

UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE REGION 6  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

- . STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

IN THE MATTER OF:	)	
	)	
	)	
HOLDEN MINE SITE	)	
	)	
	)	
Alumet Corporation	)	EPA
	)	Docket No.
	)	
	)	
	)	Forest Service
	)	Docket No.
RESPONDENT	)	06-97-01
	)	
	)	Ecology
	)	Docket No.
Proceeding Under Sections 104, 107,	)	DE 98TC-C119
122(a), 122(d)(3) and 122(h) of the	)	
Comprehensive Environmental Response,	)	
Compensation and Liability Act as	)	
amended (42 U.S.C. §§ 9604, 9607,	)	
9622 (a), 9622(d)(3) and 9622(h))	)	
and under §§ 030, 040 and 050 of	)	
the Washington Model Toxic Control	)	
Act, Chapter 70.105D RCW.	)	
	)	

ADMINISTRATIVE ORDER ON CONSENT/AGREED ORDER  
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY



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## I. INTRODUCTION

1. This Administrative Order on Consent/Agreed Order ("Consent Order") is entered into voluntarily by the United States Department of Agriculture Forest Service ("USFS") the United States Environmental Protection Agency Region 10 ("EPA"), ("Federal Agencies") the State of Washington through its Department of Ecology ("the State") (collectively referred to as the "Agencies"), and Alumet Corporation ("Alumet"). The Consent Order concerns preparation and performance by Alumet of a remedial investigation and feasibility study ("RI/FS"), a natural resources injury determination, and reimbursement of response and oversight costs incurred by the Agencies for the Holden Mine Site ("Site"), located in north central Washington State within the Wenatchee National Forest, approximately 40 miles northwest of the town of Chelan, Washington.

2. Alumet has agreed to undertake responsibility for conducting an RI/FS for the Site. Holden Village Inc. ("the Village") has agreed to provide access to the Site and certain other assistance to facilitate performance of the RI/FS.

## II. JURISDICTION AND GENERAL PROVISIONS

3. This Consent Order is issued under the authority vested in the President of the United States by sections 104, 107, 122

(a), 122 (d) (3) and 122 (h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607, 9622 (a), 9622 (d) (3) and 9622 (h) ("CERCLA"), and pursuant to the State of Washington Model Toxic Control Act (MTCA) (Chapter 173-340 WAC Chapter 70.105D RCW). In any action by the United States or the State of Washington, Alumet will not challenge the authority of the Agencies to enter into this Consent Order, and will not contest the validity of its terms.

4. Alumet's participation in this Consent Order shall not constitute or be construed as an admission of liability or an admission of factual or legal findings, conclusions or determinations contained in this Consent Order. Nor shall this Consent Order be admitted into evidence or used in any way by the Parties, directly or indirectly, in any judicial or administrative proceeding or in any manner against Alumet for any purpose other than in further proceedings to enforce the terms of this Consent Order.

### III. PARTIES BOUND

5. This Consent Order shall apply to and be binding upon the Agencies and Alumet, as the successor of Howe Sound Company, and Alumet's successors and assigns. No change in the ownership or corporate status of Alumet, or of the ownership of the Site,

or any portion thereof, shall alter Alumet's responsibilities under this Consent Order.

6. Alumet shall provide a copy of this Consent Order to each contractor, subcontractor, laboratory and consultant hired by Alumet to perform any work under this Consent Order. Alumet shall be responsible for compliance with this Consent Order by such contractors, subcontractors, laboratory and consultant.

#### IV. STATEMENT OF PURPOSE AND AGENCY ROLES

7. In entering into this Consent Order, the objectives of the Parties are: (a) to characterize the nature and extent of contamination at the Site, by conducting a remedial investigation ("RI"); (b) to determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to risks to human health, welfare or the environment by conducting a feasibility study ("FS"); (c) to perform an injury determination and other appropriate natural resource damage assessment activities as agreed by the Parties consistent with 43 CFR Part 11, to be defined in the RI/FS work plan, in order to evaluate the potential for coordinated remedial and natural resource restoration activities; (d) to recover costs incurred by the Agencies with respect to activities required under this Consent Order. The Parties intend that the work conducted by Alumet

pursuant to this Consent Order shall be undertaken in a streamlined, focused and cost-effective manner, relying on prior work and data to the extent feasible, consistent with the National Contingency Plan (NCP), 40 CFR Part 300.

8. Alumet shall complete the RI/FS as required by this Consent Order, with the exception of the preparation and release of the Proposed Plan and Record of Decision ("ROD") for the remedial action selected for the Site.

9. Pursuant to a Memorandum of Understanding ("MOU") among the Agencies, one Lead Agency will be responsible for coordinating, overseeing, and enforcing the response actions required by this Consent Order. The USFS has been designated as the Lead Agency, at this time.

