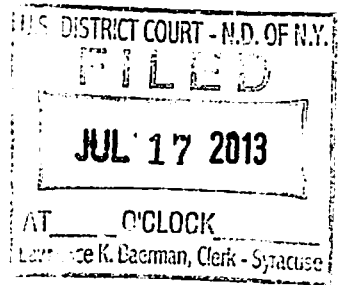


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA, STATE
OF NEW YORK and ST. REGIS MOHAWK
TRIBE

Plaintiffs,

vs.

ALCOA INC. and
REYNOLDS METALS CO.

Defendants.

CIVIL ACTION NO.
7:13-cv-00337-NAM-TWD

CONSENT DECREE

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration (“NOAA”), and the United States Department of the Interior (“DOI”); New York State (“New York” or the “State”), acting through the New York State Department of Environmental Conservation (“NYSDEC”) and its Commissioner, Joseph Martens; and the St. Regis Mohawk Tribe (the “Tribe”), (collectively, “Plaintiffs”), have filed a Complaint in this case against defendants Alcoa Inc. (“Alcoa”) and Reynolds Metals Co. (“Reynolds”), (collectively “Defendants”) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607, and analogous state laws.

B. The Complaint alleges that Defendants are responsible or liable parties under CERCLA and analogous state laws, for damages for injury to, destruction of, or loss of natural resources as defined in 42 U.S.C. § 9601(16) and costs of natural resource damage assessment and restoration actions that DOI, NOAA, NYSDEC and/or the Tribe have incurred or will incur at or in connection with the Alcoa Site and Reynolds Site (collectively, the “Sites”), as defined below.

C. This Consent Decree (the “Decree”) addresses the claims asserted in the Complaint against Defendants for Natural Resource Damages (as defined below).

D. NOAA; DOI; NYSDEC; and the Tribe (collectively, the “Trustees” and, individually, a “Trustee”), under the authority of Section 107(f)(2) of CERCLA, 42 U.S.C. § 9607(f)(2), and 40 C.F.R. Part 300, serve as trustees for natural resources for the assessment and recovery of damages for injury to, destruction of, or loss of natural resources under their trusteeship.

E. Investigations conducted by the United States Environmental Protection Agency (“EPA”), and the Trustees have detected hazardous substances in the sediments, soils, groundwater, and waters of the Sites, including but not limited to polycyclic aromatic hydrocarbons, polychlorinated biphenyls (“PCBs”), volatile organic compounds (“VOCs”), total dibenzofurans, cyanide and fluorides.

F. The Trustees have engaged in natural resource injury studies, damage assessments, and restoration planning relating to the Sites since 1991. In January 1991, the Trustees, Alcoa, Reynolds and General Motors Corp. (n/k/a Motors Liquidation Company, or “MLC”) entered into a funding agreement by which Alcoa, Reynolds and MLC agreed to provide funding for the performance of a natural resource assessment by the Trustees. The Trustees have performed a Habitat Equivalency Analysis (“HEA”) together with other assessment techniques at the Sites to determine the costs of restoration needed to compensate for natural resource injury,

recreational fishing loss, and remedial injury to aquatic resources due to releases of hazardous substances from Alcoa, Reynolds and MLC's facilities. The HEA determined that sediment, fish, birds, amphibians and mammals sustained ecological and remedial injuries from the hazardous substances released from the facilities. The recreational fishing assessment established the type and number of fishing trips lost as a result of the releases of hazardous substances from the facilities. These claims are joint by the Trustees. Further assessments determined that the release of hazardous substances from the facilities caused loss of cultural uses and impairment of natural resources of the Tribe.

G. The Trustees prepared a Restoration and Compensation Determination Plan and Environmental Assessment ("RCDP"), which is attached to this Decree as Appendix A.

H. By signing and entering into this Decree, Defendants do not admit or endorse any fact and/or conclusion in the RCDP.

I. The Trustees have developed and analyzed information sufficient to support a settlement that is fair, reasonable and in the public interest.

J. On June 17, 2011, a settlement with MLC was entered resolving the Trustees NRD claims as to the MLC site located in Massena, New York. *In re: Motors Liquidation Company, et al*, Case No. 09-50026 (REG) (Bank. S.D.N.Y. June 17, 2011).

K. By entry into this Decree, Defendants do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the Complaint.

L. For purposes of this Decree, Defendants waive any requirements of CERCLA § 113(g)(1)(B), 42 U.S.C. § 9613(g)(1)(B).

M. Plaintiffs and Defendants agree, and this Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith; that settlement of this matter will avoid prolonged and complicated litigation between the Parties; and that this Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 9607 and 9613(b), and has supplemental jurisdiction over the State and Tribal law claims. The Court has personal jurisdiction over the Defendants. Solely for the purposes of this Decree and the underlying Complaint, the Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this

District. The Defendants shall not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

III. PARTIES BOUND

2. This Decree is binding upon the United States, the State, the Tribe, Defendants, and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, will in no way alter the status or responsibilities of Defendants under this Decree.

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

4. Alcoa and Reynolds are jointly and severally liable and responsible for all payments and obligations of this Decree and the Appendices attached hereto. Since 2000, Alcoa has been the parent company of Reynolds. In the event of the insolvency of either Defendant or the failure by either Defendant to implement any requirement of this Decree, the remaining Defendant shall fulfill the obligations of the non-performing Defendant and all remaining requirements of the Decree.

IV. DEFINITIONS

5. Unless otherwise expressly provided, terms used in this Decree that are defined in CERCLA or in regulations promulgated under CERCLA have the meanings assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Decree or in any attached appendix, the following definitions will apply:

“Alcoa Site” (a/k/a Alcoa West) shall mean a parcel of property in the Town of Massena, St. Lawrence County, New York, which consists of approximately 2,700 acres, and is bordered on the north by the St. Lawrence River, on the east by property owned by Conrail Corporation, on the southwest by the Massena Power Canal and on the southeast by the Grasse River. The Alcoa Site is generally depicted in Appendix B.

“Coles Creek parcels” shall mean the parcels generally depicted in Appendix C. The total acreage is approximately 329 acres. It consists of two parcels: (1) property address 13472 SH 37, tax map # lot # 14.002-1-22; and (2) property address 13566 SH 37, tax map # lot # 14.002-1-19.

“Consent Decree” or “Decree” shall mean this Consent Decree and all attached appendices and any final approved plans required hereunder. In the event of a conflict between this Consent Decree and any Appendix or plan, the Consent Decree will control.

“DARR Fund” shall mean NOAA’s Damage Assessment and Restoration Revolving Fund.

“Day” shall mean a calendar day. In computing any period of time under this Decree, where the last day falls on a Saturday, Sunday, or federal holiday, the period of time will run until the close of business of the next working day.

“Defendants” shall mean Alcoa Inc. (f/k/a Aluminum Company of America) (“Alcoa”) and Reynolds Metals Company (“Reynolds”).

