

ANNEX 3

DATED

1995

THE DEPARTMENT OF THE ENVIRONMENT FOR NORTHERN IRELAND (1)

-and-

OMAGH MINERALS LIMITED (2)

AGREEMENT

(pursuant to Article 40 of the Planning  
(Northern Ireland) Order 1991)

23/3/1995

ARTICLE 10 AGREEMENT

LAND REGISTRY OF NORTHERN IRELAND

FOLIOS 8760 AND 8767 AND 8761 COUNTY TYRONE

REGISTERED OWNER OMAGH MINERALS LIMITED

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 1995

BETWEEN:-

(1) ("the Department")

THE DEPARTMENT OF THE ENVIRONMENT FOR NORTHERN IRELAND of Clarence Court, Adelaide Street, Belfast

-and-

(2) ("the Registered Owner")

The above named Registered Owner namely OMAGH MINERALS LIMITED having its registered office at 7 Donegall Square East Belfast

WHEREAS:-

- A. The Department is the planning authority for the purposes of the Planning (Northern Ireland) Order 1991 (hereinafter called "the Order").
- B. The Registered Owner is the owner in fee simple in possession of the lands outlined in red on the attached map numbered 1 being land the title to which is registered in the above mentioned Folios (which lands are hereinafter referred to as "the Land" and are more particularly described in the First Schedule hereto).
- C. An application (No. K/92/0713) (hereinafter called "the Application") has been made by the Registered Owner under Article 20 of the Order for planning permission for an opencast pit for the extraction of gold and silver and associated minerals with associated plant and storage on the lands shown on the attached map numbered 2 and outlined in red (and which lands are hereinafter referred to as "the Site" and include the Land). An environmental statement has been submitted on 18th December 1992 under the Planning (Assessment of Environmental Effects) Regulations (NI) 1989 (hereinafter called "the Environmental Statement").
- D. The Department has decided to grant planning permission (hereinafter called "the Permission") subject to conditions for said development in accordance with the Application and subject (inter alia) to this Agreement being entered into and so that without this Agreement being entered into the Permission would not be granted

NOW THIS AGREEMENT WITNESSES as follows:-

1. That for the benefit of the lands the subject of the Application and with the intent that the covenants hereinafter expressed and entered into by the Registered Owner shall be fully enforceable in accordance with Article 40 of the Order the Registered Owner HEREBY AGREES AND COVENANTS with the Department as follows:-
  - (a) That this Agreement is made in pursuance of Article 40 of the Order.
  - (b) The obligations of the Registered Owner set out in this Agreement shall be deemed to be undertaken by the Registered Owner jointly with any other party having an estate in land in respect of the Site for the purposes of Article 40 of the Order save in so far as the obligations relate to the Land exclusively.
  
2. That within six months of the cessation of processing of ore on the Site the Registered Owner shall (in conjunction with any other parties obliged to do so) submit an aftercare scheme for the agreement in writing of the Department which shall specify the programme of care and maintenance of vegetation and other landscape works and the replacement of dead, dying or diseased plants. In the event that the said aftercare scheme is not agreed in writing within 1 year of the cessation of processing of ore on the Site the Department shall stipulate the aftercare scheme in writing and same shall be binding on the Registered Owner. The aftercare scheme shall be implemented during the period to be specified in the scheme being a period of not less than 5 years from the completion of the Closure Plan carried out on foot of the said Permission.
  
3. (i) That for a period of 5 years from the cessation of excavation and processing or if any remedial measures are required to be carried out on foot of this Agreement for a period of 5 years from the completion of such remedial measures, the Registered Owner shall (in conjunction with any other parties obliged to do so) be responsible to cause groundwater to be monitored at the 4 monitoring points identified on Figure C3 of the Environmental Statement referred to in the Permission as Spring numbers 2 and 5 and Well numbers 4 and 7 for the following parameters;
 

BOD, COD, pH value, suspended solids, conductivity, ammoniacal nitrogen (NH4-N), nitrite, nitrate, zinc, copper, lead, chromium, nickel, arsenic, mercury, cadmium, iron, silver, aluminium, manganese, total cyanide, sulphate, chloride, acidity/alkalinity (CaCO3), sodium, potassium, magnesium, calcium and sulphide.
  
- (ii) That this monitoring shall be carried out quarterly in the first year and half-yearly thereafter, and a report on the analytical results and interpretation is to be supplied to the Department within one month of sampling. The Registered Owner (in conjunction with any other parties so obliged to do so) shall be responsible to agree in writing with the Department the number of sampling results required to permit the statistical comparison set out in 3 (iv) below to be undertaken. In the event that no agreement is reached, the Department shall specify in writing the number of sampling results so