10. The Agencies shall arrange for one qualified Oversight Contractor, including qualified subcontractors, to assist in oversight and review of the activities required under this Consent Order.

#### V. THE AGENCIES' FINDINGS OF FACT

11. The Holden Mine is located in the north central area of Washington State within the Wenatchee National Forest, approximately 40 miles northwest of the town of Chelan, at T31N, R17E, Sec. 7, S1/2, and Sec. 18, N1/2, Willamette Meridian,

Chelan County, Washington. The mine is 12 miles northwest of Lucerne and Lake Chelan. The mine is in a remote area and is only accessible by a Forest Service dirt road from Lucerne or via the Forest Service trail system which connects the Railroad Creek drainage to the Glacier Peak Wilderness Area.

12. The mine was operated by Howe Sound Company from 1938 to 1957, during which time it produced copper, zinc, and gold recovered from rock removed from more than 57 miles of underground workings. The on-site processing of the mineralized rock resulted in the generation of more than 10 million tons of tailings and waste rock materials. Approximately 8.5 million tons of the tailings were placed in three impoundments constructed adjacent to Railroad Creek. The remainder of the tailings was backfilled in the mine workings. Two waste rock piles are located adjacent to the mine portal. The concentrate was shipped to Tacoma, Washington for processing.

13. The mill facility and ore body are located on patented mining claims. The housing-related buildings and the majority of the mine tailings piles and the waste rock piles adjacent to the mill facility are situated on National Forest System land. After closure, the properties owned by Howe Sound were deeded in 1961 to the Lutheran Bible Institute which in 1961 then formed Holden

Village, Inc. (Holden Village), which has owned those properties since that time.

14. Holden Village operates under special use permits from the Wenatchee National Forest.

15. Holden Village owns the mining claims upon which the mine tailings are located. The tailings piles extend from the mill Site down the Railroad Creek drainage for approximately 1 mile and span a 1/4 mile width.

16. The potential environmental problems identified by the Agencies include: the contamination of the surface water, and ground water and stream sediments within the Railroad Creek watershed; the potential mass failure of the tailings piles through erosion or possibly earthquake events; depletion of habitat; and depletion of aquatic biota and fisheries populations.

17. Other potential environmental or human health threats to be evaluated include, but are not limited to, wind blown transport of, or direct exposure to, contaminants in tailings or other Site materials.

18. Contaminants found at the Site include: copper, zinc, iron, manganese, and other metals. Additionally, acidic drainage is present at the Site.

VI. THE AGENCIES' CONCLUSIONS OF LAW AND DETERMINATIONS

19. The Holden Mine Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and in RCW 70.105D.020(4).

20. Hazardous substances, as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and in RCW 70.105D.020(7), have been identified at the Site.

21. The presence of hazardous substances at the Site or the past, present or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases", as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22) and in RCW 70.105D.020(19).

22. Alumet is a "person", as defined in section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

23. Alumet is a potentially responsible party ("PRP") under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and a potentially liable party ("PLP") as defined at RCW 70.105D.020(11), insofar as its predecessor, the Howe Sound Company, conducted mining operations at the Site.

24. The actions required by this Consent Order are necessary to protect the public health or welfare or the

environment, are consistent with CERCLA, the NCP, and the Department of Interior Natural Resource Damage Assessment (NRDA) regulations, will expedite effective remedial and natural resource restoration activities, will minimize litigation, and are in the public interest.

25. Pursuant to RCW 70.105D.030(1) and 70.105D.050, PLPs may be required to investigate or conduct remedial actions with respect to the release or threatened release of hazardous substances when such actions are in the public interest.

26. Based on the foregoing, Ecology believes the actions required by this Consent Order are in the public interest. Ecology also finds that the actions required by this Consent Order are in accordance with MTCA.

27. By letter dated February 18, 1997, Ecology notified Alumet of its status as a "potentially liable person" under RCW 70.105D.040.10.

VII. DESIGNATED PROJECT COORDINATORS/DESIGNATION OF RPM/NOTICES

28. On or before the effective date of this Consent Order, the Agencies and Alumet shall each designate a Project Coordinator. Subject to the provisions in paragraphs 33 and 34 below, each Project Coordinator shall be responsible for overseeing implementation of the work required under the Consent

Order. Unless otherwise specified in individual paragraphs of this Consent Order, Alumet is to submit all deliverables, including primary and secondary documents, reports, and other correspondence submitted under this Consent Order to the Agencies' Project Coordinators. The Project Coordinator for the Lead Agency shall serve as the Remedial Project Manager ("RPM").

