UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED
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CLERK

1242239

UNITED STATES OF AMERICA and THE STATE OF SOUTH DAKOTA, **Plaintiffs,** v. CYPRUS MINES CORPORATION and CYPRUS AMAX MINERALS COMPANY, INC. and BLUE TEE CORP., and HOMESTAKE MINING COMPANY OF CALIFORNIA, **Defendants.**	CASE NO. CIV. 12-5058-JLV **CONSENT DECREE WITH:** **CYPRUS MINES CORPORATION; CYPRUS AMAX MINERALS COMPANY, INC.; and BLUE TEE CORP.**

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of South Dakota ("State"), on behalf of the Secretary of the South Dakota Department of Environment and Natural Resources ("DENR"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERLCA"), 42 U.S.C. § 9607, and Chapter 34A-12 of South Dakota Codified Law ("SDCL"),seekin g reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Gilt Edge Mine Site in Lawrence County, South Dakota (the "Site").

B. The Defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint.

C. In response to the release or threatened release of hazardous substances at or from the Site, EPA and the State undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

D. In performing response action at the Site, EPA and the State have incurred response costs and will incur additional response costs in the future.

E. The United States and the State allege that Settling Defendants are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and Chapter 34A-12-12 of SDCL, and are jointly and severally liable for response costs incurred and to be incurred at the Site.

F. Defendant Cyprus Mines Corporation ("Cyprus Mines") has agreed to indemnify Defendant Blue Tee Corp. ("Blue Tee") with respect to the payments and obligations under this Consent Decree.

G. The United States, the State, and Settling Defendants (the "Parties") agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Consent Decree, it is 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 and 1367, 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge entry or 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 is binding upon the United States, the State, and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Consent Decree" shall mean this Consent Decree.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Effective Date" shall mean the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Gilt Edge Special Account for Remedial Action" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section

122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3) to fund future remedial actions at or in connection with the Site.

"Gilt Edge Special Account for State Cost Share and O&M" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), to aid in funding the State's cost share and operation and maintenance obligations for the Site.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States, the State of South Dakota, and Settling Defendants.

"Plaintiffs" shall mean the United States and the State of South Dakota.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992, also known as the Resource Conservation and Recovery Act.

"SDCL" shall mean South Dakota Codified Law.

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

"Settling Defendants" shall mean Cyprus Mines Corporation, Cyprus Amax Minerals Company, Inc., and Blue Tee Corp. (formerly known as Azcon Corporation and Gold Fields American Industries, Inc.).

"Settling Defendants' Related Parties" shall mean: (i) Settling Defendants' successors and assigns, but only to the extent that the liability of such person is based on the liability of Settling Defendants; (ii) Settling Defendants' former or current officers, directors and employees, but only to the extent that the liability of such person is based on acts and/or omissions which occurred in the scope of the person's employment or capacity as an officer, director, and employee; (iii) Freeport-McMoRan Copper & Gold Inc., Freeport-McMoRan Corporation, BH Gold Mining Company, Cyprus Metals Company, Cyprus Exploration Company, Cyprus Johnson Copper Company, and Cyprus Metallurgical Processes Corporation, in their capacity as successors to relevant liabilities of Cyprus Mines Corporation and Cyprus Amax Minerals Company, Inc., including without limitation any assumption by such entities of liabilities, whether direct or indirect, express or implied, arising from the operations of Cyprus Mines Corporation and Cyprus Amax Minerals Company, Inc. or any of their subsidiaries at the Site; and (iv) the former or current officers, directors and employees of Freeport-McMoRan Copper & Gold Inc., Freeport-McMoRan Corporation, BH Gold Mining Company, Cyprus Metals Company, Cyprus Exploration Company, Cyprus Johnson Copper Company, and Cyprus Metallurgical Processes Corporation, but only to the extent that the liability of such person is based on the person's employment or capacity as an officer, director, and employee of such entities.

"Site" shall mean the Gilt Edge Mine Superfund Site, encompassing approximately 1,229 acres, located 4.5 miles southeast of the town of Lead in the northern Black Hills in Lawrence County, South Dakota, and as generally depicted on the map attached hereto as Appendix A. The "Site" also includes off-site areas impacted by hazardous substances released from the Site.

"State" shall mean the State of South Dakota.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to make a cash payment, which includes a premium, to resolve their alleged civil liability with regard to the Site under Section 107 of CERCLA, 42 U.S.C. § 9607, as provided in the Covenants by Plaintiffs in Section VIII, subject to the Reservations of Rights by United States in Section IX.

VI. PAYMENT OF RESPONSE COSTS

5. Payment by Settling Defendants for Response Costs. Within thirty (30) days after the Effective Date, Settling Defendants shall pay to EPA and the State of South Dakota a total of twenty-six million dollars ($26 million), plus an additional sum for Interest on that amount calculated from Effective Date through the date of payment. Among the Settling Defendants and without any effect on joint and several liability for payment of response costs, Cyprus Mines has agreed to indemnify Blue Tee for its obligations under the Consent Decree and intends to make this payment on behalf of all Settling Defendants.