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required

- (iii) In the event that the locations of existing emergence points i.e. Spring Nos. 2 and 5 and Well Nos. 4 and 7 as shown in figure C3 of the Environmental Statement are changed to a material extent then alternative sampling points shall be agreed in writing with the Department. In the event that no agreement is reached, the Department shall specify in writing the alternative sampling points which are situate on the Land and for which the Registered Owner shall be responsible to provide.
- (iv) That if the median values of the said monitoring results are shown to be higher, at the 90% confidence level, than the median values of the results for the parameters specified in 3 (i) above, recorded during the baseline sampling programme (referred to in Condition 1 of the permission) then remedial action shall be taken. The Registered Owner shall (in conjunction with any others so obliged to do so) be responsible to put forward proposals for remedial action for the agreement of the Department showing the proposed treatment and the timing of that treatment. In the event that no agreement is reached, the Department shall specify the remedial action to be undertaken by the Registered Owner and the timescale of the action.
4. That in the event of acid rock generation being identified in the groundwater samples referred to in 3 above, the Registered Owner shall (in conjunction with any other parties so obliged to do so) be responsible to put forward proposals for the agreement in writing of the Department **showing how the acid generation from rock shall be treated** and the timing of that treatment. In the event that no agreement is reached, the Department shall specify the remedial action by the Registered Owner and any other party under obligation to carry out such remedial action and the timescale of the action. In the event that net acid generating potential is identified the monitoring referred to in 3 above shall continue for a period of 30 years after the closure of the development.
5. (i) That for a period of 5 years from the closure of the development, or if any remedial measures are required to be carried out on foot of this Agreement, for a period from the completion of such remedial measures, the Registered Owner shall be responsible to monitor surface water at such of the 4 monitoring points shown on Figure C1 of the Environmental Statement ~~referred to in the Permission~~ as sites 3, 4, 10 and 11 which lie within the Land and (if same is within the boundaries of the Land) at the monitoring point established at the outfall to the polishing pond as shown in Figure D3 of the Environmental Statement. The samples taken shall be analysed for the following parameters:
- BOD, ammoniacal nitrogen (NH<sub>4</sub>-N), pH value, suspended solids, conductivity, zinc, copper, lead, chromium, nickel, arsenic, mercury, cadmium, iron, silver, aluminium, manganese, total cyanide, cyanate, total phosphorus, nitrite, nitrate and sulphate
- (ii) That this monitoring shall be carried out quarterly in the first year and half-

yearly thereafter, and a report on the analytical results and interpretation shall be supplied to the Department within one month of sampling. The Registered Owner shall agree in writing with the Department the number of sampling results required to permit the statistical comparison set out in 5 (iii) below to be undertaken. In the event that no agreement is reached, the Department shall specify in writing the number of sampling results so required. All analyses shall be carried out by a third party laboratory to be agreed in writing by the Department.

- (iii) That if the median values of the said monitoring results are shown to be higher, at the 90% confidence level, than the median values of the results for the parameters specified in 5(i) above, recorded during the baseline sampling programme, then the Registered Owner shall (in conjunction with any others so obliged to do so) be responsible to submit proposals for remedial action for the agreement of the Department in writing, showing the proposed treatment and the timing of that treatment. In the event that no agreement is reached, the Department shall specify in writing the necessary control measures to be put in place.

6. That, for a period of 5 years from the closure of the site or if any remedial measures are required to be carried out on foot of this Agreement, for a period of 5 years from the completion of such remedial measures:-

- (i) monthly dust sampling shall be carried out in accordance with the programme established under the Alkali & Works Regulation Act 1906 as amended and shall continue at such of the 4 dust monitoring stations established at sites shown on the attached plan numbered [ 3 ] which may lie within the boundaries of the Land. The samples shall be analysed for total particulates and for the suite of metals required by the Department to be analysed for the purposes of registration of the processing plant under the aforementioned Act during the final year of registration. Reports of analyses of the samples shall be submitted quarterly to the Department, and
- (ii) annual soil sampling shall be carried out at sites closest to such of the dust monitoring stations established under the baseline monitoring programme and analysed for heavy metals. Reports of the analyses of the samples shall be submitted quarterly to the Department within three months of sampling.

Sampling of dust and soil shall commence within three months of closure of the development. If it shall be established to the Department's satisfaction at any time after one year after closure that dust dispersal is not occurring and soil quality is not thereby adversely affected then this monitoring programme shall be discontinued.

- (iii) That if the median values of the said monitoring results are shown to be higher, at the 90% confidence level, than the median values of the results for the parameters referred to in 6(i) above recorded during the baseline sampling programme, then the Registered Owner shall (in conjunction with any others obliged to do so) be responsible to submit proposals for remedial action for

the agreement of the Department in writing, showing how the excessive levels will be treated and the timing of that treatment. In the event that no agreement is reached the Department shall specify the remedial action by the Registered Owner and the timescale of the action.

7. That Registered Owner shall be jointly responsible with any other parties entering into an Article 40 Agreement in similar terms hereto with the Department in respect of the said development of the Site to pay to the Department on demand an annual sum not exceeding £3000.00 to cover the cost of carrying out an annual sampling regime on two farms in close proximity to the site and for comparison purposes on two other farms. The sampling regime will test ~~cost~~ milk and the liver and kidney of 3 beef cattle or sheep for a suite of metals consisting of cadmium, arsenic, lead and mercury. This sampling shall be carried out from the date of the Permission until the excavated trench has been finally restored and the results of the regime shall be available for public scrutiny. The testing regime shall be reviewed after 3 years.

*Handwritten initials*

8. The Registered Owner HEREBY CONSENTS to the registration of this Deed as burden on the above mentioned Folios.

9. In this Agreement the expression "Registered Owner" shall include all parties who may during the currency of this Agreement be the registered owner of the Land or otherwise have an estate in the Land for the purposes of Article 40 of the Order.

IN WITNESS whereof this Deed has been executed in manner hereinafter appearing the day and year first above written.

FIRST SCHEDULE

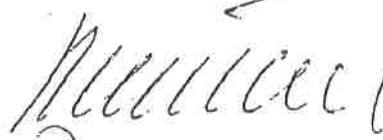
THE LAND

The lands in the above Folios being lands at Cavanacaw Upper and Aghee County Tyrone.

*Handwritten mark*

PRESENT when the OFFICIAL SEAL  
OF THE DEPARTMENT was hereto  
affixed:-

PRESENT when the COMMON SEAL  
of THE REGISTERED OWNER was hereto affixed:-

  
DIRECTOR

  
Secretary