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By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, under the seal of the National Archives and Records Administration, that the attached production(s) is a true and correct copy of documents in his custody.



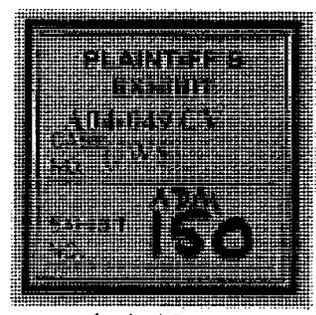
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NA FORM 13040 (10-86)

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 COMINCO ALASKA INCORPORATED)
)
 Defendant.)

Civil Action No.

CONSENT DECREE



1 of 121
Exhibit 6
Page 1 of 52
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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

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 Plaintiff,)
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JUL 14 1997

FILED

NOV 25 1997

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

By: JP Deputy

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I. BACKGROUND

A. Contemporaneously with the lodging of this Decree, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 et seq., as amended by the Oil Pollution Act of 1990 ("OPA"), Pub. L. 101-380, 104 Stat. 484 ("Complaint").

B. The United States in its complaint seeks, *inter alia*, injunctive relief and assessment of civil penalties against Cominco Alaska Incorporated ("Cominco") for alleged violations of the CWA in connection with its ownership or operation of the Red Dog Mine and associated mill and port site facilities in northwestern Alaska.

C. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1395(a), and Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E). This Court also has personal jurisdiction over Cominco. Solely for the purposes of this Consent Decree and the underlying Complaint, Cominco waives

all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Cominco shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Cominco and its successors and assigns. Any change in ownership or corporate status of Cominco including, but not limited to, any transfer of assets or real or personal property shall in no way alter Cominco's responsibilities under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CWA or in regulations promulgated under the CWA shall have the meaning assigned to them in the CWA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Alaska Fish & Game" and "AFD&G" shall mean the State of Alaska Department of Fish & Game and any successor departments or agencies of the State of Alaska.

"Aquatic Taxa Study" shall mean the study to be conducted and the associated report to be prepared by Cominco pursuant to the Aquatic Taxa Study Supplemental Environmental Project described in Appendix D to this Decree.

"Complaint" shall mean the civil complaint initiating this action that was filed concurrently with the lodging of this Decree.

"Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIII). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal or State of Alaska holiday. In computing any period of time under this Decree, where the last day would fall on a Saturday, Sunday, or federal or State of Alaska holiday, the period shall run until the close of business of the next working day.

"Design Submittal" shall mean the submittal addressing design criteria required pursuant to the Fish Protection Barrier Statement of Work.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Fish Protection Barrier" shall mean the structure to be constructed by Cominco that is intended to inhibit fish migration in the Middle Fork Red Dog Creek, pursuant to the Fish Protection Barrier Supplemental Environmental Project described in Appendix C to this Decree.

"Groundwater Monitoring System" shall mean the equipment and facilities for the long term physical monitoring of groundwater and permafrost that are to be installed and maintained by Cominco pursuant to the Groundwater Monitoring Supplemental Environmental Project described in Appendix B to this Decree.

"Groundwater Monitoring Program" shall mean the groundwater monitoring activities and the operation and maintenance of the Groundwater Monitoring System required of Cominco pursuant to the Groundwater Monitoring Supplemental Environmental Project described in Appendix B to this Decree.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Groundwater Monitoring System or the Fish Protection Barrier pursuant to the operation and maintenance plans developed pursuant to this Decree and the Statement of Work ("SOW") for each.

"Parties" shall mean the United States and Cominco.

"Performance Standards" shall mean those specific performance and/or construction requirements set out in the "Performance Standards" sections of the Statements of Work for the Groundwater Monitoring System and for the Fish Protection Barrier.

"Plaintiff" shall mean the United States.

"Red Dog Mine" shall mean the mine and related facilities operated by Cominco at the western edge of the Delong Mountains in northwest Alaska.

"Regional Administrator" shall mean the Regional Administrator of Region X of EPA or his or her designee or successor.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"State" shall mean the State of Alaska.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Supplemental Environmental Projects described in Appendices B, C, and D to this Consent Decree and any modifications thereto made in accordance with this Consent Decree.

"Supplemental Environmental Project" or "SEP" shall mean the activities to benefit and/or protect natural resources and the environment identified in Section VIII of this Decree and in Appendices B, C, and D to this Consent Decree.

"United States" shall mean the United States of America.

"Work" shall mean all activities, other than operation and maintenance, that Cominco is required to perform under Section VIII of this Consent Decree.

V. GENERAL PROVISIONS

A. Compliance With Applicable Law

4. All activities undertaken by Cominco pursuant to this Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations.

B. Permits

5. Where any portion of the Work requires a federal or state permit or approval, Cominco shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

6. Cominco may seek relief under the provisions of Section XV (*Force Majeure*) of this Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work.

7. This Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state law or regulation.

C. Notice of Obligations to Successors

8. Unless otherwise agreed to in writing by EPA, no action by Cominco, including but not limited to any merger, acquisition, name change, conveyance of an interest in real property, lease, or change in operating agreements, shall release or otherwise affect the liabilities and/or obligations of Cominco under this Decree, nor may Cominco transfer its obligations under this Decree to any other entity without prior written consent of EPA. Prior to any merger, acquisition, or conveyance of an interest in or relinquishment of control of any facility addressed by this Decree, Cominco shall provide notice to any potential successor-in-interest of Cominco's obligations under this Decree by providing such successor-in-interest with a copy of this Decree. The giving of an assignment for security purposes to secure the performance of any monetary obligation of Cominco shall not be

subject to this Paragraph. Cominco shall provide EPA with at least 30 days prior written notice of any action or transaction that could have a substantial material effect on Cominco's ability to meet its obligations under, or assure its compliance with, this Decree.