6. Of the total amount to be paid by Settling Defendants pursuant to Paragraph 5 (Payment by Settling Defendants for Response Costs), the sum of eighteen million dollars ($18 million), plus the proportionate share of Interest, shall be paid to EPA and deposited into the Gilt Edge Special Account for Remedial Action, to be retained and used by EPA to fund future remedial actions at Operable Unit One or the final remedial action at Operable Unit Two related to the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund. Of the total amount to be paid by Settling Defendants pursuant to Paragraph 5 (Payment by Settling

Defendants for Response Costs), the sum of eight million dollars ($8 million), plus the proportionate share of Interest, shall be paid to the State of South Dakota.

7. Payment by Settling Defendants to EPA shall be made by Fedwire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, and in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit ("FLU") after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. Payment by Settling Defendants to the State of South Dakota shall be made in accordance with instructions provided to Settling Defendants by the State after the Effective Date. The FLU and the State shall provide the payment instructions to:

Kevin Gaynor
Partner
VINSON & ELKINS LLP
2200 Pennsylvania Ave. NW
Suite 500
Washington, D.C. 20037

on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIII (Notices and Submissions).

8. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA, DOJ, and the State in accordance with Section XIII (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number 08-7T, and DOJ Case Number 90-11-3-08278.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

9. Interest on Late Payments. If any Settling Defendant fails to make any payment required in Paragraph 5 (Payment by Settling Defendants for Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

10. Stipulated Penalty.

a. If any amounts due under Paragraph 5 (Payment by Settling Defendants for Response Costs) are not paid by the required due date, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 9 (Interest on Late Payments), one thousand dollars ($1,000) per violation per day that such payment is late.

b. Stipulated penalties are due and payable within thirty (30) days after the date of the demand for payment of the penalties by EPA or the State. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference the CDCS Number, Site/Spill ID Number 08-7T, and DOJ Case Number 90-11-3-08278.

c. At the time of payment, Settling Defendants shall send notice that payment has been made to DOJ, EPA and the State in accordance with Section XIII (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number 08-7T, and DOJ Case Number 90-11-3-08278.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the State has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

12. The obligations of Settling Defendants to pay amounts owed the United States and the State under this Consent Decree are joint and several. In the event of the insolvency of any Settling Defendant or other failure by any Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VIII. COVENANTS BY PLAINTIFFS

14. Covenants for Settling Defendants by Plaintiffs. Except as specifically provided in Section IX (Reservation of Rights by Plaintiffs), the Plaintiffs covenant not to sue or to take administrative action against Settling Defendants with regard to releases or threatened releases of hazardous substances at or from the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); the United States covenants not to sue or take administrative action against Settling Defendants with regard to releases or threatened releases of hazardous substances at or from the Site pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606; and the State covenants not to sue or to take administrative action against Settling Defendants with regard to releases or threatened releases of hazardous or regulated substances at or from the Site pursuant to Chapters 34A-12-10, 34A-12-11, and 34A-12-12 of SDCL. With respect to present and future liability, these covenants shall take effect upon receipt by EPA and the State of all payments required by Section VI (Payment of Response Costs) and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Consent Decree). These covenants are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants extend only to Settling Defendants and do not extend to any other person; provided, however, that these covenants not to sue (and the reservations thereto) shall also apply to Settling Defendants' Related Parties.

IX. RESERVATION OF RIGHTS BY PLAINTIFFS

15. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Section VIII (Covenants by Plaintiffs). Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Settling Defendants with respect to:

a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability based on the ownership or operation of the Site by Settling Defendants when such ownership or operation commences after signature of this Consent Decree by Settling Defendants;

e. liability based on Settling Defendants' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendants; and

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site. This reservation of rights does not, however, extend to off-site areas impacted by releases or threatened releases of hazardous substances from the Site.

X. COVENANTS BY SETTLING DEFENDANTS

16. Covenants by Settling Defendants. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution; the South Dakota Constitution; the Tucker Act, 28 U.S.C. § 1491; the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Site.

17. Except as provided in Paragraph 19 and Paragraph 23 (res judicata and other defenses), the covenants in this Section shall not apply in the event the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of Rights by Plaintiffs), other than in Paragraph 15.a (liability for failure to meet a requirement of the Consent Decree) or 15.b (criminal liability). If the United States or the State brings any cause of action or issues any order pursuant to the reservation of rights contained in Paragraphs 15.c.-15.f., above, Settling Defendants may pursue any and all legal remedies available against the United States, the State, or other potentially responsible parties in connection with the matters addressed in that cause of action or order.

18. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

19. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for response costs relating to the Site against each other or against Homestake Mining Company of California. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendants, and does not apply to any claims arising out of separate agreements between the Settling Defendants.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

20. Except as provided in Paragraph 19, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 19, each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

21. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. However, if the United States or the State exercises rights under the reservations in Section IX (Reservations of Rights by Plaintiffs) other than in Paragraph 15.a (liability for failure to meet a requirement of the Consent Decree) or 15.b (criminal liability), the "matters addressed" in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

22. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify DOJ, EPA, and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim. Each Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify DOJ, EPA, and the State in writing within ten (10) days after service of the complaint or claim upon it. In addition, each Settling Defendant shall notify DOJ, EPA, and the State within ten (10) days after service or receipt of any Motion for Summary Judgment, and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

23. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief relating to the Site,

Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiffs set forth in Section VIII (Covenants by Plaintiffs).

XII. RETENTION OF RECORDS AND CERTIFICATION

24. Until thirty (30) days after Settling Defendants have complied with their payment obligations under Section VI (Payment of Response Costs), each Settling Defendant shall preserve and retain all non-identical copies of records, reports, or information (hereinafter referred to as "Records") now in its possession or control, or that come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

25. After the conclusion of the document retention period in the preceding paragraph, for a period of three (3) years from the Effective Date, Settling Defendants shall notify DOJ, EPA, and the State at least ninety (90) days prior to the destruction of any such Records, and, upon request by DOJ, EPA, or the State, Settling Defendants shall deliver any such Records to DOJ, EPA, or the State. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description

of the subject of the Record; and (f) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

26. Each Settling Defendant certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the earlier notification of its potential liability by the United States, and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XIII. NOTICES AND SUBMISSIONS

27. Whenever, under the terms of this Consent Decree, notice is required to be given or a 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. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to DOJ and EPA, the State of South Dakota, and Settling Defendants, respectively.

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611

Washington, D.C. 20044-7611
Re: DJ #90-11-3-08278

Heidi K. Hoffman
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
999 18th Street, South Terrace, Suite 370
Denver, CO 80202

As to EPA:

Andrea Madigan
Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

As to the State:

Roxanne Giedd
Assistant Attorney General
State of South Dakota
1302 East Highway 14, Suite 1
Pierre, SD 57501

Mark Lawrensen
Senior Scientist
Department of Environment and Natural Resources
State of South Dakota
Joe Foss Bldg.
523 E. Capitol
Pierre, SD 57501

As to Settling Defendants:

Kevin Gaynor, Partner
Vinson & Elkins LLP
2200 Pennsylvania Ave. NW
Suite 500
Washington, D.C. 20037

Michael B. Wood
Assistant General Counsel – Environmental
Freeport-McMoRan Copper & Gold, Inc.

333 North Central Ave.
Phoenix, AZ 85004

Chris McDonald, Esq.
Shook, Hardy & Bacon, LLP
2555 Grand Boulevard
Kansas City, MO 64108

Terrance Gileo Faye
Special Counsel to Blue Tee Corp.
Babst, Calland, Clements & Zomnir, PC
One North Maple Ave.
Greensburg, PA 15601

XIV. RETENTION OF JURISDICTION

28. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION/APPENDICES

29. This Consent Decree and its appendix constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: Appendix A is the map of the Gilt Edge Mine Superfund Site.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

30. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

31. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. SIGNATORIES/SERVICE

32. Each undersigned representative of the Settling Defendants and each undersigned representative of the Plaintiffs certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

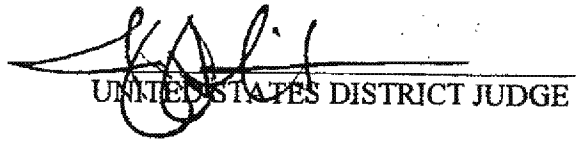
33. Each Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

34. The Settling Defendants shall identify on their signature page the name and address of one agent who is authorized to accept service of process by mail on behalf of each of the Settling Defendants with respect to all matters arising under or relating to this Consent Decree. Settling Defendants agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XVIII. FINAL JUDGMENT

35. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State of South Dakota, and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 9th DAY OF October, 2012.



UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

Date: 8/20/12

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

Date: 8/22/12

HEIDI K. HOFFMAN
Trial Attorney
Environmental Enforcement Section
United States Department of Justice
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
(303) 844-1392

BRENDAN V. JOHNSON
United States Attorney
District of South Dakota

Date:

ROBERT GUSINSKY
Assistant United States Attorney
District of South Dakota
515 Ninth Street, Suite 201
Rapid City, South Dakota 57701

FOR THE UNITED STATES OF AMERICA:

Date:_____

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

Date:_____

HEIDI K. HOFFMAN
Trial Attorney
Environmental Enforcement Section
United States Department of Justice
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
(303) 844-1392

BRENDAN V. JOHNSON
United States Attorney
District of South Dakota

Date: 8/21/2012

ROBERT GUSINSKY
Assistant United States Attorney
District of South Dakota
515 Ninth Street, Suite 201
Rapid City, South Dakota 57701

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 6/8/12

Kelcey Land
Director, Technical Enforcement Program
Office of Enforcement Compliance
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

Date: 6/13/12

Matthew Cohn
Director, Legal Enforcement Program
Office of Enforcement Compliance
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202

Date: 5/2/12

Andrea Madigan
Enforcement Attorney, Legal Enforcement Program
Office of Enforcement Compliance
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202
(303) 312-6904

FOR THE STATE OF SOUTH DAKOTA:

MARTY J. JACKLEY
South Dakota Attorney General
State of South Dakota

Date: 2-21-12

Roxanne Giedd

ROXANNE GIEDD
Assistant Attorney General
State of South Dakota
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
(605) 773-3215

FOR SETTLING DEFENDANTS CYPRUS MINES CORPORATION AND CYPRUS AMAX MINERALS COMPANY, INC.:

Date:_____

L. Richards McMillan, II
Senior Vice President and General Counsel
FREEPORT-MCMORAN COPPER & GOLD INC.
333 North Central Ave.
Phoenix, AZ 85004

Date:_____

Kevin Gaynor
Partner
VINSON & ELKINS LLP
2200 Pennsylvania Ave. NW
Suite 500
Washington, D.C. 20037

FOR SETTLING DEFENDANT BLUE TEE CORPORATION:

Date:_____

David P. Alldian
Executive Vice President – Finance and Secretary
BLUE TEE CORP.
250 Park Ave. South
New York, NY 10003

Date:_____

Terrance Gileo Faye
Special Counsel to Blue Tee Corp.
BABST CALLAND CLEMENTS & ZOMNIR, PC
One North Maple Ave.
Greensburg, PA 15601

Date:_____

Chris McDonald, Esq.
SHOOK, HARDY & BACON, LLP
2555 Grand Boulevard
Kansas City, MO 64108

AGENT AUTHORIZED TO ACCEPT SERVICE ON BEHALF OF SETTLING DEFENDANTS:

FOR SETTLING DEFENDANTS CYPRUS MINES CORPORATION AND CYPRUS AMAX MINERALS COMPANY, INC.:

Date:_____

L. Richards McMillan, II
Senior Vice President and General Counsel
FREEPORT-MCMORAN COPPER & GOLD INC.
333 North Central Ave.
Phoenix, AZ 85004

Date: 5/15/12

Kevin Gaynor
Partner
VINSON & ELKINS LLP
2200 Pennsylvania Ave. NW
Suite 500
Washington, D.C. 20037

FOR SETTLING DEFENDANT BLUE TEE CORPORATION:

Date:_____

David P. Alldian
Executive Vice President – Finance and Secretary
BLUE TEE CORP.
250 Park Ave. South
New York, NY 10003

Date:_____

Terrance Gileo Faye
Special Counsel to Blue Tee Corp.
BABST CALLAND CLEMENTS & ZOMNIR, PC
One North Maple Ave.
Greensburg, PA 15601

Date:_____

Chris McDonald, Esq.
SHOOK, HARDY & BACON, LLP
2555 Grand Boulevard
Kansas City, MO 64108

FOR SETTLING DEFENDANTS CYPRUS MINES CORPORATION AND CYPRUS AMAX MINERALS COMPANY, INC.:

Date:_____

L. Richards McMillan, II
Senior Vice President and General Counsel
FREEPORT-MCMORAN COPPER & GOLD INC.
333 North Central Ave.
Phoenix, AZ 85004

Date:_____

Kevin Gaynor
Partner
VINSON & ELKINS LLP
2200 Pennsylvania Ave. NW
Suite 500
Washington, D.C. 20037

FOR SETTLING DEFENDANT BLUE TEE CORPORATION:

Date: 5-22-12

David P. Alldian
Executive Vice President – Finance and Secretary
BLUE TEE CORP.
250 Park Ave. South
New York, NY 10003

Date: 5/16/12

Terrance Gileo Faye
Special Counsel to Blue Tee Corp.
BABST CALLAND CLEMENTS & ZOMNIR, PC
One North Maple Ave.
Greensburg, PA 15601

Date: 5/23/12

Chris McDonald, Esq.
SHOOK, HARDY & BACON, LLP
2555 Grand Boulevard
Kansas City, MO 64108

AGENT AUTHORIZED TO ACCEPT SERVICE ON BEHALF OF SETTLING DEFENDANTS:

Name: Kevin A. Gaynor

Title: Partner

Address: Vinson + Elkins, LLP
2200 Pennsylvania Ave. NW, Suite 500 West
Washington, DC 20037