

a. DOI/FWS: The Defendants shall make payment by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in the amount of \$19,692 within 30 days of the entry of this Consent Decree or within 30 days of Defendants’ receipt of wiring instructions from the United States Attorney’s Office for the Southern District of Texas, whichever is later. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. The payment shall reference “USAO File Number 2004V00667, DOJ case number 90-11-3-655/1,” and the additional notation, “NRDAR Account No. 14X5198, payment for Point Comfort/Lavaca Bay NPL Site.”

Notice of the payment also shall be sent to the following:

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

Martin Steinmetz, Esq.
Office of the Field Solicitor
U.S. Department of the Interior
7906 E. 33rd St., Suite 100
Tulsa, OK 74145

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Dept. of Justice
P.O. Box 7611
Washington, DC 20044-7611
re: DJ# 90-11-3-655/1

b. NOAA: The Defendants shall make payment by FedWire EFT to the U.S. Department of Justice account in the amount of \$632,433 within 30 days of the entry of this Consent Decree or within 30 days of Defendant’s receipt of wiring instructions from the United States Attorney’s Office for the Southern District of Texas, whichever is later. Any payment received by the Department of

Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. The payment shall reference "United States and the State of Texas v. Alcoa Inc. et al.; USAO File Number 2004V00667; DOJ case number 90-11-3-655/1; "Point Comfort/Lavaca Bay NPL Site-NOAA's DARRF."

Notice of the payment also shall be sent to the following:

NOAA/NOS/OR&R
ATTN: Kathy Salter
1305 East West Highway
SSMC 4, Room 10139
Silver Spring, MD 20910-3281

NOAA Office of General Counsel
Attn: Stephanie Fluke
9721 Executive Center Dr. N., Suite 137
St. Petersburg, FL 33702

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Dept. of Justice
P.O. Box 7611
Washington, DC 20044-7611
re: DJ# 90-11-3-655/1

73. In addition to funds previously paid by Alcoa to the State Trustees, within 30 days of entry of this Consent Decree, Defendants shall pay by certified check the amount of \$133,071.46 payable to the "State of Texas" and mailed to Chief, Natural Resource Division, Office of the Attorney General, P. O. Box 112548, Austin, TX 78711, with notice of payment provided to the Trustee representatives designated below. The check shall bear the identifying number: AG#91-37803. The proceeds shall be allocated to the State Trustees in order to fully satisfy the claims of the State Trustees for Past Assessment Costs as follows:

- a. Texas Parks and Wildlife Department: \$21,046.66

Notice of payment also shall be sent to:

Texas Parks and Wildlife Department
Don Pitts
4200 Smith School Road
Austin, TX 78744

- b. Texas Commission on Environmental Quality: \$112,024.80

Notice of payment also shall be sent to:

Texas Commission on Environmental Quality
Richard Seiler, MC142
P. O. Box 13087
Austin, TX 78711-3087

74. Following the entry of this Consent Decree, in order to fully satisfy the claims of the Federal Trustees and the State Trustees for Future Costs, Defendants shall pay the sum of \$195,000.00 by FedWire Electronic Funds Transfer (“EFT”) to an account established within DOI’s Natural Resource Damage Assessment and Restoration Account and shall reference “Agency Location Code No. 14010001, NRDAR Account No. 14X5198, payment for Point Comfort/Lavaca Bay NPL Site.” Payment shall be made in accordance with current EFT procedures within 30 days of receipt of wiring instructions from DOI. Any payment received by DOI after 4:00 p.m. Eastern Time shall be credited on the next business day. The payment also shall reference “*United States and the State of Texas v. Alcoa Inc. et al.*; USAO File Number: 2004V00667; DOJ case number 90-11-3-655/1.”

VIII. GENERAL NOTICE REQUIREMENTS

75. In addition to the notice requirements specified in Sections VI (Restoration Implementation and Verification) and VII (Payment of Past Assessment Costs and Future Costs), Defendants shall provide notices of all payments, all written documents pertaining to Force Majeure,

and all written documents pertaining to Dispute Resolution to the Assistant Attorney General at the Address specified below, unless his successor(s) give notice of a change to the other Parties in writing.