29. The following shall be the Project Coordinators:

For Alumet: David E. Jackson  
David E. Jackson & Associates  
11361 Marks Drive  
P.O. Box 1489  
Conifer, Colorado 80433-1489  
Telephone: (303)838-0700  
Fax: (303)838-0399

For the USFS: Norman Day  
Wenatchee National Forest  
215 Melody Lane  
Wenatchee, Washington 98801-5933  
Telephone: (509)662-4335  
Fax: (509)662-4368

For the EPA: Nick Ceto  
1200 6th Avenue, MS ECL 116  
Seattle, WA 98101  
Telephone: (509)553-1816  
Fax: (509)553-0124

For Ecology: Rick Roeder  
Central Regional Office  
Washington Dept of Ecology  
15 W. Yakima Avenue, Suite 20  
Yakima, WA 98902  
Telephone: (509)454-7837  
Fax: (509)575-2809

30. The Parties may change their respective Project Coordinators. All Parties must be notified in writing at least ten (10) days prior to any such change.

31. The RPM will coordinate and transmit all Agency comments on all deliverables, reports, or other communications, to Alumat. The RPM will also serve as point of contact for Alumat's Project Coordinator and other authorized representatives as work proceeds under this Consent Order. Approvals required pursuant to this Consent Order shall be communicated to Alumat in writing by the RPM.

32. The RPM shall have the authority vested by the NCP.

#### VIII. WORK TO BE PERFORMED

33. Alumet shall conduct activities and submit deliverables in accordance with the requirements, specifications and schedules in the attached RI/FS Statement of Work (SOW), which is incorporated by reference herein. All such work shall be conducted in accordance with CERCLA and MTCA, and consistent with the NCP, the NRDA regulations, and with applicable Agency guidance documents. The Agencies will work with Alumet to identify applicable guidance. In the event the total volume of out of state shipments of hazardous substances exceeds ten cubic yards, Alumet shall comply with EPA's notification guidance (OSWER Directive #9330.2-07). The activities conducted pursuant to this Consent Order, if approved by the RPM, shall be considered to be consistent with the National Contingency Plan (NCP).

34. All work performed under the Consent Order shall be under the direction and supervision of qualified personnel. Within 30 days of the effective date of the Consent Order, Alumet shall notify the Agencies, in writing, of the names, titles, and qualifications of the key professional personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. The retention of the key

professional personnel undertaking the work for Alumet shall be subject to the RPM's verification that such persons meet minimum technical background and experience requirements. During the course of the RI/FS, Alumet shall notify the Agencies in writing of any changes or additions in the key professional personnel used to carry out the work, and provide their names, titles, and qualifications. The RPM shall have the same right to disapprove changes and additions to personnel as provided hereunder regarding the initial notification.

35. During the RI/FS, Alumet shall provide the Agencies with data and deliverables as described in the SOW.

36. All deliverables described in this Consent Order are subject to review, comment, modification, and approval by the Agencies. Alumet must incorporate or expressly respond to all information, comments supplied and deficiencies identified by the Agencies, either in subsequent or resubmitted deliverables, as instructed by the RPM.

37. Alumet shall submit deliverables according to the schedule listed in the SOW. The RPM will attempt to transmit the Agencies' comments on such deliverables in a timely manner.

38. Except as authorized in writing by the RPM, Alumet shall not proceed with any activities or tasks scheduled

subsequent to the following deliverables until receiving the RPM approval for these deliverables:

RI/FS Work Plan;

Remedial Investigation Report including Risk/Injury Assessment;

While awaiting the RPM's approval on these deliverables, Alumet shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in the SOW.

39. If the USFS or EPA perform(s) any work pursuant to this Consent Order, Alumet shall, subject to the Dispute Resolution provisions in this Consent Order, integrate validated data supplied by the Agency into its affected reports and deliverables.

#### IX. COMMUNITY RELATIONS PLAN

40. Alumet shall assist the Agencies in preparing and implementing the Community Relations Plan as provided in the SOW.

#### X. MODIFICATION OF THE WORK PLAN/SCHEDULE, NOTICES OF ADDITIONAL DATA COLLECTION, IMMEDIATE THREATS AND SITE CHANGES

41. If during the RI/FS process, Alumet determines that it will collect additional data it believes is needed or appropriate to complete the work required under this Consent Order, or that

certain data need not be collected, Alumet will request, in writing, approval from the RPM of the additional data it proposes to collect or omit, the need or lack of need for such data and the deliverable in which it will be included or omitted. If the RPM approves such additional data collection or omission, the schedule for deliverables or other activities contained in the SOW or the RI/FS Work Plan shall be adjusted as appropriate.

42. If during the RI/FS process, Alumet determines that a modification of the schedule of deliverables required by the SOW, the RI/FS Work Plan or other document, is appropriate, Alumet will request, in writing, approval from the RPM of the need for such modification. If the RPM approves the request, the schedule for the deliverable shall be adjusted as appropriate.