“Defendants’ Related Parties” shall mean Defendants’ former and current officers, directors, and employees, but only to the extent that the alleged liability of the officer, director, or employee is based on said person’s status as an officer, director, or employee of a Defendant and as a result of conduct within the scope of such person’s employment or authority.

“Natural Resource” or “Natural Resources” is defined at CERCLA § 101(16), 42 U.S.C. § 9601(16).

“Natural Resource Damages” shall mean any damages recoverable by the United States, the State, or the Tribe, for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources at the Sites as a result of a release of hazardous substances from the Alcoa Site and/or the Reynolds Site, including, but not limited to: (i) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such a release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost natural resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; and (iv) compensation for injury, destruction, loss, loss of use, or impairment of natural resources.

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

“Parties” shall mean the United States, the State of New York, St. Regis Mohawk Tribe, Alcoa, and Reynolds.

“Plaintiffs” shall mean the United States, the State of New York and the St. Regis

Mohawk Tribe.

“Reynolds Site” (a/k/a Alcoa East) shall mean a parcel of property in the Town of Massena, St. Lawrence County, New York, which consists of approximately 1,600 acres off Route 37 near the Massena-Cornwall International Bridge and adjacent river systems. The Reynolds Site is generally depicted in Appendix B.

“Sites” shall mean the Alcoa Site and Reynolds Site and any area in which hazardous substances released from those Sites are found.

“State” shall mean the State of New York, the New York State Department of Environmental Conservation, and its Commissioner.

“Tribe” shall mean the St. Regis Mohawk Tribe.

“Trustees” shall mean the United States Department of Commerce, acting through NOAA, DOI, the State of New York, acting through NYSDEC, and the St. Regis Mohawk Tribe.

“United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

“Wilson Hill parcels” shall mean the parcels generally depicted in Appendix D. The total acreage is approximately 131 acres. It consists of two parcels: (1) property address Wilson Hill Rd., tax map # lot # 8.003-2-1; and (2) property address Taylor Rd., tax map # lot # 15.001-1-11.11.

V. GENERAL PROVISIONS

6. Objectives. The objectives of the Parties in entering into this Decree are: (i) to contribute to the restoration, replacement, or acquisition of the equivalent of the natural resources allegedly injured, destroyed, or lost as a result of hazardous substance releases at and from the Sites; (ii) to reimburse natural resource damage assessment costs incurred by the Trustees; (iii) to resolve Defendants' liability for Natural Resource Damages as provided herein; and (iv) to avoid potentially costly and time-consuming litigation.

7. Compliance With Applicable Law. All activities undertaken by Defendants pursuant to this Decree shall be performed in accordance with the requirements of all applicable federal, state, local, and tribal laws and regulations.

8. Permits. Where permits or approvals are required, Defendants shall submit timely and complete applications to the appropriate permitting authority and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the

provisions of Section XII (Force Majeure) for any delay in the performance of the obligations of Section IX (Recreational Fishing Restoration Projects) resulting from a failure to obtain, or a delay in obtaining, any federal or state permit or approval required for such performance, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

9. This Decree is not, and shall not be construed to be, a permit issued pursuant to any federal, state, local, or tribal law or regulation.

VI. PAYMENTS BY DEFENDANTS

10. Payments for Assessment Costs. Within 30 days after the Effective Date, Defendants shall pay a total of \$933,950 for past government assessment costs as described below.

a. Payments for Assessment Costs Incurred by the United States.

(1) Within 30 days after the Effective Date, Defendants shall pay a total of \$785,528.50 to the United States for assessment costs incurred by the United States. 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 _____, and DOJ Case Number 90-11-3-558. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of New York following lodging of the Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

(2) Of the total amount to be paid by Defendants pursuant to this Subparagraph 10.a.(1):

(a) \$638,644.25 shall be deposited in the DOI NRDAR Fund, to be applied toward natural resource damage assessment costs incurred by DOI, including funds that had been paid by DOI to the Tribe for such costs.

(b) \$146,884.25 shall be deposited in the NOAA DARR Fund, to be applied toward natural resource damage assessment costs incurred by Commerce.

b. Payment for Assessment Costs Incurred by the State. Within 30 days after the Effective Date, Defendants shall pay a total of \$137,989.25 to the State of New York for assessment costs incurred by the State. Payment shall be made by Electronic Fund Transfer to the New York Office of the Attorney General account in accordance with current EFT procedures and the instructions provided to Defendants by the State following lodging of the Decree.

c. **Payment of Assessment Costs Incurred by the Tribe.** Within 30 days after the Effective Date, Defendants shall pay a total of \$10,432.25 to the Tribe for assessment costs incurred by the Tribe. Payment shall be made by Electronic Fund Transfer to the Tribe's account in accordance with EFT procedures and the instructions provided to Defendants by the Tribe following lodging of the Decree.

d. **Payment from existing trust accounts.** The Parties acknowledge that trust accounts for funding the trustees' Natural Resource Damages assessment of the Sites exist at the following institutions: M & T Bank and HSBC Bank. Defendants acknowledge that the Trustees continue to incur assessment costs, and the remaining funds in these accounts continue to be used for assessment costs that Defendants agree to approve in good faith. Defendants consent to any request by the Trustees to the trust account custodian providing for transfer of any funds remaining in that account as of that date to pay for assessment costs in a percentage to each Trustee as agreed to by the Trustees. If requested by the Trustees, Defendants shall provide written verification of Defendants' consent to transfer of the funds from these accounts as described above. Payment of Trustee assessment costs from the existing trust accounts is in addition to the required payment by the Defendants of \$933,950 referenced above.

11. Payment for Trustee-Sponsored Natural Resource Restoration Projects.

a. **Payments for Joint Trustee-Sponsored Natural Resource Restoration Projects.** Within 30 days after the Effective Date, Defendants shall pay a total of \$7,279,883 for Joint Trustee-sponsored natural resource restoration projects. Payment shall be made by FedWire EFT to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number ____, and DOJ Case Number 90-11-3-558. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of New York 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. The total amount paid shall be deposited in a segregated sub-account within the NRDAR Fund ("Massena sub-account"), to be managed by DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration projects in accordance with Section VIII.

b. **Payment for Tribal Cultural Restoration projects.** Within 30 days after the Effective Date, Defendants shall pay a total of \$8,387,898 to the Tribe for Tribal Cultural Restoration projects. Payment shall be made by Electronic Fund Transfer to the Tribe's account in accordance with EFT procedures and the instructions provided to Defendants by the Tribe following lodging of the Decree.

12. Notice of Payment. Upon making the payments required under Paragraphs 10 and 11, Settling Defendants shall send written notice to each trustee representative at the address noted in Paragraph 73 that payment has been made.

