



U.S. Department of Justice

Environment and Natural Resources Division

LJG:JML  
90-11-6-05737

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October 4, 2001

To: All Counsel on Attached Distribution

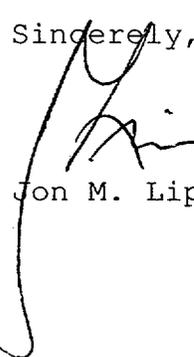
Re: Settlement in Colorado School of Mines v. A.K. Steel Corp., et al., No. 99-N-1863 (D. Colo.)

Dear Counsel:

I am writing to advise you that on September 25, 2001, Judge Edward Nottingham approved the United States' settlement with the Plaintiff in the above-captioned case. A copy of the Settlement Agreement and Order approving the settlement are enclosed for your reference. Pursuant to the Agreement, the United States will pay Plaintiff \$197,698.00, and in exchange will be dismissed from this litigation and will receive a covenant and contribution protection against claims pertaining to costs up to \$8.5 million. (If costs exceeding \$8.5 million eventually are incurred, we will need to negotiate further with the Plaintiff, but I have no indication at this point whether or when this might happen.) I will now forward this order to the Treasury Department for payment out of the Judgment Fund. No further action is required from any of you at this time; I am merely providing this summary and the enclosed documents to you for your information.

Thank you very much for your time and assistance. If you have any questions, do not hesitate to call.

Sincerely,



Jon M. Lipshultz

Enclosures

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**COLORADO SCHOOL OF MINES v. A.H. ROSS & ASSOCIATES, et al.,  
(D. Colorado) DJ # 90-11-6-179**

1/9/01

<b>NAME OF AGENCY</b>	<b>ENVIR CONTACT</b>	<b>ADDRESS</b>	<b>PHONE NO.</b>	<b>FAX NO.</b>
<b>U.S. Dept of Agriculture - U.S. Forest Service</b>	Kirk Minckler	740 Simmons, Rm. 309 Golden, CO 80401	303-725-5549	
<b>U.S. Dept of Commerce</b>	Russell Craig	General Counsel's Office 14 <sup>th</sup> & Constitution Ave., N.W. Room 5870 Washington, D.C. 20230	202-482-1362	202-482-5858
<b>U.S. Dept of Defense - U.S. Air Force</b>	Fred Kuhn	Office of General Counsel HQ, Dept of the Air Force Room 4E856, The Pentagon 1740 Air Force Washington, D.C. 20330-1740	703-695-4691	703-693-1567
U.S. Air Force	Ken Thur	AFLSA/JACE 1501 Wilson Avenue Suite 629 Arlington, VA 22209	703-696-8751	
<b>U.S. Army</b>	Craig Teller	Environmental Law Division 901 N. Stuart Street Suite 400 Arlington, VA 22203-1837	703-696-1563	703-696-2940
<b>U.S. Army Corps of Engineers</b>	Martin Cohen	441 G Street, N.W. Washington, DC 20314-1000	202-761-0027	202-761-4932
U.S. Army Engineer Research & Development Center (ERDC)	Ann Wright Counsel, HTRWCX	U.S. Army Corps of Engineers 12565 West Center Road Omaha, NE 68144	402-697-2466	402-697-2415
<b>U.S. Navy</b>	Mary Raivel	Navy Litigation Office Office of the General Counsel 720 Kennon Street., S.E., Bldg. 36, Rm. 233 Washington Navy Yard, DC 20374	202-685-6788 x 614	202-685-6793
<b>Defense Threat Reduction Agency</b>	Mr. Robert Brittigan General Counsel	45045 Aviation Drive Dulles, VA 20166-7517	703-325-2102	703-810-4550
<b>U.S. Dept of Energy</b>	Steven Miller	General Counsel's Office Forrestal Building Room 6A245 (GCI) 1000 Independence Ave., S.W. Washington, D.C. 20585	202-586-2925	202-586-7373