43. If Alumet discovers conditions that pose an immediate threat to human health or welfare or the environment, Alumet shall immediately notify the Agency Project Coordinators and, if required pursuant to CERCLA Section 103(a), 42 U.S.C. § 9603(a), the National Response Center, at (800) 424-8802.

44. If in the course of performance of this Consent Order, the RPM determines that a removal action is required due to an immediate threat to human health, welfare or the environment or unanticipated or changed circumstances at the Site, the RPM will

notify Alumet in writing of necessary actions. Within ten (10) days of such notification, Alumet shall notify the RPM in writing whether or not it will perform the proposed actions. If Alumet does not agree to perform the proposed actions, the Agencies may perform the work or take any other action authorized outside of this Consent Order. Neither the determination by the RPM that a removal action is required, nor Alumet's refusal to perform the work is subject to Dispute Resolution nor shall such refusal be considered a violation of this Consent Order.

45. If the Agencies determine that additional work is necessary to meet the specific requirements of this Consent Order and the SOW, the Agencies may, after consultation with Alumet, modify the relevant deliverable(s) in writing. Within ten (10) days of receipt of the request from the Agencies, Alumet shall either confirm its willingness to perform the additional work in writing, or invoke Dispute Resolution, as provided in this Consent Order. Alumet shall perform the work as required by the modified deliverables or in accordance with the final decision in Dispute Resolution. If Alumet does not agree to perform the additional work the Agencies reserve the right to perform the work or take any other action authorized by law.

## XI. QUALITY ASSURANCE

46. Alumet shall assure that work performed, samples taken and analyses conducted conform to the requirements of the RI/FS Work Plan, the QAPP and any guidance documents identified therein. Alumet will assure that field personnel used by Alumet are properly trained in the use of field equipment and in chain of custody procedures.

## XII. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION, ADMINISTRATIVE RECORD

47. The Agencies retain the responsibility for the release to the public of the RI/FS Report and for preparation and release to the public of the Record of Decision for the Site.

48. The Agencies will consult with Alumet concerning the selection of the remedy before taking final action to adopt the Record of Decision, but the final decision will be that of the Agencies.

49. The Agencies will maintain the administrative record for selection of the remedial action. The administrative record shall, at a minimum, include any draft or final deliverables, reports, approvals, disapprovals, applicable correspondence, including all comments on deliverables made by the Agencies, and any other person, and all documents submitted in connection with

Dispute Resolution. Alumet must submit to the Agencies' Project Coordinators all documents developed during the course of the RI/FS upon which selection of the response action may be based. Alumet shall provide to the RPM and to the State copies of plans, task memoranda, including documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports undertaken pursuant to this Consent Order. Alumet shall not assert confidentiality claims with respect to any documents or data related to Site conditions, sampling or monitoring required to be submitted to the Agencies pursuant to this Consent Order.

#### XIII. PROGRESS REPORTS

50. In addition to the deliverables set forth in this Consent Order, Alumet shall submit monthly progress reports to the Agencies by the fifteenth (15th) day of each month. At a minimum, these progress reports shall: (a) describe the actions that have been taken to comply with this Consent Order during the preceding month, (b) include all validated sampling results and other validated data received by Alumet during the preceding month, (c) describe work planned for the next month, with schedules relating such work to the overall schedule for RI/FS

completion and (d) describe all significant problems encountered or anticipated, any actual or anticipated delays in the schedule contained in the SOW, and solutions developed and implemented to address such actual or anticipated problems or delays.

#### XIV. SAMPLING, ACCESS AND DATA AVAILABILITY/ADMISSIBILITY

51. Alumet will notify the Agencies' Project Coordinators orally at least fourteen (14) days prior to conducting field events described in the RI/FS Work Plan, including major construction, excavation, drilling and sampling. The fourteen (14) day notice period may be shortened if the RPM and Alumet determine that such notice period would impede or prevent necessary or desirable sampling. At a Project Coordinator's oral or written request, Alumet shall allow split or duplicate samples to be taken of any samples collected by Alumet in implementing this Consent Order. All such split samples shall be analyzed by the methods identified in the QAPP. The Agencies will make the results of their analyses available to Alumet.

52. USFS shall provide access to Alumet for the portion of the Site located on National Forest System land. Alumet shall repair any facility or resource damage it causes in using the access provided by the USFS. Alumet shall use its best efforts to obtain Site access for all Parties and their contractors to

the remainder of the Site within 45 days of the effective date of this Consent Order. To the extent that Alumet is unable to obtain consensual access, the United States and the State may exercise their respective statutory authorities to obtain access to the Site, with costs to be paid by Alumet. All Parties with access to the Site under this paragraph shall comply with all health and safety plans to the extent feasible.