D. Contractors

9. Any contractor selected by Cominco to perform any of the activities required by this Decree must be approved, in writing, by EPA.

VI. CIVIL PENALTIES

10. Within 15 days of the later of the entry of this Decree, or receipt of the instructions from the United States as described below, Cominco shall pay to the United States \$1,700,000 as a civil penalty for claims asserted in the Complaint. Payment of this amount shall be made by Electronic funds Transfer ("EFT") to the United States Department of Justice lockbox bank, referencing this action and the DOJ number 90-5-1-1-5010. Payment by EFT shall be made in accordance with instructions provided to Cominco by the United States. Notice of payment pursuant to this Paragraph shall be sent to the United States as provided in Section XX (Notices and Submissions).

VII. INTERIM EFFLUENT LIMITATIONS AND RELATED REQUIREMENTS

11. Upon entry of this Decree and continuing until the time specified in Paragraph 12 below, Cominco shall at all times comply with all effluent limitations and all other requirements

and conditions as set forth in the NPDES permit No. AK-004064-9, that became effective on August 21, 1986, and that expired August 20, 1991 (the "Port Site Permit"). The discharges covered by this Paragraph are only those discharges specifically addressed in the Port Site Permit. The Port Site Permit is attached hereto in Appendix A, and is fully incorporated herein by reference. Any failure to comply with the effluent limitations, conditions and/or requirements set forth in the Port Site Permit shall subject Cominco to stipulated penalties in accordance with Section XVI (Stipulated Penalties). Notwithstanding the foregoing, Cominco may continue to utilize the two current locations of outfall 001 at the saltwater lagoon that were approved by EPA for sewage and desalinization effluent instead of the location specified in the Port Site Permit. Nothing in this Decree shall constitute or be deemed to be a permit or authorization by EPA to discharge any contaminant or effluent pursuant to the Clean Water Act or any other provision of federal or state law. Further, nothing herein shall supersede, modify, or supplement any requirements of any subsequently issued permit.

12. Upon the occurrence of any of the following, the provisions of Paragraph 11 shall terminate and be of no further force and effect as to the discharges which occur after such termination: (1) issuance of a final permit decision by the Regional Administrator on Cominco's application for a NPDES permit for the port site dated October 22, 1992 and amended

January 30, 1996 (the "Pending Application"); (2) withdrawal of the Pending Application by Cominco or its successor in interest; or (3) amendment of the Pending Application by Cominco or its successor-in-interest and issuance by EPA of notice to Cominco that EPA has determined that the amendment was made for the primary purpose of delaying EPA's action on the Pending Application.

VIII. PERFORMANCE OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS BY COMINCO

A. Commitments by Cominco

13. Cominco shall undertake the following Supplemental Environmental Projects and meet the specific performance standards for the implementation of each project as set forth in the relevant Appendices attached to this Decree. Specifically, Cominco shall:

a. Design, construct and install the Groundwater Monitoring System and prepare a plan for the operation and maintenance of such system in accordance with the requirements set forth in Appendix B to this Decree;

b. Conduct routine groundwater monitoring operations, and maintain the effectiveness of the Groundwater Monitoring System, in accordance with the requirements of Appendix B to this Decree;

c. Design and construct the Fish Protection Barrier in accordance with the requirements set forth in Appendix C to this Decree; and

d. Perform the Aquatic Taxa Study and prepare a written report of the results, in accordance with the requirements of Appendix D.

14. Cominco shall implement the Supplemental Environmental Projects described in Appendices B, C, and D, in accordance with the schedules contained therein or the schedules otherwise approved by EPA pursuant to the terms of this Decree.

15. Cominco expressly represents that to the best of its knowledge and belief, as of the date of the lodging of this Decree, the Supplemental Environmental Projects identified in Paragraph 13 are not currently required or mandated by:

a) federal or state law, regulation or order of a federal or state court; b) local law or ordinance; or c) contractual agreements with any other entities, including but not limited to, the State of Alaska and its subdivisions, and Native Corporations.

B. SEP Design and Construction.

16. In accordance with the schedule(s) established in or pursuant to Appendices B and C, Cominco shall submit to EPA work plans and/or a final design submittal that addresses the implementation of the Groundwater Monitoring Program SEP and the Fish Protection Barrier SEP. Each work plan or final design submittal shall, upon its approval by EPA, be incorporated into and become enforceable under this Decree.

17. All work plans relating to the Groundwater Monitoring System and the final design submittal for the Fish Protection

Barrier shall include plans and schedules for implementation of all tasks identified in the relevant Statement of Work covered by such work plan or design submittal. These plans and schedules shall address, at a minimum: (a) completion of all deliverables, submittals and reports; (b) the commencement and completion of the construction; and (c) identifiable contingencies (e.g., weather, availability of materials, issuance of needed permits) that could affect such scheduling.

18. Within thirty (30) days of Cominco's receipt of written approval by EPA of a work plan or final design submittal, Cominco shall submit to EPA a Health and Safety Plan for field design activities which conforms to the applicable federal and/or state worker health and safety laws.

19. Upon approval by EPA of any work plan or final design submittal and the submission to EPA of the Health and Safety Plan for all field activities, Cominco shall implement the work plan or final design submittal in accordance with any schedule set forth therein.

20. Copies of all work plans and other deliverables required to be submitted to EPA by Cominco pursuant to this Decree shall be transmitted by Cominco to the appropriate State of Alaska agencies as provided in Statements of Work for the SEPs (Appendices B, C and D).