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Regional Solicitor's Office	Gina Guy Andrea Gelfuso	Office of the Regional Solicitor 755 Parfet Street Suite 151 Lakewood, CO 80215	303-231-5353	303-231-5363
<b>U.S. Dept of Treasury</b> Internal Revenue Service	Richard Carro	1500 Pennsylvania Ave., NW Room 3000 Washington, D.C. 20220	202-622-1146	202-622-1188
<b>U.S. Dept of Veterans Affairs</b>	Patrick LeMoy	810 Vermont Avenue, NW Washington, D.C. 20420	202-273-8613	202-273-6671
<b>U.S. Environmental Protection Agency</b>	Karen Kellen	Region VIII 999 - 18 <sup>th</sup> Street Suite 500 Denver, CO 80202-2466	303-312-6312	303-313-6339
<b>U.S. Nuclear Regulatory Commission</b>	Brooke Poole	General Counsel's Office 11555 Rockville Pike Rockville, MD 20852	301-415-2490	301-415-2036
<b>Securities &amp; Exchange Commission</b>	Sam Folsteen Office of Chief Counsel	Division of Enforcement 450 Fifth Street, N.W. Washington, D.C. 20549	202-942-0871	
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~~SEP~~ MAR 16 2007

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 99-N-1863

Colorado School of Mines,

Plaintiff,

v.

AK Steel Corp., et al.,

Defendants.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLO.

**SEP 26 2001**

JAMES R. MANSPEAKER  
CLERK

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ORDER

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Upon consideration of the Joint Motion For Entry and Approval of Settlement Between Plaintiff Colorado School of Mines ("School") and Defendant United States of America ("United States") and any responses thereto, the Court being fully advised of the grounds for said Joint Motion, it is hereby

ORDERED, that the Court finds the proposed Settlement Agreement to be fair and reasonable, both procedurally and substantively, consistent with applicable law, in good faith, and in the public interest; and it is further

ORDERED, that the Court hereby approves and enters the proposed Settlement Agreement between the School and the United States; and it is further

ORDERED, that the United States is entitled to, as of the effective date of the Settlement Agreement, contribution protection pursuant to section 113(f) of the Comprehensive

Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9613(f), and any other applicable provision of federal or state law, whether by statute or common law, for the Covered Matters in the Settlement Agreement; and it is further

ORDERED, that all claims against the United States in this action, whether alleged in the Second Amended Complaint or as a cross-claim or third-party claim, or otherwise, are hereby dismissed without prejudice; and it is further

ORDERED, that the School and the United States shall each bear their own costs and expenses, including attorneys' fees, in this case.

  
Hon. Edward W. Nottingham  
United States District Judge

DATED: Sept. 25, 2001

Rec 3-5-01  
DEPT. OF JUSTICE

MAR 23 2001

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

\_\_\_\_\_)  
 COLORADO SCHOOL OF MINES, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 AK STEEL CORP., et al., )  
 )  
 Defendants. )  
 \_\_\_\_\_)

1863  
Civ. No. 99-N-1263

SETTLEMENT AGREEMENT AND ORDER

This Settlement Agreement ("Agreement") is made, as of the Effective Date of this Agreement, as defined in Paragraph 3 below, between the State of Colorado, the Colorado School of Mines (the "Plaintiff"), and the Colorado School of Mines Research Institute ("CSMRI") and Defendant United States of America ("United States"). Plaintiff, the State of Colorado, CSMRI and the United States will be collectively referred to as "the Parties."

WHEREAS, Plaintiff brought this action styled Colorado School of Mines v. AK Steel Corp., et al., and bearing Civil Action Number 99-N-1263, in the United States District Court for the District of Colorado ("the Action");

WHEREAS, this Action involves claims by Plaintiff under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-75, as amended, (hereinafter "CERCLA"), together with other claims, seeking to recover certain costs it has allegedly incurred in response to the release or threatened release of hazardous substances

("Response Costs") at a mining research center located near and in Golden, Colorado, on the South Side of Clear Creek, Section 33, Township 3 South, Range 70 West ("the Site"), and seeking a declaration as to the various Defendants' liability for costs to be incurred in the future;

WHEREAS, the Parties have previously entered into agreements settling the United States' alleged liability for past Response Costs incurred up to May 31, 1997 which Past Response Costs are \$7.5 million;

WHEREAS, the Parties desire to enter into this Agreement to have a full and final resolution of any and all remaining claims by Plaintiff that were, could now be or hereafter have been asserted against the United States in connection with the Site for all Response Costs up to and including \$8.5 million, and to avoid the complication and expense of further litigation of such claims concerning the Site;

WHEREAS, the Parties currently intend that they will negotiate in good faith settlement of future response costs in excess of \$8.5 million when additional site characterization information is known, provided that nothing in this or prior Agreements shall be deemed binding or precedential with respect to any issue of liability or allocation for such future response costs, and that any challenge by any Party on such liability or allocation issues shall not be deemed bad faith; and

WHEREAS, the Parties agree that this Agreement is fair, reasonable and in the public interest; and

WHEREAS, the Parties enter into this Agreement as a final settlement of all claims by Plaintiff against the United States, and all claims by the United States on behalf of all federal

entities named in the Second Amended Complaint against the Plaintiff, the State of Colorado, and CSMRI, in connection with the Site for response costs up to \$8.5 million, and do not admit any liability arising from occurrences or transactions pertaining to the Site.