53. The Agencies and their authorized representatives shall have authority to inspect conditions, activities, and the results of activities at the Site pursuant to this Consent Order, and records, including operating logs and/or contracts related to the Site, of Alumet and its contractors pursuant to this Consent Order; to conduct such tests as the Agencies or their authorized representatives deem necessary; to use cameras, sound recording devices or other documentary type equipment at the Site; and to verify the data submitted by Alumet. Alumet shall allow these persons to inspect and copy, at reasonable times and circumstances, all non-privileged records, files, photographs, documents, sampling and monitoring data, and other writings related to work under this Consent Order. Nothing herein shall be interpreted as limiting or affecting the Agencies' rights of entry or inspection authority under law.

54. Alumet and the Agencies waive objections to the validity of data generated or evaluated in the course of performance or oversight of work under this Consent Order if such data has been validated in accordance with the quality assurance/quality control ("QAQC") procedures required by the SOW and the RI/FS Work Plan.

55. Alumet may assert claims of business confidentiality covering part or all of the information submitted pursuant to the terms of this Consent Order under 40 CFR § 2.203, provided such claim(s) are allowed by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and applicable State law. Such claim(s) shall be asserted in the manner described in 40 CFR § 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by the United States will be given protection as specified in 40 CFR Part 2 by the United States. Alumet may also assert claims of confidentiality pursuant to State law. Information determined to be confidential by the State shall be given the protection by the State provided by applicable State law. If no such claim accompanies the information when it is submitted to the Agencies, it may be made available by any party without further notice to Alumet. Alumet agrees not to assert confidentiality claims with respect to any

data related to Site conditions, sampling, or monitoring required to be submitted under this Consent Order.

XV. OTHER APPLICABLE LAWS

56. Alumet shall comply with state, federal and local laws applicable to the performance of the RI/FS. No local, state, or federal permit shall be required for any portion of any action, including studies, conducted entirely on-site where such action is selected and carried out in compliance with section 121 of CERCLA, 42 USC § 9621.

XVI. RECORD PRESERVATION

57. The original or one copy of all records and documents (excluding internal drafts of deliverables) in the possession of Alumet, generated or collected pursuant to this Consent Order, shall be preserved during performance of the RI/FS and for a minimum of ten (10) years after completion of this Consent Order. Alumet shall also acquire and retain one copy of all documents (excluding internal drafts of deliverables) generated or collected pursuant to this Consent Order, which are in the possession of its employees and contractors. After this ten-year period, Alumet shall notify the Agencies at least thirty (30) days before the documents described in this paragraph are scheduled to be destroyed and shall provide the Agencies with the

opportunity to take possession of or copy non-privileged material, at no cost to the requesting party.

58. Except as expressly provided herein, nothing in this Consent Order shall be deemed to waive the attorney-client privilege, the work product protection or any other privilege or protection that may otherwise apply to documents or other information arising out of or in any other way connected with this Consent Order. In the event privilege is asserted, Alumet shall, upon request of the Agencies, describe the nature of the documents in a manner that will enable the Agencies to assess the applicability of the asserted privilege.

#### XVII. DISPUTE RESOLUTION

59. Unless specifically excluded, the Dispute Resolution procedures in this Section are the exclusive mechanism for resolving disputes arising under or with respect to this Consent Order. If the Parties agree, an alternative Dispute Resolution technique, such as mediation, may be used by the Parties.

60. The Parties to this Consent Order shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Consent Order, including, but not limited to, the approval or disapproval of submittals, or any work required hereunder. If the Parties fail to resolve such dispute

informally, the Dispute Resolution procedure in the following paragraph shall apply.

61. If a dispute regarding a deliverable or any other work undertaken pursuant to this Consent Order is not resolved informally, and if Alumet intends to invoke the Dispute Resolution provisions of this Consent Order, Alumet shall notify the Agencies' Project Coordinators in writing of its objections within fourteen (14) days of receipt of the disapproval notice or requirement. Alumet's written objections shall define the dispute, state the basis of objections, and be sent by facsimile, overnight mail or some equivalent service. The Agencies and Alumet then have an additional fourteen (14) days to reach agreement. If an agreement is not reached within this time period, Alumet may, within seven (7) days, request a final determination by the Agencies and within the same period may submit additional documentation to be reviewed by the Agencies prior to the final resolution of the dispute. Disputes shall be resolved by the USFS Region 6 Regional Forester (or designee) and the EPA Region 10 Associate Director of the Office of Environmental Cleanup, except that disputes involving Ecology response costs shall be resolved by the program manager for Ecology's Toxics Cleanup Program. The Federal Agencies shall

provide a written explanation to Alumet of their decision. All material submitted or exchanged during the Dispute Resolution process shall become part of the administrative record.

