

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALCOA, INC.,

Defendant.

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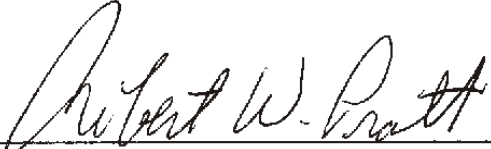
3:08-cv-00096

ORDER

The United States has filed an unopposed motion to enter the proposed Remedial Design/ Remedial Action Consent Decree between the United States and defendant Alcoa, Inc. in this action. The Court, having reviewed the United States' motion and the terms of the agreement, finds that the Consent Decree is fair, reasonable, and consistent with the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. Accordingly, the Court ORDERS that the Consent Decree between the United States and defendant Alcoa, Inc. is hereby approved and entered as an Order of this Court.

IT IS SO ORDERED.

Dated this ___11th___ day of December 2008.



ROBERT W. PRATT, Chief Judge
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

ALCOA, INC.

Defendant.

CIVIL ACTION NO.

REMEDIAL DESIGN/REMEDIAL ACTION CONSENT DECREE

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	JURISDICTION	3
III.	PARTIES BOUND	4
IV.	DEFINITIONS	4
V.	GENERAL PROVISIONS	10
VI.	PERFORMANCE OF THE WORK BY SETTLING DEFENDANT	13
VII.	REMEDY REVIEW	21
VIII.	QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS	23
IX.	ACCESS AND INSTITUTIONAL CONTROLS	25
X.	REPORTING REQUIREMENTS	30
XI.	EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS	32
XII.	PROJECT COORDINATORS	34
XIII.	ASSURANCE OF ABILITY TO COMPLETE WORK	35
XIV.	CERTIFICATION OF COMPLETION	37
XV.	EMERGENCY RESPONSE	41
XVI.	PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES	42
XVII.	INDEMNIFICATION AND INSURANCE	47
XVIII.	<i>FORCE MAJEURE</i>	49
XIX.	DISPUTE RESOLUTION	51
XX.	STIPULATED PENALTIES	55
XXI.	COVENANTS NOT TO SUE BY PLAINTIFF	59
XXII.	COVENANTS BY SETTLING DEFENDANT	65
XXIII.	EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION	66
XXIV.	ACCESS TO INFORMATION	68
XXV.	RETENTION OF RECORDS	69
XXVI.	NOTICES AND SUBMISSIONS	71
XXVII.	EFFECTIVE DATE	72
XXVIII.	RETENTION OF JURISDICTION	72
XXIX.	APPENDICES	73
XXX.	COMMUNITY RELATIONS	73
XXXI.	MODIFICATION	73
XXXII.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	74
XXXIII.	SIGNATORIES/SERVICE	74
XXXIV.	FINAL JUDGMENT	75

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 Secretary of the Department of the Interior, filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Alcoa-Davenport Works ("Alcoa") and Mississippi River Pool 15 ("MRP15") Superfund Sites in Riverdale, Iowa, together with accrued interest; (2) performance of response actions by the defendant at the Sites consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); and (3) recovery of Natural Resource Damages at the Sites.

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the state of Iowa (the "State") on October 15, 2004, of negotiations with the potentially responsible party regarding the implementation of the remedial design and remedial action for the Sites, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of Interior on October 15, 2004, of negotiations with the potentially responsible party regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

E. The defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Alcoa Site or the MRP15 Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. Neither Site has been placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Alcoa Site, Settling Defendant commenced a Remedial Investigation and Feasibility Study ("RI/FS") in July 1990 for the Alcoa Site pursuant to 40 C.F.R. § 300.430.

H. For the Alcoa Site, the Settling Defendant submitted the Remedial Investigation ("RI") Report in May 2002 and the Feasibility Study ("FS") Report in May 2004. Settling Defendant submitted a number of Investigation Reports for the MRP15 between 1996 and 2002, and the Feasibility Study ("FS") Report on May 21, 2004.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action for both Sites on July 28, 2004 in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Sites is embodied in the Record of Decision ("ROD"), executed on September 28, 2004, on which the

State has given its concurrence. The ROD includes EPA's explanation for any significant changes between the ROD and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with CERCLA Section 117(b). The EPA announced changes to the remedial action to be implemented at the Alcoa Site in an Explanation of Significant Differences ("ESD"), issued on July 5, 2007.

K. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial Action selected by the ROD and the ESD, and the Work to be performed by the Settling Defendant shall constitute a response action taken or ordered by the President.

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

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to

jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing Settling Defendant with respect to the Sites or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which 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 in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

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

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

“DOI” shall mean the United States Department of Interior and any successor departments or agencies of the United States

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 106.

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

“Explanation of Significant Differences” or “ESD” shall mean the Explanation of Significant Differences for the Alcoa Site issued by EPA on July 5, 2007, and all attachments thereto. The ESD is attached hereto as Appendix B.

“Future Oversight Costs” shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Settling Defendant’s performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of the Work; however, Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls), XV (Emergency Response), and Paragraph 88 of Section XXI (Work Takeover), or the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XIX (Dispute Resolution) and all litigation costs.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 88 of Section XXI. Future Response Costs shall also include all Interim Response Costs and all Interest on Past Response Costs Settling Defendant has agreed to reimburse under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from July 25, 2004 to the date of entry of this Consent Decree. The

terms governing the accrual and payment of Future Response Costs are referenced in Paragraphs 55 and 56 of this Consent Decree.

“IDNR” shall mean the Iowa Department of Natural Resources and any successor departments or agencies of the State.

“Interim Response Costs” shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Sites between October 28, 2007 and the Effective Date of this Consent Decree, or (b) incurred prior to the Effective Date but paid after that date. The terms governing the accrual and payment of Interim Response Costs are referenced in Paragraphs 55 and 56 of this Consent Decree.

“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.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Natural Resources” shall include “natural resources,” as defined in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

“Natural Resource Assessment Costs” shall mean the costs incurred by the DOI for assessing the alleged injury, destruction or loss of natural resources at the Sites.

“Natural Resource Damages” shall mean compensation for injury, destruction or loss of natural resources as set forth in Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), for any Natural Resources at the Sites, including reimbursement of Natural Resource Assessment Cost incurred by the DOI in assessing such injury, destruction or loss arising from or related to such a release.

“NRDAR Fund” shall mean the DOI’s Natural Resource Damage Assessment and Restoration Fund.

“Operational and Functional Activities” shall mean all activities conducted during the Remedial Action phase after construction of the remedy is complete to ensure that the remedy is functioning properly and operating as designed.

“Operation and Maintenance” or “O&M” shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (“SOW”).

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

“Parties” shall mean the United States and the Settling Defendant.

“Past Response Costs” shall mean all unreimbursed costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Sites through October 27, 2007, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section 2.12 of the ROD, the ESD, and Section III of the SOW.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Sites signed on September 28, 2004, by the Superfund Division Director, EPA Region VII, or his/her delegate, and all attachments thereto. The ROD is attached hereto as Appendix A.

“Remedial Action” shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendant to implement the ROD and the ESD, in accordance with the SOW and the Remedial Design in accordance with Paragraph 12.

“Remedial Design” shall mean those activities to be undertaken by the Settling Defendant to develop the final plans and specifications for the Remedial Action in accordance with Paragraph 11.

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

“Settling Defendant” shall mean Alcoa, Inc.

“Site” and/or Sites, consistent with 42 U.S.C. § 9601(9), shall mean the Alcoa, Inc. Superfund Site (a.k.a. the Alcoa-Davenport Works Superfund Site) in Riverdale, Scott County, Iowa, and/or portions of Mississippi River Pool 15 (“MRP15”) where contamination from the Alcoa facility came to be located (both Sites depicted generally on the map attached hereto as Appendix C).

“State” shall mean the state of Iowa.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Sites, as set forth in Appendix D to this Consent Decree and any modifications made in accordance with this Consent Decree.

“Technical Impracticability Zone” or “TI Zone” shall mean the spatial extent over which the TI waiver applies. The horizontal extent of the TI Zone is an area that lies within the Alcoa facility boundary as depicted in Figure 3 of the ROD. The vertical extent of the TI Zone includes the unconsolidated zone aquifer and the bedrock aquifers.

“United States” shall mean the United States of America.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (b) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33).

“Work” shall mean all activities Settling Defendant is required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Sites by the design and implementation of response actions at the Sites by the Settling Defendant, to fund natural resource restoration projects and provide for the reimbursement of DOI’s Natural Resource Assessment Costs, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendant as provided in this Consent Decree.

6. Commitments by Settling Defendant. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the ROD, the ESD, the SOW, and all plans, standards, specifications, and schedules set forth herein or developed by Settling Defendant and approved by EPA pursuant to this Consent Decree. Settling Defendant shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree, and shall pay Natural Resource Damages to the United States.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable Federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD, the ESD, and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a Federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendant may seek relief under the provisions of Section XVIII (*Force Majeure*) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any Federal or state statute or regulation.

9. Notice to Successors-in-Title.

a. With respect to any property owned or controlled by the Settling Defendant that is located within the Alcoa Site, within fifteen (15) days after the entry of this Consent Decree, the Settling Defendant shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Scott County, state of Iowa, which shall provide notice to all successors-in-title that the property is part of the Alcoa Site, that EPA selected a remedy for the Alcoa Site on September 28, 2004, as may be modified by subsequent post-Record of Decision changes, and that Settling Defendant has entered into a Consent Decree requiring implementation of the remedy. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Settling Defendant shall record the notice within ten (10) days of EPA's approval of the notice. The Settling Defendant shall provide EPA with a certified copy of the recorded notice within ten (10) days of recording such notice(s).

b. At least thirty (30) days prior to the conveyance of any interest in property located within the Alcoa Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, Settling Defendant shall give the grantee written notice of: (i) this Consent Decree; (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Alcoa Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls); and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such

property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least thirty (30) days prior to such conveyance, the Settling Defendant shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of the Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of the United States. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

10. Selection of Project Coordinator or Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendant pursuant to Sections VI (Performance of the Work by Settling Defendant), VII (Remedy Review), VIII (Quality Assurance, Sampling, and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Project Coordinator, or the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Such disapproval shall not be arbitrary, capricious or otherwise not in accordance with law. Within twenty (20) days after the lodging of this Consent Decree, Settling Defendant shall notify EPA in

writing of the name, title, and qualifications of its proposed Project Coordinator or its proposed Supervising Contractor. Settling Defendant shall demonstrate that the proposed Project Coordinator or proposed Supervising Contractor will utilize a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. The EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendant proposes to change its Project Coordinator or Supervising Contractor, Settling Defendant shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Project Coordinator or Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves of Alcoa's proposed Project Coordinator or proposed Supervising Contractor, EPA will notify Settling Defendant in writing and will provide a written explanation for the disapproval. The EPA shall use its best efforts to respond within thirty (30) days. Settling Defendant shall then submit to EPA a list of proposed project coordinators or a list of proposed supervising contractors, including the qualifications of each, with a copy of the QMP for each proposed supervisory contractor, that would be acceptable to Settling Defendant within thirty (30) days of receipt of EPA's disapproval of the Project Coordinator or Supervising Contractor previously proposed. The EPA will provide written notice of the names of any project coordinator or contractor(s) that it disapproves and an authorization to proceed with

respect to any of the other project coordinators or contractors. Settling Defendant may select any project coordinator or supervising contractor from that list that is not disapproved and shall notify EPA of the name of the Project Coordinator or Supervising Contractor selected within twenty-one (21) days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendant from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendant may seek relief under the provisions of Section XVIII (*Force Majeure*) hereof.

11. Remedial Design/Remedial Action Work Plan.

a. Within sixty (60) days of receipt of EPA's issuance of an authorization to proceed pursuant to Paragraph 10, or within sixty (60) days of entry of the Consent Decree, whichever occurs later, Settling Defendant shall submit to EPA a Remedial Design/Remedial Action ("RD/RA") Work Plan that meets the requirements and specifications set forth in the SOW. The RD/RA Work Plan shall provide for design and implementation of the remedy set forth in the ROD and ESD, in accordance with the SOW, and for achievement of the Performance Standards and other requirements set forth in the ROD, the ESD, this Consent Decree and the SOW. Upon its approval by EPA, the RD/RA Work Plan shall be incorporated into and become enforceable under this Consent Decree.

b. The RD/RA Work Plan shall include plans and schedules for implementation of all RD/RA Work Plan tasks identified in the SOW, including, but not limited to, the following items for the Alcoa and the MRP15 Sites: (i) Overall Management Strategy; (ii) Groundwater

Containment, Extraction, and Treatment System ("GCETS") Plan for the Alcoa Site; (iii) Long-Term Monitoring Plan ("LTMP") for the Alcoa Site; (iv) Monitored Natural Recovery Program Plan ("MNRPP") for the MRP15 Site; (v) description of Operational and Functional ("O&F") phase for the Alcoa and MRP15 Sites (vi) Quality Assurance Project Plan; (vii) Health and Safety Plan; and (viii) Overall Project Schedule. Settling Defendant shall submit to EPA all plans, submissions and other deliverables required under the approved RD/RA Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).

12. Performance of the Remedial Action.

a. Within thirty (30) days of receipt of EPA's approval of the RD/RA Work Plan, Settling Defendant shall implement the activities of the RD/RA Work Plan in accordance with the approved schedules therein.

b. Any changes or additions to the RD/RA Work Plan, LTMP, GCETS Plan and/or MNRPP at or after the time of implementation shall be submitted to EPA for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).

c. Within sixty (60) days of completion of the Remedial Action for both Sites, Settling Defendant shall submit to EPA for review and approval a Final Remedial Action Report and an Operation and Maintenance ("O&M") Plan for the Alcoa and MRP15 Sites, both developed in accordance with the SOW.

13. Performance Standards

a. The Performance Standard for groundwater remediation at the Alcoa Site is containment, extraction, and treatment of groundwater so that groundwater contamination is

being hydraulically contained within the TI Zone and groundwater contaminant concentrations outside the TI Zone shall not exceed specific Performance Standards as a result of contaminant migration from within the TI Zone. The specific Performance Standards for groundwater are set forth in Attachment 1 of the SOW. The specific Performance Standards for effluent from the Groundwater Containment, Extraction and Treatment System are set forth in Attachment 3 of the SOW.

b. The Performance Standard with respect to the Remedial Action at the MRP15 Site is to reduce PCB concentrations in fish to levels that are protective of human health and the environment, as determined by species specific Performance Standards for channel catfish and common carp, and to establish that natural recovery processes, in areas along the Alcoa shoreline, including sedimentation and sediment bed stability, provide conditions that are protective of human health and the environment. Species specific Performance Standards of PCB concentrations in fish tissue for channel catfish and common carp are 226 ug/kg and 231 ug/kg, respectively. Monitoring standards, to monitor natural recovery processes, including sedimentation and sediment bed stability, will be established in the MNRPP.

14. Completion of the Work.

a. Within thirty (30) days of receipt of EPA's approval of both the Final Remedial Action Report and the O&M Plan, Settling Defendant shall implement the activities described in the approved O&M Plan according to the requirements and schedules set forth therein.

b. Any changes or additions to the O&M Plan at or after the time of implementation shall be submitted to EPA for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).

c. Within sixty (60) days after all phases of the Work, including O & M, have been completed at both Sites, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by both Parties.

d. Within sixty (60) days of completion of the Work at both Sites and following the pre-certification inspection, Settling Defendant shall prepare a Completion of Work Report in accordance with the SOW.

e. Work at both Sites shall continue until:

i. it has been determined by EPA, as a result of the implementation of the groundwater monitoring program for the Alcoa Site as described in the O&M Plan, that:

A) concentrations of groundwater contaminants are below the chemical-specific Performance Standards listed in Attachment 1 to the SOW in areas outside the TI Zone; and B) concentrations of groundwater contaminants are below the chemical-specific Performance Standards listed in Attachment 1 to the SOW throughout the TI Zone; and

ii. in addition to achieving the conditions in the Paragraph 14.e.i, it has also been determined by EPA that the Performance Standards and monitoring standards for the MRP15 Site have been achieved through the implementation of the monitored natural recovery program for the MRP15 Site as described in the O&M Plan.

15. Modification of the SOW or Related Work Plans.

a. If, at any time, EPA determines that modification to the Work specified in the SOW and/or in plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD and ESD, EPA may require that such modification be incorporated in the SOW and/or

such plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD and ESD.

b. For the purposes of this Paragraph 15 and Paragraph 50 of Section XIV (Certification of Completion of Remedial Action) only, the “scope of the remedy selected in the ROD and ESD” is: (i) operation of a groundwater containment, extraction, and treatment system until EPA has determined that concentrations of groundwater contaminants are being maintained below chemical-specific Performance Standards (see Attachment 1 to the SOW) in areas outside the TI zone; (ii) source area remediation at the Alcoa Site; (iii) monitoring of groundwater at the Alcoa Site; (iv) implementation and maintenance of institutional controls at the Alcoa Site as specified in the SOW; and (v) monitoring natural recovery processes in MRP15 until EPA is assured that fish tissue concentrations in MRP15 are at levels protective of human health and the environment and that natural recovery processes in MRP15 are sufficient to provide protection of human health and the environment. For the purposes of this Paragraph 15 and Paragraph 51 of Section XIV (Certification of Completion of the Work) only, the “scope of the remedy selected in the ROD and ESD” is: (i) operation of a groundwater containment, extraction, and treatment system until EPA has determined that concentrations of groundwater contaminants are below chemical-specific Performance Standards (see Attachment 1 to the SOW) throughout the TI Zone, and are below chemical-specific Performance Standards (see Attachment 1 to the SOW) for groundwater contaminants in areas outside the TI zone; (ii) source area remediation at the Alcoa Site; (iii) monitoring of groundwater at the Alcoa Site; (iv) implementation and maintenance of institutional controls at the Alcoa Site as specified in the SOW; and

(v) monitoring natural recovery processes in MRP15 until EPA is assured that fish tissue concentrations in MRP15 are at levels protective of human health and the environment and that natural recovery processes in MRP15 are sufficient to provide protection of human health and the environment.

c. If Settling Defendant objects to any modification determined by EPA to be necessary pursuant to this Paragraph, Settling Defendant may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 68 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendant shall implement any Work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

16. Settling Defendant acknowledges and agrees that nothing in this Consent Decree, the SOW, or the Remedial Design and Remedial Action constitutes a warranty or representation of any kind by Plaintiff that compliance with the Work requirements set forth in the SOW and the plans developed pursuant to this Consent Decree will achieve the Performance Standards.

17. Off-Site Shipment of Wastes.

a. Settling Defendant shall, prior to any off-Site shipment of Waste Material from the Sites that is generated pursuant to this Consent Decree to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material.

However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

(i) The Settling Defendant shall include in the written notification the following information, where available: (A) the name and location of the facility to which the Waste Material is to be shipped; (B) the type and quantity of the Waste Material to be shipped; (C) the expected schedule for the shipment of the Waste Material; and (D) the method of transportation. The Settling Defendant shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(ii) The identity of the receiving facility and state will be determined by the Settling Defendant following the award of the contract for Remedial Action construction. The Settling Defendant shall provide the information required by Paragraph 17.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Sites to an off-site location, Settling Defendant shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. Settling Defendant shall only send hazardous substances, pollutants, or contaminants from the Sites to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. REMEDY REVIEW

18. Periodic Review. Settling Defendant shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is

protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulation.

19. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for either Site in accordance with the requirements of CERCLA and the NCP.

20. Opportunity To Comment. Settling Defendant and, if required by CERCLA Sections 113(k)(2) or 117, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to CERCLA Section 121(c) and to submit written comments for the record during the comment period.

21. Settling Defendant's Obligation To Perform Further Response Actions. If EPA selects further response actions at either Site, the Settling Defendant shall undertake such further response actions to the extent that the re-opener conditions in Paragraph 84 or Paragraph 85 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendant may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute: (a) EPA's determination that the re-opener conditions of Paragraph 84 or Paragraph 85 of Section XXI (Covenants Not To Sue by Plaintiff) are satisfied; (b) EPA's determination that the Remedial Action is not protective of human health and the environment; or (c) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 68 (record review).

22. Submissions of Plans. If Settling Defendant is required to perform the further response actions pursuant to Paragraph 21, Settling Defendant shall submit a plan for such work

to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendant) and shall implement the plan approved by EPA in accordance with the provisions of this Consent Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

23. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all samples taken pursuant to this Consent Decree in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data, generated in accordance with the QAPP(s) and reviewed and approved by EPA, shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Defendant shall ensure that EPA and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of

those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA the Settling Defendant may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Settling Defendant shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendant shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. The EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Defendant shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

24. Upon request, Settling Defendant shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendant shall notify EPA not less than thirty (30) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Defendant to take split or duplicate samples of any

sample it takes as part of the Plaintiff's oversight of the Settling Defendant's implementation of the Work.

25. Settling Defendant shall submit to EPA three (3) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the Sites and/or the implementation of this Consent Decree unless EPA agrees otherwise.

26. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statute or regulation.

IX. ACCESS AND INSTITUTIONAL CONTROLS

27. If the Sites, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, are owned or controlled by Settling Defendant, Settling Defendant shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Sites, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (i) Monitoring the Work;
- (ii) Verifying any data or information submitted to the United States;
- (iii) Conducting investigations relating to contamination at or near the Sites;
- (iv) Obtaining samples;

(v) Assessing the need for, planning, or implementing additional response actions at or near the Sites;

(vi) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

(vii) Implementing the Work pursuant to the conditions set forth in Paragraph 88 of this Consent Decree;

(viii) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or their agents, consistent with Section XXIV (Access to Information);

(ix) Assessing Settling Defendant's compliance with this Consent Decree;
and

(x) Determining whether the Sites or other property are being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Sites, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, those activities identified in Appendix E (the Environmental Covenant); and

c. execute and record in the Recorder's Office of Scott County, State of Iowa, for the Alcoa Site, the Environmental Covenant, or other appropriate instrument, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this

Consent Decree including, but not limited to, those activities listed in Paragraph 27.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions referred to in Paragraph 27.b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendant shall grant the access rights and the rights to enforce the land/water use restrictions to the United States, on behalf of EPA, and the State, if appropriate, under the Environmental Covenant, or other appropriate instrument. Such Settling Defendant shall, within forty-five (45) days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

- (i) A draft Environmental Covenant, in substantially the form attached hereto as Appendix E, that is enforceable under the laws of the state of Iowa;
- (ii) Any other appropriate draft instrument; and
- (iii) A current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the Environmental Covenant, or other appropriate instrument, and the title evidence, Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the Environmental Covenant, or other appropriate instrument, with the Recorder's Office of Scott County. Within thirty (30) days of

recording the Environmental Covenant, or other appropriate instrument, Settling Defendant shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded instrument(s) showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

28. If the Sites, or any other property where access needed to implement this Consent Decree, are owned or controlled by persons other than Settling Defendant, Settling Defendant shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Defendant, as well as for the United States on behalf of EPA, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 27.a of this Consent Decree; and

b. an agreement, enforceable by the Settling Defendant and the United States, to refrain from using the Sites, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree.

29. For purposes of Paragraph 28 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, land/water use restrictions, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access agreements required by Paragraphs 28.a or 28.b of this Consent Decree are not obtained within

forty-five (45) days of the date of entry of this Consent Decree, or (b) Settling Defendant is unable to obtain an agreement pursuant to Paragraph 27.c from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the interest being created pursuant to this consent decree within forty-five (45) days of the date of entry of this Consent Decree, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendant has taken to attempt to comply with Paragraphs 27 and 28 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access or land/water use restrictions or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendant shall reimburse the United States in accordance with the procedures in Section XVI (Payments for Response Costs and Natural Resource Damages), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

30. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendant shall cooperate with EPA's efforts to secure such governmental controls.

31. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

32. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA copies of written periodic progress reports in accordance with the SOW that:

(a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous reporting period; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents pursuant to this Consent Decree in the previous reporting period; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous reporting period; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next reporting period and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous reporting period and those to be undertaken in the next reporting period. Settling Defendant shall submit each progress report to EPA by the fifteenth (15th) day of the month immediately following the end of the reporting period. The reporting period shall be quarterly following the lodging of this Consent Decree and shall continue until EPA notifies the Settling Defendant pursuant to Paragraph 51.b of Section XIV (Certification of Completion). The reporting period may be modified upon approval of EPA. If

requested by EPA, Settling Defendant shall also provide briefings for EPA to discuss the progress of the Work.

33. The Settling Defendant shall notify EPA of any change in the schedule described in a periodic progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than ten (10) days prior to the performance of the activity.

34. Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), 42 U.S.C. §§ 9603 or 11004, Settling Defendant shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region VII, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

35. Within twenty (20) days of the onset of such an event, Settling Defendant shall furnish to Plaintiff a written report, signed by the Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto.

36. Settling Defendant shall submit three (3) copies of all plans, reports, and data required by the SOW, the Remedial Design/Remedial Action Work Plan, or any other approved

plans to EPA in accordance with the schedules set forth in such plans. Upon request by EPA, Settling Defendant shall submit in electronic form all portions of any report or other deliverable. Settling Defendant is required to submit pursuant to the provisions of this Consent Decree.

37. All reports and other documents submitted by Settling Defendant to EPA (other than the periodic progress reports referred to above), which purport to document Settling Defendant's compliance with the terms of this Consent Decree, shall be signed by Settling Defendant's Project Coordinator, identified pursuant to Section XII, Paragraph 44 of this Consent Decree.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

38. After review of any plan, report or other item which is required to be submitted for approval (except for the Health and Safety Plan) pursuant to this Consent Decree, EPA shall:

(a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendant modify the submission; or (e) any combination of the above. Any notice of approval with specified conditions, or notice of disapproval issued by EPA pursuant to this Consent Decree shall provide the reasons for such qualified approval or disapproval in writing. However, EPA shall not modify a submission without first providing Settling Defendant at least one notice of deficiency and an opportunity to cure within thirty (30) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

39. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 38(a), (b), or (c), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 38.c and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

40. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 38(d), Settling Defendant shall, within thirty (30) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the thirty (30) day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 41 and 42.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 38(d), Settling Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XX (Stipulated Penalties).

41. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. The EPA also retains the right to modify or

develop the plan, report or other item. Settling Defendant shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

42. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendant invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX of this Consent Decree.

43. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

44. Within twenty (20) days of lodging this Consent Decree, Settling Defendant and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be

given to the other Party at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendant's Project Coordinator shall not be an attorney for Settling Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

45. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and Federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Sites constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

46. Within thirty (30) days of entry of this Consent Decree, Settling Defendant shall establish and maintain financial security in the amount of \$3,000,000 in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;

b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;

c. A trust fund;

d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Settling Defendant; and/or

e. A demonstration that Settling Defendant satisfies the requirements of 40 C.F.R. Part 264.143(f).

47. At a minimum, \$750,000 of the financial security amount identified in Paragraph 46 shall be guaranteed by one of the forms identified in Paragraph 46.a, 46.b, or 46.c. If Settling Defendant seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 46.d of this Consent Decree, Settling Defendant shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendant seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 46.d or 46.e, Settling Defendant shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendant shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 46 of this Consent Decree. Settling Defendant's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activity required under this Consent Decree.

48. If Settling Defendant can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 46 above after entry of this Consent Decree, Settling Defendant may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendant shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendant may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

49. Settling Defendant may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendant may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

50. Completion of the Remedial Action.

a. The Settling Defendant shall submit a Final Remedial Action Report to EPA for approval, pursuant to Section XI (EPA Approval of Plans and Other Submissions), within sixty (60) days after Settling Defendant concludes, that the Remedial Action has been fully performed and that the Performance Standards for the Alcoa Site and the Performance Standards and monitoring standards for the MRP15 Site have been achieved as follows: (i) the groundwater contamination is being hydraulically contained within the TI Zone by the groundwater

containment, extraction and treatment system and the concentrations of contaminants in areas outside the TI Zone have been maintained below the chemical-specific Performance Standards listed in Attachment 1 of the SOW for two years; (ii) the concentrations of compounds in the effluent from the groundwater treatment system are being maintained below the effluent discharge Performance Standards set forth in Attachment 3 of the SOW; (iii) the PCB concentrations in fish tissue are below the species specific Performance Standards for channel catfish and common carp of 226 ug/kg and 231 ug/kg, respectively; and (iv) natural recovery processes and sediment bed stability in areas along the Alcoa shoreline provide conditions that are protective of human health and the environment as determined by compliance with the monitoring standards. In the Final Remedial Action Report, the Settling Defendant's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. This report shall contain the following statement, signed by a responsible corporate official of the Settling Defendant or the Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after receipt and review of the Final Remedial Action Report, EPA determines that the Remedial Action for both Sites, or any portion thereof, has not been completed in accordance with this Consent Decree or that these Remedial Action Performance Standards have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Remedial Action and

achieve the Performance Standards, provided, however, that EPA may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD and ESD," as that term is defined in Paragraph 15.b. The EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendant. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendant's obligations under this Consent Decree.

51. Completion of the Work

a. Within sixty (60) days after Settling Defendant concludes that all phases of the Work (including O & M), as outlined in Paragraph 14.e of this Consent Decree, have been fully performed at both Sites, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant, EPA and the State. Completion of the Work for

the Alcoa Site shall only occur when it has been demonstrated, and EPA has certified, that concentrations of groundwater contaminants are below the chemical-specific Performance Standards listed in Attachment 1 of the SOW in areas outside the TI Zone, and concentrations of groundwater contaminants are below the chemical-specific Performance Standards listed in Attachment 1 of the SOW throughout the TI Zone. Completion of the Work for the MRP15 Site shall only occur when it has been demonstrated, and EPA has certified, that, in addition to achieving the conditions set forth in the preceding sentence for the Alcoa Site, the Performance Standards and monitoring standards for the MRP15 Site have also been achieved through implementation of the monitored natural recovery program as described in the O&M Plan. If, after the pre-certification inspection, the Settling Defendant still believes that the Work has been fully performed, Settling Defendant shall submit within sixty (60) days of the completion of the pre-certification inspection, a Completion of Work Report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. This report shall contain the following statement, signed by a responsible corporate official of the Settling Defendant or the Settling Defendant's Project Coordinator:

“To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

If, after review of the Completion of Work Report, EPA determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require

Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD and ESD," as that term is defined in Paragraph 15.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendant, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendant in writing.

XV. EMERGENCY RESPONSE

52. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Alcoa Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 53, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendant shall notify the EPA Region VII Duty Officer on the twenty-four hour spill line (913-281-0991). Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the

Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendant shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs and Natural Resource Damages).

53. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Sites; or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Alcoa Site, subject to Section XXI (Covenants Not to Sue by Plaintiff).

XVI. PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES

54. Payments for Past Response Costs and Natural Resource Damages.

a. Within thirty (30) days of the Effective Date of this Consent Decree, Settling Defendant shall pay to EPA \$586,821.08 in payment for Past Response Costs for the Alcoa Site and \$165,524.91 in payment for Past Response Costs for the MRP15 Site. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, EPA Site/Spill ID Number 07E5 for the Alcoa Site and 07P8 for the MRP15 Site, and DOJ Case Number 90-11-2-08358. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the

Southern District of Iowa following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. At the time of payment, Settling Defendant shall send notice that payment has been made to the United States and to EPA, in accordance with Section XXVI (Notices and Submissions).

b. The amounts to be paid by Settling Defendant pursuant to Paragraph 54.a shall be deposited in the Alcoa-Davenport Works Site Special Account and the MRP15 Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Alcoa Site and the MRP15 Site. At any time, EPA may transfer funds from either of the Special Accounts to the EPA Hazardous Substance Superfund.

c. Within thirty (30) days of the Effective Date of this Consent Decree, Settling Defendant shall pay \$198,235 in Natural Resource Damages. Settling Defendant shall make this payment to the United States by EFT to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-08358. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Iowa following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. Of the total amount paid for Natural Resource Damages:

i. \$39,137.00 shall be deposited in the DOI NRDAR Fund, to be applied toward Natural Resource Assessment Costs incurred by the DOI; and

ii. \$159,098.00 shall be deposited in a segregated sub-account within the NRDAR Fund, to be managed by the DOI for natural resource restoration projects.

d. Notice of Payment. Upon making payment under Paragraph 54.c, Settling Defendant shall send written notice that payment has been made to:

Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
1849 C Street, NW
Mailstop 4449
Washington, D.C. 20240

55. Payments for Future Response Costs.

a. Settling Defendant shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis, the United States will send Settling Defendant a bill requiring payment that includes an Itemized Cost Summary ("ICS") Report. Settling Defendant shall make all payments within thirty (30) days of Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 56. Settling Defendant shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 07E5 (Alcoa Site) or 07P8 (MRP15 Site), and DOJ Case Number 90-11-2-08358. Settling Defendant shall send the check(s) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000

b. At the time of payment, Settling Defendant shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. The amounts to be paid by Settling Defendant pursuant to Paragraph 55.a shall be deposited in the Alcoa-Davenport Works Site Special Account and the MRP15 Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Alcoa Site and the MRP15 Site. At any time, EPA may transfer funds from either of the Special Accounts to the EPA Hazardous Substance Superfund.

56. Settling Defendant may contest payment of any Future Response Costs under Paragraph 55 if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendant shall within the thirty (30) day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 55. Simultaneously, Settling Defendant shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the state of Iowa and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendant shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account.

Simultaneously with establishment of the escrow account, the Settling Defendant shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within five (5) days of the resolution of the dispute, the Settling Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 55. If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 55; Settling Defendant shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

57. In the event that the payments required by Paragraph 54 are not made within thirty (30) days of the Effective Date or the payments required by Paragraph 55 are not made within thirty (30) days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay Interest on the unpaid balance. Interest to be paid on Past Response Costs and Natural Resource Damages under this Paragraph shall begin to accrue on the Effective Date. Interest on Future Response Costs shall begin to accrue on the date of the bill. Interest shall accrue through the date of the Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraphs 72, 73 and 74. The Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 55.

XVII. INDEMNIFICATION AND INSURANCE

58. Settling Defendant's Indemnification of the United States.

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendant notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 58, and shall consult with Settling Defendant prior to settling such claim.

59. Settling Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Sites, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Sites, including, but not limited to, claims on account of construction delays.

60. No later than fifteen (15) days before commencing any on-site Work, Settling Defendant shall secure, and shall maintain [until the first anniversary of EPA's Certification of Completion of the Work pursuant to Paragraph 51.b of Section XIV (Certification of Completion)] comprehensive general liability insurance with limits of one million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendant demonstrates

by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

61. "*Force Majeure*," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* event and best efforts to address the effects of any potential *force majeure* event (1) as it is occurring and (2) following the potential *force majeure* event, such that the delay is minimized to the greatest extent possible. "*Force Majeure*" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

62. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a *force majeure* event, the Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region VII, within ten (10) days of when Settling Defendant first knew that the event might cause a delay. Within seven (7) days thereafter,

Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting their claim that the delay was attributable to a *force majeure*. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of *force majeure* for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known.

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

64. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), Settling Defendant shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a *force majeure* event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 61 and 62, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

65. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

66. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the Parties to the dispute. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

67. Statements of Position.

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 68 or Paragraph 69.

b. Within thirty (30) days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 68 or 69. Within fourteen (14) days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and Settling Defendant as to whether dispute resolution should proceed under Paragraph 68 or 69, the Parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 68 and 69.

68. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the Parties to the dispute.

b. The Director of the Superfund Division, EPA Region VII, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 68.a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 68.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 68.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendant with the Court and served on all Parties within ten (10) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute

must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 68.a.

69. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 67, the Director of the Superfund Division, EPA Region VII, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendant unless, within ten (10) days of receipt of the decision, the Settling Defendant files with the Court and serves on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.

b. Notwithstanding Paragraph L of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

70. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 79. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

71. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 72 and 73 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (*Force Majeure*).

“Compliance” by Settling Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

72. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any failure to submit timely or adequate plans or reports or for any failure to timely comply with the requirements identified in Paragraph 72.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000.00	1st through 14th day
\$2,000.00	15th through 30th day
\$4,000.00	31st day and beyond

b. Compliance Milestones.

- (i) Submission of the Remedial Design/Remedial Action Work Plan
- (ii) Submission of the Final Remedial Action Report
- (iii) Submission of the Completion of Work Report
- (iv) Payment of Past Response Costs
- (v) Payment of Future Response Costs
- (vi) Payment for Natural Resource Damages

73. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate periodic progress reports or other written documents not listed in Paragraph 72.b as required per EPA approved schedules.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 14th day
\$1,000.00	15th through 30th day
\$2,000.00	31st day and beyond

74. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 88 of Section XXI (Covenants Not to Sue by Plaintiff), Settling Defendant shall be liable for a stipulated penalty in the amount of \$2,000,000.

75. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the thirty-first (31st) day after EPA's

receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency;

(b) with respect to a decision by the Director of the Superfund Division, EPA Region VII, under Paragraph 68.b or 69.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the twenty-first (21st) day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute;

or (c) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the thirty-first (31st) day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

76. Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendant written notification of the same and describe the noncompliance. EPA may send the Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendant of a violation.

77. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

and shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 07E5 (Alcoa Site) or 07P8 (MRP15 Site), the DOJ Case Number 90-11-2-08358, and the name and address of the Party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to the Director, Financial Management Center (NWD), 26 West Martin Luther King Drive, Cincinnati, Ohio 45268.

78. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

79. Penalties shall continue to accrue as provided in Paragraph 75 during any dispute resolution period, but need not be paid until the following:

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

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA within sixty (60) days of receipt of the Court's decision or order, except as provided in Paragraph 79.c below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States

into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that they prevail.

80. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 77.

81. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

82. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

83. In consideration of the actions that will be performed and the payments that will be made by Settling Defendant under the terms of the Consent Decree, and except as specifically

provided in Paragraphs 84, 85, and 87 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) and (f) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) and (f), relating to the Sites. With respect to the covenant not to sue for response actions and response costs incurred and to be incurred in response to releases and threats of releases of hazardous substances, this covenant shall not apply to response actions or costs incurred or to be incurred in response to releases or threats of releases of inorganic compounds, including metals, elements and compounds of metals, listed in 40 C.F.R. Part 261, Appendix VIII. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA and DOI of the payments required by Paragraph 54 of Section XVI (Payments for Response Costs and Natural Resource Damages). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 50.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant, or its respective successors and assigns, of Settling Defendant's obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and its respective successors and assigns and do not extend to any other person.

84. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant:

- a. to perform further response actions relating to the Sites; or

b. to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

(i) conditions at the Sites, previously unknown to EPA, are discovered; or
(ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

85. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant:

- a. to perform further response actions relating to the Sites; or
- b. to reimburse the United States for additional costs of response if, subsequent to

Certification of Completion of the Remedial Action:

(i) conditions at the Sites, previously unknown to EPA, are discovered, or
(ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

86. For purposes of Paragraph 84, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Sites and the administrative record supporting the Record of Decision. For purposes of Paragraph 85, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action. The presence of inorganic compounds, including metals and elements or compounds of metals listed in 40 C.F.R. Part 261, Appendix A, outside of the TI Zone in concentrations above those listed in Table 2 of the ESD (Attachment 2 of the SOW), and the presence of any PCB, PAH or inorganic compound in Table 4 of the ESD (Attachment 4 of the SOW) in any discharge from the GCETS, shall constitute "new information" and "unknown conditions" for purposes of both Paragraphs 84 and 85.

86a. Notwithstanding any other provision of this Consent Decree, the United States reserves the right to institute proceedings against the Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages, including the costs of damages assessment, based on: (1) conditions with respect to the Sites, unknown to the DOI as of the date of the entry of this Consent Decree that result in releases of hazardous substances that contribute to injury, destruction of, or loss of Natural Resources ("Unknown Conditions"); or (2) information received by the DOI after the date of entry which indicates that there is injury to,

destruction of, or loss of Natural Resources of a type or future persistence that was unknown to the DOI as of the date of lodging of this Consent Decree ("New Information"). For purposes of this Paragraph, the information and conditions known to the DOI shall include any information or conditions identified in the Record of Decision and Administrative Record for the Sites that were in the possession or under the control of the EPA or the DOI as of the date of entry of this Consent Decree.

87. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Sites;
- c. liability based upon the Settling Defendant's ownership or operation of the Alcoa Site, or upon the Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Sites, other than as provided in the ROD, the ESD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendant;
- d. criminal liability;

e. liability for violations of Federal or state law which occur during or after implementation of the Remedial Action;

f. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 15 (Modification of the SOW or Related Work Plans);

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Sites; and

h. liability arising in connection with releases or threats of releases of inorganic compounds, including metals, elements and compounds of metals, listed in 40 C.F.R. Part 261, Appendix VIII.

88. Work Takeover. In the event EPA determines that Settling Defendant has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendant may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 68, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendant shall pay pursuant to Section XVI (Payments for Response Costs and Natural Resource Damages).

89. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANT

90. Covenant Not to Sue. Subject to the reservations in Paragraph 91, Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Sites or this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;
- b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Sites, or
- c. any claims arising out of response actions at or in connection with the Sites, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

91. Except as provided in Paragraph 98 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 84, 85, 87(b), (c), or 87(f)-(h), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

92. The Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while

acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendant's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

93. Nothing in this Consent Decree shall be deemed to constitute 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).

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

94. 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. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights including, but not limited to, any right to contribution, defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto.

95. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or

claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are the Work performed pursuant to this Consent Decree, Past Response Costs and Future Response Costs as defined in this Consent Decree, and Natural Resources Damages as defined in this Consent Decree. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree, in the event the United States asserts rights against Settling Defendant coming within the scope of such reservations.

96. The Settling Defendant agrees that, with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, Settling Defendant will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

97. The Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, Settling Defendant will notify in writing the United States within ten (10) days of service of the complaint on them. In addition, Settling Defendant shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

98. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Sites, Settling Defendant 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 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 not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff).

XXIV. ACCESS TO INFORMATION

99. Settling Defendant shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Sites or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendant shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

100. Business Confidential and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the photographs, documents or information submitted to or obtained by Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, EPA may give the public access to such documents or information without further notice to Settling Defendant.

b. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide the Plaintiff with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the document, record, or information; and (vi) the privilege asserted by Settling Defendant. However, no document, report or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

101. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Sites.

XXV. RETENTION OF RECORDS

102. Until ten (10) years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 51.b of Section XIV (Certification of Completion of the Work), Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Sites and that relate to the liability of any other person under CERCLA with respect to the Sites. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the

same period of time specified above all non-identical copies of the last draft or final version of any document or record (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary. Records required to be preserved and maintained by Settling Defendant pursuant to this Section of the Consent Decree may be transferred to and preserved on computer discs following the Effective Date of this Consent Decree.

103. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall deliver any such records or documents to EPA. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by Federal law. If Settling Defendant asserts such a privilege, it shall provide the Plaintiff with the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Settling Defendant. However, no document, report or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

104. Settling Defendant hereby certifies 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, documents or other information (other than identical copies) relating to its potential liability regarding the Sites since notification of potential liability by the United States or the State or the filing of suit against it regarding the Sites and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

105. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA and the Settling Defendant, respectively.

As to the United States:

Bruce Gelber
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 #90-11-2-08358

As to EPA

Cecilia Tapia
Director, Superfund Division
United States Environmental Protection
Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101

and

EPA Project Coordinator identified pursuant
to Paragraph 44
United States Environmental Protection
Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101

As to the Settling Defendant:

Settling Defendant's Project Coordinator
identified pursuant to Paragraph 44

XXVII. EFFECTIVE DATE

106. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

107. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

108. The following appendices are attached to and incorporated into this Consent

Decree:

“Appendix A” is the Record of Decision.

“Appendix B” is the Explanation of Significant Differences

“Appendix C” is the description and/or map of the Sites.

“Appendix D” is the Statement of Work.

“Appendix E” is the Environmental Covenant

XXX. COMMUNITY RELATIONS

109. Settling Defendant shall propose to EPA their participation in the implementation of the community relations plan developed by EPA. EPA will determine the appropriate role for the Settling Defendant under the Plan. Settling Defendant shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Sites.

XXXI. MODIFICATION

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

111. Except as provided in Paragraph 15 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendant, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.

300.435(c)(2)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(I), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendant.

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

113. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

114. If for any reason the 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.

XXXIII. SIGNATORIES/SERVICE

115. The undersigned representative of the Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the

Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

116. Settling Defendant hereby 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 the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

117. Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees 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 Defendant need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXIV. FINAL JUDGMENT

118. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the 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.

119. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States and the Settling Defendant. 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 _____ DAY OF _____, 20 ____.


United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Alcoa, Inc., relating to the Alcoa-Davenport Works Groundwater Site and the Mississippi River Pool 15 Superfund Site.

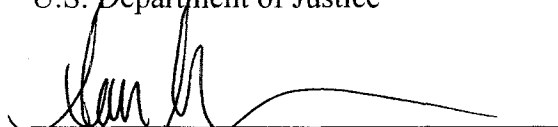
FOR THE UNITED STATES OF AMERICA

RONALD J. TENPASS
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Sept 24, 2008
Date


BRUCE S. GELBER
Chief
Environmental Enforcement Section
U.S. Department of Justice

Oct. 7, 2008
Date


SEAN CARMAN
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-2746
sean.carman@usdoj.gov

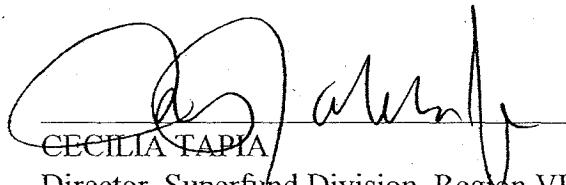
MATTHEW G. WHITTAKER
United States Attorney
Southern District of Iowa

CHRISTOPHER HAGEN
Civil Chief
Office of the United States Attorney
Southern District of Iowa
110 East Court Avenue
Des Moines, Iowa 50309
(515) 473-9355

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Alcoa, Inc., relating to the Alcoa-Davenport Works Groundwater Site and the Mississippi River Pool 15 Superfund Site.

8-27-08

Date

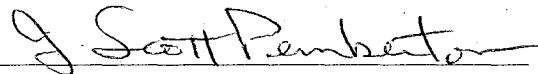


CECILIA TAPIA

Director, Superfund Division, Region VII
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

8-26-08

Date




J. SCOTT PEMBERTON

Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101
(913) 551-7276
pemberton.scott@epa.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Alcoa, Inc., relating to the Alcoa-Davenport Works Groundwater Site and the Mississippi River Pool 15 Superfund Site.

FOR ALCOA, INC.

8/22/2008
Date

Signature: 

Name:

KEVIN MCKNIGHT

Title:

Director, HR Services and EHS

Address:

201 Isabella Street
Pittsburgh, Pennsylvania 15212

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

CT Corporation System

Address:

100 Pine Street
Harrisburg, Pennsylvania