NOW, THEREFORE, IT IS AGREED that:

1. The Parties to this Agreement are Plaintiff, the State of Colorado, CSMRI, and the United States.
2. Subject to any applicable requirement of the Assignment of Claims Act, 31 U.S.C. § 3727, or any other applicable provision of federal law, this Agreement applies to, is binding upon, and inures to the benefit of Plaintiff, the State of Colorado, CSMRI (and their successors, assigns, and designees) and the United States.
3. Effective Date. The Effective Date of this Agreement shall be the date this Agreement is entered by the Court.
4. The Site. The "Site" shall mean the former mining research center near and in Golden, Colorado, on the South Side of Clear Creek, Section 33, Township 3 South, Range 70 West ("the Site"). The Site does not include the Table Mountain Research Center located on McIntyre Street in unincorporated Jefferson County, Colorado, nor the three drums of alleged yttrium-containing materials located at the "Site."
5. Covered Matters. "Covered Matters" means any and all claims for Response Costs incurred or to be incurred at the Site, up to \$8.5 million in total Response Costs incurred by any person, that were, could now be or hereafter have been asserted by Plaintiff against the United

States arising out of or in connection with any conditions at the Site, including any claims regarding off-site contamination that may be emanating from the Site.

6. Response Costs. "Response Costs" shall mean all past, present and future necessary costs of "response," as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), incurred by any person for the cleanup, investigation, removal or remediation of hazardous substances at or in connection with the Site. For purposes of this Agreement, "Response Costs" shall not include damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damages assessments, nor shall it include stipulated penalties or litigation costs. For purposes of this Agreement, "Response Costs" shall include the cost categories<sup>1/</sup> identified by Plaintiff in settlement discussions for Past Response Costs, which were covered in the Parties' prior Settlement Agreements for Past Response Costs, and for the Response Costs that are covered in this agreement up to \$8.5 million. For purposes of this Agreement, Past Response Costs incurred up to May 31, 1997 shall be \$7.5 million. Response Costs up to \$8.5 million shall mean the Past Response Costs plus the next \$1 million in Response Costs incurred after May 31, 1997 (\$7.5 million plus \$1.0 million = \$8.5 million). Prejudgment interest accruing after May 31, 1997 on specific underlying costs initially incurred

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<sup>1/</sup> EPA stockpile removal, AOC negotiations, clay liner notice of violation, community relations, contractors & contract management, Envirocare, miscellaneous project, removal action options analysis, searching for PRPs, UAO compliance, building decontamination, clay pits, drum removal project (owner known), drum removal project (owner unknown), miscellaneous projects, pyrochlore/niobium ore removal project, response projects: surface and subsurface, preliminary studies, site restoration, Attorney General's office, and prejudgment interest. Litigation costs are not included.

prior to May 31, 1997 shall not be considered a part of the next \$1 million in Response Costs incurred after May 31, 1997.

7. United States. The "United States" means the United States of America, including all of its departments, agencies, and instrumentalities.

8. Release and Covenant Not To Sue by Plaintiff, the State of Colorado, and CSMRI and Reservation. Upon entry of this Agreement by the Court, Plaintiff, the State of Colorado, and CSMRI, hereby forever release, discharge, and covenant and agree not to assert (by way of the commencement of an action, the joinder of the United States in an existing action or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity which it they may have had, or hereafter have, including, but not limited to, claims under CERCLA sections 107 and 113, against the United States for Covered Matters, except that the releases and covenants not to sue do not pertain to any matters other than those expressly specified herein and Plaintiff, the State of Colorado, and CSMRI reserve, and this Agreement is without prejudice to, all rights against the United States with respect to all other matters including, but not limited to:

- a. claims based on a failure to meet a requirement of this Agreement;
- b. criminal liability;
- c. damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- d. liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the CSMRI Site by the United

States after May 31, 1997 if such substance, pollutant or contaminant is not presently at the Site.