62. Alumet shall proceed in accordance with the final decision regarding the matter in dispute. If Alumet does not perform work in accordance with the Federal Agencies' final decision, the Agencies may perform the work, or seek any other appropriate relief. If Alumet does not agree with the Federal Agencies' final decision, Alumet reserves the right to comply under protest, and to seek credit from the USFS for the demonstrated costs of such disputed work in future settlement negotiations pertaining to the Site. The decision whether to grant, and the amount of, any such credit shall be in the unreviewable discretion of the USFS.

63. While a matter is pending in Dispute Resolution, Alumet is not relieved of its obligations to perform other activities and submit deliverables not related to the dispute on the schedule set forth in the SOW.

#### XVIII. STIPULATED PENALTIES

64. At the Agencies' option, Alumet shall be liable for stipulated penalties for each day that it fails to perform in accordance with the requirements of this Consent Order. In

exercising their unreviewable discretion, the Agencies may take into account, among other things, the reason for the noncompliance, whether Alumet cured the violation in a timely manner, whether the noncompliance caused delays in completion of the requirements of this Consent Order, and whether Alumet made a good faith effort to comply with the Consent Order. Stipulated penalties, if assessed, shall in the case of late submission of a deliverable, begin to accrue on the day the performance is due. In the case of deliverables that are submitted in good faith but not approved, penalties will accrue only after Alumet has had a reasonable opportunity to correct the deficiency within a time frame determined by the Agencies.

65. Payment of stipulated penalties shall be due within 30 days of receipt by Alumet of a demand letter from the RPM, after which interest will accrue on the unpaid balance at the rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717. Alumet may dispute the Agencies' right to the stated amount of penalties by invoking Dispute Resolution. Penalties and interest shall accrue, but need not be paid, during the Dispute Resolution period. If Alumet does not prevail upon resolution, all penalties and interest shall be due within thirty

(30) days of resolution of the dispute. If Alumet prevails upon resolution, no penalties shall be paid.

66. Alumet shall make all payments on account of stipulated penalties by certified check made payable to the United States Treasury:

United States Attorney's Office  
Eastern District of Washington  
920 West Riverside Street, Suite 300  
Spokane, Washington 99201

Checks should identify the name of the Site. A copy of the check and/or transmittal letter shall also be forwarded to the RPM.

67. For any deliverable designated as primary by the SOW, stipulated penalties, if assessed, shall accrue in the amount of \$1,000 per day for the first fifteen (15) days of noncompliance, \$2,000 per day for noncompliance between the 16th and 30th day, and \$5,000 per day for all noncompliance lasting beyond 30 days.

68. For the deliverables designated as secondary by the SOW, monthly progress reports, or any other violation of this Consent Order not specified in the preceeding paragraph, stipulated penalties, if assessed, shall accrue in the amount of \$500 per day for the first fifteen (15) days of noncompliance; \$1,000 per day for noncompliance between the 16th and 30th day,

and \$2,500 per day for all noncompliance lasting beyond thirty (30) days.

69. In the event of a violation of this Consent Order, the Agencies shall elect between stipulated penalties, as provided above, or statutory penalties. The penalty provisions in this section do not preclude the Agencies from pursuing other available non-monetary remedies if Alumet does not comply with this Consent Order, including judicial enforcement of this Consent Order. Payment of stipulated penalties does not alter Alumet's obligation to complete performance under this Consent Order.

#### XIX. FORCE MAJEURE

70. Delays or inability to perform the requirements of the Consent Order within the time limits prescribed shall not be a violation of this Consent Order where performance is prevented or delayed by events that constitute a force majeure. Force majeure is defined as any event arising from causes beyond the control of Alumet, or any entity controlled by Alumet, that delays or prevents timely performance of any obligation under this Consent Order, notwithstanding Alumet's best efforts to fulfill the obligation. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of

any work to be performed under this Order or the financial inability of Alumet to perform such work. Alumet shall have the burden of proving such force majeure.

71. If any event occurs that may materially delay performance of any obligation under this Consent Order or may delay submission of any deliverable past the deadline set forth in the SOW, Alumet shall notify the RPM by telephone within 48 hours of the time Alumet becomes aware of such delay or anticipated delay. Within five (5) business days thereafter Alumet shall notify the Agencies in writing of the reasons for the delay, the anticipated length of delay, (including necessary demobilization and remobilization), measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the above requirements shall preclude Alumet from establishing any claim of force majeure.