As to the State of Texas Attorney General:

Albert Bronson
Assistant Attorney General
Natural Resource Division
Texas Office of Attorney General
P. O. Box 12548, Capitol Station
Austin, TX 78711-2548

76. In addition to the notice requirements specified in Sections VI (Restoration Implementation and Verification) and VII (Payment of Past Assessment Costs and Future Costs), Defendants shall provide notices of all payments, all written documents pertaining to the transfer of the Whitmire Property, Force Majeure, Dispute Resolution, Events, requests for Certification of Project Completion, requests for Final Certification of Completion of All Restoration Projects, and any modification that materially alters a Restoration Project to the United States Department of Justice, at the address specified below.

As to the United States Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P. O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611
DJ # 90-11-3-655/1

77. In addition to the notice requirements specified in Sections VI (Restoration Implementation and Verification) and VII (Payment of Past Assessment Costs and Future Costs),

Defendants shall provide either by electronic format or by mail, notice of all transmittals, without the technical document, to the following individuals at the addresses specified below, unless her or his successors give notice of a change to the other Parties in writing.

Stephanie Fluke
NOAA Office of General Counsel
9721 Executive Center Dr. N., Suite 137
St. Petersburg, FL 33702
e-mail: Stephanie.Fluke@noaa.gov

Martin Steinmetz
Attorney
Department of Interior, Office of the Solicitor
Tulsa Field Solicitor's Office
7906 East 33rd Street, Suite 100
Tulsa, Oklahoma 74145

Carol Lear
Texas Commission on Environmental Quality
12100 Park 35 Circle, Bldg. A.
Mail Code 173
Austin, TX 78753
e-mail: clear@TCEQ.state.tx.us

Raenell Silcox
Attorney
Texas Parks & Wildlife Department
420 Smith School Road
Austin, TX 78744
e-mail: raenell.silcox@tpwd.state.tx.us

Jane Sarosdy
Texas General Land Office
Legal Services Division
P. O. Box 12873
Austin, TX 78711-2873
e-mail: Jane.Sarosdy@glo.state.tx.us

78. The United States and the State shall provide all notices, determinations, certifications, and decisions to be submitted to the Defendants via mail and electronic media to the

following representatives, unless his or her successor give notice of a change to the other Parties in writing:

As to Alcoa:

Alcoa Inc.
c/o Legal Department
Alcoa Inc.
201 Isabella Street
Pittsburgh, PA 15212-5858

and

the Restoration Project Manager (designated in accordance with Section VI.A of this Consent Decree)

and

Pamela M. Giblin
Derek R. McDonald
Baker Botts L.L.P.
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701-4039

As to AWA:

Alcoa World Alumina L.L.C.
c/o Legal Department
Alcoa Inc.
201 Isabella Street
Pittsburgh, PA 15212-5858.

79. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein and in Sections VI (Restoration Implementation and Verification) and VII (Payment of Past Assessment Costs and Future Costs) shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the Parties.

IX. FORCE MAJEURE

80. "Force majeure," for purposes of this Consent Decree, is defined as any circumstance arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, that delays or prevents the scheduled performance of any obligation under this Consent Decree despite Alcoa's 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 (1) as it is occurring and (2) following the potential force majeure, such that the delay is minimized to the greatest extent practical. "Force Majeure" does not include financial inability to complete a Restoration Project or a failure (not itself caused by an event of force majeure) to satisfy the requirements of the Implementation Plans. "Force Majeure" does include a FWS requirement that Alcoa cease construction because of the presence of an endangered species.

81. If any circumstance occurs or has occurred that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by force majeure, Defendants shall orally notify the Lead Administrative Trustee within 48 hours following the time that Alcoa first knew that the circumstance might cause a delay. Within five (5) days thereafter, Defendants shall provide in writing to the Lead Administrative Trustee a 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 the implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and Defendants' rationale for attributing such delay to a force majeure if they intend to assert such a claim and a statement as to whether, in the opinion of Defendants, such circumstance may cause or contribute to an endangerment to public health, welfare or the

environment. Defendants' notice shall include the documentation available to Defendants and/or their agents supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that circumstance for the period of time of such failure to comply and for any additional foreseeable delay caused by such failure. 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.