C. Operation and Maintenance of
the Groundwater Monitoring System

21. In accordance with the requirements of Appendix B, Cominco shall: (a) develop a plan for the long-term routine collection, analysis, and reporting of the data specified in that Appendix (the "Groundwater Monitoring Plan"), and (b) develop a plan for the long-term maintenance of the Groundwater Monitoring System that will insure its continued effectiveness in meeting its design objectives (the "Groundwater Monitoring System O & M Plan"). Upon approval by EPA, these plans may be combined into a single plan. The activities specified in the Groundwater Monitoring Plan together with activities specified in the Groundwater Monitoring System O & M Plan shall constitute the "Groundwater Monitoring Program."

22. Upon approval by EPA of both the Groundwater Monitoring Plan and the Groundwater Monitoring System O & M Plan, Cominco shall commence implementation of the requirements of the Groundwater Monitoring Program. Cominco's obligation to continue the long-term monitoring, reporting, and operation and maintenance pursuant to the Groundwater Monitoring Program shall continue to be enforceable under this Decree until the earliest of any of the following events.

- a. Thirty years after the cessation of mining and/or milling operations at the Red Dog Site.
- b. A change in applicable federal or state law that EPA agrees, in writing, requires Cominco to conduct a groundwater monitoring program that is the substantive

equivalent of the Groundwater Monitoring Program required under this Decree.

- c. Receipt of written notice from EPA (or the appropriate State agency that has entered into the Cominco/State Agreement described in Subparagraph 22(d) below) that, based upon at least 10 years of data from the Groundwater Monitoring Program and other relevant data there is no reasonable potential that waters from the impoundment are being, or could be, discharged into groundwater connected with waters of the United States, other than as allowed by or permitted pursuant to federal law. Authorization by EPA for the discontinuance of the Groundwater Monitoring Program pursuant to this Subparagraph must be in writing to be effective.
- d. The entry by Cominco into a binding and enforceable agreement with an agency or instrumentality of the State of Alaska ("Cominco/State Agreement") that has been approved in writing by the Regional Administrator and which provides for the following:
 - i. Continuance of the Groundwater Monitoring Program as described in the long-term Groundwater Monitoring Plan and the Groundwater Monitoring System O & M Plan to be approved by EPA pursuant to this Decree, until the occurrence of one of the events

- described in Subparagraphs 22(a), 22(b) or 22(c) above, or until such other time approved by the Regional Administrator;
- ii. Financial assurances that the Groundwater Monitoring Program will continue to be carried out until the occurrence of one of the three events described in Subparagraphs 22a, 22b or 22c above, or until such other time approved by EPA;
 - iii. Continued reporting to EPA and the State of Alaska of the results of the Groundwater Monitoring Program;
 - iv. Notice to EPA of any proposed material modifications (as that term is defined in Paragraph 74 below) of the Cominco/State Agreement that may affect Cominco's obligations regarding matters addressed by Subparagraph 22(d); and
 - v. A provision that EPA or its successor agency is a bonafide third-party beneficiary of the Cominco/State Agreement, with the right to file and maintain an action to enforce all terms of the contract relating to the Groundwater Monitoring Program, maintenance of financial assurance, and reporting of results of groundwater monitoring activities.

The Regional Administrator may waive any one or more of the requirements of this Subparagraph in the event that the Cominco/State Agreement is incorporated in a judicial or administrative order that EPA agrees is adequate to meet the intent of this Decree. To be effective, such agreement must be in writing.

23. Cominco may exercise the option created by Paragraph 22(d) only if Cominco obtains written concurrence of the Regional Administrator prior to the execution of the Cominco/State Agreement. In seeking such approval Cominco shall timely provide EPA with sufficient information to allow evaluation of Cominco's agreement with the State. In addition, Cominco shall, upon request, provide to EPA an opinion letter from an attorney licensed to practice law in the State of Alaska that opines that the proposed agreement satisfies the requirements of Paragraph 22(d) and that each of the rights purported to be created in favor of EPA are valid and enforceable under applicable law. Such opinion letter shall contain specific citation to law. Further, if Cominco seeks to provide the financial assurance required by Paragraph 22(d)(ii) by segregating or dedicating some or all of any type of operating account or preexisting bond to this purpose, then the segregated or dedicated portion of such account or bond may not be used to provide security or assurance for any different obligation.

D. Operation, Maintenance and Removal
of the Fish Protection Barrier

24. In accordance with the requirements of Appendix C Cominco shall: (a) design and construct the Fish Protection Barrier; (b) develop a plan for the long-term maintenance of the Fish Protection Barrier that will insure the continued integrity of its structure for as long as such system must be maintained by Cominco (the "FPB Maintenance Plan"); and (c) if so directed by the Alaska Department of Fish and Game ("ADF&G"), remove or otherwise decommission the Fish Protection Barrier, as provided in Paragraph 25.

25. Cominco shall maintain the Fish Protection Barrier in accordance with the FPB Maintenance Plan approved by EPA. This obligation shall be enforceable under this Decree until the earliest of any of the following:

- a. Thirty years after the cessation of mining and/or milling operations at the Red Dog Site;
- b. Ninety days after both (i) ADF&G, or its successor agency, requests in writing that the Fish Protection Barrier be removed or otherwise decommissioned in a manner prescribed by ADF&G, and (ii) EPA agrees to such removal or decommissioning;
- c. The date ADF&G determines, in writing, that the Fish Protection Barrier should be removed and that the failure to immediately remove or decommission the system poses an imminent and substantial risk to human health or the environment;

- d. The date established under a mine site reclamation plan, approved by the appropriate governmental authority, for the removal or decommissioning of the Fish Protection Barrier; or
- e. The date that both (i) ADF&G, or its successor agency, enters into a binding agreement with Cominco that provides for the continued maintenance of the Fish Protection Barrier for a described period, and (ii) such agreement has been approved in writing by the Regional Administrator.