72. The RPM shall notify Alumet in writing of the RPM's determination as to whether force majeure applies to the event or circumstances, within fourteen (14) days after receipt of written notice from Alumet. If the RPM determines that the delay has been or will be caused by circumstances constituting a force majeure, the schedule contained in the SOW shall be extended for

a sufficient period to complete the tasks that were delayed or prevented, and the deadline for every directly affected subsequent deliverable will be extended accordingly. If the RPM does not agree that the delay or failure has been or will be caused by circumstances constituting a force majeure event, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the Dispute Resolution provisions of this Consent Order.

XX. REIMBURSEMENT OF CONSENT ORDER RESPONSE COSTS

73. The Agencies shall separately submit to Alumet, on a periodic basis, a detailed accounting of all response costs incurred after the effective date of the Consent Order with respect to implementation of this Consent Order. Response costs for purposes of this paragraph consist of all direct and indirect costs incurred in overseeing Alumet's performance of the work required under this Consent Order, including the RI/FS and the natural resource injury determination, and Oversight Contractor costs only for the Lead Agency. All cost summaries will include time and travel, the Lead Agency's Oversight Contractor costs and indirect costs, including the amount computed on the basis of direct labor hours. Alumet may request documents evidencing such expenditures. The Agencies shall also submit to Alumet a

detailed accounting of response costs for the period from May 1, 1997 for EPA, May 25, 1997, for the Forest Service, and April 1, 1997 for the State, to the effective date of this Consent Order.

74. Alumet, within forty-five (45) days of receipt of each accounting, shall remit payment for the amount of the stated costs, together with interest from the date of billing, calculated in accordance with applicable state and federal law, unless the costs are disputed. If payments are made within forty-five (45) days, interest need not be paid.

75. Alumet shall make all payments of Agency response costs by certified or cashier's check, or by wire transfer. Checks shall be made payable to each Agency in the following manner:

a. For the Forest Service: Checks shall be made payable to USDA Forest Service. The check and copy of the Bill for Collection shall be mailed to: USDA Forest Service, Wenatchee National Forest, Financial Management, 215 Melody Ln., Wenatchee, Washington 98802.

b. For the State: Checks shall be made payable to the Washington State Department Of Ecology, and mailed to Cashiering Section, P.O. Box 5128, Lacey, Washington 98509-5128.

c. For EPA: Checks shall be made payable to the Hazardous Substances Superfund, shall include the name of the Site, and

shall be mailed to Mellon bank, EPA Region 10 - Superfund Accounting, P.O. Box 360903M, Pittsburgh, Pennsylvania 15251.

76. Alumet may dispute payment of any portion of the Agencies' response costs, but only on the basis of accounting errors, the inclusion of Federal Agency costs inconsistent with the NCP, the inclusion of Ecology costs inconsistent with MTCA, the inclusion of costs outside the scope of this Consent Order, or the inclusion of costs that have not been paid or approved for payment by the billing Agency. Any such objection shall be made in writing within forty-five (45) days of receipt of the accounting and shall specifically identify the disputed costs and the basis of the dispute. All undisputed costs shall be remitted by Alumet in accordance with the provisions in the preceding paragraphs of this Section. In any Dispute Resolution proceeding, Alumet shall bear the burden of establishing its contentions as to inappropriate costs. If the Agencies prevail in the Dispute Resolution proceeding, Alumet shall remit the amount(s) in question, including any applicable interest, within 30 days after receipt of the final determination.

#### XXI. REIMBURSEMENT OF OTHER RESPONSE COSTS

77. Within 30 days of the effective date of this Consent Order, Alumet shall reimburse EPA its past costs through April 30, 1997 in the amount of \$39,765.12, the State its past costs through March 31, 1997 in the amount of \$ 18,697.54, and the USFS its partial past costs through May 24, 1997 in the amount of \$ 91,908.39. Upon payment of past costs pursuant to this paragraph, the United States and the State covenant not to sue and agrees not to assert any claims against Alumet for recovery of the costs paid by Alumet to the Agencies.

78. Alumet and the USFS shall negotiate in good faith for a period of 120 days after the effective date of this Consent Order for reimbursement of all other USFS response costs associated with the Site not covered by paragraphs 73 and 77 of this Consent Order.

#### XXII. RESERVATION/WAIVER OF RIGHTS

79. Except as specifically provided in this Consent Order, nothing herein shall limit the power and authority of the United States or the State to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous

or solid waste on, at, or from the Site. Further, nothing herein shall prevent the United States or the State from seeking legal or equitable relief to enforce the terms of this Consent Order, from taking other legal or equitable action they deem appropriate and necessary, or from requiring Alumet in the future to perform additional activities pursuant to CERCLA or any other applicable law. The United States and the State reserve the right to bring an action against Alumet under Section 107 of CERCLA, 42 U.S.C. section 9607, or other appropriate law, for recovery of any response costs incurred by the Agencies related to this Consent Order or the Site and not reimbursed by Alumet.