Nothing in this paragraph shall be construed to modify or alter prior agreements Plaintiff, CSMRI, and the State of Colorado have with EPA and the United States regarding this Site.

9. Protection Against Claims.

a. The Parties acknowledge and agree that the payment to be made by the United States pursuant to this Agreement represents a good faith compromise of disputed claims and that the compromise represents a fair, reasonable, and equitable discharge for the Covered Matters addressed in this Agreement. With regard to any claims for costs, damages or other claims against the United States for Covered Matters under or addressed in this Agreement, the Parties agree that the United States is entitled to, as of the effective date of this Agreement, contribution protection pursuant to section 113(f) of CERCLA, 42 U.S.C. § 9613(f) and any other applicable provision of federal or state law, whether by statute or common law, extinguishing the United States' liability to persons not party to this Agreement. Any rights the United States may have to obtain contribution or otherwise recover costs or damages from persons not party to this Agreement are preserved.

b. The Plaintiff agrees to join in and/or support, as may be appropriate, such legal proceedings as necessary to secure the Court's entry of this Agreement and to secure and maintain the contribution protection contemplated in this Agreement. The United States and Plaintiff shall draft the necessary documentation.

10. Payment:

a. Within a reasonable time after the Effective Date of this Agreement, the United States will pay \$197,698.00 to Plaintiff. Payment shall be in the form of a check or checks made payable to Colorado School of Mines and sent to Colorado School of Mines, Vice President for Business Affairs, 1500 Illinois Street, Golden, Colorado, 80401-1887, or by Electronic Funds Transfer to:

Bank Name:	U.S. Bank
Attn:	Colorado School of Mines Golden, CO 80401
SWIFT Code:	CNBDUS55
Routing Number:	1020-0002-1
Account Number:	120404100196

b. If such payment is not made in full within one hundred and twenty (120) days after the Effective Date of this Agreement, then interest on the unpaid balance shall be paid commencing on the 121st day after the Effective Date. Interest shall accrue at the rate specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26 of the United States Code.

c. Said payment by the United States is subject to the availability of funds appropriated for such purpose. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable provision of law.

11. Covenants and Release by United States and Reservation. Upon entry of this Agreement by the Court, the United States, on behalf of all federal entities named in the Second

Amended Complaint, hereby forever releases, discharges, and covenants and agrees not to assert (by way of the commencement of an action, the joinder of the Plaintiff, the State of Colorado, and/or CSMRI, in an existing action or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity which it may have had, or hereafter have, including, but not limited to, claims under CERCLA sections 107 and 113, against the Plaintiff, the State of Colorado, and/or CSMRI for Covered Matters except that the United States specifically reserves its right to assert against Plaintiff, the State of Colorado, and CSMRI any claims to enforce the terms of this Agreement or any claims or actions (civil or administrative) regarding the Site brought on behalf of the United States Environmental Protection Agency (EPA), or a natural resource trustee, provided that nothing herein shall be construed to modify or alter prior agreements Plaintiff, CSMRI, and the State of Colorado have with EPA and the United States regarding this site, and this Agreement is without prejudice to, all rights against the Plaintiff, CSMRI, and the State of Colorado with respect to all other matters including, but not limited to:

- a. claims based on a failure to meet a requirement of this Agreement;
- b. criminal liability;
- c. damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- d. from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the CSMRI Site by Plaintiff, CSMRI, and the State of

Colorado after May 31, 1997 if such substance, pollutant or contaminant is not presently at the Site.

Nothing in this paragraph shall be construed to modify or alter prior agreements Plaintiff, CSMRI, and the State of Colorado have with EPA and the United States regarding this Site.

12. Effect of Settlement/Entry of Judgment.

This Agreement was negotiated and executed by Plaintiff and the United States in good faith and at arms length and is a fair and equitable compromise of claims, which were vigorously contested but for which no discovery was conducted. This settlement is fair, reasonable, consistent with the public interest, consistent with CERCLA, and consistent with CERCLA's purpose of early resolution of disputes without litigation. This Agreement shall not constitute or be construed as an admission of any issue of liability by the Parties. Nor is it an admission or denial of any factual allegations set out in the Complaint or cross-claim or third-party claim or an admission of violation of any law, rule, regulation, or policy by any of the Parties to this Agreement.

13. Dismissal of Complaint. Upon entry of this Agreement by the Court, Plaintiff agrees that all claims against the United States in this Action, whether alleged in the complaint or as a cross-claim or third-party claim, or otherwise, shall be dismissed without prejudice.

14. Reservations Regarding Certain Future Costs. Notwithstanding any other provision of this Agreement, the Parties expressly reserve, and this Agreement is without prejudice to, any claims for matters not specified as Covered Matters in Paragraph 5 of this Agreement ("Reserved Claims"), and the Parties expressly reserve any defenses they may have to any such Reserved

Claims. It is the mutual current intention of the Parties that upon the completion of the site characterization studies currently being undertaken by Plaintiff, or at such other time as may mutually be deemed appropriate by the Parties, they will engage in further good faith negotiations regarding such Reserved Claims, if any such Reserved Claims are presented to the United States by Plaintiff, before any litigation regarding Reserved Claims is initiated. The parties agree that in any negotiation regarding the share of such Reserved Claims to be borne by any Party, if any, no Party shall be bound by the share of other costs agreed to in this Agreement or other agreements and shall be free to contest its liability for any such Reserved Claims. Any decision by any Party to contest either its alleged liability or share of costs shall not be deemed bad faith within the meaning of this Paragraph .

15. Tolling Agreement. The Parties agree that in any subsequent action that the Parties may bring in connection with Reserved Claims, as that term is defined in Paragraph 15 of this Agreement, that any limitations period in 42 U.S.C. § 9613(g) that may be deemed applicable to such Reserved Claims, shall be deemed tolled from September 24, 1999 to the date one year subsequent to the Effective Date of this Agreement.

16. This Agreement contains the entire agreement between the Parties, and no statements, promises, or inducements made by any Party, or agent or representative of any Party, that is not contained in this Agreement shall be valid or binding. This Agreement may not be enlarged or altered except by writing signed by all the Parties and entered by the Court.

17. This Agreement may be executed in duplicate originals. A facsimile signature shall have the same force and effect as an original signature.

18. Representative Authority. The individuals signing this Agreement on behalf of the Parties hereby certify that they are authorized to bind their respective party to this Agreement.

19. This Agreement does not create any contractual right or any other legal right in any person not a party to this Agreement, including but not limited to the obligations or responsibilities of the Parties to this Agreement. This Agreement does not constitute a waiver or release of any claim or cause of action which the United States, Plaintiff, the State of Colorado, or CSMRI may have against any person not a party to this Agreement.

20. The Court hereby finds that the foregoing Agreement is fair and reasonable, both procedurally and substantively, consistent with applicable law, in good faith, and in the public interest.

The United States of America is entitled to, as of the effective date of the Agreement, contribution protection pursuant to section 113(f) of CERCLA, 42 U.S.C. § 9613(f) and any other applicable provision of federal or state law, whether by statute or common law, for the Covered Matters in the Agreement.

All claims against the United States of America in this Action, whether alleged in the Second Amended Complaint or as a cross-claim or third-party claim, or otherwise, are hereby dismissed without prejudice.

Plaintiff and the United States of America shall each bear their own costs and expenses, including attorneys' fees, in this case.

For the Plaintiff Colorado School of Mines:

Dated: 3/5/01

John W. Trefny  
John W. Trefny

For CSMRI:

Dated: 3/5/01

Robert G. Moore  
Robert G. Moore

For the State of Colorado:

Dated: 3-9-01

Christina Margulles  
Chief Deputy

For the United States:

Dated: 3/1/01

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(202) 514-2191

IT IS SO ORDERED

Dated: \_\_\_\_\_

Edward W. Nottingham  
EDWARD W. NOTTINGHAM  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 99-N-1863

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order (Regarding the Joint Motion for Entry and Approval of Settlement Between Plaintiff Colorado School of Mines and Defendant United States of America) signed by Judge Edward W. Nottingham on September 25, 2001 was served on September 26, 2001 by hand-delivery, where a "D.C." box number or asterisk is indicated after the recipient's name, or otherwise by depositing it in the United States mail, postage prepaid, addressed to the recipient:

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Magistrate Judge Patricia A. Coan\*

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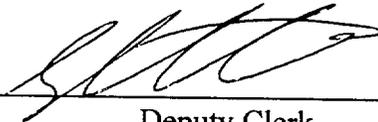
Lori Potter, Esq.  
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