VII. LAND PURCHASE BY DEFENDANTS

13. The natural resource injury studies conducted by the Trustees, in particular the HEA, determined that the releases of hazardous substances had injured sediment, fish, birds, amphibians, mammals, and their habitats, and further resulted in injury to, destruction of, or loss of ecological services and human use services provided by those resources and habitats. The Trustees have determined that the acquisition of and transfer of title to the State of two parcels of land, the Coles Creek and Wilson Hill parcels, as depicted in Appendix C and D, together with the other restoration and compensation set forth herein, will provide compensation to the public for those injuries.

14. Within 90 days of the Effective Date, or within such other time period if mutually agreed by Defendants and Trustees, Defendants shall transfer title to the Coles Creek parcels and the Wilson Hill parcels, as generally depicted in Appendices C and D, to the State of New York.

15. Defendants shall transfer these parcels, identified in paragraphs 13 and 14, to the State free and clear of any liens and/or encumbrances, except for the following encumbrances which the Trustees have determined will not interfere with the intended use of the property - easement for the New York Telephone Company and public access to Taylor Road. The preceding obligation does not apply with respect to any liens or encumbrances that were not properly recorded as of the effective date of any title insurance acquired by Defendants with respect to these parcels. The Coles Creek parcels and the Wilson Hill parcels will become part of the Wilson Hill Wildlife Management Area. Both parcels will be managed by the State of New York, and may be subject to a conservation easement and/or deed restrictions acceptable to all the Trustees.

16. Defendants agree that they are exclusively responsible for all "Closing Costs" related to the acquisition and transfer of title to the Coles Creek parcels and Wilson Hill parcels. "Closing Costs" include all title insurance, transfer fees, attorneys fees, a boundary survey conducted by a licensed surveyor, broker fees, recording costs and other costs customarily incurred by buyers of real property in New York, such that Defendants may deliver evidence of recorded, clean title which meets the land acquisition requirements of the State of New York (subject to paragraph 15), in the name of the State of New York as Grantee, accompanied by a boundary survey, to the State of New York. Closing Costs do not include the purchase price for each property.

17. If the purchase price for Defendants to obtain title to the Coles Creek parcels and Wilson Hill parcels is less than \$1,030,300, the Defendants shall pay the difference (\$1,030,300 minus the purchase price) into the NRDAR Fund segregated Massena sub-account for implementation of the Joint Trustee Sponsored Natural Resource Restoration Projects, pursuant to the procedure set out in paragraph 11.a. Payment of this difference, if any, shall be made

within 30 days of transfer of title to the State of New York. Defendants shall submit to Trustees land purchase documentation establishing the purchase price and closing costs paid by Defendants.

VIII. TRUSTEE-SPONSORED NATURAL RESOURCE RESTORATION PROJECTS

18. Management and Application of Funds.

(a) All funds deposited in the segregated Massena sub-account within the NRDAR Fund under Subparagraph 11.a. shall be managed by DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration efforts in accordance with this Decree and the RCDP. All such funds shall be applied toward the costs of restoration, rehabilitation, or replacement of injured natural resources, and/or acquisition of equivalent resources, including but not limited to any administrative costs and expenses necessary for, and incidental to, restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken.

(b) All funds deposited in Tribe's account shall be managed by the Tribe to pay for Cultural Restoration projects, in accordance with the RCDP.

19. Restoration Planning. The Trustees prepared a RCDP describing how the funds dedicated for natural resource restoration efforts under this Section will be used in accordance with 43 C.F.R. § 11.93, for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources (Appendix A).

20. Decisions regarding any use or expenditure of funds from the segregated sub-account that are dedicated for Trustee-sponsored natural resource restoration efforts under this Section shall be made by unanimous agreement of the Trustees, acting through the Trustee Council, pursuant to the Memorandum of Understanding signed by the Trustees. Decisions regarding any use or expenditure of funds from the separate Tribal account for Cultural Restoration projects shall be made by the Tribe. Defendants shall not be entitled to dispute, in any forum or proceeding, any decision relating to use of funds or restoration efforts.

IX. RECREATIONAL FISHING RESTORATION PROJECTS

21. The natural resource injury studies conducted by the Trustees, in particular the recreational fishing assessment, established a loss of recreational fishing, which is a human use service provided by fish, a natural resource. The recreational fishing assessment established the type and number of fishing trips lost as a result of the releases of hazardous substances from the facilities. The Trustees have determined that the Recreational Fishing Projects ("RFPs") set forth herein will compensate the public for the recreational fishing injuries.

22. Defendants shall submit the draft 100% design for the recreational fishing restoration projects to the Trustees within 90 days of the Effective Date, subject (except as set forth herein) to obtaining any permits required as part of the final design. The approved 85% design for the recreational fishing restoration projects is included as Appendix F to this Decree. The expected elements of the draft 100% design are set forth in Appendix G. The draft 100% design is subject to approval of the Trustees. Defendants are responsible for all costs of implementation of the RFPs, including the costs of design completion and construction, and the costs of maintaining the projects for a period of twenty (20) years after construction is complete, subject to inspection of the projects by the Trustees to ensure that such maintenance is adequate but excluding the Trustees' costs of oversight and inspection of the RFPs. Defendants are responsible for timely applying for, submitting all required documentation for, and obtaining any permits required for implementing the RFPs.

23. Within 60 days of the date of completion of an RFP, and subject to the consent of any municipal landowner, Defendants shall record an easement on the portion of each parcel of land that is subject to the construction and operation of the RFP that establishes the right of public access for purposes of the RFP and encumbering the parcel such that the right of public access runs with the land, substantially in the form of Appendix E, with New York State as the beneficiary/grantee. Each easement is subject to the approval of the New York State Office of Attorney General. Defendants shall deliver proof of such recording, with page and book numbers, to the Trustees, within 30 days of recording.

24. Subject to Paragraph 27 of this Consent Decree, Defendants shall complete the following projects (more fully described in Appendix F) within 24 months after (i) the Trustees approve the 100% design and (ii) Defendants receive all applicable governmental permits and approvals for these projects: Springs Park - River Access Improvements; Lower Raquette River - Access Improvements; Route 37 Bridge - River Access Improvements; and Madrid Upper Grasse River - Access Improvements.

25. Subject to Paragraph 27 of this Consent Decree, Defendants shall complete the Massena Center - River Access Improvements (more fully described in Appendix F) within 24 months after (i) EPA's issuance of a certificate of completion of the response action selected, if any, for the Grasse River area and (ii) Defendants' receipt of all applicable government permits and approvals for this restoration project. However, if EPA does not issue a certification of completion of the response action selected, if any, for the Grasse River area within nine (9) years after the Effective Date of this Decree, Defendants shall pay as compensation \$620,000, plus Interest running from the date nine (9) years after the Effective Date of this Decree at the rate specified at paragraph 34.(c)(i) of this Decree, to the NRDAR Massena sub-account in lieu of performance of the Massena Center River Access Improvements Project, with the funds to be used by the Trustees for recreational fishing restoration projects and/or other restoration projects.

26. Within sixty (60) days following the completion of construction of each of the foregoing RFPs, Defendants shall prepare and submit to the State a post-construction report. The post-construction report shall include the following: (1) A statement signed and sealed by a registered New York State Engineer confirming that the RFP was built in accordance with the plans and specifications approved by the Trustees; (2) If Defendants elect to not operate or maintain a RFP, an executed agreement between Defendants and an entity approved by the State that provides for a) the ownership and/or management of the RFP by that entity- following construction; b) free, public access to the RFP; and c) funding sufficient, in the judgment of Defendants and the operator/manager of the Project Site, to conduct routine maintenance activities and to fund repair of damage caused by storms, hurricanes, or accidents or to fund the purchase of casualty loss insurance policies to cover such damage for the project for twenty (20) years (collectively, the "Post-Construction Report"). The Trustees shall evaluate each Post-Construction Report and the results of any inspection they may undertake, and if the Trustees agree that the construction criteria have been met, then the State shall issue a Certification of Project Completion of the particular RFP in accordance with the Decree within the later of 60 days after receipt of the Post-Construction Report or any joint inspection of the particular Project Site. If the Trustees do not agree that the Post Construction Report is adequate, the Trustees will arrange a meeting with Defendants to discuss whether additional steps need to be taken to meet the completion criteria.

27. In the event that Defendants fail to complete construction of one or more of the RFPs due to a "force majeure" event (see paragraph 41), Defendants shall propose for Trustee review and approval one or more alternative RFPs of comparable value and cost, and following Trustee approval of such project(s), shall implement the project(s) or, in lieu of performing the project, pay the following amounts, plus Interest at the rate specified at paragraph 34.(c)(i) of this Decree running from the date of Defendants' notice to the Trustees of their inability to complete a given RFP and their election of the payment option. These amounts shall be paid into the NRDAR Massena sub-account for each RFP that is not implemented, with the funds to be used by the Trustees for recreational fishing restoration projects and/or other restoration projects.

Lower Raquette River Access Project	\$179,000
Madrid Access Project	\$201,000
Massena Center Access Project	\$620,000
Route 37 Bridge Access Project	\$292,000
Springs Park Access Project	\$242,000

In addition to the amount to be paid identified above, for any RFP not implemented by the Defendants, Defendants shall pay to the Trustees the fair market value of local river-front acreage that would be necessary to perform a comparable RFP elsewhere in the area. Defendants' obligation under this paragraph to pay the fair market value required to obtain alternative property in the area shall not exceed a cumulative total of \$250,000 for all properties. The Defendants shall also use best efforts to record an easement on each parcel of land associated

with any alternative RFP performed under this paragraph consistent with paragraph 23. Payment by Defendants into the NRDAR Massena sub-account shall be within 60 days of Defendants' notice to the Trustees of their inability to complete a given RFP and their election of the payment option.

X. TRUSTEE APPROVAL OF PLANS, REPORTS, AND OTHER DELIVERABLES, REQUIRED PURSUANT TO THE RECREATIONAL FISHING RESTORATION PLAN

28. Initial Submissions.

a. After review of any plan, report, or other deliverable that is required to be submitted for approval pursuant to this Decree, the Trustees shall: (1) approve, in whole or in part, the submission; (2) approve the submission upon specified conditions; (3) disapprove, in whole or in part, the submission; or (4) any combination of the foregoing.

b. The Trustees may modify the initial submission to cure deficiencies in the submission only if: (1) the Trustees determine that disapproving the submission and awaiting a resubmission would cause substantial disruption to the work required; or (2) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report, or deliverable.

29. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 28, or if required by a notice of approval upon specified conditions under Paragraph 28, Defendants shall, within thirty (30) days or such longer time as specified by the Trustees in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. After review of the resubmitted plan, report, or other deliverable, the Trustees may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Defendants to correct the deficiencies; or (e) any combination of the foregoing.

30. Material Defects. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by the Trustees under Paragraph 28 or 29 due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Paragraph 29. The provisions of Section XIII (Dispute Resolution) and Section XI (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Defendants' submissions under this Section.

31. Implementation. Upon approval, approval upon conditions, or modification by the Trustees under Paragraph 28 (Initial Submissions) or Paragraph 29 (Resubmissions), of any plan, report, or other deliverable, or any portion thereof: (a) such plan, report, or other

deliverable, or portion thereof, shall be incorporated into and enforceable under this Decree; and (b) Defendants shall take any action required by such plan, report, or other deliverable, or portion thereof, subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIII (Dispute Resolution) with respect to the modifications or conditions made by the Trustees. The implementation of any non-deficient portion of a plan, report, or other deliverable submitted or resubmitted under Paragraph 28 or 29 shall not relieve Defendants of any liability for stipulated penalties under Section XI (Stipulated Penalties).

XI. STIPULATED PENALTIES

32. Non-Compliance with Assessment Costs and Trustee-Sponsored Natural Resource Restoration Projects Payment Obligations.

a. Interest. If Defendants fail to make the payments required by Paragraphs 10 and Paragraphs 11.a and 11.b by the required due date, interest shall be assessed 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 is the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Interest will continue to accrue on the unpaid balance through the date of payment.

b. Stipulated Penalties for Non-Compliance with Assessment Costs Payment Obligations. In addition to the Interest required to be paid under Subparagraph 32.a., if any payment required by Paragraph 10 is not made when due, the Defendants shall also pay a stipulated penalty of \$1,000 per day through the date of full payment.

c. Stipulated Penalties for Non-Compliance with Trustee-Sponsored Natural Resource Restoration Projects Payment Obligations. In addition to the Interest required to be paid under Subparagraph 32.a., if any payment required by Paragraph 11 is not made when due, the Defendants shall also pay the following through the date of full payment.

Penalty Per Violation Per Day	Period of Noncompliance
\$1,000	1st through 30th day
\$3,000	31st day and beyond

33. Non-Compliance with Land Purchase Obligations.

a. If Defendants fail to transfer title to New York State by the date required by Paragraph 15, Defendants shall pay a stipulated penalty of \$1,000 per day through the date of parcel transfer.

b. If Defendants fail to pay the amount required pursuant to Paragraph 17 by the date required, Defendants shall pay a stipulated penalty of \$1,000 per day through the date of payment.

34. Non-Compliance with RFP obligations.

a. Stipulated Penalty Amounts - projects completion required by Paragraphs 24 and 25:

Penalty Per Violation Per Day	Period of Noncompliance
\$1,500	1st through 30th day
\$3,000	31st day and beyond

b. Stipulated Penalty Amounts - Plans, Reports, and other Deliverables required pursuant to Paragraphs 22, 23 and 26:

Penalty Per Violation Per Day	Period of Noncompliance
\$1,000	1st through 30th day
\$2,000	31st day and beyond

c. Failure to timely pay amount required under Paragraphs 25 and 27:

i. Interest. If Defendants fail to make the payments required by Paragraphs 25 and/or 27 by the required due date, interest shall be assessed 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 is the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Interest will continue to accrue on the unpaid balance through the date of payment.

ii. Stipulated Penalties. In addition to the Interest required to be paid under the preceding Subparagraph, if any payment required by Paragraphs 25 and/or 27 is not made when due, the Defendants shall also pay a stipulated penalty of \$1,000 per day through the date of full payment.

35. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by a Trustee or Trustees.

36. Penalties will accrue as provided in this Section regardless of whether the Trustees have notified Defendants of the violation or made a demand for payment, but the penalties need only be paid upon demand. All penalties will begin to accrue on the day after performance or payment is due and will continue to accrue through the date of performance or

payment. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section X (Trustees Approval of Plans, Reports, and Other Deliverables), during the period, if any, beginning on the 31st day after Trustees receipt of such submission until the date that the Trustees notify Defendants of any deficiency; or (b) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), during the period, if any, beginning on the 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 in this Decree prevents the simultaneous accrual of separate penalties for separate violations of this Decree. Defendants may dispute the Trustees' right to the penalties identified herein by invoking the dispute resolution procedures of Section XIII.

37. Instructions for Stipulated Penalty Payments.

a. All payments of stipulated penalties demanded by the Trustees for violations of this Decree, except as provided in paragraphs 37.b., c., and d., below, shall be made 1/3 to the United States pursuant to the instructions in Paragraph 10.a.(1) , 1/3 to the State pursuant to the instructions in Paragraph 10.b., and 1/3 to the Tribe pursuant to the instructions in Paragraph 10.c., and shall indicate that the payments are for stipulated penalties.

b. All payments of stipulated penalties demanded by the United States for violations of Paragraph 10.a. (Assessment Costs incurred by the United States) shall be made to the United States pursuant to the instructions in Paragraph 10.a.(1), and shall indicate that the payments are for stipulated penalties.

c. All payments of stipulated penalties demanded by the Tribe for violations of Paragraphs 10.c. (Assessment Costs incurred by the Tribe) and 11.b. (Payment for Tribal Cultural Restoration projects) shall be made to the Tribe pursuant to the instructions in Paragraph 10.c., and shall indicate that the payments are for stipulated penalties.

d. All payments of stipulated penalties demanded by the State of New York for violations of Paragraphs 10.b. (Assessment Costs incurred by the State) shall be made to the NYSDEC pursuant to the instructions in Paragraph 10.b., and shall indicate that the payments are for stipulated penalties.

38. If Plaintiffs bring an action to enforce this Decree, Defendants will reimburse Plaintiffs for all costs of such action, including but not limited to costs of attorney time.

39. Nothing in this Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the Plaintiffs to seek any other remedies or sanctions available by virtue of Defendants' violation of this 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, 42 U.S.C. § 9622(l), provided, however, that the Plaintiffs shall not seek civil penalties pursuant to Section

122(l) of CERCLA for any violation for which a stipulated penalty is provided in this Decree, except in the case of a willful violation of this Decree.

40. Notwithstanding any other provision of this Section, Plaintiffs may, in their unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Decree. For stipulated penalties accruing pursuant to Paragraph 32, the Plaintiff to whom payment is owed may, in its unreviewable discretion, waive payment of any portion of those stipulated penalties that have accrued pursuant to Paragraph 32. Payment of stipulated penalties does not excuse Defendants from any payment obligation of this Decree or from performance of any other requirement of this Decree.

XII. FORCE MAJEURE

41. "Force majeure," for purposes of this Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors that delays or prevents (hereinafter collectively referred to as "delay") the performance of any obligation under this Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to comply with any obligation of this Decree.

42. If any event occurs or has occurred that may delay the performance of any obligation under this Decree for which Defendants intend or may intend to assert a claim of force majeure, Defendants shall notify orally the Administrator Trustee (the Tribe contact), within three days of when Defendants first knew that the event might cause a delay. Within 14 days thereafter, Defendants shall provide in writing to the Trustees 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; Defendants' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Defendants from asserting any claim of force majeure regarding that event, provided, however, that if the Trustees, despite the late notice, are able to assess to their satisfaction whether the event is a force majeure under Paragraph 41 and whether Defendants have exercised their best efforts under Paragraph 41, the Trustees may, in their

unreviewable discretion, excuse in writing Defendants' failure to submit timely notices under this Paragraph.

43. If the Trustees agree that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Decree that are affected by the force majeure will be extended by the Trustees 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 shall not, of itself, extend the time for performance of any other obligation. If the Trustees do not agree that the delay or anticipated delay has been or will be caused by a force majeure, the Trustees will notify Defendants in writing of its decision. If the Trustees agree that the delay is attributable to a force majeure, the Trustees will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

44. If Defendants elect to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), they shall do so no later than 15 days after receipt of the Trustees's notice. In any such proceeding, Defendants 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, 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 Defendants complied with the requirements of Paragraphs 41 and 42. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligations of this Decree.

XIII. DISPUTE RESOLUTION WITH DEFENDANTS

45. Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree.

46. Any dispute which arises under or with respect to this Decree shall in the first instance be the subject of informal negotiations between the Trustees and Defendants. The period for informal negotiations shall not exceed twenty-one (21) days from the time the dispute arises, unless the parties agree otherwise in writing. The dispute shall be considered to have arisen when the Trustees send Defendants a written notice specifying the nature of the dispute and requested relief ("Notice of Dispute") or Defendants send the Trustees a written Notice of Dispute.

47. a. If the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Trustees shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Defendants invoke the formal dispute resolution procedures of this Section by serving on the Trustees 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 Defendants.

b. Within twenty-one (21) days after receipt of Defendants' Statement of Position, the Trustees shall serve on Defendants their written Statement of Position, including, but not necessarily limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Trustees.

c. An administrative record of the dispute shall be maintained by the Trustees and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Section.

d. Defendants and the Trustees each shall identify Formal Dispute Resolution Representatives who shall meet to discuss the matter in dispute at the earliest available opportunity and will work in good faith to resolve the matter in dispute. If the Parties fail to resolve the dispute within twenty-one (21) days after the initial meeting of the Formal Dispute Resolution Representatives, then the position advanced by the Trustees in their Statement of Position shall be considered binding upon Defendants, subject to any agreements the Formal Dispute Resolution Representatives may have reached on one or more issues and further subject to Defendants' right to seek judicial review pursuant to the following Subparagraph. In such event the Trustees shall within five (5) days of the conclusion of the formal dispute resolution process notify Defendants in writing that the formal dispute resolution process has concluded. Defendants may seek judicial review of the Trustees' Statement of Position (as modified by any agreements the Formal Dispute Resolution Representatives may have reached) pursuant to the following Subparagraph. The Disputing Party shall bear the burden of demonstrating that its position complies with this Decree and better furthers the objectives of the Decree.

e. Any matter in dispute shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Defendants with the Court and served on all Parties within twenty-one (21) days of receipt of the Trustees' letter notifying Defendants of the conclusion of the formal dispute resolution process. The motion shall include a description of the matter in dispute, the relief requested and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Decree. The Plaintiffs may file a response to Defendants' motion within twenty-one (21) days of receipt of the motion or within any different time frame that the local rules of court may provide, and Defendants may file a reply brief within five (5) days of receipt of the response or such different time that the local rules of court may provide.

f. The foregoing notwithstanding, the Parties acknowledge that disputes may arise that require resolution on an expedited basis. In such cases, the Parties shall agree on an expedited schedule or, absent prompt agreement, either Defendants or the Trustees may petition the Court for the imposition of an expedited schedule.

48. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of any Party under this Decree not directly in dispute or contingent on issues in dispute, unless the Trustees or the Court agrees otherwise. Defendants' obligation to pay stipulated penalties as provided in Section XI with respect to the matter in dispute shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, the obligation to pay stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Decree, subject to agreement of the Parties or to the decision of the Court on Defendants' motion. If Defendants do not prevail on a disputed issue, stipulated penalties shall be assessed and paid as provided in Section XII.

XIV. COVENANTS NOT TO SUE BY THE PLAINTIFFS

49. Covenant by the United States. Except as specifically provided by Paragraph 52 (General Reservations) and Paragraph 53 (Special Reservations Regarding Natural Resource Damages), the United States covenants not to sue or take administrative action against Defendants for Natural Resource Damages. This covenant not to sue shall take effect upon receipt of the Defendants' payments pursuant to Paragraphs 10 and 11 of this Decree. This covenant not to sue is conditioned upon the satisfactory performance by Defendants of all their obligations under this Decree. This covenant not to sue extends only to Defendants and does not extend to any other person; provided, however, that this covenant not to sue (and the reservations thereto) shall also apply to Defendants' Related Parties.

50. Covenant by the State. Except as specifically provided by Paragraph 52 (General Reservations) and Paragraph 53 (Special Reservations Regarding Natural Resource Damages), the State covenants not to sue or take administrative action against Defendants for Natural Resource Damages. This covenant not to sue shall take effect upon receipt of the Defendants' payments pursuant to Paragraphs 10 and 11 of this Decree. This covenant not to sue is conditioned upon the satisfactory performance by Defendants of all their obligations under this Decree. This covenant not to sue extends only to Defendants and does not extend to any other person; provided, however, that this covenant not to sue (and the reservations thereto) shall also apply to Defendants' Related Parties.

51. Covenant by the Tribe. Except as specifically provided by Paragraph 52 (General Reservations) and Paragraph 53 (Special Reservations Regarding Natural Resource Damages), the Tribe covenants not to sue or take administrative action against Defendants for Natural Resource Damages. This covenant not to sue shall take effect upon receipt of the Defendants' payments pursuant to Paragraphs 10 and 11 of this Decree. This covenant not to sue is conditioned upon the satisfactory performance by Defendants of their obligations under this Decree. This covenant not to sue extends only to Defendants and does not extend to any other person; provided, however, that this covenant not to sue (and the reservations thereto) shall also apply to Defendants' Related Parties.

XV. RESERVATION OF RIGHTS BY PLAINTIFFS

52. General Reservations. The United States and the State and the Tribe reserve, and this Decree is without prejudice to, all rights against Defendants and with respect to all matters not expressly included within Paragraph 49 (Covenants by the United States), Paragraph 50 (Covenants by the State) or Paragraph 51 (Covenants by the Tribe)]. Notwithstanding any other provisions of this Decree, the United States, the State and the Tribe reserve all rights against the Defendants with respect to:

- a. claims based on a failure by the Defendants to meet a requirement of this Decree;
- b. liability for injunctive relief or administrative order enforcement under CERCLA Section 106, 42 U.S.C. § 9606;
- c. liability under CERCLA Section 107(a)(4)(A), 42 U.S.C. § 9607(a)(4)(A), for costs of removal or remedial action incurred by the United States, the State or the Tribe;
- d. liability under Section 107(a)(4)(D), 42 U.S.C. § 9607(a)(4)(D), for costs of any health assessment or health effects study carried out under 42 U.S.C. § 9604(I);
- e. liability for any other costs incurred or to be incurred by the United States, the State or the Tribe that are not within the definition of Natural Resource Damages;
- f. liability for damages for injury to, destruction of, or loss of natural resources resulting from releases or threatened releases of hazardous substances outside of the Sites;
- g. liability arising from any disposal of hazardous substances at the Sites by Defendants after the lodging of this Decree, except where such disposal is consistent with government approved workplan(s) or permits or is at the direction or under the oversight of the U.S. Environmental Protection Agency or the NYSDEC; and
- h. criminal liability.

53. Special Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this Decree, the United States, State and Tribe each reserves the right to institute proceedings against Defendants in this action or in a new action seeking recovery of Natural Resource Damages if conditions are discovered or information is received relating to the Sites, not known to the Trustees at the time of lodging of this Decree, that, together with any other relevant information, indicates that there is injury to, destruction of, or loss of Natural

Resources of a type unknown, or of a magnitude substantially greater than was known, by the Trustees as of the date of lodging of this Decree. For purposes of this Paragraph, information and conditions known to the Trustees relating to the Sites as of the date of lodging of this Decree shall include only the information and conditions set forth in the NOAA, DOI, State and Tribe files for the Sites as of the date of lodging of this Decree.

XVI. COVENANTS BY THE DEFENDANTS

54. Covenants by Defendants. Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, the State or the Tribe, or their contractors or employees, with respect to Natural Resource Damages or this Decree, including but not limited to:

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

b. any claim against the United States, the State or the Tribe pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Natural Resource Damages.

Except as provided in Paragraph 60 (Waiver of Res Judicata and Other Defenses), these covenants not to sue shall not apply in the event that the United States, the State or the Tribe brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 52 or 56, but only to the extent that Defendants' claims arise from the same damages that the United States, the State or the Tribe is seeking pursuant to the applicable reservation.

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

56. Waiver of Certain Claims Against Other Persons. Defendants agree not to assert any claims and to waive all claims or causes of action that they may have against all other persons for all matters relating to Natural Resource Damages, including for contribution; provided, however, that Defendants reserve the right to assert and pursue all claims, causes of action, and defenses relating to Natural Resource Damages against any person in the event such person first asserts, and for so long as such person pursues, any claim or cause of action against Defendants relating to Natural Resource Damages. Nothing in this Paragraph shall operate to waive or release any claim or action by Defendants under any contract of insurance. Nothing in this Paragraph shall operate to waive or release any claim or action by the Defendants for costs they incurred or will incur that are not within the definition of Natural Resource Damages.

XVII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

57. Except as provided in Paragraph 56 (Waiver of Certain Claims Against Other Persons), nothing in this Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Decree. Except as provided in Paragraph 56 (Waiver of Certain Claims Against Other Persons), 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 Site against any person not a Party hereto.

58. The Parties agree, and by entering this Decree the Court finds, that this settlement constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Natural Resource Damages. The "matters addressed" in this Consent Decree do not include those matters as to which the United States, the State or the Tribe have reserved their rights under this Decree (except for claims for failure to comply with this Decree), in the event that the United States, the State or the Tribe asserts rights against Defendants coming within the scope of such reservations.

59. Defendants agree that, with respect to any suit or claim brought against them for matters related to this Decree, Defendants will notify the persons identified in Section XXII (Notices and Submissions) in writing within 10 days of service of the complaint or claim upon it. In addition, Defendants shall notify the persons identified in Section XXII (Notices and Submissions) within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Decree.

60. In any subsequent administrative or judicial proceeding initiated by the United States, the State or the Tribe for injunctive relief, recovery of response costs or Natural Resource Damages, or other relief relating to the Site, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States, the State or the Tribe 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 by the United States, the State and the Tribe set forth in Section XIV.

XVIII. INDEMNIFICATION AND INSURANCE

61. Defendants' Indemnification of the United States, State and Tribe.

a. The United States, State and Tribe do not assume any liability by entering into this Decree. Defendants shall indemnify, save and hold harmless the United States, the State, and the Tribe and their 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 Defendants, 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 Decree. Further, Defendants agree to pay the United States, the State and Tribe all costs they incur 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, the State or Tribe based on negligent or other wrongful acts or omissions of Defendants, 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 Decree. Neither the United States, the State nor the Tribe shall be held out as a party to any contract entered into by or on behalf of Defendants in carrying out activities pursuant to this Decree. Neither Settling Defendants nor any such contractor shall be considered an agent of the United States, the State or the Tribe.

b. The United States, the State and the Tribe shall give Defendants notice of any claim for which the United States, the State or the Tribe plans to seek indemnification pursuant to this Paragraph 61.a., and shall consult with Defendants prior to settling such claim.

62. Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, the State and the Tribe for damages or reimbursement or for set-off of any payments made or to be made to the United States, the State or the Tribe, arising from or on account of any contract, agreement, or arrangement between Defendants and any person for performance of work relating to the Sites, including, but not limited to, claims on account of construction delays. In addition, Defendants shall indemnify and hold harmless the United States, the State and the Tribe with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Defendants and any person for performance of work relating to the Sites, including, but not limited to, claims on account of construction delays.

63. No later than 15 days before commencing any work, Defendants shall secure, and shall maintain a comprehensive commercial general liability and automobile liability insurance with limits of two million dollars (\$2,000,000), combined single limit. The United States, the State and the Tribe shall be named as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Defendants pursuant to this Decree. In addition, for the duration of this Decree, Defendants 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 Defendants in furtherance of this Decree. Prior to commencement of the work under this Decree, Defendants shall provide to the United States, State and Tribe certificates of such insurance and a copy of each insurance policy. Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Defendants demonstrate by evidence satisfactory to the United States, the State and the Tribe 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, Defendants need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XIX. ACCESS TO PROPERTY

64. If the Sites, or any other real property where access is needed for purposes of this Decree, is owned or controlled by Defendants, Defendants shall, commencing on the Effective Date, provide the United States, the State and Tribe, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Sites, or such other real property, to conduct any activity regarding the Decree including, but not limited to, the following activities (to the extent applicable under this Decree):

- (a) Monitoring the implementation of the Decree requirements;
- (b) Verifying any data or information submitted to the United States, the State or Tribe under this Decree;
- (c) Conducting investigations regarding contamination at or near the Sites;
- (d) Obtaining samples;
- (e) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Defendants or their agents, relating to implementation of this Decree and consistent with Section XX (Access to Information);
- (f) Assessing Defendants' compliance with the Decree;

65. Notwithstanding any provision of the Decree, the United States, the State and Tribe retain any access authorities and rights they may have, under CERCLA and any other applicable statute or regulations.

XX. ACCESS TO INFORMATION

66. Defendants shall provide to the Trustees in accordance with paragraph 73, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to the implementation of this 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 regarding any work required. Defendants shall also make available to the Trustees, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the implementation of this Decree.

67. Business Confidential and Privileged Documents.

a. Defendants may assert business confidentiality claims covering part or all of the Records submitted to Plaintiffs 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). Records determined to be confidential by the Trustees will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to the Trustees, or if the Trustees have notified Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Defendants.

b. Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege in lieu of providing Records, they shall provide Plaintiffs with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Defendants. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the Trustees in redacted form to mask the privileged portion only. Defendants shall retain all Records that they claim to be privileged until the Trustees have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Defendants' favor.

c. No Records created or generated pursuant to the requirements of this Decree shall be withheld from the Trustees on the grounds that they are privileged or confidential.

68. No claim of confidentiality or privilege 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 Site. Defendants may redact documents containing information evidencing conditions at or around the Site but only to remove privileged information, as referenced in paragraph 67, other than the data evidencing conditions at or around the Site.

XXI. RETENTION OF RECORDS

69. Until ten years after Defendants have fully implemented this Decree, Defendants shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Sites. In addition, Defendants must retain all Records that relate to the liability of any other person under CERCLA with respect to the Sites. Defendants 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 Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to implementation of the requirements of this Decree, provided, however, that Defendants (and its contractors and agents) must retain, in addition, copies of all data generated during the implementation of the requirements of this Decree and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

70. At the conclusion of this record retention period, Defendants shall notify the Trustees at least 90 days prior to the destruction of any such Records, and, upon request by the Trustees, Defendants shall deliver any such Records to the Trustees. Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide Plaintiffs with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted by Defendants. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the Trustees in redacted form to mask the privileged portion only. Defendants shall retain all Records that they claim to be privileged until the Trustees have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Defendants' favor. However, no Records created or generated pursuant to the requirements of this Decree shall be withheld on the grounds that they are privileged or confidential.

71. Each Defendant certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Sites since the earlier of notification of potential liability by the United States, the State or the Tribe, or the filing of suit against it regarding the Site and that it has fully complied with any and all federal, state and tribal requests for information pursuant to Sections 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, and state law.

XXII. NOTICES AND SUBMISSIONS

72. Whenever notice is required to be given or a document is required to be sent by one Party to another under the terms of this Decree, it will be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified constitutes complete satisfaction of any written notice requirement of the Decree for Plaintiffs and Defendants.

As to the United States:

Chief, Environmental Enforcement Section
U.S. Department of Justice
DJ #90-11-3-558
P.O. Box 7611
Washington, DC 20044-7611

Laurie Lee
Natural Resources Section
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NOAA
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Mark Barash
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U.S. Department of Interior
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Newton, MA 02458-2802

As to the State of New York:

Maureen F. Leary
Assistant Attorney General
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Environmental Protection Bureau
The Capitol
Albany, New York 12224-0341

Nathaniel H. Barber
Office of General Counsel

New York State Department of Environmental Conservation
14th Floor
625 Broadway
Albany, New York 12233-1500

As to the St. Regis Mohawk Tribe:

John J. Privitera, Esq.
McNamee, Lochner, Titus & Williams, P.C.
677 Broadway, Suite 500
Albany, New York 12077

Ken Jock
Director, Environment Division
St. Regis Mohawk Tribe
412 State Route 37
Akwesasne, New York 13655

General Counsel
St. Regis Mohawk Tribe
Community Building
412 State Route 37
Akwesasne, New York 13655

As to Defendants, Alcoa and Reynolds:

Gregory J. Pfeifer
Alcoa Inc.
Alcoa Corporate Center
201 Isabella Street
Pittsburgh, PA 15212-5858

Kirk J. Gribben
Alcoa Inc.
Alcoa Corporate Center
201 Isabella Street
Pittsburgh, PA 15212-5858

XXIII. APPENDICES

73. The following appendices are attached to and incorporated into this Decree:

"Appendix A" is the Restoration and Compensation Determination Plan and Environmental Assessment ("RCDP").

"Appendix B" is a depiction of the Alcoa and Reynolds Sites.

"Appendix C" is a depiction of the Coles Creek parcels.

"Appendix D" is a depiction of the Wilson Hill parcels.

"Appendix E" is a draft New York State easement.

"Appendix F" is the 85% Design for the RFPs.

"Appendix G" lists the expected elements of the 100% Design for the RFPs.

XXIV. EFFECTIVE DATE AND RETENTION OF JURISDICTION

74. The effective date of this Decree ("Effective Date") shall be the date upon which this Decree is entered, or a motion to enter the Decree is granted, whichever occurs first, as recorded on the Court's docket.

75. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Decree.

XXV. CONSENT DECREE MODIFICATIONS

76. Any material modification of this Decree shall be made by agreement of the Parties to this Decree and in writing, and shall not take effect unless approved by the Court. Any non-material modification of this Decree, including any schedule extensions, shall be made by agreement of the Parties to this Decree and in writing. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Decree.

XXVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

77. This Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if comments regarding the Decree disclose facts or considerations which indicate that this Decree is inappropriate, improper, or inadequate. Defendants consent to the entry of this Decree without further notice. If for any reason the Court should decline to approve this Decree in the form presented, or if approval and entry is subsequently vacated on appeal of such approval and entry, 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.

XXVII. SIGNATORIES/SERVICE

78. The undersigned representatives of the Defendants, the United States, the State and the Tribe each certify that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such Party to this document.

79. Defendants hereby agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree unless the United States has notified Defendants in writing that it no longer support entry of the Decree.

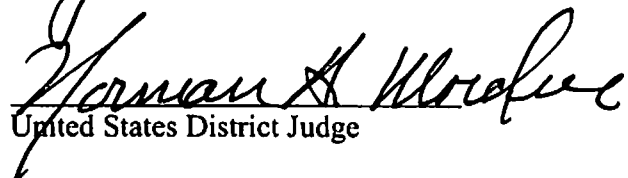
80. Defendants shall identify, on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of the Defendants with respect to all matters arising under or relating to this Decree. Defendants hereby agree to accept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

XXVIII. FINAL JUDGMENT

81. This Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Decree.

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

SO ORDERED THIS 17 DAY OF July, 2013.



United States District Judge

THE UNDERSIGNED PARTY enters into this Decree in the matter of *United States of America, State of New York and St. Regis Mohawk Tribe v. Alcoa Inc. and Reynolds Metals Co.*

3/13/13
Date

3/25/13
Date

FOR THE UNITED STATES


IGNACIA S. MORENO

Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
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PETER M. FLYNN

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OF COUNSEL
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MARK BARASH
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U.S. Department of Interior
One Gateway Center, Suite 612
Newton, MA 02458-2802

THE UNDERSIGNED PARTY enters into this Decree in the matter of *United States of America, State of New York and St. Regis Mohawk Tribe v. Alcoa Inc. and Reynolds Metals Co.*

FOR THE STATE OF NEW YORK

March 22, 2013
Date

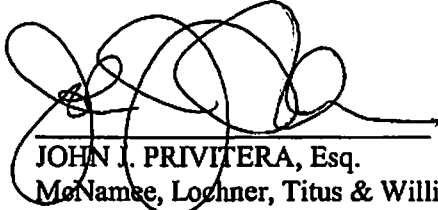

MAUREEN F. LEARY

**Assistant Attorney General
New York State Office of the Attorney General
Environmental Protection Bureau
The Capitol
Albany, New York 12224-0341
(518) 474-7154
Maureen.leary@ag.ny.gov**

THE UNDERSIGNED PARTY enters into this Decree in the matter of *United States of America, State of New York and St. Regis Mohawk Tribe v. Alcoa Inc. and Reynolds Metals Co.*

FOR THE SAINT REGIS MOHAWK TRIBE

Date

A handwritten signature in black ink, appearing to read "John J. Privitera", written over a horizontal line.

JOHN J. PRIVITERA, Esq.
McNamee, Loehner, Titus & Williams, P.C.
677 Broadway, Suite 500
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(518) 447-3337
PRIVITERA@mltw.com

THE UNDERSIGNED PARTY enters into this Decree in the matter of *United States of America, State of New York and St. Regis Mohawk Tribe v. Alcoa Inc. and Reynolds Metals Co.*

FOR ALCOA INC.

February 5, 2013
Date



Name (print): Kevin Anton

Title: Vice President

Address: 900 SOUTH GAY ST.
Suite 1200
Knoxville TN 37902

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

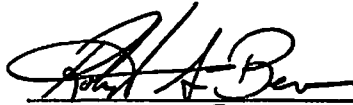
Name (print): Gregory J. Pfeifer
Title: Counsel
Phone: (412) 553-2521
email: gregory.pfeifer@alcoa.com
Address: 201 Isabella Street
Pittsburgh, PA 15212-5858

THE UNDERSIGNED PARTY enters into this Decree in the matter of *United States of America, State of New York and St. Regis Mohawk Tribe v. Alcoa Inc. and Reynolds Metals Co.*

FOR THE REYNOLDS METALS COMPANY

02/11/13

Date



Name (print): Robert S. Bear

Title: Vice President

Address: Reynolds Metals Company
201 Isabella St
Pittsburgh, PA 15212

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

Name (print): Gregory J. Pfeifer

Title: Counsel

Phone: (412) 553-2521

email: gregory.pfeifer@alcoa.com

Address: 201 Isabella Street
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