80. Except as expressly provided in this Consent Order, the State reserves the right at all times to independently exercise its authority under MTCA.

81. Except as expressly provided in this Consent Order, Alumet reserves any and all rights, claims and defenses it may have.

82. In entering into this Consent Order, Alumet waives any right to seek reimbursement under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b). Alumet also waives any right to present a claim under Section 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612. This Consent Order does not constitute any decision on

preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Alumet further waives all other statutory and common law claims against the United States and the State, for recovery of costs related to this Consent Order including, but not limited to, contribution and counterclaims.

XXIII. FINANCIAL ASSURANCE, INSURANCE AND INDEMNIFICATION

83. Alumet shall demonstrate an ability to complete the work required under this Consent Order by presenting to the Agencies, within 30 days after the effective date of this Consent Order, one of the following: (a) a performance bond equaling the total estimated cost of the work; (b) one or more letters of credit equaling the total estimated cost of the work; or (c) corporate financial information that is sufficient to satisfy the standards set forth in 40 C.F.R., Part 265, Subpart H.

84. Prior to commencing any work under this Consent Order, Alumet shall obtain comprehensive general liability insurance with limits of at least \$3 million, combined single limit per occurrence, naming the United States and the State as additional insured, to insure against all claims of injury or property damage to third Parties arising from or related to such work. Such insurance shall be maintained for the duration of this Consent Order. In lieu of such coverage Alumet, at its option,

may provide evidence of financial capacity sufficient for purposes of self-insurance, pursuant to the requirements in 40 C.F.R., Part 265, Subpart H.

85. Alumet may demonstrate, by evidence satisfactory to the Agencies, that its contractors or subcontractors maintain equivalent coverage, or coverage for the same risks but in a lesser amount or for lesser terms, in which case Alumet need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. At least seven days before commencing work under this Consent Order, Alumet shall provide the Agencies with copies of the applicable policies or other evidence of the coverage required.

86. By entering into this Consent Order, the Agencies assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Alumet. The Agencies shall not be deemed to be Parties to any contract entered into by Alumet or its contractors or subcontractors to carry out actions pursuant to this Consent Order. Alumet agrees to indemnify and hold the United States and the State of Washington and their agencies, departments, agents and employees harmless from all claims arising from acts or omissions of Alumet or those acting on its behalf, in carrying out activities under

this Consent Order except for claims arising from the gross negligence or willful misconduct of the United States and/or the State, their agencies, departments, agents or employees.

XXIV. EFFECTIVE DATE, SUBSEQUENT MODIFICATIONS,  
COMPUTATION OF TIME, FORMAL APPROVALS

87. The effective date of this Consent Order shall be the date it is signed by the last of the Parties.

88. The terms of this Consent Order may be modified only by written agreement of the Parties.

89. Calendar days shall be utilized for the purposes of computing due dates in this Consent Order and the attached SOW. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal State of Washington or federal holiday, in which event the period runs until the end of the next business day.

90. No informal advice, guidance, suggestion or comment by USFS, EPA, or the State regarding any document submitted by Alumet relieves Alumet of its obligation to obtain any formal approval required by this Consent Order, or to comply with all requirements of this Consent Order.

XXV. PUBLIC NOTICE

91. RCW 70.105D.030(2)(a) requires that, at a minimum, this Consent Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice.

XXVI. TERMINATION AND SATISFACTION

92. This Consent Order shall terminate when Alumet demonstrates in writing and certifies that all activities and obligations under this Consent Order have been performed and the Agencies have approved the certification, in writing. Termination shall not affect obligations and rights of the record preservation section of this Consent Order.

93. The certification shall be signed by an Alumet official with the requisite authority to do so. That official shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete."

XXVII. COUNTERPARTS

94. This Consent Order may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

By: Donald W. Abbott

Name: Donald W. Abbott

Title: Section Manager  
Toxics Cleanup Program

Date: March 25, 1998

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE REGION 6

By:

*Richard A. Ferraro*

Name: Richard A. Ferraro

Title: Deputy Regional Forester

Date:

March 19, 1998

ALUMET CORPORATION

By: R.P. Wolf

Name: R.P. Wolf

Title: Vice President

Date: March 17, 1998

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

By: *Michael F. Gearheard*

Name: Michael F. Gearheard

Title: Associate Director  
Office of Environmental Cleanup

Date: 3-24-98

I hereby concur with the exercise by the United States Department of Agriculture Forest Service and the United States Environmental Protection Agency of their authority to enter into the foregoing Administrative Order on Consent In the Matter of Holden Mine Site.

Dated: 4/11/68

*L. J. Schiffer*  
LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice