for such Other Event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the conversion price is so required (or, in the case of Distributed Stock, would be so required if such Distributed Stock were Common Stock) to be adjusted as a result of such Other Event.

(ix) The Corporation may make such reductions in the conversion price, in addition to those required by subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of this Section 5(c), as it considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes. The Corporation from time to time may reduce the conversion price by any amount for any period of time if the period is at least twenty (20) days, the reduction is irrevocable during the period and the Board of Directors of the Corporation shall have made a determination that such reduction would be in the best interest of the Corporation, which determination shall be conclusive. Whenever the conversion price is reduced pursuant to the preceding sentence, the Corporation shall mail to holders of record of the Series A Convertible Preferred Stock a notice of the reduction at least fifteen (15) days prior to the date the reduced conversion price takes effect, and such notice shall state the reduced conversion price and the period it will be in effect.

(x) No adjustment in the conversion price shall be required unless such adjustment (plus any adjustments not previously made by reason of this subparagraph (c)) would require an increase of at least one percent (1%) in the number of shares of Common Stock into which each share of Series A Convertible Preferred Stock is then convertible; *provided, however,* that any adjustments which by reason of this subparagraph (c) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this subparagraph (x) shall be made to the nearest one-hundred thousandth of a share.

(xi) Whenever any adjustment is made to the conversion price, the Corporation shall forthwith (i) file with each Transfer Agent of such Series A Convertible Preferred Stock a statement describing in reasonable detail the adjustment and the method of calculation used, and (ii) cause a copy of such statement to be mailed to the holders of record of the Series A Convertible Preferred Stock as of the effective date of such adjustment.

(d) *Reclassification, Consolidation, Merger or Sale of Assets.* (i) In the event that the Corporation shall be a party to any transaction (including without limitation any recapitalization or reclassification of the Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination of the Common Stock), any consolidation of the Corporation with, or merger of the Corporation into, any other person, any merger of another person into the Corporation (other than a merger which does not result in a reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Corporation) or any sale or transfer of all or substantially all of the assets of the Corporation or any compulsory share exchange) pursuant to which all Common Stock is converted into the right to receive other securities, cash or other property, to the extent permitted by law, provisions shall be made as part of the terms of such transaction whereby the holder of each share of Series A Convertible Preferred Stock then outstanding shall have the right thereafter to convert such share only into (A) in the case of any such transaction other than a Common Stock Fundamental Change (as defined in Section 5(h)) and subject to funds being legally available for such purpose under applicable law at the time of such conversion, the kind and amount of securities, cash and other property receivable upon such transaction by a holder of the number of shares of Common Stock into which such share of Series A Convertible Preferred Stock might have been converted immediately prior to such transaction, after giving effect, in the case of any Non-Stock Fundamental Change (as defined in Section 5(h)), to any adjustment in the conversion price required by the provisions of Section 5(g), and (B) in the case of a Common Stock Fundamental Change, common stock of the kind received by holders of Common Stock as a result of such Common Stock Fundamental Change at a conversion price determined pursuant to the provisions of Section 5(g).

(ii) In the event the Corporation determines in good faith that there is doubt whether the adjustment otherwise required by subparagraph (i) of this Section 5(d) can be made in a manner consistent with then applicable law, then the Corporation may elect (which election shall be evidenced by a resolution of the Board of Directors) that, in lieu of the Corporation's making such adjustment, the holder of each share of Series A Convertible Preferred Stock then outstanding shall have the right thereafter to

convert such share into, but only into, shares of the common stock (the "New Common Stock") of the principal corporation surviving the transaction which gives rise to the adjustment (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) at a conversion price (based upon a value of a share of Series A Convertible Preferred Stock of $50 for such purpose) determined by multiplying $50 by a fraction the numerator of which is the fair market value (as so determined by the Board of Directors) per share of the New Common Stock (but without any adjustment pursuant to Section 5(g)) and the denominator of which is the fair market value on the date the transaction becomes effective (as so determined by the Board of Directors) of the kind and amount of securities, cash and other property receivable in such transaction by a holder of the number of shares of Common Stock into which such share of Series A Convertible Preferred Stock might have been converted immediately prior to such transaction.

(iii) The Corporation or the person formed by such consolidation or resulting from such merger or which acquires such assets or which acquires the Corporation's shares, as the case may be, shall make provisions in its certificate or articles of incorporation or other constituent document to establish such rights as are created by this subparagraph (d). Such certificate or articles of incorporation or other constituent document shall provide, in respect of any shares of capital stock into which the Series A Convertible Preferred Stock has become convertible, for adjustments which, for events subsequent to the effective date of such certificate or articles of incorporation or other constituent document, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 5. The above provisions shall similarly apply to successive transactions of the foregoing type.

(e) *Special Conversion Option.* Notwithstanding any other provision in this Section 5, if the Corporation pays a dividend or makes another distribution on its Common Stock consisting of capital stock of one or more Public Companies in a Public Company Distribution, then, in lieu of making any adjustment that would otherwise be applicable in respect of the distribution of any one or more such Public Companies in accordance with Section 5 (including without limitation Section 5(g) hereof) and to the extent permitted by law, the Board of Directors may elect (which election shall be evidenced by a resolution of the Board of Directors) that, immediately following each distribution of capital stock of each Public Company as to which an election is made, the Series A Convertible Preferred Stock shall be convertible into (i) fully paid and nonassessable shares of Common Stock at the rate of such number of shares of Common Stock for each full share of Series A Convertible Preferred Stock that is equal to $50 divided by the conversion price per share of Common Stock applicable immediately

prior to such adjustment, and (ii) fully paid and nonassessable shares of capital stock of each such Public Company at the rate of such number of shares of capital stock of such Public Company for each full share of Series A Convertible Preferred Stock that is equal to $50 divided by the conversion price applicable per share of capital stock of such Public Company. The initial conversion price of the Series A Convertible Preferred Stock applicable to shares of capital stock of each such Public Company shall be equal to $50 divided by the Allocable Public Company Shares and shall thereafter be subject to adjustment as provided in Section 5, provided that, with respect to adjustments relating to such capital stock and except where the context otherwise requires, references in Sections 5(c), (d), (e), (g), (h) (excluding Subsection 7 thereof), (i), (j), (k) and (m) to the "Corporation", "Common Stock" and "Board of Directors" shall be deemed to refer to such Public Company. As used herein, the term "Allocable Public Company Shares" shall mean, with respect to a Public Company, the product of (i) such number of shares of capital stock of such Public Company as is distributed to a holder of one share of Common Stock in the Public Company Distribution, and (ii) such number of shares of Common Stock of the Corporation as would have been received by a holder of one share of Series A Convertible Preferred Stock had the Series A Convertible Preferred Stock been converted immediately prior to such distribution into Common Stock that received such distribution. The term "Public Company" shall mean any corporation (other than Alumax Inc.) the capital stock of which is distributed in the Public Company Distribution and is listed, admitted to trading or quoted, including upon notice of issuance or on a when-issued basis, on a Stock Exchange (as defined in Section 5(h)) prior to the sixth business day after the date of such distribution. The term "Public Company Distribution" shall mean any dividend or another distribution by the Corporation on its Common Stock consisting of capital stock of one or more Public Companies in which the Market Value of the capital stock of all of the Public Companies so distributed on the date of such distribution is greater than ten percent (10%) of the aggregate of the Market Value of the Corporation and the Market Value of all such Public Companies on the date of the Public Company Distribution. The term "Market Value" shall mean, with respect to the capital stock of any corporation, the product of (i) the fair market value of such capital stock as shall be determined in good faith by the Board of Directors (whose determination shall be conclusive and described in a resolution of the Board of Directors) by reference to the daily Closing Prices for the first ten consecutive Trading Days subsequent to and including the date of such distribution and (ii) the number of shares of capital stock of such Corporation outstanding on the date of the Public Company Distribution.

(f) *Prior Notice of Certain Events.* In case:

(i) the Corporation shall (1) declare any dividend (or any other distribution) on Common Stock, other than (A) a dividend payable in shares of Common Stock or (B) a dividend payable in cash out of its retained earnings other than any special or nonrecurring or other extraordinary dividend or (2) declare or authorize a redemption or repurchase of in excess of ten percent (10%) of the then outstanding shares of Common Stock; or

(ii) the Corporation shall authorize the granting to all holders of Common Stock of rights or warrants to subscribe for or purchase any shares of stock of any class or series or of any other rights or warrants; or

(iii) of any reclassification of Common Stock (other than a subdivision or combination of the outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Corporation is a party and for which approval of any stockholders of the Corporation shall be required, or of the sale or transfer of all or substantially all of the assets of the Corporation whereby the Common Stock is converted into other securities, cash or other property; or

(iv) of the voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed with the transfer agent for the Series A Convertible Preferred Stock and shall cause to be mailed to the holders of record of the Series A Convertible Preferred Stock, at their last address as they shall appear upon the stock transfer books of the Corporation, at least fifteen (15) days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record (if any) is to be taken for the purpose of such dividend, distribution, redemption, repurchase, rights or warrants or, if a record is not taken, the date as of which the holders of record of Common Stock to be entitled to such dividend, distribution, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer, share exchange, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of record of Common Stock shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, share exchange, dissolution, liquidation or winding up (but no failure to mail such notice or any defect therein or in

the mailing thereof shall affect the validity of the corporate action required to be specified in such notice).

(g) *Adjustments in Case of Fundamental Changes.* Notwithstanding any other provision in this Section 5 to the contrary, if any Fundamental Change (as defined in Section 5(h)) occurs, then the conversion price in effect will be adjusted immediately after such Fundamental Change as described below. In addition, in the event of a Common Stock Fundamental Change (as defined in Section 5(h)), each share of Series A Convertible Preferred Stock shall be convertible, to the extent permitted by applicable law, solely into common stock of the kind received by holders of Common Stock as the result of such Common Stock Fundamental Change; provided, that, in the event the Board of Directors determines in good faith (such determination to be conclusive and described in a resolution of the Board of Directors) that there is doubt whether the adjustment provided in this sentence can be made in a manner consistent with then applicable law or that despite the Corporation's reasonable efforts the issuer of common stock will not agree to provide such shares of common stock as would be needed for the purposes of satisfying the provisions of this sentence (or resulting from any subsequent adjustments of the conversion right pursuant to this Section 5), on reasonable terms (with reference to the Applicable Price of such common stock, determined as if the first reference to "Common Stock" in clause (ii) in the definition of Applicable Price were references to such common stock), then, by election of the Corporation (which election shall be evidenced by a resolution of the Board of Directors) the Fundamental Change that would otherwise be a Common Stock Fundamental Change shall be a Non-Stock Fundamental Change.

For purposes of calculating any adjustment to be made pursuant to this Section 5(g) in the event of a Fundamental Change, immediately after such Fundamental Change:

(i) in the case of a Non-Stock Fundamental Change (as defined in Section 5(h)), the conversion price of the Series A Convertible Preferred Stock shall thereupon become the lower of (A) the conversion price in effect immediately prior to such Non-Stock Fundamental Change, and (B) the result obtained by multiplying the greater of the Applicable Price (as defined in Section 5(h)) or the then applicable Reference Market Price (as defined in Section 5(h)) by a fraction of which the numerator shall be $50 and the denominator shall be (x) the then-current Redemption Price per share of Series A Convertible Preferred Stock or (y) for any Non-Stock Fundamental Change that occurs before the Series A Convertible Preferred Stock becomes redeemable pursuant to Section 4, the applicable price per share set forth in the following table if the date of such Non-Stock Fundamental Change occurs during

the twelve-month period ending December 17 of the year indicated:

Year	Price
1993	$54.00
1994	$53.60
1995	$53.20
1996	$52.80

plus, in any case referred to in this clause (y), an amount equal to all per share dividends on the Series A Convertible Preferred Stock accrued and unpaid thereon, whether or not declared, to but excluding the date of such Non-Stock Fundamental Change, provided that at such time after such Non-Stock Fundamental Change as dividends shall have been paid to the holders of the Series A Convertible Preferred Stock in an amount equal to dividends accrued and unpaid thereon at the time of the foregoing adjustment, the conversion price as adjusted pursuant to the foregoing clause (x) or (y) shall be readjusted to increase it to the conversion price which would have then existed if there would have been no dividend accrued and unpaid on the date of such Non-Stock Fundamental Change; and

(ii) in the case of a Common Stock Fundamental Change, the conversion price of the Series A Convertible Preferred Stock in effect immediately prior to such Common Stock Fundamental Change shall thereupon be adjusted by multiplying such conversion price by a fraction of which the numerator shall be the Purchaser Stock Price (as defined in Section 5(h)) and the denominator shall be the Applicable Price;

provided, however, that in the event of a Common Stock Fundamental Change or a Non-Stock Fundamental Change (other than a Non-Stock Fundamental Change as to which Section 5(d) is not applicable) in which (A) 100% by value of the consideration received by a holder of Common Stock is common stock of the successor, acquiror or other third party (and cash, if any, is paid with respect to any fractional interests in such common stock resulting from such Fundamental Change) and (B) all of the Common Stock shall have been exchanged for, converted into or acquired for common stock (and cash with respect to fractional interests) of the successor, acquiror or other third party, the conversion price of the Series A Convertible Preferred Stock in effect immediately prior to such Fundamental Change shall thereupon be adjusted by multiplying such conversion price by a fraction of which the numerator shall be one (1) and the denominator shall be the number of shares of common stock of the successor, acquiror, or other third party received by a holder of one share of Common Stock as a result of such Fundamental Change.

(h) *Definitions*. The following definitions shall apply to terms used in this Section 5:

(1) "Applicable Price" shall mean (i) in the event of a Non-Stock Fundamental Change in which the holders of the Common Stock receive only cash, the amount of cash received by the holder of one share of Common Stock and (ii) in the event of any other Non-Stock Fundamental Change or any Common Stock Fundamental Change, the average of the daily Closing Prices of the Common Stock for the ten (10) consecutive Trading Days prior to and including the record date for the determination of the holders of Common Stock entitled to receive cash, securities, property or other assets in connection with such Non-Stock Fundamental Change or Common Stock Fundamental Change, or, if there is no such record date, the date upon which the holders of the Common Stock shall have the right to receive such cash, securities, property or other assets, in each case, as adjusted in good faith by the Board of Directors of the Corporation (whose determination shall be conclusive and described in a resolution of the Board of Directors) appropriately to reflect any of the events referred to in subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of Section 5(c) or in Section 5(g).

(2) "Closing Price" of any common stock on any day shall mean the last reported sale price regular way on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices regular way of the common stock in each case on the New York Stock Exchange, or, if the common stock is not listed or admitted to trading on such Exchange, on the principal national securities exchange or quotation system on which the common stock is listed or admitted to trading or quoted, or, if not listed or admitted to trading or quoted on any national securities exchange or quotation system, the average of the closing bid and asked prices of the common stock in the over-the-counter market on the day in question as reported by the National Quotation Bureau Incorporated, or a similarly generally accepted reporting service, or, if not so available in such manner, as furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors of the Corporation for that purpose.

(3) "Common Stock Fundamental Change" shall, except as provided in the second sentence of this Section 5(g), mean any Fundamental Change in which (i) more than 50% by value (as determined in good faith by the Board of Directors of the Corporation (whose determination shall be conclusive and described in a resolution of the Board of Directors)) of the consideration received by holders of Common Stock consists of common stock that for each of the ten (10) consecutive Trading

Days referred to with respect to such Fundamental Change in Section 5(h)(1) above has been admitted for listing or admitted for listing subject to notice of issuance on a national securities exchange or quoted on the National Association of Securities Dealers, Inc. ("NASDAQ") National Market Systems and (ii) either (A) the Corporation continues to exist after the occurrence of such Fundamental Change and the outstanding shares of Series A Convertible Preferred Stock continue to exist as outstanding shares of Series A Convertible Preferred Stock, or (B) not later than the occurrence of such Fundamental Change, the outstanding shares of Series A Convertible Preferred Stock are converted into or exchanged for shares of convertible preferred stock of a corporation succeeding to the business of the Corporation, and such convertible preferred stock has powers, preferences and relative, participating, optional or other rights, and qualifications, limitations and restrictions, substantially similar to those of the Series A Convertible Preferred Stock.

(4) "Fundamental Change" shall mean the occurrence of any transaction or event in connection with a plan to which the Corporation is a party pursuant to which 90% or more of the outstanding Common Stock shall be exchanged for, converted into, acquired for or constitute solely the right to receive cash, securities, property or other assets (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise); *provided, however,* in the case of a plan involving more than one such transaction or event, for purposes of adjustment of the conversion price, such Fundamental Change shall be deemed to have occurred when 90% of the outstanding Common Stock of the Corporation shall be exchanged for, converted into, or acquired for or constitute solely the rights to receive cash, securities, property or other assets, but the adjustment shall be based upon the highest weighted average of consideration per share which a holder of Common Stock could have received in such transactions or events as a result of which more than 50% of the Common Stock of the Corporation shall have been exchanged for, converted into, or acquired for or constitute solely the right to receive cash, securities, property or other assets.

(5) "Non-Stock Fundamental Change" shall mean any Fundamental Change other than a Common Stock Fundamental Change.

(6) "Purchaser Stock Price" shall mean, with respect to any Common Stock Fundamental Change, the average of the daily Closing Prices of the common stock received in such Common Stock Fundamental Change for the ten (10) consecutive Trading Days prior to and including the record date for the

determination of the holders of Common Stock entitled to receive such common stock, or, if there is no such record date, the date upon which the holders of the Common Stock shall have the right to receive such common stock, in each case, as adjusted in good faith by the Board of Directors of the Corporation (whose determination shall be conclusive and described in a resolution of the Board of Directors) appropriately to reflect any of the events referred to in subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of Section 5(c) or in Section 5(g) or to give appropriate weight to the relative values in the event that more than one series or class of common stock is received; *provided, however,* if no such Closing Prices of the common stock for such Trading Days exist, then the Purchaser Stock Price shall be set at a price to be determined in good faith by the Board of Directors of the Corporation.

(7) "Reference Market Price" shall initially mean $6.429 and in the event of any adjustment to the conversion price other than as a result of a Fundamental Change, the Reference Market Price shall also be adjusted so that the ratio of the Reference Market Price to the conversion price after giving effect to any such adjustment shall always be the same as the ratio of the foregoing amount to the initial conversion price per share set forth in the first sentence of Section 5(a).

(8) "Stock Exchange", with respect to shares of capital stock, shall mean the principal national securities exchange or quotation exchange or quotation system on which such evidences of indebtedness or shares of capital stock are listed or admitted to trading or quoted.

(9) "Trading Day" shall mean a day on which securities are traded or quoted on the national securities exchange or quotation system or in the over-the-counter market used to determine the Closing Price.

(i) *Dividend or Interest Reinvestment Plans.* Notwithstanding the foregoing provisions, the issuance of any shares of Common Stock pursuant to any plan providing for the reinvestment of dividends or interest payable on securities of the Corporation and the investment of additional optional amounts in shares of Common Stock under any such plan, and the issuance of any shares of Common Stock or options or rights to purchase such shares pursuant to any employee benefit plan or program of the Corporation or pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the date the Series A Convertible Preferred Stock was first authorized, shall not be deemed to constitute an issuance of Common Stock or exercisable, exchangeable or convertible securities by the Corporation to which any of the adjustment provisions described above applies. There

shall also be no adjustment of the conversion price in case of the issuance of any stock (or securities convertible into or exchangeable for stock) of the Corporation except as specifically described in this Section 5. If any action would require adjustment of the conversion price pursuant to more than one of the provisions described above, only one adjustment shall be made and, except as expressly otherwise provided, such adjustment shall be the amount of adjustment which has the highest absolute value to holders of Series A Convertible Preferred Stock.

(j) *Certain Additional Rights.* In case the Corporation shall, by dividend or otherwise, declare or make a distribution on its Common Stock referred to in Section 5(c)(iv) or 5(c)(v) (including, without limitation, dividends or distributions referred to in the last sentence of Section 5(c)(iv)), the holder of each share of Series A Convertible Preferred Stock, upon the conversion thereof subsequent to the close of business on the date fixed for the determination of stockholders entitled to receive such distribution and prior to the effective date (whether or not determined retroactively) of any conversion price adjustment in respect of such distribution, shall also be entitled to receive for each share of Common Stock into which such share of Series A Convertible Preferred Stock is converted such number or amount of shares of Common Stock, rights, warrants, evidences of indebtedness, shares of capital stock, cash and assets that is so distributed to a holder of one share of Common Stock; *provided, however,* that, at the election of the Corporation (whose election shall be evidenced by a resolution of the Board of Directors) with respect to all holders so converting, the Corporation may, in lieu of distributing to such holder any portion of such distribution not consisting of cash or securities of the Corporation, pay such holder an amount in cash equal to the fair market value thereof (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors). If any conversion of a share of Series A Convertible Preferred Stock described in the immediately preceding sentence occurs prior to the payment date for a distribution to holders of Common Stock which the holder of the share of Series A Convertible Preferred Stock so converted is entitled to receive in accordance with the immediately preceding sentence, the Corporation may elect (such election to be evidenced by a resolution of the Board of Directors) to distribute to such holder a due bill for the shares of Common Stock, rights, warrants, evidences of indebtedness, shares of capital stock, cash or assets to which such holder is so entitled, provided that such due bill (i) meets any applicable requirements of the principal national securities exchange or other market on which the Common Stock is then traded and (ii) requires payment or delivery of such shares of Common Stock, rights, warrants, evidences of indebtedness, shares of capital stock, cash or assets no later than the date of payment or

delivery thereof to holders of shares of Common Stock receiving such distribution.

(k) *No Fractional Shares.* No fractional shares or scrip representing fractional shares shall be issued upon the conversion of Series A Convertible Preferred Stock. If any such conversion would otherwise require the issuance of a fractional share, an amount equal to such fraction multiplied by the Closing Price (as defined in Section 5(h)) of the Common Stock on the day of conversion shall be paid to the holder in cash by the Corporation.

(l) *Reservation of Shares.* The Corporation shall at all times reserve and keep available out of its authorized Common Stock the full number of shares of Common Stock into which all shares of Series A Convertible Preferred Stock from time to time outstanding are convertible. If at any time the number of authorized and unissued shares of Common Stock shall not be sufficient to effect the conversion of all outstanding shares of Series A Convertible Preferred Stock at the conversion price then in effect, the Corporation shall take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized and unissued shares of Common Stock to such number as shall be sufficient for such purpose.

(m) *Computation of Adjustments.* The certificate of any independent firm of public accountants of recognized standing selected by the Board of Directors shall be evidence of the correctness of any computation made under this Section 5.

(n) *Cancellation of Shares Upon Conversion.* All shares of Series A Convertible Preferred Stock redeemed, purchased or otherwise acquired by the Corporation or surrendered to it for conversion into Common Stock as provided above shall be cancelled and thereupon restored to the status of authorized but unissued shares of Preferred Stock undesignated as to series.

6. *Voting Rights.*

(a) Except as otherwise expressly required by law, the Series A Convertible Preferred Stock shall have no voting rights except as set forth in Section 6(b) below.

(b) So long as any shares of the Series A Convertible Preferred Stock remain outstanding, but not thereafter, in the event that four quarterly dividends (whether or not consecutive) payable on the Series A Convertible Preferred Stock or any class or series of stock which ranks on a parity with the Series A Convertible Preferred Stock in the payment of dividends (collectively, including the Series A Convertible Preferred Stock, the "Parity Stock") shall be in default, in whole or in part, the holders of the outstanding Parity Stock, in addition to any right

of holders of any series of Parity Stock to vote with the Common Stock at the election of other Directors or otherwise, shall be entitled at the next annual meeting of stockholders, voting separately as a class regardless of series, each share of Parity Stock having one vote, to elect one Director of the class of Directors then being elected, and, in the event such default continues to exist at succeeding annual meetings, the holders of the outstanding Parity Stock shall be entitled in like manner to elect one Director of the class of Directors being elected at such meetings; the Parity Stock thus, in the event of such default, being entitled as a class to elect a maximum of three (3) Directors, each to hold office for a term of three years or until his successor is elected and qualified; *provided, however,* that each person elected a Director by the holders of Parity Stock shall, as a condition to his qualification as a Director of the Corporation, submit to the Board of Directors his written resignation effective if and when all dividends in default on the Parity Stock shall be paid in full. If, after any such default in the payment of dividends on Parity Stock, all such dividends in default shall be paid in full, the Parity Stock shall then be divested of its right as a class to elect Directors, subject to the revesting of same in the event of any similar future default or defaults. Upon the payment in full of all dividends then in default on the Parity Stock, the Directors of the Corporation, exclusive of those elected by the Parity Stock, may by a majority vote accept the aforesaid resignations of the Directors so elected by the Parity Stock, and thereupon elect in the place and stead of such Directors new Directors to fulfill the unexpired terms of such resigning Directors.

If at any time, when the holders of Parity Stock as a class are represented by only one Director on the Board of Directors, and for any reason other than acceptance of the aforesaid resignation of such Director, the office of such Director becomes vacant, the remaining Directors shall not be entitled to elect a successor, but instead, such vacancy shall be filled at the next annual meeting of stockholders by the holders of Parity Stock, voting separately as a class. If, after the holders of Parity Stock as a class are represented by more than one Director on the Board of Directors, any vacancy occurs among the Directors elected by the holders of Parity Stock, other than as a result of acceptance of the aforesaid resignations, the remaining Director or Directors so elected by the Parity Stock shall be entitled to nominate for election by the Board of Directors a successor-director to hold office for the unexpired term of the Director whose position has become vacant. If the vacancy is not so filled prior to the next succeeding annual meeting of stockholders, it may be filled at such meeting by the holders of Parity Stock, voting separately as a class.

7. *Relation to Other Preferred Stock.* The holders of the Series A Convertible Preferred Stock shall not be entitled to receive any amount upon the dissolution, liquidation or winding up of the Corporation until the liquidation preference of any other class of stock of the Corporation ranking senior to the Series A Convertible Preferred Stock as to rights upon liquidation, dissolution or winding up shall have been paid in full.

If, upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the assets available for distribution are insufficient to pay in full the amounts payable with respect to the Series A Convertible Preferred Stock and any other shares of stock of the Corporation ranking as to any such distribution on a parity with the Series A Convertible Preferred Stock, the holders of the Series A Convertible Preferred Stock and of such other shares shall share ratably in any distribution of assets of the Corporation in proportion to the full respective preferential amounts to which they are entitled.

After payment to the holders of the Series A Convertible Preferred Stock of the full preferential amounts provided for in Section 3, the holders of the Series A Convertible Preferred Stock shall be entitled to no further participation in any distribution of assets by the Corporation.

FIFTH. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal By-laws of the Corporation. The holders of shares of Voting Stock (as defined in Article Tenth, paragraph (c)) shall, to the extent such power is at the time conferred on them by applicable law, also have the power to make, alter, amend or repeal the By-laws of the Corporation, except that if such a proposal is made by or on behalf of an Interested Person (as defined in Article Tenth, paragraph (c)) or a Director who is not an Independent Director (as defined in Article Tenth, paragraph (c)), then the vote of at least two-thirds (2/3) of the outstanding Voting Stock, voting as a class, excluding Voting Stock beneficially owned by such Interested Person or Director, will be required unless (a) in the case of a proposal by an Interested Person, either (i) such proposal has been approved by a majority of the Board of Directors prior to such Interested Person first becoming an Interested Person or (ii) prior to such Interested Person first becoming an Interested Person, a majority of the Board of Directors has approved such Interested Person becoming an Interested Person and (b) in the case of a proposal by a Director who is not an Independent Director, such proposal has been approved by a majority of the Board of Directors, excluding such Director.

SIXTH. Elections of Directors need not be by written ballot except and to the extent provided in the By-laws of the Corporation.

SEVENTH. The number of Directors of the Corporation shall be determined from time to time by resolution adopted by the affirmative vote of a majority of the entire Board of Directors; *provided, however,* that in no event shall the number of Directors be less than three (3). In the absence of a determination of such number by the Board of Directors, the number of Directors shall be nine. The Directors of the Corporation shall be divided into three (3) classes as nearly equal in number as reasonably possible, as determined by the Board of Directors, with the initial term of office of the first class of such Directors to expire at the first annual meeting of stockholders thereafter, the initial term of office of the second class of such Directors to expire at the second annual meeting of stockholders thereafter and the initial term of office of the third class of such Directors to expire at the third annual meeting of stockholders thereafter, with each class of Directors to hold office until their successors have been duly elected and qualified. At each annual meeting of stockholders following such initial classification and election, Directors elected to succeed the Directors whose terms expire at such annual meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders in the third year following the year of their election and until their successors have been duly elected and qualified. If the number of Directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain or attain a number of Directors in each class as nearly equal as reasonably possible, but no decrease in the number of Directors may shorten the term of any incumbent Director. Any Director, or the entire Board of Directors, may be removed from office only for cause and only by the affirmative vote of not less than a majority of the votes entitled to be cast by the holders of all the then outstanding shares of Voting Stock, voting together as one class; *provided, however,* that if a proposal to remove a Director is made by or on behalf of an Interested Person or a Director who is not an Independent Director, then such removal shall require the affirmative vote of not less than a majority of the votes entitled to be cast by the holders of all Voting Stock, voting together as one class, excluding Voting Stock beneficially owned by any such Interested Person or by such Director who is not an Independent Director. Whenever the holders of any class or series of stock are entitled to elect one or more Directors by this Restated Certificate of Incorporation, the provisions of the preceding sentence shall apply to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole. This Article Seventh may not be amended, modified or repealed except by the affirmative vote of not less than two-thirds (2/3) of the votes entitled to be cast by the holders of all Voting Stock of the Corporation entitled to vote generally in the election of Directors, voting together as one class, excluding Voting Stock beneficially owned by any Interested Person or by any Director who is not an Independent Director.

In the event that the holders of any class or series of stock of the Corporation shall be entitled, voting separately as a class, to elect any Directors of the Corporation, then the number of Directors that may be elected by such holders shall be in addition to the number fixed by the Board of Directors or as otherwise provided in Article Seventh and, except as otherwise expressly provided in the terms of such class or series, the terms of the Directors elected by such holders shall expire at the annual meeting of stockholders next succeeding their election without regard to the classification of the remaining Directors.

EIGHTH. Any action required or permitted to be taken by the holders of any class or series of stock of the Corporation, including but not limited to the election of Directors, may be taken by written consent or consents but only if such consent or consents are signed by all holders of such class or series of stock.

NINTH. A Director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent that such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Law as currently in effect or as the same may hereafter be amended. No amendment, modification or repeal of this Article Ninth shall adversely affect any right or protection of a Director that exists at the time of such amendment, modification or repeal.

TENTH. (a) In addition to any affirmative vote required by law or this Restated Certificate of Incorporation or the By-laws of the Corporation, and except as otherwise expressly provided in paragraph (b) of this Article Tenth, a Business Transaction (as hereinafter defined) with, or proposed by or on behalf of, any Interested Person (as hereinafter defined) or any Affiliate (as hereinafter defined) of any Interested Person or any person who thereafter would be an Affiliate of such Interested Person shall require approval by the affirmative vote of not less than two-thirds (2/3) of the votes entitled to be cast by holders of all the then outstanding Voting Stock, voting together as one class excluding Voting Stock beneficially owned by such Interested Person. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or otherwise.

(b) The provisions of paragraph (a) of this Article Tenth shall not be applicable to any particular Business Transaction, and such Business Transaction shall require only such affirmative vote, if any, as is required by law or by any other provision of this Restated Certificate of Incorporation or the By-laws of the Corporation, or any agreement with any national securities exchange, if either (i) the Business Transaction shall have been

approved by a majority of the Board of Directors prior to such Interested Person first becoming an Interested Person or (ii) prior to such Interested Person first becoming an Interested Person, a majority of the Board of Directors shall have approved such Interested Person becoming an Interested Person.

(c) The following definitions shall apply with respect to this Article Tenth:

(i) The term "Affiliate" shall mean a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified person.

(ii) A person shall be deemed the "beneficial owner" and to have "beneficial ownership" of, and to "beneficially own", any securities as to which such person or any of such person's Affiliates is or may be deemed to be the beneficial owner pursuant to Rule 13d-3 and 13d-5 under the Securities Exchange Act of 1934, as amended, as well as any securities as to which such person or any of such person's Affiliates has the right to become the beneficial owner (whether such right is exercisable immediately or only after the passage of time or the occurrence of conditions) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; *provided, however,* that a person shall not be deemed the "beneficial owner", or to have "beneficial ownership" of, or to "beneficially own", any security (A) solely because such security has been tendered pursuant to a tender or exchange offer made by such person or any of such person's Affiliates until such security is accepted for payment or exchange or (B) solely because such person or any of such person's Affiliates has or shares the power to vote or direct the voting of such security pursuant to a revocable proxy given in response to a public proxy or consent solicitation made to more than ten (10) holders of shares of a class of stock of the Corporation registered under Section 12 of the Securities Exchange Act of 1934 and pursuant to, and in accordance with, the applicable rules and regulations under the Securities Exchange Act of 1934 (or any similar provision of a comparable or successor report). In determining the percentage of the outstanding shares of Voting Stock with respect to which a person is the beneficial owner, all shares as to which such person is deemed the beneficial owner shall be deemed outstanding.

(iii) The term "Business Transaction" shall mean any of the following transactions when entered into by the Corporation or a subsidiary of the Corporation with, or upon a proposal by or on

behalf of, any Interested Person or any Affiliate of any Interested Person:

(A) any merger or consolidation of the Corporation or any subsidiary with (1) any Interested Person, or (2) any other corporation which is, or after such merger or consolidation would be, an Affiliate of an Interested Person;

(B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the Interested Person of assets of the Corporation (other than Capital Stock of the Corporation) or of any subsidiary of the Corporation which assets have an aggregate market value equal to ten percent (10%) or more of the aggregate market value of all the outstanding stock of the Corporation;

(C) any transaction or a series of transactions that results in the issuance or transfer by the Corporation or by any subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the Interested Person, except (1) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the Interested Person became such, (2) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the Interested Person became such, (3) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock, (4) any issuance or transfer of stock by the Corporation, *provided, however,* that in no case under clauses (1) through (3) above shall there be an increase of more than one percent (1%) in the Interested Person's proportionate share of the stock of any class or series of the Corporation or of the Voting Stock of the Corporation or (5) pursuant to a public offering or private placement by the Corporation;

(D) any reclassification of securities, recapitalization or other transaction involving the Corporation or any subsidiary of the Corporation proposed by, or pursuant to any agreement, arrangement or understanding with, an Interested Person, which has the effect, directly or indirectly, of (1) increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such

subsidiary which is owned by the Interested Person, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the Interested Person or (2) increasing the voting power, whether or not then exercisable, of an Interested Person in any class or series of stock of the Corporation or any subsidiary of the Corporation;

(E) the adoption of any plan or proposal by or on behalf of an interested person for the liquidation or dissolution of the Corporation; or

(F) any receipt by the Interested Person of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, tax benefits or other financial benefits or assistance (other than those expressly permitted in subparagraphs (1) through (5) above) provided by or through the Corporation or any subsidiary.

(iv) The term "Capital Stock" shall mean all capital stock of the Corporation authorized to be issued from time to time under Article Fourth of this Restated Certificate of Incorporation.

(v) The term "Independent Directors" shall mean the members of the Board of Directors who are not Affiliates or representatives of, or associated with, an Interested Person and who were either Directors of the Corporation prior to any person becoming an Interested Person or were recommended for election or elected to succeed such Directors by a vote which includes the affirmative vote of a majority of the Independent Directors.

(vi) The term "person" shall mean any individual, firm, company or other entity.

(vii) The term "Interested Person" shall mean any person (other than the Corporation, any subsidiary, any profit-sharing, employee stock ownership or other employee benefit plan of the Corporation or any subsidiary or any trustee of or fiduciary with respect to any such plan when acting in such capacity) who (A) is the beneficial owner of Voting Stock representing fifteen percent (15%) or more of the votes entitled to be cast by the holders of all then outstanding shares of Voting Stock or (B) is an Affiliate of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner of Voting Stock representing fifteen percent (15%) or more of the votes entitled to be cast by holders of all then outstanding shares of Voting Stock.

(viii) The term "subsidiary" means any company of which a majority of the voting securities are owned, directly or indirectly, by the Corporation.

(ix) The term "Voting Stock" shall mean stock of any class or series of the Corporation entitled to vote in the election of Directors generally.

(d) A majority of the Independent Directors shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, for the purposes of (i) this Article Tenth, all questions arising under this Article Tenth including, without limitation (A) whether a person is an Interested Person, (B) the number of shares of Capital Stock or other securities beneficially owned by any person; and (C) whether a person is an Affiliate of another; and (ii) this Restated Certificate of Incorporation, the question of whether a person is an Interested Person. Any such determination made in good faith shall be binding and conclusive on all parties.

(e) Nothing contained in this Article Tenth shall be construed to relieve any Interested Person from any fiduciary obligation imposed by law.

(f) Notwithstanding any other provisions of this Restated Certificate of Incorporation or the By-laws of the Corporation (and notwithstanding the fact that a lesser percentage or separate class vote may be specified by law, this Restated Certificate of Incorporation or the By-laws of the Corporation), any proposal to amend, alter, change or repeal any provision of this Article Tenth, or to adopt any provision inconsistent with this Article Tenth, shall require the affirmative vote of not less than two-thirds (2/3) of the votes entitled to be cast by the holders of all Voting Stock, voting together as one class, excluding Voting Stock beneficially owned by any Interested Person or by any Director who is not an Independent Director.

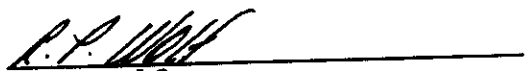
ELEVENTH. Unless proposed by stockholders of record of at least one-half of one percent of the Corporation's shares of Common Stock then outstanding, or previously authorized by the Board of Directors or under a then effective policy adopted by the Board of Directors, a proposal may not be submitted for consideration or action at any meeting of stockholders if the proposal is advisory or precatory in nature or if under applicable law action at the meeting by stockholders would not, without further action by the Board of Directors, be effective to authorize or implement the action which is the subject of the proposal.

IN WITNESS WHEREOF, Alumax Inc. has caused this certificate to be signed by Allen Born, Chairman of its Board of Directors, and attested by R.P. Wolf, its Secretary, on the 15th day of November, 1993.

ALUMAX INC.

By: 
Allen Born

Attest:


R.P. Wolf

STATE OF DELAWARE
SECRETARY OF STATE 10.035
DIVISION OF CORPORATIONS
FILED 10:12 AM 07/31/1998
981298885 – 2867895

CERTIFICATE OF MERGER

OF

ALUMAX INC.

WITH AND INTO

AMX ACQUISITION CORP.

Pursuant to Section 251 of the General Corporation Law
of the State of Delaware

AMX Acquisition Corp., a Delaware corporation, hereby certifies as follows:

FIRST: The name and states of incorporation of the constituent corporations are as follows:

Name	State
AMX Acquisition Corp.	Delaware
Alumax Inc.	Delaware

SECOND: An Agreement and Plan of Merger (the "Merger Agreement") dated as of March 8, 1998, has been approved, adopted, certified, executed and acknowledged by each constituent corporation in accordance with the provisions of Section 251(c) of the General Corporation Law of the State of Delaware.

THIRD: The name of the corporation surviving the Merger shall be AMX Acquisition Corp. (the "Surviving Corporation").

FOURTH: Article FIRST of the Certificate of Incorporation of the Surviving Corporation shall be amended to read as follows:

> "FIRST: The name of the corporation is Alumax Inc. (hereinafter the 'Corporation')."

FIFTH: An executed copy of the Merger Agreement is on file at the principal place of business of the Surviving Corporation, 425 Sixth Avenue, Pittsburgh, PA 15219. A copy of the Merger Agreement will be furnished by the Surviving

Corporation, on request and without cost, to any stockholder of either constituent corporation.

IN WITNESS WHEREOF, AMX Acquisition Corp. has caused this Certificate of Merger to be executed in its corporate name this 31st day of July, 1998.

AMX ACQUISITION CORP.

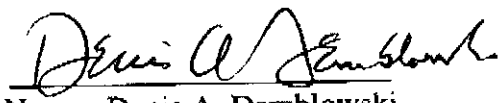
By: 
Name: Denis A. Demblowski
Title: Secretary

EXHIBIT 30

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 04:30 PM 03/06/1998
981088100 - 2867895

CERTIFICATE OF INCORPORATION

OF

AMX ACQUISITION CORP.

FIRST: The name of the Corporation is AMX Acquisition Corp. (hereinafter the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at that address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (the "GCL").

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is 1000 shares of Common Stock, each having a par value of one penny ($.01).

FIFTH: The name and mailing address of the Sole Incorporator is as follows:

Lynn T. Buckley
P.O. Box 636
Wilmington, DE 19899

SIXTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

(1) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

(2) The directors shall have concurrent power with the stockholders to make, alter,

amend, change, add to or repeal the By-Laws of the Corporation.

(3) The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the By-Laws of the Corporation. Election of directors need not be by written ballot unless the By-Laws so provide.

(4) No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the GCL or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article SIXTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

(5) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the GCL, this Certificate of Incorporation, and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

SEVENTH: Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept

(subject to any provision contained in the GCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

EIGHTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

I, THE UNDERSIGNED, being the Sole Incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the GCL, do make this Certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 6th day of March, 1998.

Lynn Buckley
Sole Incorporator

STATE OF DELAWARE
SECRETARY OF STATE 10.035
DIVISION OF CORPORATIONS
FILED 10:12 AM 07/31/1998
981298885 – 2867895

CERTIFICATE OF MERGER

OF

ALUMAX INC.

WITH AND INTO

AMX ACQUISITION CORP.

Pursuant to Section 251 of the General Corporation Law
of the State of Delaware

AMX Acquisition Corp., a Delaware corporation, hereby certifies as follows:

FIRST: The name and states of incorporation of the constituent corporations are as follows:

Name	State
AMX Acquisition Corp.	Delaware
Alumax Inc.	Delaware

SECOND: An Agreement and Plan of Merger (the "Merger Agreement") dated as of March 8, 1998, has been approved, adopted, certified, executed and acknowledged by each constituent corporation in accordance with the provisions of Section 251(c) of the General Corporation Law of the State of Delaware.

THIRD: The name of the corporation surviving the Merger shall be AMX Acquisition Corp. (the "Surviving Corporation").

FOURTH: Article FIRST of the Certificate of Incorporation of the Surviving Corporation shall be amended to read as follows:

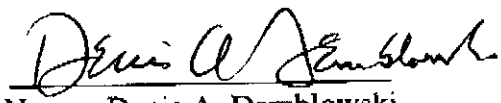
> "FIRST: The name of the corporation is Alumax Inc. (hereinafter the 'Corporation')."

FIFTH: An executed copy of the Merger Agreement is on file at the principal place of business of the Surviving Corporation, 425 Sixth Avenue, Pittsburgh, PA 15219. A copy of the Merger Agreement will be furnished by the Surviving

Corporation, on request and without cost, to any stockholder of either constituent corporation.

IN WITNESS WHEREOF, AMX Acquisition Corp. has caused this Certificate of Merger to be executed in its corporate name this 31st day of July, 1998.

AMX ACQUISITION CORP.

By: 
Name: Denis A. Demblowski
Title: Secretary

State of Delaware
Secretary of State
Division of Corporations
Delivered 07:02 PM 12/29/2005
FILED 06:12 PM 12/29/2005
SRV 051074005 - 2867895 FILE

CERTIFICATE OF OWNERSHIP AND MERGER

OF

ALUMAX JAPAN, INC.
a Delaware Corporation

into

ALUMAX INC.,
a Delaware Corporation

It is hereby certified that:

1. Alumax Inc. (hereinafter referred to as the "Corporation") is a business corporation of the State of Delaware.

2. The Corporation is the owner of all of the outstanding shares of Common Stock of Alumax Japan, Inc., which is also a business corporation of the State of Delaware.

3. On December 22, 2005, the Board of Directors of the Corporation adopted the following resolutions to merge Alumax Japan, Inc. into the Corporation.

RESOLVED that Alumax Japan, Inc. be merged into this Corporation, and that all of the estate, property, rights, privileges, powers and franchises of Alumax Japan, Inc. be vested in and held and enjoyed by this Corporation as fully and entirely and without change or diminution as the same were before held and enjoyed by Alumax Japan, Inc. in its name.

RESOLVED that this Corporation shall assume all of the obligations of Alumax Japan, Inc.

RESOLVED that this Corporation shall cause to be executed and filed and/or recorded the documents prescribed by the laws of the State of Delaware and by the laws of any other appropriate jurisdiction and will cause to be performed all necessary acts within the State of Delaware and within any other appropriate jurisdiction.

Executed on December 28th 2005

Effective on December 31, 2005 ALUMAX INC.

By: Lonnie F. Nicol
LONNIE F. NICOL, VICE PRESIDENT

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:23 PM 12/21/2011
FILED 02:19 PM 12/21/2011
SRV 111322363 - 2867895 FILE

STATE OF DELAWARE
CERTIFICATE OF MERGER OF
DOMESTIC LIMITED LIABILITY COMPANY
INTO A
DOMESTIC CORPORATION

Pursuant to Title 8, Section 264(c) of the Delaware General Corporation Law and Title 6, Section 18-209 of the Delaware Limited Liability Company Act, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is Alumax Inc., a Delaware Corporation, and the name of the limited liability company being merged into this surviving corporation is Kawneer Germany LLC.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by the surviving corporation and the merging limited liability company.

THIRD: The name of the surviving corporation is Alumax Inc.

FOURTH: The merger is to become effective on December 31, 2011.

FIFTH: The Agreement of Merger is on file at 101 Cherry Street, 4th Floor Burlington, VT 05401, the place of business of the surviving corporation.

SIXTH: A copy of the Agreement of Merger will be furnished by the corporation on request, without cost, to any stockholder of any constituent corporation or member of any constituent limited liability company.

SEVENTH: The Certificate of Incorporation of the surviving corporation shall be it's Certificate of Incorporation

IN WITNESS WHEREOF, said Corporation has caused this certificate to be signed by an authorized officer, the 21st day of December, A.D., 2011.

By: John E. Wilson
Authorized Officer

Name: John E. Wilson Jr.
Print or Type

Title: President

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:54 AM 07/06/2016
FILED 10:54 AM 07/06/2016
SR 20164788007 - File Number 2867895

STATE OF DELAWARE
CERTIFICATE OF CONVERSION
FROM A CORPORATION TO A
LIMITED LIABILITY COMPANY PURSUANT TO
SECTION 266 OF THE DELAWARE GENERAL CORPORATION LAW AND
SECTION 18-214 OF THE DELAWARE LIMITED LIABILITY COMPANY ACT

Dated: July 6, 2016

FIRST: The jurisdiction where Alumax Inc., a Delaware corporation (the "Corporation"), was first formed is the State of Delaware.

SECOND: The jurisdiction immediately prior to filing this Certificate of Conversion was the State of Delaware.

THIRD: The date the Corporation first formed was March 6, 1998.

FOURTH: The name of the Corporation immediately prior to filing this Certificate of Conversion was "Alumax Inc."

FIFTH: The name of the limited liability company as set forth in the Certificate of Formation is "Alumax LLC".

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Conversion as of the date set forth above.

ALUMAX INC.

By: _____
Name: John E. Wilson, Jr.
Title: President

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:54 AM 07/06/2016
FILED 10:54 AM 07/06/2016
SR 20164788007 - File Number 2867895

STATE OF DELAWARE

CERTIFICATE OF FORMATION

OF

ALUMAX LLC

Dated: July 6, 2016

This Certificate of Formation is being duly executed and filed by the undersigned, an authorized person within the meaning of the Delaware Limited Liability Company Act, as amended (the "Act"), to form a limited liability company under the Act.

FIRST: The name of the limited liability company formed hereby is:

Alumax LLC

SECOND: The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, New Castle County, Wilmington, Delaware 19801.

THIRD: The name and address of its registered agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, New Castle County, Wilmington, Delaware 19801.

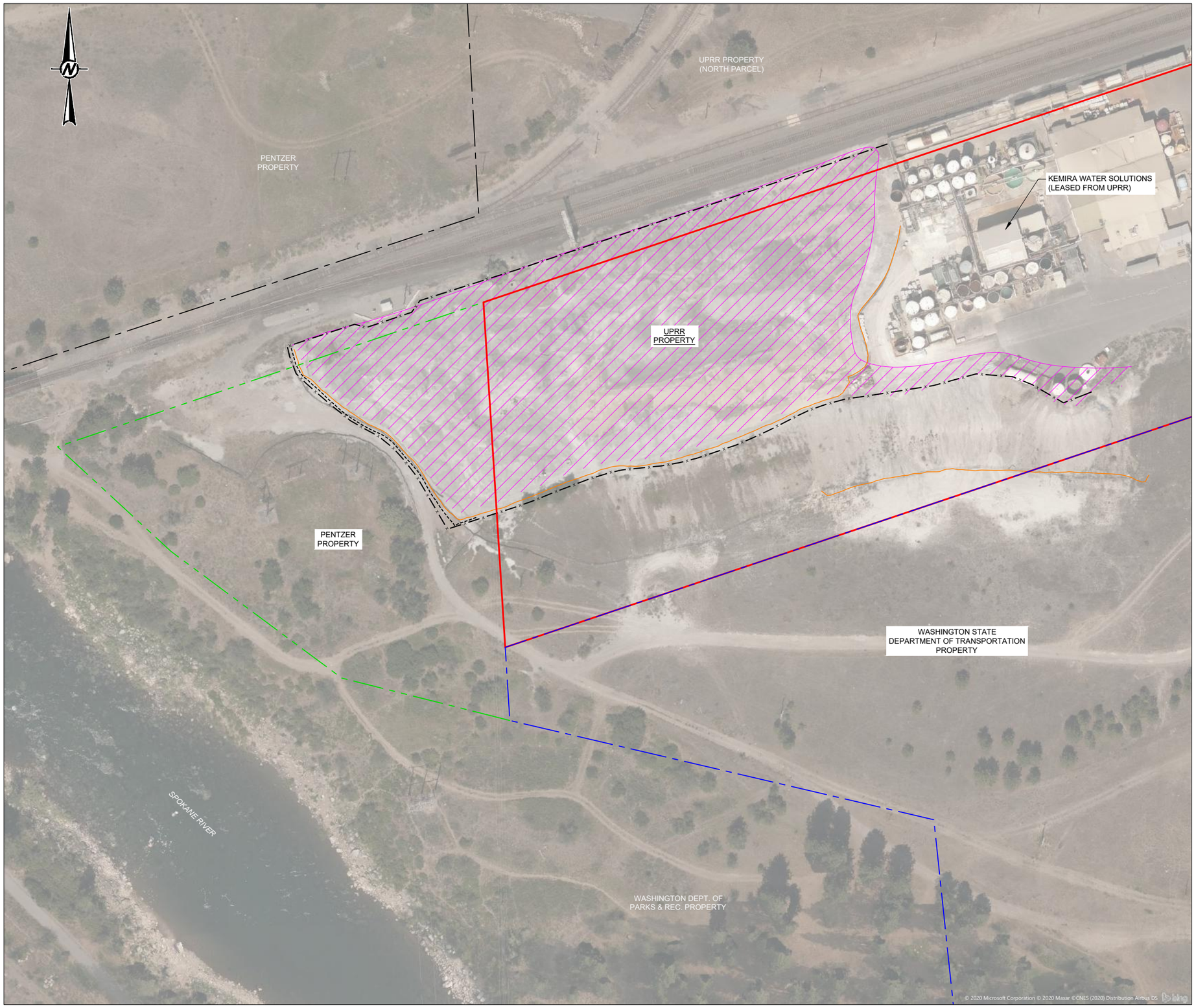
FOURTH: This Certificate of Formation shall be effective upon filing with the Secretary of State of the State of Delaware.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the date set forth above.

John E. Wilson, Jr.
Authorized Person

EXHIBIT 31



LEGEND

- APPROXIMATE UPRR PROPERTY BOUNDARY (SOUTH PARCEL)
- APPROXIMATE PENTZER PROPERTY BOUNDARY
- APPROXIMATE WSDOT PROPERTY BOUNDARY
- LIMITS OF DROSS STOCKPILE
- SECURITY FENCE
- SILT FENCE
- ECOLOGY BLOCK LOCATION

NOTE(S)

1. BLACK LABELED PROPERTIES ARE PART OF MTCA SITE.

0 50 100
1" = 50' FEET

CLIENT
UNION PACIFIC RAILROAD CO.

PROJECT
ALUMINUM RECYCLING TRENTWOOD SITE
FEASIBILITY STUDY (REVISED)
SPOKANE VALLEY, WASHINGTON

TITLE
SITE PLAN

CONSULTANT
GOLDER

YYYY-MM-DD	2021-03-26
DESIGNED	TN
PREPARED	REDMOND
REVIEWED	FS
APPROVED	TN

PROJECT NO.	PHASE	REV.	FIGURE
19119180	1000	A	2

IF THIS MEASUREMENT DOES NOT MATCH WHAT IS SHOWN, THE SHEET SIZE HAS BEEN MODIFIED FROM: ANSI D

0 1 in

Path: \\redmond.golder.gds\data\geomatics\UnionPacific\Railroad\Trentwood\WA99_PROJECTS\19119180\1000\02_PRODUCTION\DWG\ | File Name: 19119180_1000_009.dwg | Last Edited By: trybar Date: 2021-03-03 Time:2:27:40 PM | Printed By: trybar Date: 2021-03-03 Time:2:29:33 PM

EXHIBIT 32

IMPERIAL WEST CHEMICAL CO.

P. O. BOX 696 · 1701 WILBUR AVENUE · ANTIOCH, CALIFORNIA 94509 · TELEPHONE (415) 757-8230

Lease check in safe

August 7, 1985

UPRR CO REAL ESTATE DEPT.

COD	RFN	DOB	JMK	GMJ	AAE	LBRY	FILE
GBC	JJB	JAT	RDR	LLD	RWC		DHL

AUG 12 1985

RJZ	TJS	MSS	PLW	CJC	MAP	DRR	WTG
DRL		AOM	PGF	FBS	WLL	JEM	GWC
		4			12		

Union Pacific System
District Real Estate Director
Room 306, 1416 Dodge Street
Omaha, Nebraska 68179

Re: R.E. No. 825-08

Gentlemen:

Thank you for the subject lease, of which we enclose the executed original and copy.

TALK

There are several areas of the lease that need clarification and acceptance by Union Pacific System.

1. Section 1. "Premises to be used only as a site for aluminum recycling."

   Imperial intends to use the site for manufacturing and distribution of aluminum sulfate and aluminum oxides in addition to recycling of aluminum.

WATER

2. Section 1. "Water Rights". Imperial currently utilizes the water from the existing deep well and therefore needs consent of Union Pacific System for continued use of this water.

3. Section 10. "Explosives and Inflammables". Imperial does not store explosives or inflammables other than small quantities as provided in Section 10. Imperial does require large use of Sulfuric Acid, which is a corrosive material and will bring this material to the plant by rail tank cars to the siding. The storage is greater than 50 feet from the center line of the main track, but the tank car on the unloading spot may be approaching the 50 foot limit.

Enclosed is our check for the first year lease.

Very truly yours,
IMPERIAL WEST CHEMICAL COMPANY

D. A. Huckabay
President

509-922-2244

cc: John Huckabay

FORM 2209-B

FILE COPY

Void see new Lease of 7-14-86

825-08

LEASE

This Agreement made and entered into as of the 26th day of July, 1985 by and between SPOKANE INTERNATIONAL RAILROAD COMPANY, a corporation of the State of Washington, (hereinafter called "Lessor"), party of the first part, and IMPERIAL WEST CHEMICAL CO., a corporation of the State of Nevada, of 2317 No. Sullivan, Spokane, Washington 99216 (hereinafter called "Lessee"), party of the second part, WITNESSETH:

Lease / Term
Location / Use

Section 1. The Lessor, for and in consideration of the covenants and payments hereinafter mentioned to be performed and made by the Lessee, hereby agrees to lease and let and does hereby lease and let unto the Lessee for a term of one year beginning on the 15th day of July, 1985, the portion of the premises of the Lessor (hereinafter the "Premises") at or near Trentwood, Spokane County, Washington, shown on the plat, or described in the description, or both, hereto attached and hereby made a part hereof, such Premises to be used only as a site for aluminum recycling plant.

Renewal

Thereafter, so long as neither party is in default, this Lease will renew itself without further documentation from year to year until terminated as provided in Section 16 herein. Each renewal term will be upon the same terms and conditions set forth herein, including, without limitation, the Lessor's right to reevaluate the rental as hereinafter provided.

Improvements

It is agreed that no improvements placed upon the Premises by the Lessee shall become a part of the realty.

Water Rights

The Lessee acknowledges that this Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by the Lessor which may be appurtenant to or otherwise associated with the Premises, and that all right, title, and interest in and to such water is expressly reserved unto the Lessor, its successors and assigns, and that the right to use same or any part thereof may be obtained only by the prior written consent of the Lessor.

This Lease is made without covenant of title or to give possession or for quiet enjoyment.

Rental

Section 2. The Lessee shall pay to the Lessor for the use of the Premises, rental at the rate of ONE THOUSAND THREE HUNDRED FIFTY DOLLARS ($1,350.00) per annum, payable annually in advance for each and every year during the term of this Lease, or any renewal thereof, subject to reevaluation, as hereinafter provided.

Rental Reevaluation

The Lessor may annually reevaluate the rental base upon which the above rental is computed. In the event the Lessor shall determine that the rental paid is no longer representative of a fair market value rental, the Lessor may adjust the rental and shall advise the Lessee by written notice of such change. Such written notice shall be served at least thirty (30) days prior to the effective date of the new rental, it being understood however that rental adjustments shall not be made more often than once every twelve months.

Utilities

The Lessee shall arrange, secure, and be responsible for all water, gas, heat, electricity, power, sewer, telephone, and any and all other utilities and services supplied and/or furnished to the Premises in connection with the use of the Premises by the Lessee as hereinafter provided, together with any and all taxes and/or assessments applicable thereto.

In the event such utilities and services are not separately metered to Lessee, Lessee shall pay a reasonable proportion of the cost of such utilities and services, to be determined by the Lessor, of all charges jointly metered with other portions of the Lessor's property.

It is understood and agreed that none of the above utilities or services may be installed upon the Premises without first securing the written consent and approval for such installation and the location thereof by the Lessor's Chief Engineer.

Taxes

The Lessee further agrees to pay, before the same shall become delinquent, all taxes levied during the life of this Lease upon the Premises and upon any buildings and improvements thereon, or to reimburse the Lessor for sums paid by the Lessor for such taxes, except taxes levied upon the Premises as a component part of the railroad property of the Lessor in the state as a whole.

Assessments

If, during the life of this Lease, any street or other improvement, whether consisting of new construction, maintenance, repairs, renewals, or reconstruction, shall be made, the whole or any portion of the cost of which is assessed against or is fairly assignable to the Premises, the Lessee agrees to pay in addition to the other payments herein provided for:

(a) Ten and one-half per cent (10½%) per annum on the amount so assessed against or assignable to the Premises when expenditures by the Lessor for such improvements are properly chargeable to capital account under accounting rules of the Interstate Commerce Commission current at the time; and

(b) the entire amount so assessed against or assignable to the Premises when expenditures for such improvements are not properly chargeable to capital account under said accounting rules.

Use of Premises Abandonment

Section 3. The Lessee covenants that the Premises shall not be used for any other purpose than for such use specified in Section 1 hereof and agrees that if the Lessee abandons the Premises, the Lessor may enter upon and take possession of the same, and that a non-user for the purpose mentioned continuing for thirty days shall be sufficient and conclusive evidence of such abandonment.

Lessee Not To Sublet or Assign

Section 4. The Lessee agrees not to let or sublet the Premises, in whole or in part, or to assign this Lease without the consent in writing of the Lessor, and it is agreed that any transfer or assignment of this Lease, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Lessor, shall terminate this Lease.

Use for Unlawful Purposes Prohibited-Indemnity

Section 5. It is especially covenanted and agreed that the use of the Premises or any part thereof for any unlawful or immoral purposes whatsoever is expressly prohibited; that the Lessee shall indemnify, hold harmless and defend the Lessor and the Premises from any and all liens, fines, damages, penalties, forfeitures or judgments in any manner accruing by reason of the use or occupation of the Premises by the Lessee; and that the Lessee shall at all times protect the Lessor and the Premises from all injury, damage, or loss by reason of the occupation of the Premises by the Lessee or from any cause whatsoever growing out of the Lessee's use thereof.

Care of Premises and Improvements

Section 6. The Lessee hereby covenants and agrees that any and all buildings erected upon the Premises shall be painted by the Lessee a color satisfactory to the Lessor, and shall at all times be kept in good repair; that the roof of each building shall be of fire-resistive material; that the Premises shall during the continuance of this Lease be kept by the Lessee in a neat and tidy condition and free from all material which would tend to increase the risk of fire or give the Premises an untidy appearance; that none of the buildings or other structures erected on the Premises shall be used for displaying any signs or advertisements other than signs as may be connected with the business of the Lessee, and that such signs shall be neat, properly maintained and subject to approval of the Lessor. In the event any building or other improvement not belonging to the Lessor on the Premises is damaged or destroyed by fire, storm, or other casualty, the Lessee shall, within thirty days after such happening, remove all debris and rubbish resulting therefrom; and if the Lessee fails to do so, the Lessor may enter the Premises and remove such debris and rubbish, and the Lessee agrees to reimburse the Lessor, within thirty days after bill rendered, for the expense so incurred.

Liens-Indemnity

Section 7. The Lessee shall, when due and before any lien shall attach to the Premises, if the same may lawfully be asserted, pay all charges for water, gas, light, and power furnished; rental or use of sewer facilities serving the Premises; pay for all material joined or affixed to the Premises; pay for all taxes and

assessments; and shall pay in full all persons who perform labor upon the Premises, and shall not permit or suffer any mechanic's or materialman's or other lien of any kind or nature to be enforced against the Premises for any work done or materials furnished thereon at the instance or request or on behalf of the Lessee; and the Lessee agrees to indemnify, hold harmless, and defend, the Lessor and its property against and from any and all liens, claims, demands, costs, and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials or other things furnished.

Superior Rights

Section 8. This lease is made subject to all outstanding superior rights, including, but not limited to, rights of way for highways, pipelines, and for power and communications lines, and the right of the Lessor to renew such outstanding rights and to extend the term thereof.

Clearances

Section 9. Detailed plans for all buildings, platforms, loading or unloading devices, structure and all alterations, improvements and/or additions thereto and/or upon the Premises which the Lessee shall desire to make, shall be presented to Lessor for consent in written form prior to installation upon the Premises. If the Lessor shall give its consent, the consent shall be deemed conditioned upon Lessee acquiring a permit to do such work from appropriate governmental agencies, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner.

All buildings, platforms, loading or unloading devices, structures, and/or material or obstruction of any kind erected, maintained, placed, piled, stacked, or maintained upon the Premises after the commencement of this Lease and any alterations, improvements, and/or additions thereto or to buildings, platforms, loading or unloading devices structures located on the Premises prior to the commencement of this Lease shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Lessee in strict conformity with Union Pacific Railroad Company's Standard Minimum Clearances for All New Structures and Facilities Along Industry Tracks, as in effect at the time of the placement, construction, operation, maintenance, repair, renewal, modification or reconstruction.

Buildings, platforms, loading or unloading devices, structures and/or material or obstruction of any kind located upon the Premises which are in place at the time the Lessee takes possession of the Premises or which were constructed, placed, piled, stored, stacked, or maintained upon the Premises with the express consent of the Lessor under the terms of a previous lease between Lessor and Lessee, but which are not in conformity with Union Pacific Railroad Company's Standard Minimum Clearances, shall be considered permitted for the purposes of this Section.

Compliance with such standards shall not relieve Lessee from the Obligation to fully comply with the requirements of any federal, state, or municipal law or regulation; it being understood and agreed that Union Pacific Railroad Company's Standard Minimum Clearances are in addition to and supplemental of, any and all requirements imposed by applicable law or regulation and shall be complied with unless to do so would cause Lessee to violate an applicable law or regulation.

Lessor shall consider requests of the Lessee to impair clearances which are necessitated by the operational requirements of the Lessee, but Lessor shall not be obligated to consent to any impairment. Any necessary permission to impair clearances to which the Lessor has consented must be secured by the Lessee at its own expense, in advance of any impairment; and Lessee shall comply promptly and strictly with all requirements or orders issued by appropriate state or other public authority relating to such impairments.

Lessee assumes the risk of and shall indemnify, hold harmless, and defend the Lessor, its officers, agents, and employees, against and from all injury or death to persons or loss or damage to property of the parties hereto and their employees and agents and to the person or property of any other person or corporation resulting from the Lessee's noncompliance with the provision of this Section 9, or resulting directly or indirectly from any impairment of the clearances described in this Section 9, whether the Lessor had notice thereof or consented thereto, or whether authorized by applicable state or other public authority pursuant hereto, or existing without compliance with the provisions of this Section 9.

Any knowledge on the part of the Lessor of a violation of the clearance requirements of this Lease, whether such knowledge is actual or implied, shall not constitute a waiver and shall not relieve the Lessee of its obligation to indemnify and defend the Lessor, its officers, agents, and employees, for losses and claims resulting from such violation. However, the terms of this Section shall not apply to losses resulting from impairments or facilities created or constructed by the Lessor that will not benefit the Lessee.

Explosives and Inflammables

Section 10. It is further agreed that no gunpowder, gasoline, dynamite, or other explosives or flammable or hazardous materials shall be stored or kept upon the Premises. Nothing herein contained, however, shall prevent the storage of those hazardous commodities, if any, specified in Section 1, or oil or gasoline where same are to be used, as indicated by Section 1 hereof, contemplates such storage; nor the storage of oil or gasoline where same are used by the Lessee for fuel in the business carried on by the Lessee on the Premises, and are stored in quantities reasonable for such purposes; PROVIDED, however, that in all of such excepted cases, the Lessee shall store such commodities no closer than fifty (50) feet from the center line of any main track and strictly comply with all statutory and municipal regulations relating to the storage of such commodities.

No Construction by Lessee Over or Under Tracks

Section 11. The Lessee shall not locate or permit the location or erection of any poles upon the Premises, nor any beams, pipes, wires, structures or other obstruction over or under any tracks of the Lessor without the written consent of the Lessor.

Liability of Lessee for Breach

Section 12. The Lessee shall be liable for and shall defend against any and all injury or death of persons or loss of or damage to property, of whatsoever nature or kind, arising out of or contributed to by any breach in whole or in part of any covenant of this Lease.

Fire Damage Release

Section 13. It is understood by the parties hereto that the Premises are in dangerous proximity to the tracks of the Lessor, and that by reason thereof there will be constant danger of injury and damage by fire, and the Lessee accepts this Lease subject to such danger.

It is therefore agreed, as one of the material considerations for this Lease and without which the same would not be granted by the Lessor, that the Lessee assume all risk of loss or destruction of or damage to buildings or contents on the Premises, and of or to other property brought thereon by the Lessee or by any other person with the knowledge or consent of the Lessee, and of or to property in proximity to the Premises when connected with or incidental to the occupation thereof, and any incidental loss or injury to the business of the Lessee, where such loss, damage, destruction, injury, or death of persons is occasioned by fire caused by, or resulting from, the operation of the railroad of the Lessor, whether such fire be the result of defective engines, or of negligence on the part of the Lessor or of negligence or misconduct on the part of any officer, servant or employee of the Lessor, or otherwise, and the Lessee hereby agrees to indemnify and hold harmless and defend the Lessor, its officers, servants, and/or employees, against and from all liability, causes of action, claims, or demands which any person may hereafter asset, have, claim, or claim to have, arising out of or by reason of any such loss, damage, destruction, injury, or death of persons including any claim, cause of action or demand which any insurer of such buildings or other property may at any time assert, or undertake to assert, against the Lessor, its officers, servants and/or employees.

Water Damage Release

Section 14. The Lessee hereby releases the Lessor, its officers, servants, and/or employees, from all liability for damage by water to the Premises or to property thereon belonging to or in the custody or control of the Lessee, including buildings and contents, regardless of whether such damage be caused or contributed by the position, location, construction or condition of the railroad, roadbed, tracks, bridges, dikes, ditches or other structures of the Lessor.

Termination on Default

Section 15. It is further agreed that the breach of any covenant, stipulation or condition herein contained to be kept and performed by the Lessee, shall, at the option of the Lessor, forthwith work a termination of this Lease, and all rights of the Lessee hereunder; that no notice of such termination or declaration of forfeiture shall be required, and the Lessor may at once re-enter upon the Premises and repossess itself thereof and remove all persons therefrom or may resort to an action of forcible/unlawful entry and detainer, or any other action to recover the same. A waiver by the Lessor of the breach by the Lessee of any covenant or condition of this Lease shall not impair the right of the Lessor to avail itself of any subsequent breach thereof.

Termination by Notice

Section 16. This Lease may be terminated by written notice given by either the Lessor or the Lessee to the other party on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date on which such notice shall be given. Said notice may be given to the Lessee by serving the Lessee personally or by posting a copy thereof on the outside of any door in any building upon the Premises or by mailing the same, postage prepaid, to the Lessee at the last address known to the Lessor. Said notice may be given to the Lessor by mailing the same, postage prepaid to the office of the Director of Real Estate, Room 306, 1416 Dodge Street, Omaha, Nebraska, 68179. Upon such termination and vacation of the Premises by the Lessee, the Lessor shall refund to the Lessee on a prorata basis, any unearned rental paid in advance.

Vacation of Premises

Removal of Lessee's Property

Section 17. The Lessee covenants and agrees to vacate and surrender the quiet and peaceable possession of the Premises upon the termination of this Lease howsoever. No later than the expiration or termination date of this Lease, the Lessee shall (a) remove from the Premises, at the expense of the Lessee, all structures and other property not belonging to the Lessor; and (b) restore the surface of the ground to as good condition as the same was in before such structures were erected, including, without limiting the generality of the foregoing, the removal of foundations of such structures, the filling in of all excavations and pits and the removal of all debris and rubbish, all at the Lessee's expense, failing in which the Lessor may perform the work and the Lessee shall reimburse the Lessor for the cost thereof within thirty (30) days after bill rendered.

In the case of the Lessee's failure to remove such structures and other property, the same, at the option of the Lessor, shall upon the expiration of thirty (30) days after the termination of this Lease, become and thereafter remain the property of the Lessor; and if within one (1) year after the expiration of such thirty-day period the Lessor elects to and does remove, or cause to

be removed, said structures and other property from the Premises and the market value thereof or of the material therefrom on removal does not equal the cost of such removal plus the cost of restoring the surface of the ground as aforesaid, then the Lessee shall reimburse the Lessor for the deficit within thirty (30) days after bill rendered.

Successors And Assigns

Section 18. Subject to the provisions of Section 4 hereof, this Lease shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors and assigns.

Special Provisions

Section 19.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first herein written.

Witness:

SPOKANE INTERNATION RAILROAD COMPANY

_____ By_____

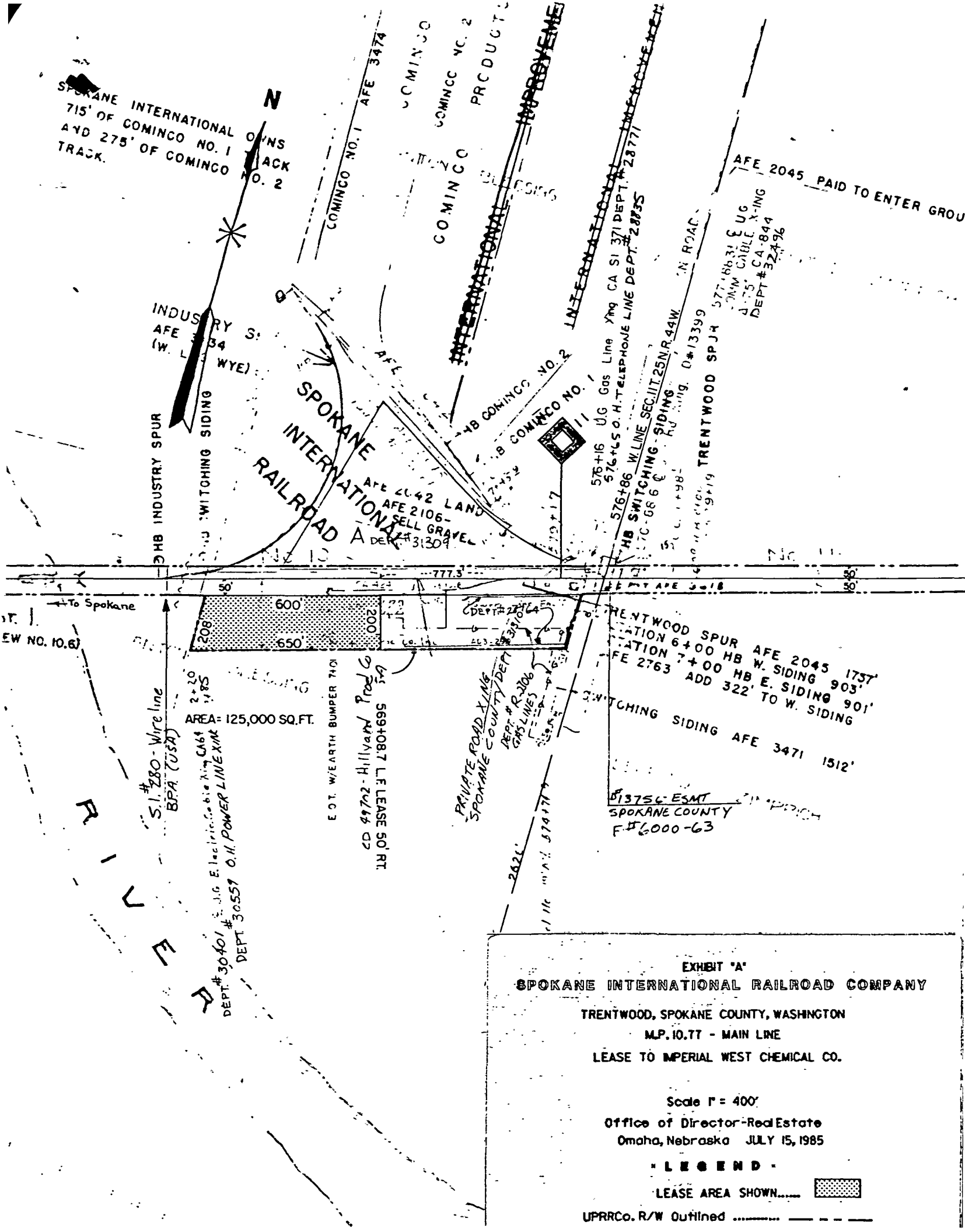
DIRECTOR-REAL ESTATE

Witness:

IMPERIAL WEST CHEMICAL CO.

X_____ X_____

President


N
SPOKANE INTERNATIONAL OWNS 715' OF COMINCO NO. 1 AND 275' OF COMINCO NO. 2 TRACK.
COMINCO NO. 1 AFE 3474
COMINCO NO. 2
COMINCO PRODUCTS
INTERSTATE 90
AFE 2045 PAID TO ENTER GROU
INDUSTRY SPUR AFE
(W. L
WYE)
HB INDUSTRY SPUR
HB SWITCHING SIDING
SPOKANE INTERNATIONAL RAILROAD
AFE 2042 LAND AFE 2106 SELL GRAVEL DEPT #31309
HB COMINCO NO. 2
HB COMINCO NO. 1
576+16 U.G. Gas Line Xing CA SI 371 DEPT. #28771
576+65 O.H. TELEPHONE LINE DEPT. #2885
576+86 W LINE SEC. 11 T. 25N R. 44W
HB SWITCHING SIDING
TRENTWOOD SPUR
DEPT #13399
DEPT #32496
777.5'
50'
To Spokane
600'
650'
208'
200'
DEPT #27764
DEPT #31906
TRENTWOOD SPUR AFE 2045 1737'
STATION 6+00 HB W. SIDING 903'
STATION 7+00 HB E. SIDING 901'
AFE 2763 ADD 322' TO W. SIDING
SWITCHING SIDING AFE 3471 1512'
#13756 ESMT
SPOKANE COUNTY
F#6000-63
S.I. #280 - Wire line
BPA (USA)
AREA = 125,000 SQ.FT.
E.O.T. W/EARTH BUMPER TYP.
CD 49702 - Hillyard Prod G
569+087 L.E. LEASE 50' RT.
PRIVATE ROAD X'ING SPOKANE COUNTY DEPT
DEPT #R-2106
GAS LINES
DEPT #30401 U.G. E. Electric Line Xing CA61
DEPT #30559 O.H. POWER LINE X'ING
RIVER
262'
EXHIBIT "A"
SPOKANE INTERNATIONAL RAILROAD COMPANY
TRENTWOOD, SPOKANE COUNTY, WASHINGTON
M.P. 10.77 - MAIN LINE
LEASE TO IMPERIAL WEST CHEMICAL CO.
Scale 1" = 400'
Office of Director-Real Estate
Omaha, Nebraska JULY 15, 1985
- LEGEND -
LEASE AREA SHOWN.....
UPRRCo. R/W Outlined .....

STATE OF NEBRASKA)
) ss.
County of Douglas)

On this _____ day of _____ 19___, before me personally appeared _____ to me know to be the _____ Director of Real Estate of OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY and UNION PACIFIC RAILROAD COMPANY, the corporations that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporations for the uses and purposes therein mentioned and on oath stated he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

_____

Notary Public in and for the
State of Nebraska

My commission expires:_____

EXHIBIT 33

INTENTIONALLY OMITTED

EXHIBIT 34
EXCERPT

IDENTIFICATION NUMBER)
</TABLE>

3424 PEACHTREE ROAD, N.E., SUITE 2100
ATLANTA, GEORGIA 30326
(PRINCIPAL EXECUTIVE OFFICES)

TELEPHONE NUMBER: (404) 846-4600

SECURITIES REGISTERED PURSUANT TO SECTION 12(B) OF THE ACT:

<TABLE>
<C> <C>

TITLE OF EACH CLASS:	NAME OF EACH EXCHANGE ON WHICH REGISTERED:
Common Stock, $0.01 par value per share (including Stock Purchase Rights relating thereto)	New York Stock Exchange

</TABLE>

SECURITIES REGISTERED PURSUANT TO SECTION 12(G) OF THE ACT:
NONE

Indicate by check mark whether the registrant(1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for at least the past 90 days. Yes X No ____

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [X]

As of January 31, 1998, 53,424,939 shares of the common stock of the registrant were issued and outstanding. The aggregate market value of the common stock held by non-affiliates of the registrant was $1,822,145,616 as determined by the January 31, 1998 closing price of $34.875 for one share of common stock on the New York Stock Exchange.

DOCUMENTS INCORPORATED BY REFERENCE

Proxy Statement for the Annual Meeting of Stockholders of the registrant to be held on May 28, 1998. Certain information therein is incorporated by reference into Part III hereof.

==========

PART I

ITEM 1. BUSINESS

GENERAL

Alumax Inc. ("Alumax" or the "Company") is the third largest aluminum company in the United States and the fourth largest in North America, based on sales, and operates over 70 plants and other manufacturing and distribution facilities in 22 states, Canada, Western Europe, Mexico, Australia, the People's Republic of China and Poland. The Company is an integrated producer of aluminum products, operating in a single segment: aluminum processing. Using alumina purchased from one principal supplier, the Company produces primary aluminum employing an electrolytic process at five reduction plants in the United States and Canada. Primary products are sold externally or further processed by Alumax into a broad range of semi-fabricated and fabricated products. The Company's products are sold to a wide variety of markets, including transportation, distributors, building and construction, consumer durables, and packaging.

Since becoming an independent public corporation in November 1993, Alumax has taken several significant steps to increase stockholder value, position the Company for future growth and strengthen its balance sheet. Alumax has devised and implemented a four-point business strategy designed to (i) enhance the Company's position as a low-cost producer of primary aluminum; (ii) grow in transportation, aluminum's largest and fastest growing market; (iii) emphasize the manufacture of more specialized, value-added products; and (iv) expand in emerging global markets where the Company believes it will be able to capitalize on its product strengths.

The four-point strategy has been complemented by the Company's continuing efforts to increase its operational strengths and efficiencies, principally by improving its business and product mix, enhancing the market share and unit volume growth prospects of its downstream businesses, reducing controllable costs and improving productivity. The Company has reconfigured its asset base by (i) disposing of various businesses and assets which did not generate, and offered limited prospects of yielding, acceptable returns or which were not integral to the Company's long-range business activities and (ii) reinvesting the proceeds derived from such dispositions into businesses having greater potential for future growth. In the four years ended December 31, 1997, sales of

</TABLE>

SCHEDULE III

SUBSIDIARIES

THE COMPANY'S SUBSIDIARIES ARE AS FOLLOWS:

RESTRICTED SUBSIDIARIES:

<TABLE>
<CAPTION>

Name of Subsidiary	Jurisdiction of Organization	Percentage of Voting Stock or Other Equity Interest Owned Directly By The Company
<S>	<C>	<C>
Alumax Inc.	Nevada	100%
Alumax Aluminum Corporation	Delaware	100%
Alumax Astechnology, Inc.	Delaware	100%
Alumax Becancour, Inc.	Delaware	100%
Alumax Employee Services, Inc.	Delaware	100%
Alumax Engineered Metal Processes, Inc.	Delaware	100%
Alumax Extrusions, Inc.	Pennsylvania	100%
Alumax Extrusions, Inc.	New York	100%
Alumax Foil Industrial Redevelopment Corp.	Missouri	100%
Alumax Foils, Inc.	Delaware	100%
Alumax International Company	Nevada	100%
Alumax Japan, Inc.	Delaware	100%
Alumax of Maryland, Inc.	Delaware	100%
Alumax Materials Management, Inc.	Delaware	100%
Alumax Mill Products, Inc.	Delaware	100%
Alumax Primary Aluminum Corporation	Delaware	100%
Alumax Quebec, Inc.	Wyoming	100%
Alumax Remelt Corporation	Delaware	100%
Alumax Retiree Services, Inc.	Delaware	100%
Alumax 6100 South Broadway Redevelopment Corporation	Missouri	100%
Alumax of South Carolina, Inc.	Delaware	100%
Alumax Technical Center, Inc.	Delaware	100%
Alumax Technical Services, Inc.	Delaware	100%
Alumax Technology Corporation	Delaware	100%
Alumax Warehouse Corporation	Delaware	100%
Alumax of Washington, Inc.	Delaware	100%
Alumet Corporation	Delaware	100%
Eastalco Aluminum Company	Delaware	100%
Hillyard Aluminum Recovery Corporation	Delaware	100%
Intalco Aluminum Corporation	Delaware	100%
Kawneer Company, Inc.	Delaware	100%
Kawneer Europe, Inc.	Delaware	100%
Kawneer France, Inc.	Delaware	100%
Kawneer Germany, Inc.	Delaware	100%
Kawneer Polska Sp. zo.o.	Poland	100%
Mt. Holly Plantation, Inc.	Delaware	100%
Murphy Properties, Inc.	Delaware	100%
Alumax Asia Limited	Hong Kong	100%
Alumax Asia Pacific Pty. Limited	Australia	100%
Alumax de Mexico, S.A. de C.V.	Mexico	100%

</TABLE>

<TABLE>

<CAPTION>

Name of Subsidiary	Jurisdiction of Organization	Percentage of Voting Stock or Other Equity Interest Owned Directly By The Company
<S>	<C>	<C>
Alumax Extrusions Australia Pty. Limited	Australia	100%
Alumax Extrusions B.V.	The Netherlands	100%
Alumax Extrusions Limited	United Kingdom	100%
Alumax Holdings B.V.	The Netherlands	100%
Alumax Holdings de Mexico, S.A. de C.V.	Mexico	100%
Alumax Extrusions Mexico, S.A. de C.V.	Mexico	100%
Comercializadora Alumax Extrusions Mexico, S.A. de C.V.	Mexico	100%
Alumax Holdings S.A.	France	100%
Alumax Polska Sp. zo.o.	Poland	100%
Alumax Recycling B.V.	The Netherlands	100%
Alumax S.A.	Spain	100%
Alumax U.K. Limited	United Kingdom	100%
Amax Holdings Australia Limited	Australia	100%
Amax Resources Australia Limited	Australia	100%
Asesoria Mexicana Empresarial, S.A. de C.V.	Mexico	100%
Intalco Aluminum Company, Ltd.	Alberta, Canada	100%
Kawneer Deutschland G.m.b.H.	Germany	100%
Kawneer Company Canada Limited	Ontario, Canada	100%
Kawneer Europe B.V.	The Netherlands	100%
Kawneer France S. A.	France	100%
Kawneer Installations Limited	Ontario, Canada	100%
Kawneer Maroc S.A.	Morocco	100%
Kawneer U.K. Limited	United Kingdom	100%

</TABLE>

SUBSIDIARIES (OTHER THAN RESTRICTED SUBSIDIARIES):

<TABLE>
<CAPTION>

Name of Subsidiary	Jurisdiction of Organization	Percentage of Voting Stock or Other Equity Interest Owned Directly By The Company
<S>	<C>	<C>
Alamo Resources Corporation	Delaware	100%
Alumax PD Holdings Pte. Ltd.	Singapore	50%
Aluminerie Lauralco, Inc.	Delaware	100%
Amax Asia, Inc.	Delaware	100%
Canalco, Inc.	Delaware	100%
Honduras-Rosario Mining Company	Delaware	100%
Lauralco Quebec, Inc.	Delaware	100%
Lauralco Superieur, Inc.	Delaware	100%
Lauralco Trois-Rivieres, Inc.	Delaware	100%
Rosario Mining of Nicaragua, Inc.	Delaware	100%
Rosario Resources Corporation	New York	100%
The Durango Corporation	Delaware	100%
The Fresnillo Company	New York	100%
Yunnan Xinmeilu Aluminum Foil Co., Ltd.	China	56%

</TABLE>

SCHEDULE IV
TO PARTICIPATION AGREEMENT

INDEBTEDNESS IN EXCESS OF $5,000,000

By: /s/

Vice President & Corporate Secretary

</TEXT>
</DOCUMENT>
<DOCUMENT>
<TYPE>EX-11.01
<SEQUENCE>7
<DESCRIPTION>CALCULATION OF EARNINGS PER COMMON SHARE
<TEXT>

<PAGE> 1

EXHIBIT 11.01

ALUMAX INC.

CALCULATION OF EARNINGS PER COMMON SHARE
(IN MILLIONS, EXCEPT PER SHARE AMOUNTS)

<TABLE>
<CAPTION>

	YEAR ENDED DECEMBER 31, 1997	YEAR ENDED DECEMBER 31, 1996	YEAR ENDED DECEMBER 31, 1995
<S>	<C>	<C>	<C>
Basic Earnings per common share:			
1. Net earnings	$ 33.7	$ 250.0	$ 237.4
2. Deduct -- Series A Convertible Preferred Dividends		(9.3)	(9.3)
3. Earnings applicable to common shares	$ 33.7	$ 240.7	$ 228.1
4. Average common shares outstanding (in thousands)	54,735	45,731	44,637
5. Basic earnings per common share (line 3 divided by line 4)	$ 0.62	$ 5.26	$ 5.11
Diluted earnings per common share:			
6. Earnings applicable to common shares	$ 33.7	$ 240.7	$ 228.1
7. Add -- Series A Convertible Preferred Dividends		9.3	9.3
8. Net earnings	$ 33.7	$ 250.0	$ 237.4
9. Average diluted shares outstanding (in thousands)	55,721	55,211	54,761
10. Diluted earnings per common share (line 8 divided by line 9)	$ 0.60	$ 4.53	$ 4.34

</TABLE>
</TEXT>
</DOCUMENT>
<DOCUMENT>
<TYPE>EX-21.01
<SEQUENCE>8
<DESCRIPTION>LIST OF SUBSIDIARIES
<TEXT>

<PAGE> 1

EXHIBIT 21.01

ALUMAX INC.

LIST OF SUBSIDIARIES

<TABLE>
<CAPTION>

Name of Subsidiary	Jurisdiction of Corporation
- ------------------	----------
<S>	<C>
Alamo Resources Corporation	Delaware
Alumax Inc.	Nevada
Alumax Aluminum Corporation	Delaware
Alumax Becancour, Inc.	Delaware
Alumax Employee Services, Inc.	Delaware
Alumax Engineered Metal Processes, Inc.	Delaware
Alumax Extrusions, Inc.	Pennsylvania
Alumax Extrusions, Inc.	New York
Alumax Foil Industrial Redevelopment Corporation	Missouri

Alumax Foils, Inc.	Delaware
Alumax International Company	Nevada
Alumax Japan, Inc.	Delaware
Alumax Materials Management, Inc.	Delaware
Alumax Mill Products, Inc.	Delaware
Alumax Primary Aluminum Corporation	Delaware
Alumax Retiree Services, Inc.	Delaware
Alumax Semi-Fabricated Products, Inc.	Delaware
Alumax Quebec, Inc.	Wyoming
Alumax 6100 South Broadway Redevelopment Corporation	Missouri
Alumax of South Carolina, Inc.	Delaware
Alumax Technical Center, Inc.	Delaware
Alumax Technical Services, Inc.	Delaware
Alumax Technology Corporation	Delaware
Alumax Warehouse Corporation	Delaware
Alumax of Washington, Inc.	Delaware
Alumet Corporation	Delaware
Canalco, Inc.	Delaware
Eastalco Aluminum Company	Delaware
Hillyard Aluminum Recovery Corporation	Delaware
Intalco Aluminum Corporation	Delaware
Kawneer Company, Inc.	Delaware
Kawneer Europe, Inc.	Delaware

</TABLE>
<PAGE> 2
<TABLE>
<CAPTION>

Name of Subsidiary	Jurisdiction of Incorporation
Kawneer Germany, Inc.	Delaware
Mt. Holly Plantation, Inc.	Delaware
Murphy Properties, Inc.	Delaware
Alumax Asia Limited	Hong Kong
Alumax Asia Pacific Pty. Limited	Australia
Alumax de Mexico, S.A. de C.V.	Mexico
Alumax Europe N.V.	Belgium
Alumax Extrusions Australia Pty. Limited	Australia
Alumax Extrusions B.V.	The Netherlands
Alumax Extrusions Limited	United Kingdom
Alumax Extrusions Mexico, S.A. de C.V.	Mexico
Alumax Holdings B.V.	The Netherlands
Alumax Holdings de Mexico, S.A. de C.V.	Mexico
Alumax Holdings S.A.	France
Alumax PD Holdings Pte Ltd. (50% Shareholder)	Singapore
Alumax Polska Sp. zo.o.	Poland
Alumax Recycling B.V.	The Netherlands
Alumax S.A.	Spain
Alumax U.K. Limited	United Kingdom
Aluminerie Lauralco, Inc.	Delaware
Amax Asia, Inc.	Delaware
Asesoria Mexicana Empresarial, S.A. de C.V.	Mexico
Comercializadora Alumax Extrusions Mexico, S.A. de C.V.	Mexico
Honduras-Rosario Mining Company	Delaware
Intalco Aluminum Company, Ltd.	Alberta, Canada
Kawneer Deutschland G.m.b.H.	Germany
Kawneer Company Canada Limited	Ontario, Canada
Kawneer Europe B.V.	The Netherlands
Kawneer France S.A.	France
Kawneer Installations Limited	Ontario, Canada
Kawneer Maroc S.A. (75% Shareholder)	Morocco
Kawneer Polska Sp. zo.o.	Poland
Kawneer U.K. Limited	United Kingdom
Lauralco Quebec, Inc.	Delaware
Lauralco Superieur, Inc.	Delaware
Lauralco Trois-Rivieres, Inc.	Delaware
Rosario Mining of Nicaragua, Inc.	Delaware
Rosario Properties, Inc.	Delaware
Rosario Resources Corporation	New York
The Durango Corporation	Delaware
The Fresnillo Company, Inc.	New York
Yunnan Xinmeilu Aluminum Foil Col., Ltd. (56% Shareholder)	China

</TABLE>
</TEXT>
</DOCUMENT>
<DOCUMENT>
<TYPE>EX-23.01
<SEQUENCE>9
<DESCRIPTION>CONSENT OF COOPERS & LYBRAND
<TEXT>

<PAGE> 1

EXHIBIT 23.01

EXHIBIT 35

CERTIFICATE OF INCORPORATION
of
KEMWATER NORTH AMERICA COMPANY

The undersigned person, acting as sole incorporator of the corporation pursuant to the General Corporation Law of the State of Delaware, does hereby make this Certificate of Incorporation for such corporation, declaring and certifying that this is my act and deed and that the facts herein stated are true

FIRST The name of the corporation is Kemwater North America Company

SECOND The address of its registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle 19801 The name of its registered agent at such address is The Corporation Trust Company

THIRD The nature of the business or purposes to be conducted or promoted by the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Laws of the State of Delaware

FOURTH The total number of shares of stock which the corporation shall have authority to issue is Eighty Thousand (80,000), consisting of Fifty Thousand (50,000) shares of Preferred Stock, $1 00 par value (hereinafter called "Preferred Stock"), and Thirty Thousand (30,000) shares of Common Stock, of the par value of $0 10 per share (hereinafter called "Common Stock")

The Preferred Stock may be issued from time to time in one or more series The Board of Directors is hereby authorized to provide for the issuance of shares of Preferred Stock in series, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereof The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of any or all of the following

a) The designation of the series, which may be by distinguishing number, letter or title;

(b) The number of shares of the series, which number the Board of Directors may thereafter (except where otherwise provided in the creation of the series) increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares then outstanding),

(c) Whether dividends, if any, shall be cumulative or noncumulative, the dividend rate of the series and the dates at which dividends, if any, shall be payable;

(d) The redemption rights and price or prices, if any, for shares of the series,

(e) The terms and amount of any sinking fund provided for the purchase or redemption of shares of the series,

(f) The amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the corporation;

(g) Whether the shares of the series shall be convertible into or exchangeable for shares of any other class or series of shares, or any other security, of the corporation or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion price or prices or rate or rates of exchange, any adjustments thereof, the date or dates as of which such shares shall be convertible and all other terms and conditions upon which such conversion or exchange may be made;

(h) Restrictions on the issuance of shares of the same series or of any other class or series and the right, if any, to subscribe for or purchase any securities of the corporation or any other corporation,

(i) The voting rights, if any, of the holders of such series, and

(j) Any other relative, participating, optional or other special powers, preferences, rights, qualifications, limitations or restrictions thereof,

all as determined from time to time by the Board of Directors and stated in the resolutions providing for the issuance of such preferred stock (a "Preferred Stock Designation").

The holders of Common Stock shall be entitled to one vote for each such share upon all questions presented to the stockholders Except as may be provided in this Certificate of Incorporation or by the Board of Directors in a Preferred Stock Designation, the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes, and holders of Preferred Stock shall not be entitled to receive notice of any meeting of stockholders at which they are not entitled to vote or consent

The corporation shall be entitled to treat the person in whose name any share of its stock is registered as the owner thereof for all purposes and shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not the corporation shall have notice thereof, except as expressly provided by applicable laws

FIFTH The Board of Directors is authorized to adopt, amend or repeal the bylaws of the corporation Election of directors need not be by written ballot

SIXTH The name and mailing address of the incorporator is

John T Cabaniss	4200 Texas Commerce Tower 600 Travis Houston, Texas 77002

SEVENTH The number of directors of the corporation shall be as provided in the bylaws of the corporation, as the same may be amended from time to time The name and address of the person who is to serve as the initial director of the corporation until the first annual meeting of stockholders or until his successor is elected and qualified is

NAME	ADDRESS
Richard C Kellogg, Jr	4200 Nationsbank Center 700 Louisiana Houston, Texas 77002

EIGHTH A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit If the General Corporation Law of the State of Delaware is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended Any repeal or modification of this paragraph by the stockholders of the corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the corporation existing at the time of such repeal or modification.

NINTH The corporation shall, to the fullest extent permitted by the General Corporation Law of the State of Delaware (including, without limitation, Section 145 thereof), as amended from time to time, indemnify any officer or director whom it shall have power to indemnify from and against any and all of the expenses, liabilities or other losses of any nature The indemnification provided in this Article NINTH shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity, while holding such office, and shall continue as to a person who has ceased to be a officer or director and shall inure to the benefit of the heirs, executors and administrators of such a person

I, THE UNDERSIGNED, hereunto set my hand this 26th day of January, 1996

John T. Cabaniss

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 01:45 PM 01/31/1996
960029799 - 2586312

KEMWATER NORTH AMERICA COMPANY

Statement of Resolution Establishing Series of Shares

Pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware, Kemwater North America Company, a Delaware corporation (the "Corporation"), submits the following statement for the purpose of establishing and designating a series of shares and fixing and determining the relative rights and preferences thereof:

1 The name of the Corporation is Kemwater North America Company

2 The resolutions, establishing and designating one series of Preferred Stock of the Corporation and fixing and determining the relative rights and preferences thereof, which are attached hereto as Appendix I and incorporated herein for all purposes, were duly adopted by the board of directors of the Corporation on and effective as of January 31, 1996.

WITNESS THE EXECUTION HEREOF, this the 31st day of January, 1996.

KEMWATER NORTH AMERICA COMPANY

By: _____
Kent R. Stephenson, Vice President

APPENDIX 1

"Establishment of Series A Preferred Stock"

"RESOLVED, that pursuant to the authority conferred on the Board of Directors of the Corporation by the Certificate of Incorporation, a series of the Corporation's authorized preferred stock, par value $1.00 per share (the "*Preferred Stock*"), is hereby established, created and approved, and that the designation and number of shares thereof and the voting and other powers, preferences and relative, participating, optional or other rights of the shares of such series, and the qualifications, limitations and restrictions thereof, are as set forth on Exhibit A attached hereto and incorporated herein by reference for all purposes.

RESOLVED that the Chairman of the Board, the President, any Vice President and the Secretary of the Corporation be, and each of them acting alone hereby is, authorized and empowered, in the name and on behalf of the Corporation, to prepare, execute and deliver, and file with the Secretary of State of the State of Delaware, a Certificate of Powers, Designations, Preferences and Rights of the Preferred Stock (a "*Certificate of Designations*"), with substantially the designations, rights and preferences set forth in Exhibit A to these resolutions, with such changes, modifications, additions and deletions therein or thereto as the officer(s) executing the same on behalf of the Corporation may approve, the execution and delivery of the Certificate of Designations by such officer(s) to conclusively evidence such approval."

"General Enabling Resolutions"

"RESOLVED that the Chairman of the Board and the officers of the Corporation be, and each of them acting alone hereby is, authorized and empowered, in the name and on behalf of the Corporation, to take, or cause to be taken, any and all such actions (including, without limitation, the execution and delivery of notices, certificates and other instruments) as in the judgment of such officer(s) may be necessary or appropriate to carry out the foregoing resolutions and to consummate the transactions contemplated thereby.

RESOLVED that, without limitation of the authorization conferred by the preceding resolution, the Chairman of the Board, the President, any Vice President and the Secretary of the Corporation be, and each of them acting alone hereby is, authorized and empowered, in the name and on behalf of the Corporation, to do all things and perform all acts which the Corporation could do to authorize, carry out and complete in all respects the transactions contemplated by . . . the foregoing resolutions . .".

EXHIBIT A

Certificate of Powers, Designations, Preferences and Rights of a Series of 10,000 Shares of 10¼% Preferred Stock, $1.00 par value per share, $1,000 per share Redemption Price and Liquidation Value, designated "Series A Preferred Stock"

The powers, designations, preferences and rights, and the qualifications, limitations or restrictions for the Series A Preferred Stock of Kenwater North America Company (the "Corporation") shall be as follows:

Section 1. Definitions. For purposes hereof, the following terms shall have the meanings set forth below:

"banking holiday" shall mean any day on which banking institutions are authorized to close in either New York or in Delaware.

"Common Stock" shall have the meaning assigned to such term in Section 6 hereof.

"Issue Date" shall mean February 2, 1996.

"Junior Dividend Stock" shall mean any shares of Junior Stock (other than Common Stock) ranking junior as to dividends to the then outstanding shares of Series A Preferred Stock.

"Junior Liquidation Stock" shall mean any shares of Junior Stock (other than Common Stock) ranking junior as to liquidation rights to the then outstanding shares of Series A Preferred Stock.

"Junior Stock" shall mean the shares of Common Stock and other capital stock of the Corporation (other than Common Stock), which, by the terms of the Certificate of Incorporation or of the instrument by which the Board of Directors, acting pursuant to authority granted in the Certificate of Incorporation, shall fix the relative rights, preferences and limitations thereof, shall be subordinated to the Series A Preferred Stock in respect of either the right to receive dividends or rights to receive assets of the Corporation in liquidation

"Parity Stock" shall mean the shares of any class or series of capital stock of the Corporation which (by the terms of the Certificate of Incorporation or of the instrument by which the Board of Directors, acting pursuant to authority granted in the Certificate of Incorporation, shall fix the relative rights, preferences and limitations thereof) shall (i) in the event that the stated dividends thereon are not paid in full, be entitled to share ratably with the Series A Preferred Stock in the payment of dividends, including accumulations, if any, in accordance with the sums which would be payable on such shares if all dividends were declared and paid in full, or (ii) in the event that the

amounts payable thereon in liquidation are not paid in full, be entitled to share ratably with the Series A Preferred Stock in any distribution of assets other than by way of dividends in accordance with the sums which would be payable in such distribution of assets if all sums payable were discharged in full. The term "Parity Stock" shall be deemed to refer (i) in Section 4 hereof, to stock of the Corporation which is Parity Stock in respect of dividend rights and (ii) in Section 5 hereof, to stock of the Corporation which is Parity Stock in respect of liquidation rights.

"Person" shall mean an individual, partnership, joint venture, trust, unincorporated organization, association or other entity.

"Redemption Date" shall mean the effective date upon which shares may be redeemed pursuant to Section 4 hereof.

"Redemption Notice" shall mean a notice of redemption provided by the Corporation to the holders of Series A Preferred Stock pursuant to Section 4.B. hereof

"Redemption Price" shall mean $1,000 per share of Series A Preferred Stock to be redeemed.

"Voting Stock" means securities of any class or classes of capital stock of the Corporation entitling the holders thereof (whether at all times or only so long as no senior class of stock has voting power by reason of a contingency) to vote in the election of members of the Corporation's Board of Directors.

Section 2 Designation and Amount.

A There is hereby created a series of the Corporation's Preferred Stock designated as "Series A Preferred Stock," and the number of shares of such series shall be ten thousand (10,000). Such number may be reduced (but not below the number of such shares at the time outstanding) by further resolution duly adopted by the Board of Directors of the Corporation and by the filing of a certificate pursuant to the provisions of the Delaware Act stating that such reduction has been so authorized. The series of Preferred Stock created hereby is referred to herein as the "Series A Preferred."

B. Concurrently upon any reduction of the number of the shares of Series A Preferred Stock as provided for in subsection A above, or any redemption, purchase, or other acquisition by the Corporation, the shares of Series A Preferred Stock that are eliminated or so redeemed, purchased or acquired shall resume the status of authorized and unissued shares of Preferred Stock of the Corporation without designation as to series and may be reclassified and reissued as part of a new series of Preferred Stock by resolution of the Board of Directors in accordance with clause (j) of Article FOURTH of the Certificate of Incorporation.

Section 3. Dividends. No dividends or distribution shall be paid to holders of Common Stock or any class of Junior Dividend Stock while any shares of Series A Preferred Stock are outstanding except upon the consent of holders of a majority of the then outstanding shares of Series A Preferred Stock. The holders of Series A Preferred Stock shall be entitled to receive cumulative dividends, if and when declared by the Corporation, at an annual rate equal to 10¼% per annum times the Redemption Price per share of Series A Preferred Stock. Such dividend will be payable to the extent cash is available to the Corporation and to the extent cash is not available to make such dividend, the dividend will be cumulated annually.

Section 4. Redemption.

A At any time after February 2, 2001, the Corporation shall have the right, exercisable at the Corporation's option, in the Corporation's sole discretion, to redeem all or any part of the then outstanding shares of Series A Preferred Stock for an amount per share, payable in cash, equal to the Redemption Price. In the event the Corporation elects to redeem shares of Series A Preferred Stock pursuant to this Section 4.A., the Corporation shall deliver a Redemption Notice to the holders of record of the shares of Series A Preferred Stock, such Redemption Notice to be made in accordance with the provisions of Section 4.B. hereof.

B. Within five days after making any election to redeem shares of Series A Preferred Stock in accordance with Section 4.A., the Corporation shall deliver to each holder of record, in accordance with Section 11 hereof, at such holder's address as it appears on the books of the Corporation, a notice that shall advise such holder that with respect to Section 4.A., if the Corporation is exercising its right to redeem the shares of Series A Preferred Stock: (a) that the Corporation is exercising such right, and (b) instructions as to the manner by which a holder may submit the certificates for his shares of Series A Preferred Stock in order to receive payment therefor.

C. In order to facilitate the redemption of Series A Preferred Stock pursuant to this Section 4, the Board of Directors may cause the transfer books of the Corporation to be closed as to such shares not more than 50 days prior to the Redemption Date thereof.

D. Upon any redemption to be affected pursuant to Section 4.A., shares to be redeemed shall be prorated among all holders of Series A Preferred Stock or selected by lot in such manner as the Board of Directors may determine; provided that only whole shares shall be selected for redemption The Corporation will notify holder(s) of shares of Series A Preferred Stock selected for redemption as soon as practicable after the election to redeem, and in any event not less than 15 days prior to the applicable Redemption Date, and any such notice shall include instructions as to how certificates for shares so selected for redemption are to be surrendered by such holder(s) for redemption.

E. If, on or before any Redemption Date, the Corporation has deposited in trust with a bank or trust company in the City of New York, New York, having a capital and surplus of at least $50,000,000.00, the funds necessary for the redemption of the shares of Series A Preferred

Stock to be redeemed pursuant to this Section 4 on such Redemption Date accompanied by irrevocable instructions to apply such funds for the redemption of such shares, and if on or before the date of such deposit the Corporation has given a Redemption Notice, or made provisions satisfactory to such bank or trust company for timely giving thereof, then from and after such Redemption Date, all shares to be redeemed shall no longer be deemed to be outstanding, and all rights of holders of such shares of Series A Preferred Stock to be redeemed shall cease and terminate, except for the right to receive the Redemption Price plus accrued but unpaid dividends thereon (in cash or Common Stock) without interest. In case any holder of shares of Series A Preferred Stock which have been called for redemption has not, within two years after the Redemption Date, claimed the amount or shares of Common Stock deposited with respect to the redemption thereof, any such bank or trust company shall, upon demand, pay over to the Corporation such unclaimed amount and thereupon such bank or trust company shall be relieved of all responsibility in respect thereof to such holder, and such holder shall look only to the Corporation for the payment thereof. Any interest accrued on funds and cash dividends paid or shares of Common Stock so deposited shall be paid to the Corporation from time to time.

Section 5. Liquidation Preference. In the event of a voluntary or involuntary liquidation, dissolution or winding up of the Corporation, before any payment shall be made or any assets distributed to the holders of the Corporation's outstanding shares of Common Stock or any other Junior Liquidation Stock, each holder of a share of Series A Preferred Stock shall be entitled to receive out of the assets of the Corporation, whether such assets are stated capital or surplus of any nature, an amount per share of Series A Preferred Stock (such amount per share being referred to herein as the "Series A Liquidation Preference") equal to but not greater than the Redemption Price, plus any cumulated but unpaid dividends thereon. All of the Corporation's assets available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock and Parity Stock in proportion to the respective preferences in liquidation to which each is entitled (but only to the extent of such preferential amounts). Neither a consolidation, merger or other business combination of the Corporation with or into another corporation or other entity, nor a sale or transfer of all or part of the Corporation's assets for cash, securities or other property shall constitute a liquidation, dissolution or winding up of the Corporation for purposes of this Section 5.

Section 6. Ranking All shares of Series A Preferred Stock shall rank (i) senior, both as to payment of dividends and as to distributions of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, to all shares of the Corporation's common stock, par value $0.10 per share (the "Common Stock") and all shares of the Corporation's Junior Stock whether presently outstanding or issued after the date hereof, (ii) senior, as to payment of dividends, to all shares of the Corporation's Junior Dividend Stock and, as to distributions of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, all shares of the Corporation's Junior Liquidation Stock issued after the date hereof and (iii) on a parity, as to payment of dividends or distributions of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or both, as the case may be, with all shares of Parity Stock issued after the date hereof.

Section 7. Voting Rights.

A. The holders of Series A Preferred Stock shall not have any voting rights except as set forth in this Section 7 or as otherwise from time to time required by law. In connection with any right to vote and except as otherwise provided in this Section 7, each holder of Series A Preferred Stock will have one vote for each share held.

B. So long as any shares of Series A Preferred Stock remain outstanding, the Corporation will not issue (i) any shares of Parity Stock or (ii) any shares of any class or series of capital stock of the Corporation having rights to receive dividends or rights to receive assets of the Corporation in liquidation that have priority over the outstanding shares of Series A Preferred Stock unless such issuance is approved in advance by the affirmative vote or written consent of the holders of a majority of the then outstanding shares of Series A Preferred Stock.

C. So long as any of the Series A Preferred Stock is outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of a majority of the outstanding shares of Series A Preferred Stock, given in person or by proxy either in writing or at any special or annual meeting called for such purpose, amend, alter or repeal any provision of this Certificate (as hereinafter defined), so as to adversely affect the relative rights, preferences, qualifications, limitations or restrictions of the Series A Preferred Stock.

D. The voting provisions set forth in this Section 7 shall not apply if, at or prior to the time when such vote would otherwise be required, all outstanding shares of Series A Preferred Stock shall have been redeemed or sufficient funds shall have been deposited in trust to effect such redemption, and such redemption is scheduled to be consummated within 90 days after such time.

Section 8. Status of Acquired Shares. Shares of Series A Preferred Stock which have been issued and reacquired in any manner by the Corporation, or otherwise acquired by the Corporation will be restored to the status of authorized and unissued shares of Preferred Stock, without designation as to series, and may thereafter be issued in accordance with the Certificate of Incorporation, but not as shares of Series A Preferred Stock.

Section 9. Preemptive Rights. The Series A Preferred Stock is not entitled to any preemptive rights or subscription rights in respect of any securities of the Corporation.

Section 10. Severability of Provisions. Whenever possible, each provision hereof shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision hereof is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions hereof. If a court of competent jurisdiction should determine that a provision hereof would be valid or enforceable if a period of time were extended or shortened or a particular percentage were increased or decreased, then such court may make such change as shall be necessary to render the provision in question effective and valid under applicable law.

Section 11. Notices. Any notice required to be given under this Certificate shall be sufficient if in writing, sent by facsimile transmission or electronic telecommunications equipment (with confirmation of receipt), or by courier service (with proof of service), hand delivery or certified or registered mail (return receipt requested and first-class postage prepaid), and addressed (i) if to any record holder of shares of Series A Preferred Stock, to the address or facsimile number of such record holder as reflected in the transfer records for shares of Series A Preferred Stock maintained by the Corporation or any transfer agent, or (ii) if to the Corporation, at its principal executive offices to the attention of its Chief Executive Officer. Any notice given in accordance with this provision by the Corporation shall be deemed delivered as of the date receipt or proof of service or delivery is confirmed or on the third business day after the date mailed.

Section 12 Rescission. The Corporation may cause a certificate, setting forth a resolution adopted by the Board of Directors of the Corporation stating that none of the authorized shares of Series A Preferred Stock remain outstanding, to be filed with the Secretary of State of the State of Delaware and at such time as such certificate becomes effective, all references to Series A Preferred Stock in the Certificate of Incorporation of the Corporation shall be eliminated from the Certificate of Incorporation and the shares of Preferred Stock designated hereby as Series A Preferred Stock shall constitute authorized and unissued shares of Preferred Stock and may be reclassified and reissued as designated by the Board of Directors of the Corporation in accordance with Article FOURTH of the Certificate of Incorporation as part of any new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 04:30 PM 12/26/2001
010669004 - 2586312

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

KEMWATER NORTH AMERICA COMPANY

Kemwater North America Company, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

A. The name of the Corporation is Kemwater North America Company.

B. The Certificate of Incorporation was filed in the office of the Secretary of State of the State of Delaware on the 26th day of January, 1996.

C. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with Section 303 of the Delaware General Corporation Law (the "DGCL").

D. The text of the Certificate of Incorporation is hereby amended and restated to read in full as follows:

FIRST: The name of the Corporation is Kemwater North America Company.

SECOND: The address of its registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Laws of the State of Delaware.

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is Eighty Thousand (80,000), consisting of Fifty Thousand (50,000) shares of Preferred Stock, par value of One Dollar ($1.00) per share (hereinafter called "Preferred Stock"), and Thirty Thousand (30,000) shares of Common Stock, par value of Ten Cents ($0.10) per share (hereinafter called "Common Stock").

The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized to provide for the issuance of shares of Preferred Stock in series, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereof.