IX. SUBMISSIONS REQUIRING AGENCY APPROVAL

26. After review of any plan, report or other item, which is required to be submitted for approval pursuant to this Decree, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the above.

27. In the event of approval or approval upon conditions, Cominco shall proceed to take any action required by the plan, report, or other item, as approved by EPA or the Regional Administrator. Upon receipt of a notice of disapproval, Cominco shall, within thirty (30) days or such other longer time as specified in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the receipt of a notice of disapproval, Cominco shall proceed, at the written direction of EPA, to take those actions as required

by any approved portion of the submission whose performance is not contingent upon performance of the actions required under the unapproved portion of the submission.

28. In the event that a resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again require Cominco to correct the deficiencies, in accordance with the preceding Paragraphs. If upon resubmission, a plan, report, or other item is disapproved by EPA due to a material defect, Cominco shall be deemed to have failed to submit such plan, report, or other item timely and adequately unless Cominco invokes the dispute resolution procedures set forth in Section XVII (Dispute Resolution) and EPA's action is changed or overturned pursuant to that Section. The provisions of Section XVII (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's position is unchanged and/or EPA prevails in any proceeding under Section XVII (Dispute Resolution), stipulated penalties shall accrue from the date on which the initial submission was originally due under the relevant SOW, work plan or modification thereof effected pursuant to Section XXIV (Modification).

29. All plans, reports, or other items required to be submitted to EPA under this Decree shall, upon approval, be enforceable under this Decree. In the event EPA approves a portion of a plan, report, or other item required to be submitted

to EPA under this Decree, the approved portion shall be enforceable under this Decree.

X. ACCESS

30. Commencing upon the date of lodging of this Decree, Cominco agrees to provide the United States, the State, and their representatives, including EPA and its contractors, access to the Red Dog Mine, mill and port site, and any other adjoining or neighboring property to which access is required for the implementation of this Decree, to the extent access to the property is controlled by Cominco, for the purposes of conducting any activity related to this Decree including, but not limited to: monitoring the Work; verifying any data or information submitted to the United States; obtaining samples; inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Cominco or their agents in connection with the Work performed under this Decree; and assessing Cominco's compliance with this Decree.

31. Notwithstanding any provision of this Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, the Clean Water Act and any other applicable statute or regulation. Cominco retains all of its rights to the protections it has based on the attorney-client privilege, the attorney work product doctrine, the proprietary nature of the information, and other similar privileges, protections and doctrines recognized by law, regulation, evidentiary rule or case decision.

XI. REPORTING REQUIREMENTS

32. In addition to any other requirement of this Decree, Cominco shall submit written quarterly progress reports (two copies) to EPA that: (a) describe the actions which have been taken toward achieving compliance with this Decree during the previous quarter; (b) include a summary of all results of sampling and tests and all other data received or generated by Cominco or its contractors or agents in performing the activities required under this Decree during the previous quarter; (c) identify all work plans, plans and other deliverables required by this Decree to have been completed and submitted during the previous quarter; (d) describe all actions, including, but not limited to, data collection and implementation of work plans and/or other activities, that are scheduled for the next quarter and provide other information relating to the progress of construction; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Cominco has proposed to EPA or that have been approved by EPA. Cominco shall submit these progress reports to EPA, with courtesy copies to the State, by the fifteenth day of the month following the end of each quarter. The first quarter shall begin on the first day of the month following the entry of this Decree unless otherwise agreed by EPA

and Cominco. Cominco shall at the request of EPA also provide telephonic or in-person briefings for EPA and the State to discuss the progress of the Work. The obligation to submit quarterly reports shall terminate upon the issuance pursuant to Section XIII of a Certification of Completion of Phase III of the Groundwater Monitoring Statement of Work.

33. Cominco shall notify EPA of any deviation from the schedule described in the quarterly progress report for the performance of any activity, including, but not limited to, implementation of work plans, no later than seven days prior to the scheduled performance of the activity. If it is impracticable under the circumstances for Cominco to provide such notice at least seven days in advance, Cominco shall provide this notice to EPA as early as it is practicable to do so. Notification of a delay is not sufficient to excuse the failure to meet an approved schedule.

34. All reports and other documents submitted by Cominco to EPA which purport to document Cominco's compliance with the terms of this Decree shall be signed by an authorized representative of Cominco.

XII. ASSURANCE OF ABILITY TO COMPLETE WORK

35. Within 30 days of entry of this Decree, Cominco shall establish and maintain financial security for the performance of the Work in the amount of \$5,000,000 in one of the following forms:

a. One or more irrevocable letters of credit, in a form acceptable to the United States, equaling the total estimated cost of the Work that could be drawn upon by Cominco to conduct the work;

b. A trust fund or escrow, in a form acceptable to the United States, dedicated to ensuring completion of the work;

c. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Cominco or its parent corporation or subsidiaries; or

d. A demonstration that Cominco substantively satisfies the requirements of 40 C.F.R. § 264.143(f).

36. If Cominco seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 35(c) of this Decree, Cominco shall demonstrate that the guarantor substantively satisfies the requirements of 40 C.F.R. § 264.143(f) or, in the case of a foreign corporation as guarantor, that: (a) its financial status is substantially the same as a domestic corporation meeting the requirements of 40 C.F.R. § 264.143(f); and (b) it is amenable to suit in the United States on its guarantee. If Cominco seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 35(c) or (d), it shall submit to EPA sworn statements conveying the information required by 40 C.F.R. § 264.143(f). In the event that EPA determines at any time that the financial assurances provided

pursuant to this Section are inadequate, Cominco shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 35 of this Decree. Cominco's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Decree.

XIII. CERTIFICATION OF COMPLETION

37. After Cominco concludes that Phase I, II or III of the Work for the Groundwater Monitoring SEP has been fully performed, or that construction of the Fish Protection Barrier SEP has been completed in accordance with the EPA-approved final design submittal, Cominco may request certification from EPA that Cominco has completed such portion of the Work. Cominco may make either four separate requests for certification of completion, or one request for all three phases of the Groundwater Monitoring SEP and the Fish Protection Barrier SEP. For a certification of completion of Work involving actual construction or installation of facilities, Cominco shall propose a date for a certification inspection to be attended by Cominco and EPA. Cominco shall provide notice of such inspection to the State and request the attendance of a State representative. Contemporaneous with the request for certification of completion, Cominco shall submit a written report containing (a) a statement from a responsible corporate official of Cominco that the Work covered by the request has been completed in full satisfaction of the

requirements of this Decree, and (b) a statement from one or more registered professional engineers that such Work has been completed in accordance with all approved work plans and/or design submittals. The written report for the Fish Protection Barrier SEP shall include as-built drawings signed and stamped by a professional engineer, if such have not previously been provided to EPA. The report shall contain the following statement, signed by a responsible corporate official of Cominco or Cominco's project coordinator:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If EPA determines that any portion of the Work has not been completed in accordance with the work plans or design submittals approved pursuant to this Decree, EPA will notify Cominco in writing of the activities that must be undertaken to complete such Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Decree and the SOW or require Cominco to submit a schedule to EPA for approval. Cominco shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph.

38. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion that the Work that is the subject of that request has been fully performed in accordance with this Decree, EPA will so certify in writing to Cominco. This certification shall constitute the Certification of Completion of that Work for purposes of this Decree, including, but not limited to, Section XVIII (Covenants Not to Sue by Plaintiffs). Certification of Completion of a Supplemental Environmental Project, or a phase thereof, shall not affect Cominco's other obligations under this Decree.

XIV. INDEMNIFICATION AND INSURANCE

39. The United States does not assume any liability by entering into this agreement. Cominco shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Cominco, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under their control, in carrying out activities pursuant to this Decree. Further, Cominco agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Cominco, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf

or under its control, in carrying out activities pursuant to this Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Cominco in carrying out activities pursuant to this Decree. Neither Cominco, nor any contractor employed by Cominco, nor any subcontractor of such contractor shall be considered an agent of the United States.

40. Cominco waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Cominco and any person for performance of Work on or relating to the Red Dog Mine or Port Sites, including, but not limited to, claims on account of construction delays. In addition, Cominco shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement by any contractor or subcontractor arising from or on account of any contract, agreement, or arrangement between Cominco and any such person for performance of Work on or relating to such Sites, including, but not limited to, claims on account of construction delays.

XV. FORCE MAJEURE

41. "Force Majeure," for purposes of this Decree, is defined as any event arising from causes beyond the reasonable control of Cominco or of any entity controlled by Cominco, including, but not limited to, its contractors and subcontractors, that delays or prevents the performance of any obligation under this Decree despite Cominco's best efforts to

fulfill the obligation. The requirement that Cominco exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* event and best efforts to address the effects of any potential *force majeure* event without endangering the lives of any persons or creating a high risk of injury to wildlife or the environment: (a) as the *force majeure* event is occurring; and (b) following the potential *force majeure* event, such that the delay is minimized to the greatest extent possible. "*Force Majeure*" does not include financial inability to complete the Work, or failure to provide in a timely manner all information required to obtain a permit or approval necessary to meet the requirements of this Decree.

42. When circumstances are occurring or have occurred which may delay the completion of any requirement of this Decree, whether or not due to a *force majeure* event, Defendants shall so notify EPA, in writing, within fifteen (15) days after Defendants knew, or should have known, of the delay or anticipated delay. The notice shall describe in detail the bases for Cominco's contention that a *force majeure* event occurred, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Failure to so notify EPA shall constitute a waiver of any claim of *force majeure* for that event.

43. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance

of the obligations under this Decree that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Cominco in writing of its decision.

XVI. STIPULATED PENALTIES

44. Cominco shall pay to the United States stipulated penalties in the amount of \$15,000 for each day beyond the date due it fails to pay in full the civil penalty specified in Paragraph 10.

45. Cominco shall pay to the United States stipulated penalties in the amount of \$1,000 per day for each violation of the requirements specified in the expired Port Site Permit incorporated by reference into Section VII (Interim Effluent Limitations and Related Requirements) including, but not limited to, the effluent limitations, monitoring requirements, compliance responsibilities and general conditions specified therein, as set forth in Paragraph 11 of this Decree.

46. Cominco shall pay to the United States stipulated penalties for each day it fails to: (a) timely submit any report, plan, design or other deliverable specifically identified in Appendices B, C and D required under this Decree; or (b) meet

any construction or installation deadline set forth in this Decree or established in a work plan or other submittal approved by EPA pursuant to Section IX (Submissions Requiring Agency Approval). The stipulated penalties for failure to meet each deadline requirement shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$1,000
31st to 60th day	\$5,000
After 60 days	\$8,000

47. Stipulated civil penalties assessed against Cominco pursuant to this Decree shall automatically begin to accrue on the first day Cominco breaches its obligation under this Decree to either meet any of the schedules of performance required by this Decree or satisfy any obligation or requirement of this Decree for which a stipulated penalty is provided. Stipulated penalties shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section IX (Submissions Requiring Agency Approval) during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Cominco of any deficiency; (b) with respect to a decision by the designated decision maker for EPA Region X, under Paragraph 56(b) of Section XVII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Cominco's reply to EPA's Statement of Position is received until

the date that the EPA designated decision-maker issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XVII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

48. Payment of stipulated civil penalties pursuant to this Section shall be in addition to any other rights or remedies which may be available to the United States or its agencies by reason of Cominco's failure to comply with requirements of this Decree, and all applicable federal, state or local laws, regulations, wastewater discharge permit(s) and all other applicable permits. Provided, however, that the United States shall not seek civil penalties from Cominco pursuant to the Clean Water Act for any violation for which a stipulated penalty has been both (a) demanded by the United States pursuant to this Section, and (b) either paid or escrowed pursuant to Paragraph 52, below.

49. Stipulated civil penalties are due and shall be paid within thirty (30) days of the date of the United States' demand for payment of stipulated civil penalties for any non-compliance with any of the schedules of performance or requirements set forth in this Decree unless Cominco timely invokes the dispute resolution procedures of Section XVII. EPA shall use its best efforts to notify Cominco as early as possible of EPA's belief

that Cominco has failed to meet any of the schedules of performance required by this Decree or satisfy any obligation or requirement of this Decree or the Cominco/State Agreement as described in Subparagraph 22(d) above.

50. Stipulated civil penalties shall be paid by submitting a cashier's or certified check payable to the "Treasurer, the United States of America," and tendered to the United States Attorney for the District of Alaska, 222 West 7th Avenue, #9, Room 253, Anchorage, Alaska 99513-7567. Copies of the check and the transmittal letter shall be sent simultaneously to the Chief, Environmental Enforcement Section, United States Department of Justice, Post Office Box 7611, Ben Franklin Station, Washington, D.C. 20044 and to the Director, Office of Water, United States Environmental Protection Agency, Region X, 1200 6th Avenue, Seattle, Washington 98101.

51. Stipulated penalties shall continue to accrue as provided in Paragraph 47 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to the United States within 15 days of the agreement or the receipt of EPA's decision;

b. If the dispute is appealed to this Court for the matters upon which the United States is the prevailing Party, Cominco shall pay all accrued penalties determined by the Court

to be owed to United States within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph 51(c) below;

c. If the District Court's decision is appealed by Cominco, Cominco shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. If the District Court's decision is appealed by the United States, Cominco is not obligated to, but it may, pay stipulated penalties into an escrow account as provided in Paragraph 52. Interest shall continue to accrue on any stipulated penalty that is not deposited into an interest-bearing escrow. Within 15 days of receipt of the final appellate court decision the escrow agent or Cominco, as applicable, shall pay the balance of the escrow account or the stipulated penalties plus accrued interest to the United States to the extent that the United States has prevailed. Excess funds in the escrow account shall be returned to Cominco.

52. Cominco shall pay interest on any unpaid stipulated civil penalty commencing on the 31st day after a demand for payment by the United States. Interest shall accrue at the statutory judgment rate set forth at 28 U.S.C. § 1961(a). Cominco may avoid the obligation to pay interest on a stipulated penalty that is subject to a timely commenced dispute resolution procedure by depositing the full disputed amount, plus any accrued interest, into an interest-bearing escrow account

established pursuant to a written agreement of the Parties. Such escrow account must provide that: (a) interest will accrue at a commercially reasonable rate; and (b) the escrowed amounts, plus accrued interest, will be paid to the Party that prevails in the dispute. The interest accrued on stipulated penalties shall cease to run when the disputed amounts are deposited into the escrow account. In the event that a stipulated civil penalty is not paid when due, the United States may institute proceedings to collect the penalties and interest.

XVII. DISPUTE RESOLUTION

53. The Dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce Cominco's obligations that have not been disputed in accordance with this Section.

54. Nothing in this Section is meant to discourage informal discussions and negotiations in good faith between the Parties. Any dispute which arises under or with respect to this Decree shall in the first instance be the subject of such informal negotiations between the Parties. A disagreement shall be deemed a dispute, triggering the requirements of the Dispute Resolution process of this Section, if and when one Party sends the other Party a written Notice of Dispute identifying the nature of the disagreement and designating it as a dispute under this Section.

55. a. Any dispute shall in the first instance be the subject of further informal negotiations between the parties. The period for informal negotiations shall not exceed twenty (20) days from the time the Notice of Dispute is delivered to the recipient, unless this time period is extended by written agreement of the Parties.

b. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Subparagraph, then the position advanced by EPA shall be considered binding unless, within 20 days after the Notice of Dispute is delivered, Cominco invokes the formal dispute resolution procedures of this Section by serving on EPA a written Statement of Position on the matter in dispute, including but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Cominco. Cominco shall simultaneously serve a copy of its Statement of Position on the Chief, Environmental Enforcement Section, United States Department of Justice at the address indicated in Section XX (Notices and Submissions).

c. After receipt of Cominco's Statement of Position, EPA will serve on Cominco its Statement of Position, including but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by EPA. Within 21 days of service of EPA's Statement of Position, Cominco may serve on EPA a response to the EPA's Statement of Position.

d. If there is disagreement between EPA and Cominco as to whether dispute resolution should proceed under Paragraph 56 or Paragraph 58, the Parties shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if Cominco ultimately appeals to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards identified in Paragraphs 56 and 58.

56. Formal dispute resolution for disputes pertaining to any aspect of the design, construction, performance or maintenance of any Work, including but not limited to approval of reports, submissions, and requests for certification of completion, and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, shall be conducted pursuant to the procedures set forth in this Paragraph.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position and responses thereto, including supporting documentation, submitted pursuant to Paragraph 55. Where appropriate, EPA may allow submission of supplemental Statements of Position and responses by either Party.

b. The Director of the Office of Water, EPA Region X, or such other person as may be designated by the Regional Administrator, EPA Region X, will issue a final administrative decision resolving the dispute based on the administrative record

described in Subparagraph 53(a) above. Any decision shall be binding upon Cominco and shall not be subject to judicial review, unless, within 20 days of the service upon Cominco of the decision, Cominco serves upon the United States and files with this Court a motion challenging the decision. Such motion shall be served upon the United States as provided in Section XX (Notices and Submissions). The United States shall have 60 days from the date of service to serve and file a response to Cominco's motion. Cominco's motion shall inform the Court of this provision regarding the length of time allowed to the United States for a response.

57. In any proceeding to review a determination made pursuant to Paragraph 56, Cominco shall have the burden of demonstrating that the decision of the designated decision-maker for EPA is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision shall be on the administrative record compiled pursuant to Paragraph 56(a) with either Party having the right to request oral argument.

58. Formal dispute resolution for disputes that are neither explicitly identified in Paragraph 56, nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Cominco's Statement of Position submitted pursuant to Paragraph 55, the designated decision-maker for EPA will issue a final decision resolving the dispute. This decision shall be binding upon Cominco and shall

not be subject to judicial review unless, within 20 days of the service upon Cominco of the decision, Cominco serves upon the United States and files with this Court a motion challenging the decision. Such motion shall be served upon the United States as provided in Section XX (Notices and Submissions). The United States shall have 60 days from the date of service to serve and file a response to Cominco's motion, and Cominco's motion shall inform the Court of this provision regarding the length of time allowed for a response.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

59. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Cominco's under this Consent Decree not directly in dispute, unless EPA agrees or the Court orders otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending final resolution of the dispute as provided above.

60. For the purposes of this Section, service is complete when the documents are deposited for delivery with an overnight delivery service or with the United States Postal Service if sent certified mail, return receipt requested. Service is also complete upon actual receipt if some other method is used.

XVIII. COVENANTS NOT TO SUE BY PLAINTIFF

61. Effective upon (a) entry of the Decree; (b) payment in full of the civil penalty pursuant to Paragraph 10; (c) certification by EPA of the completion of Phases I, II and III of the Groundwater Monitoring SEP in accordance with Section XIII (Certification of Completion); (d) the construction of the Fish Protection Barrier; and (e) the acceptance by EPA of the report to be produced pursuant to the Aquatic Taxa Study SEP, the United States covenants not to sue or to take administrative action pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 et seq., as amended by the Oil Pollution Act of 1990 ("OPA"), Pub. L. 101-380, 104 Stat. 484, against Cominco for any civil claim explicitly alleged in the Complaint.

62. General reservations of rights. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Paragraph 61. The United States reserves, and this Decree is without prejudice to, all rights against Cominco with respect to all other matters.

63. Nothing herein shall be construed as relieving Defendants of the duty to comply with the Clean Water Act, the regulations promulgated thereunder, and all permits issued thereunder.

64. Except as expressly stated in this Decree, each Party reserves against any person not a Party to this Decree all rights, claims, or defenses available to it arising out of or relating to any claim in the Complaint.

65. Nothing in this Decree creates, nor shall it be construed as creating, any claim in favor of any person not a Party to this Decree.

66. The covenant not to sue in Paragraph 61 shall apply only to civil claims arising out of the facts alleged in the Complaint and shall not apply to claims based on a failure of Cominco to satisfy the requirements of this Decree or any violation of law not identified in the Complaint.

67. The United States reserves, and this Decree is without prejudice to, any cause of action or claim for relief not in the Complaint including but not limited to, claims for damages to natural resources, and claims arising under statutes other than the Clean Water Act, 33 U.S.C. §§ 1251 et seq. In addition, notwithstanding the covenant not to sue in Paragraph 61, the United States reserves all rights to take any action, including administrative or judicial actions against Cominco, to address any imminent and substantial endangerment to human health or the environment.

XIX. ACCESS TO INFORMATION

68. Except as to any attorney-client communications, attorney work product, proprietary information and other material protected from disclosure by law, regulation, case decision or evidentiary rule, Cominco shall provide to EPA upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to any aspect of the Work and/or to the implementation of this Decree,

including, but not limited to, sampling, analysis, chain of custody records, logs, reports, correspondence, or other documents or information related to the Work. Claims for confidentiality of business information shall be made and governed in accordance with the Confidential Business Information regulations set forth in 40 C.F.R. Part 2, Subpart B. Cominco may not claim privilege over any data produced in connection with the performance of the Work or operation and maintenance activities required by this Decree.

XX. NOTICES AND SUBMISSIONS

69. Whenever, under the terms of this 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 to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

As to the United States:

Joel Gross
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-5-1-1-5010,

and

Director, Office of Water
United States Environmental Protection Agency
Region X
1200 Sixth Avenue, Mail Code OW-135
Seattle, WA 98101

As to EPA:

Joe Roberto
United States Environmental Protection Agency
Region X, Mail Code OW-133
1200 Sixth Avenue
Seattle, WA 98101

As to the State:

Dr. Alvin G. Ott and Dr. Phyllis Weber Scannell
Habitat and Restoration Division
Alaska Department of Fish and Game
1300 College Road
Fairbanks, AK 99701-1599,

and

Paul Bateman
Alaska Department of Environmental Conservation
610 University Avenue
Fairbanks, AK 99709-3643

As to Cominco:

John L. Key,
General Manager
James Kulas,
Manager, Environmental Affairs
Cominco Alaska Incorporated
Environmental Department
P.O. Box 1230
Kotzebue, AK 99752,

Courtesy copies should be sent to:

C. Bruce DiLuzio,
Attorney and Corporate Secretary
Cominco American Incorporated
P.O. Box 3087
Spokane, WA 99220-3087,

and

Charlotte MacCay
Senior Administrator, Environmental and
Regulatory Affairs
Cominco Alaska Incorporated
1133 West 15th Avenue
Anchorage, AK 99501

XXI. EFFECTIVE DATE AND TERMINATION DATE

70. The effective date of this Decree shall be the date upon which this Decree is entered by the Court, except as otherwise provided herein. This Decree may be terminated upon the motion of either Party only after:

- (a) Cominco has met all of the conditions precedent to the effectiveness of the Covenants Not to Sue as set forth in Paragraph 61;
- (b) Cominco has either (i) completed the operation and maintenance requirements for both the Groundwater Monitoring and Fish Protection Barrier SEPs set out in Paragraphs 21 and 24 respectively, or (ii) satisfied the provisions of Paragraphs 22 and 25 relating to the transfer of oversight of operation and maintenance obligations to an agency of the State of Alaska; and
- (c) The termination of the provisions of Paragraph 11 (Interim Effluent Limitations and Related Requirements) in accordance with the terms of Paragraph 12.

XXII. RETENTION OF JURISDICTION

71. This Court retains jurisdiction over both the subject matter of this Decree and Cominco 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 modification of this Consent Decree, or to effectuate or enforce compliance with its terms.

XXIII. APPENDICES

72. The following appendices are attached to and incorporated into this Consent Decree:

APPENDIX A (NPDES Permit No. AK-004064-9, as modified on April 28, 1986 for the Port Site)

APPENDIX B (Groundwater Monitoring Statement of Work)

APPENDIX C (Fish Protection Barrier Statement of Work)

APPENDIX D (Aquatic Taxa Study Statement of Work)

XXIV. MODIFICATION

73. Schedules specified in this Decree for completion of the Work may be modified by agreement of EPA and Cominco. All such modifications shall be made in writing.

74. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Cominco, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and Cominco. For purposes of this Section XXIV, a modification

is not material if it does not substantially alter the overall cost of the SEP or change the main objectives or construction standards of the SEP as expressed in the performance standards for that SEP.

75. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Decree.

XXV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

76. This Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations which indicate that the Decree is inappropriate, improper, or inadequate. Cominco consents to the entry of this Decree without further notice.

77. If for any reason the Court declines to approve this Decree in the form presented based on concerns about the substantive provisions contained in it, this agreement is voidable at the sole discretion of either Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

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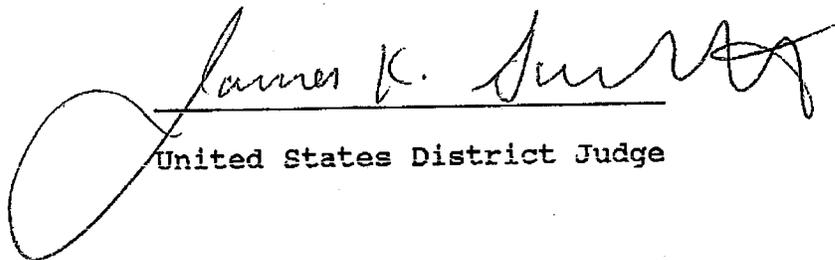
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XXVI. SIGNATORIES/SERVICE

78. Each undersigned representative of Cominco, the Assistant Attorney General for Environment and Natural Resources of the Department of Justice, and the Assistant Administrator for Enforcement and Compliance Assurance of the Environmental Protection Agency certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

SO ORDERED THIS 24 DAY OF November, 1997.


United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Cominco Alaska Incorporated.

FOR THE UNITED STATES OF AMERICA

Date: 6/23/97



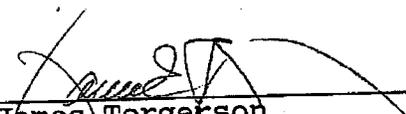
Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 7/2/97



Phillip A. Brooks
David F. Askman
Attorneys
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 7/14/97



James Torgerson
Assistant United States Attorney
District of Alaska
222 West Seventh Avenue #9
Anchorage, Alaska 99513-7567

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Cominco Alaska Incorporated.

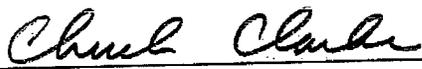
FOR THE UNITED STATES OF AMERICA
CONTINUED

Date: 7/8/97



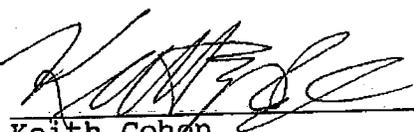
Steven A. Herman
Assistant Administrator for
Enforcement and Compliance
Assurance
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460

Date: 5/28/97



Chuck Clarke
Regional Administrator, Region X
U.S. Environmental Protection
Agency
1200 Sixth Avenue
Seattle, Washington 98101

Date: 5/21/97

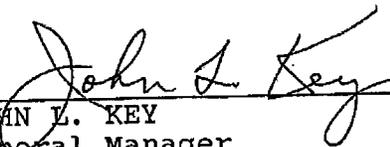


Keith Cohen
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region X
1200 Sixth Avenue
Seattle, Washington 98101

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Cominco Alaska Incorporated.

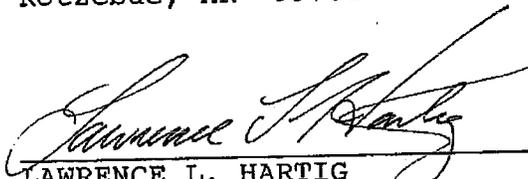
FOR COMINCO ALASKA, INC.

Date: May 20, 1997



JOHN L. KEY
General Manager
Cominco Alaska Incorporated
P.O. Box 1230
Kotzebue, AK 99752

Date: May 30, 1997



LAWRENCE L. HARTIG
Hartig, Rhodes, Norman,
Mahony & Edwards
717 K Street
Anchorage, AK 99501-3397
Counsel for Cominco Alaska
Incorporated

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