The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of any or all of the following:

(a) The designation of the series, which may be by distinguishing number, letter or title;

(b) The number of shares of the series, which number the Board of Directors may thereafter (except where otherwise provided in the creation of the series) increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares then outstanding);

(c) Whether dividends, if any, shall be cumulative or noncumulative, the dividend rate of the series and the dates at which dividends, if any, shall be payable;

(d) The redemption rights and price or prices, if any, for shares of the series;

(e) The terms and amount of any sinking fund provided for the purchase or redemption of shares of the series;

(f) The amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;

(g) Whether the shares of the series shall be convertible into or exchangeable for shares of any other class or series of shares, or any other security, of the Corporation or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion price or prices or rate or rates of exchange, any adjustments thereof, the date or dates as of which such shares shall be convertible and all other terms and conditions upon which such conversion or exchange may be made;

(h) Restrictions on the issuance of shares of the same series or of any other class or series and the right, if any, to subscribe for or purchase any securities of the Corporation or any other corporation;

(i) The voting rights of the holders of such series; provided, however, that with respect to any series of Preferred Stock, the terms of such stock shall include adequate provisions for the election of a director representing such Preferred Stock in the event of default in the payment of dividends on such Preferred Stock; and

(j) Any other relative, participating, optional or other special powers, preferences, rights, qualifications, limitations or restrictions thereof all as determined from time to time by the Board of Directors and stated in the resolutions providing for the issuance of such preferred stock (a "Preferred Stock Designation").

The holders of Common Stock shall be entitled to one vote for each such share upon all questions presented to the stockholders. Except as may be provided in this Certificate of Incorporation or by the Board of Directors in a Preferred Stock Designation, the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes, and holders of Preferred Stock shall not be entitled to receive notice of any meeting of stockholders at which they are not entitled to vote or consent.

The Corporation shall be entitled to treat the person in whose name any share of its stock is registered as the owner thereof for all purposes and shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not the Corporation shall have notice thereof; except as expressly provided by applicable laws.

FIFTH: The Board of Directors is authorized to adopt, amend or repeal the bylaws of the Corporation. Election of directors need not be by written ballot.

SIXTH: The number of directors of the Corporation shall be as provided in the bylaws of the Corporation, as the same may be amended from time to time.

SEVENTH: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Any repeal or modification of this paragraph by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

EIGHTH: The Corporation shall, to the fullest extent permitted by the DGCL (including, without limitation, Section 145 thereof), as amended from time to time, indemnify any officer or director whom it shall have power to indemnify from and against any and all of the expenses, liabilities or other losses of any nature. The indemnification provided in this Article EIGHTH shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity, while holding such office, and shall continue as to a person who has ceased to be an officer or director and shall inure to the benefit of the heirs, executors and administrators of such a person.

NINTH: Notwithstanding any other provision contained herein to the contrary, the Corporation shall not issue non-voting equity securities.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by Michael J. Ferris, its President, and Kent R. Stephenson, its Vice President, General Counsel and Secretary, this 26th day of December, 2001.

BY: */s/ Michael J. Ferris*
Michael J. Ferris
President

ATTEST: */s/ Kent R. Stephenson*
Kent R. Stephenson
Vice President, General Counsel
and Secretary

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 01:00 PM 01/29/2002
020058412 – 2586312

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
KEMWATER NORTH AMERICA COMPANY

Pursuant to Section 242 of the General Corporation Law of the State of Delaware

The undersigned, pursuant to the provisions of the General Corporation Law of the State of Delaware, do hereby certify and set forth as follows:

FIRST: The name of the corporation is Kemwater North America Company.

SECOND: The amendment to the Certificate of Incorporation to be effected hereby is as follows:

Article First: The name of the corporation is KNA California, Inc.

THIRD: The amendments effected herein were authorized by the affirmative vote of the holders of a majority of the outstanding shares entitled to vote thereon at a meeting of shareholders pursuant to Section 242 of the General Corporation Law of the State of Delaware.

FOURTH: The capital of the corporation will not be reduced under or by reason of this amendment.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 29th day of January 2002.

by: Eva Clark

Eva Clark, Assistant Secretary

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 03/18/2002
020188949 – 2586312

CERTIFICATE OF CHANGE OF REGISTERED AGENT AND LOCATION OF REGISTERED OFFICE

It is hereby certified that:

1. The name of the corporation (hereinafter called the "Corporation") is KNA CALIFORNIA, INC.

2. The registered office of the Corporation within the State of Delaware is hereby changed to 615 South Dupont Highway, Dover DE 19901, County of Kent.

3. The registered agent of the Corporation within the State of Delaware is hereby changed to Capitol Services, Inc., the business office of which is identical with the registered office of the corporation as hereby changed.

4. The Corporation has authorized the changes hereinbefore set forth by resolution of its Board of Directors.

Executed on March 12, 2002.

KNA CALIFORNIA, INC.
Name of Corporation

Eva Clark
Signature

Eva Clark, Assistant Secretary
Printed Name and Title

STATE OF DELAWARE
CERTIFICATE OF CHANGE
OF REGISTERED AGENT AND/OR
REGISTERED OFFICE

The Board of Directors of KNA California, Inc.,
a Delaware Corporation, on this 26 day of
September, A.D. 2007, do hereby resolve and order that the
location of the Registered Office of this Corporation within this State be, and the
same hereby is Corporation Trust Center
1209 Orange Street, in the City of Wilmington,
County of New Castle Zip Code 19801.

The name of the Registered Agent therein and in charge thereof upon whom process against this Corporation may be served, is THE CORPORATION TRUST COMPANY.

The Corporation does hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Directors at a meeting held as herein stated.

IN WITNESS WHEREOF, said Corporation has caused this certificate to be signed by an authorized officer, the 26 day of September, A.D., 2007.

By: Theodore Z
Authorized Officer

Name: Ted Zimmermann
Print or Type

Title: Secretary

State of Delaware
Secretary of State
Division of Corporations
Delivered 11:18 AM 10/10/2007
FILED 10:46 AM 10/10/2007
SRV 071100100 - 2586312 FILE

DB023 - 08/23/2005 C T System Online

EXHIBIT 36

Folder: 0825-08
Audit No: SI82508

LEASE OF PROPERTY

THIS LEASE ("Lease") is entered into on the 20 day of AUGUST, 1998 between UNION PACIFIC RAILROAD COMPANY ("Lessor") and KEMWATER NORTH AMERICA COMPANY, a Delaware corporation, whose address is 2185 NORTH CALIFORNIA BLVD., SUITE 500, WALNUT CREEK, California 94596 ("Lessee").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

Article I. PREMISES; USE.

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises") at Trentwood, Washington, as shown on the print dated April 11, 1995, marked Exhibit A, hereto attached and made a part hereof, subject to the provisions of this Lease and of Exhibit B attached hereto and made a part hereof. The Premises may be used for the manufacturing and distribution of aluminum sulfate and oxides, storage and handling of sulfuric acids, a hazardous commodity and purposes incidental thereto and for no other purpose.

Article II. TERM.

The term of this Lease shall commence on July 15, 1998 and end on July 14, 2003, and unless sooner terminated as provided in this Lease, shall extend for one year; and thereafter, shall automatically be extended from year to year.

Article III. RENT.

A. Lessee shall pay to Lessor, in advance, rent of Twenty-Five Thousand Eight Hundred Sixty Dollars ($25,860.00) per annum. The rent shall be increased by Three Percent (3%) annually, cumulative and compounded.

B. At the end of the initial Five (5) year term and not more than once every Three (3) years, Lessor may redetermine the rent. In the event Lessor does redetermine the rent, Lessor shall notify Lessee of such change.

Article IV. SPECIAL PROVISION - CANCELLATION

Effective upon commencement of the term of this Lease, the Lease dated July 17, 1995, identified as Audit No SI82508, together with any and all supplements and amendments, is

P.D.

SEP 01 1998

canceled and superseded by this Lease, except for any rights, obligations or liabilities arising under such prior lease before cancellation, including any consent to conditional assignment, chattel agreement, or consent to sublease.

Article V. SPECIAL PROVISION - INSURANCE

A. At all times during the term of this Lease, Lessee shall, at Lessee's sole cost and expense, procure and maintain the following insurance coverage:

General Public Liability providing bodily injury, including death, personal injury and property damage coverage with combined single limit of at least One Million Dollars ($1,000,000.00) per occurrence and a general aggregate limit of at least One Million Dollars ($1,000,000.00). This insurance shall provide Broad Form Contractual Liability covering the indemnity provisions contained in this Agreement, severability of interests, and name Lessor as an additional insured. If coverage is purchased on a "claims-made" basis, it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked if insurance covering the time period of this Agreement is canceled.

B. Lessee shall furnish Lessor with certificate(s) of insurance evidencing the required coverage and, upon request, a certified duplicate original of the policy. The insurance company issuing the policy shall notify Lessor, in writing, of any material alteration including any change in retroactive date in any "claims-made" policies or substantial reduction of aggregate limits, c cancellation at least thirty (30) days prior thereto. The insurance policy shall be written by a reputable insurance company or companies acceptable to Lessor or with a current Best's Insurance Guide Rating of B and Class VII or better, and which is authorized to transact business in the state where the Premises are located.

C. Lessee hereby waives its right of subrogation under the above insurance policy against Lessor for payment made to or on behalf of employees of Lessee or its agents or for loss of its owned or leased property or property under its care, custody and control while on or near the Premises or any other property of Lessor. Lessee's insurance shall be primary with respect to any insurance carried by Lessor.

Article VI. SPECIAL PROVISION - TERMINATION

Effective upon commencement of the term of this Lease, Exhibit B, Section 13, Subsection B is deleted for the initial Five (5) year term. If the Lease is extended said Section 13 and Subsection B are reinstated.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

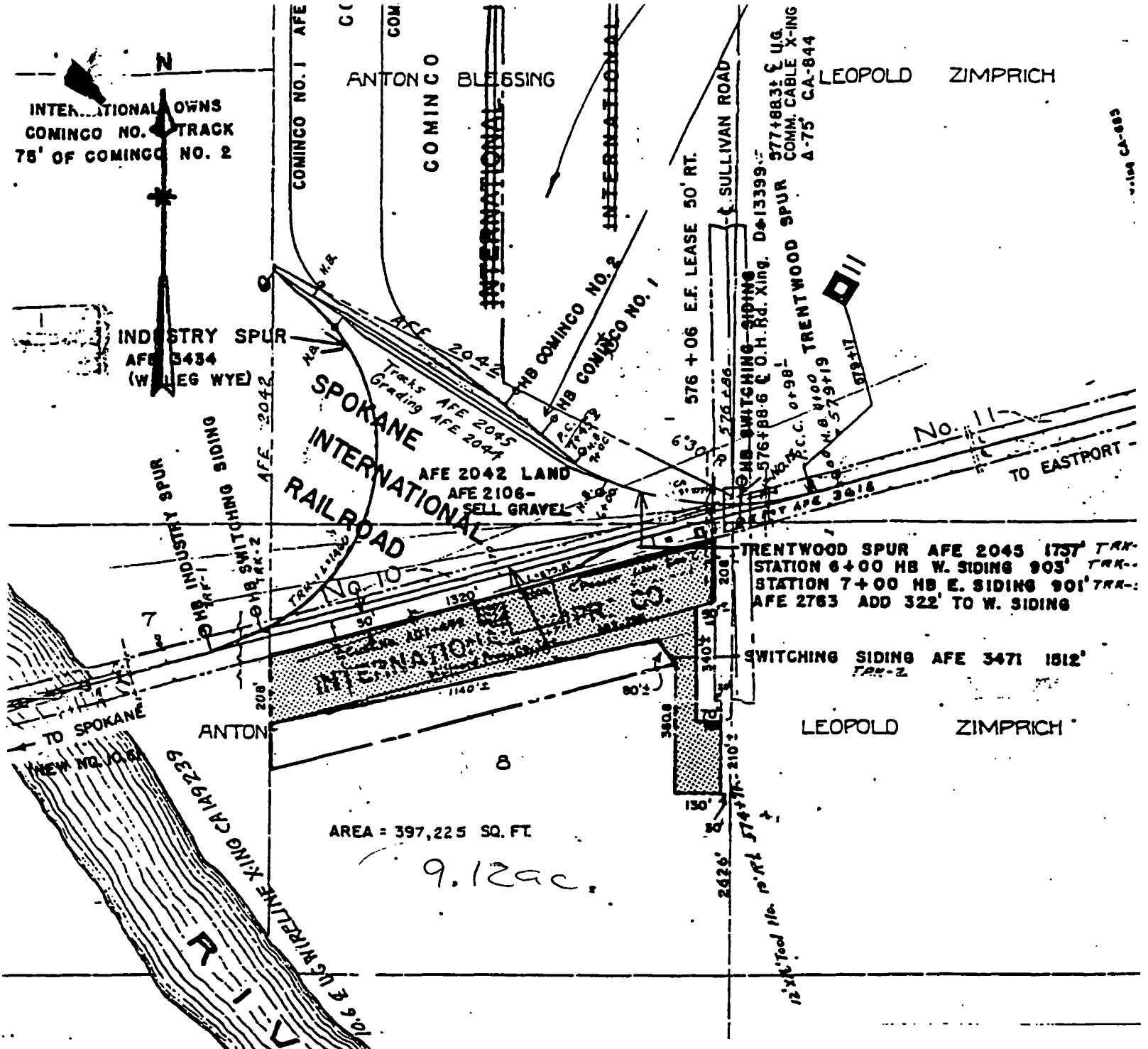
UNION PACIFIC RAILROAD COMPANY

By: _____
Director - Real Estate

KEMWATER NORTH AMERICA COMPANY

By: _____
Title: VICE PRESIDENT

NOTE: Cancels and Supersedes Lease SI-82508 dated July 17, 1995.



NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISION.

EXHIBIT "A"
UNION PACIFIC RAILROAD COMPANY
Trentwood, Spokane County, Washington
M.P. 10.67 - Spokane Subdivision

SCALE: 1" = 400'

OFFICE OF CONTRACTS & REAL ESTATE
OMAHA, NE Date: April 11, 1995
Folder: 825-08

* L E G E N D *

Lease Area Shown

IND LS 110695
APPROVED, LAW

EXHIBIT B

Section 1. IMPROVEMENTS.

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2. RESERVATIONS AND PRIOR RIGHTS.

A. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B. Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

C. This Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew such outstanding rights.

Section 3. PAYMENT OF RENT.

Rent (which includes the annual rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4. TAXES AND ASSESSMENTS.

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.

B. If the Premises are specially assessed for public improvements, the annual rent will be automatically increased by 12% of the full assessment amount.

Section 5. WATER RIGHTS.

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. CARE AND USE OF PREMISES.

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the Premises in a safe, neat, clean and presentable condition, and in good condition and repair. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard and all water flow shall be directed away from the tracks of the Lessor.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.

C. If any improvement on the Premises not belonging to Lessor is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises.

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use (i) small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises and (ii) other Hazardous Substances, other than hazardous wastes as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., as amended ("RCRA"), that are necessary for the conduct of Lessee's business at the Premises as specified in Article I. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It

shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use, or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 12), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any exceptions of the foregoing to Lessee's responsibility for Hazardous Substances applies.

E. In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Landlord reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F. For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under federal, state or local law.

Section 8. UTILITIES.

A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.

B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C. Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.

D. Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

Section 11. AS-IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) and arising from or related to (i) any use of the Premises by Lessee or any invitee or licensee of Lessee, (ii) any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or (iii) any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss caused by the sole, active and direct negligence of any Indemnified Party if the Loss (i) was not occasioned by fire or other casualty, or (ii) was not occasioned by water, including, without limitation, water damage due to the position, location, construction or condition of any structures or other improvements or facilities of any Indemnified Party.

C. Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.

D. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. TERMINATION.

A. Lessor may terminate this Lease by giving Lessee notice of termination, if Lessee (i) fails to pay rent within fifteen (15) days after the due date, or (ii) defaults under any other obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given.

B. Notwithstanding the term of this Lease set forth in Article II.A., Lessor or Lessee may terminate this Lease without cause upon thirty (30) days' notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 15A), at which time Lessor shall refund to Lessee, on a pro rata basis, any unearned rental paid in advance.

Section 14. LESSOR'S REMEDIES.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as

provided in Section 13 A) above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

Section 15. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A. Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, and restored the surface of the ground to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Lessee has not completed such removal and restoration within thirty (30) days after termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

Section 16. FIBER OPTICS.

Lessee shall telephone Lessor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried on the Premises. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

Section 17. NOTICES.

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Contracts & Real Estate Department, Room 1100, 1416 Dodge Street, Omaha, Nebraska 68179; and to Lessee at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are personally served or sent by courier service shall be deemed served upon receipt.

Section 18. ASSIGNMENT.

A. Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.

B. Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 19. CONDEMNATION.

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee' business.

Section 20. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. ENTIRE AGREEMENT.

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction. Except for the unilateral redetermination of annual rent as provided in Article III., this Lease may be amended only by a written instrument signed by Lessor and Lessee.