82. If the Trustees agree that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by the Lead Administrative Trustee, on behalf of 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 Lead Administrative Trustee, on behalf of the Trustees, does not agree that the delay or anticipated delay has been or will be caused by a force majeure, the Lead Administrative Trustee will notify Alcoa in writing of its decision.

83. If Defendants elect to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), they shall do so no later than 15 days after receipt of the Lead Administrative Trustee's notice.

X. DISPUTE RESOLUTION

84. 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 Sections V (Natural Resource Restoration Requirements), VI (Restoration Implementation and

Verification), VII (Payment of Past Assessment Costs and Future Costs), IX (Force Majeure), XI (Stipulated Penalties) and XVII (Modification) of this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by one Party to enforce obligations of another Party that have not been disputed in accordance with this Section.

85. Informal Dispute Resolution. If, in the opinion of either the Trustees or Defendants, there is a dispute which arises under or with respect to this Consent Decree, the Lead Administrative Trustee, for the Trustees, or the Restoration Project Manager, for Defendants, whichever is disputing the issue, shall send written notice ("Dispute Notice") to the opposing entity outlining the nature of dispute and requesting negotiations to resolve the dispute. The Party disputing the issue shall serve on the opposing entity its statement of position together with supporting documentation within 10 days of such Dispute Notice and the opposing entity shall serve on the Party disputing the issue its statement of position together with supporting documentation within 20 days of the Dispute Notice. The Trustees and Defendants shall endeavor to resolve the dispute through good faith negotiations. The period for negotiations shall end on a date that is 50 days after the Dispute Notice, unless this time period is modified by written agreement of the Lead Administrative Trustee and the Restoration Project Manager. A record of the dispute shall be maintained by the Lead Administrative Trustee and shall contain the Dispute Notice, the statements of position, and supporting documentation, submitted by the Parties.

86. Court Intervention. If a dispute is not resolved during the dispute resolution period described above, Defendants shall file a motion with this Court within 30 days of the end of the dispute resolution period. In any judicial proceeding concerning a dispute, Defendants shall have the burden of demonstrating the merit of its position according to a standard of review based on

applicable law determined by the Court. Judicial review of the dispute shall be on the record compiled during the dispute resolution period unless good cause to supplement the record is shown.

87. Effect of Dispute Resolution. The invocation of the dispute resolution process pursuant to this Section shall not extend, postpone or affect in any way any obligation of any Party under this Consent Decree that is not directly in dispute, unless the Parties agree or the Court orders otherwise. In any judicial proceeding concerning a dispute, the prevailing Party may request the Court to grant such further relief as to which it may be entitled including, but not limited to, the extension of any time period affected by the dispute by the amount of time that the judicial proceedings required.

XI. STIPULATED PENALTIES

88. Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 89 to the United States and the State for failure to comply with those specified requirements.

89. The following stipulated penalties shall accrue per violation per day for Defendants' failure to comply with the deadlines established under this Consent Decree:

- (a) Failure to obtain the Certification of Construction of each Restoration Project by the deadline specified in the applicable Implementation Plan: \$1,000/day/unfinished Restoration Project.
- (b) Failure to submit when due any of the following reports: (i) 50% Survival Report, Phase 1 Monitoring Reports, and Phase 2 Monitoring Reports, as required by the Marsh Implementation Plan; (ii) 18-month and 30-month

post-construction monitoring reports, as required by the Oyster Reef Implementation Plan: \$500/day.

- (c) Failure to undertake fieldwork in accordance with the schedule established in a Corrective Action Plan that has been agreed to by all Parties: \$1,000/day.

90. All penalties due under this Section shall be due and payable within thirty (30) days of receipt of a demand for payment from the United States and/or the State of Texas, unless Defendants invoke dispute resolution under Section X (Dispute Resolution) of this Consent Decree. If Defendants invoke dispute resolution under Section X (Dispute Resolution), then stipulated penalties, if any, shall be due within thirty (30) days after the conclusion of the dispute resolution process in accordance with the final resolution reached. Stipulated penalties shall be paid 50% to the United States and 50% to the State of Texas as follows:

- (a) All payments to the United States under this Section shall be paid by certified check made payable to "U.S. Department of Justice." This payment shall be mailed to:

United States Attorney
Southern District of Texas
P.O. Box 61129
Houston, TX 77208
Attn: Claude Hippard
Chief, Financial Litigation Unit

and shall reference "United States and the State of Texas v. Alcoa; USAO File Number: 2004V00667; DOJ Case Number: 90-11-3-655/1," and shall include Defendants' name and address. Copies of the check and notice shall be sent to the Parties as specified in Section VIII (General Notice Requirements).

- (b) All payments made to the State under this Section shall be paid by certified check made payable to the "State of Texas." This payment should be mailed to the Chief, Natural

Resources Division, Texas Attorney General's Office, P.O. Box 12548, Austin, TX 78711. The check shall bear the identifying number "AG# 91-37803."

91. In the event that Alcoa fails to pay stipulated penalties when due, the United States and/or the State may institute a legal proceeding to collect such penalties, as well as Interest accruing on any unpaid balance, as provided by law.

XII. COVENANTS NOT TO SUE BY THE UNITED STATES
AND THE STATE OF TEXAS

92. In consideration of the actions that will be performed and payments that will be made by Defendants under this Consent Decree, and except as specifically provided in Paragraph 93 of this Section, the United States and the State each hereby covenant not to sue or otherwise take any civil or administrative action against Defendants; or, to the extent they are bound by this Consent Decree, to Defendants' respective successors and assigns, for Natural Resource Damages. Except with respect to future liability, these covenants not to sue shall take effect upon receipt of the payment of all Past Assessment Costs and Future Costs due pursuant to Section VII of this Consent Decree. With respect to future liability, these covenants not to sue shall take effect only after all of the following actions have occurred:

- (a) The Lead Administrative Trustee, on behalf of the Trustees, has issued the Certification of Completion of Marsh Construction, in accordance with the Marsh Implementation Plan;
- (b) No sooner than the end of the first growing season after receipt of the Certification of Completion of Marsh Construction, Alcoa has established that at least 50% of the planted vegetation has survived;

- (c) The Lead Administrative Trustee, on behalf of the Trustees, has issued the Certification of Completion of Oyster Reef Construction, in accordance with the Oyster Reef Implementation Plan; and
- (d) The Lead Administrative Trustee, on behalf of the Trustees, has issued the Certification of Completion of Recreation Project Construction for all Recreational Projects, in accordance with the Implementation Plan for Recreational Projects.

These covenants not to sue are conditioned upon the satisfactory performance by Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to Defendants and do not extend to any other person.

93. Trustees' Reservation of Rights.

- (a) Notwithstanding any other provision of this Consent Decree, the United States and the State of Texas reserve the right to institute civil or administrative proceedings as applicable against Defendants in this action or in a new action, seeking recovery of additional Natural Resource Damages, if:
 - (i) conditions at the Site previously unknown to the Trustees are discovered; or
 - (ii) information documenting past, present or future releases of hazardous substances at or from the Site that previously was unknown to the Trustees is received, in whole or in part, and these previously unknown conditions or this information, together with any other

relevant information, indicates that the response actions are not protective of human health or the environment and that there are new or additional injuries to, destruction of, or losses of natural resources or new or additional service losses for which Defendants have not already provided adequate compensation pursuant to this Consent Decree. For purposes of this provision, conditions and information known to the Trustees shall include only the information and conditions set forth in the administrative record supporting the Final Ecological DARP and the Final Recreational DARP and the administrative record supporting the ROD that was issued on December 20, 2001.

- (b) Nothing in the Consent Decree is intended to be, nor shall be construed as, a release from liability or a covenant not to sue for any claim or cause of action of the United States or the State, administrative or judicial for:
 - (i) Defendants' failure to comply with any obligation or requirement of this Consent Decree;
 - (ii) claims brought on behalf of the United States and the State, including State and Federal agencies, for costs, damages, and expenses of any sort, other than for Natural Resource Damages that are the subject of this Consent Decree;

- (iii) liability arising from any past, present, or future releases of hazardous substances other than the releases at or from the Site that are the subject of this Consent Decree;
 - (iv) liability arising from any releases of hazardous substances from any site or location that is not the subject of this Consent Decree, including but not limited to, any hazardous substance taken from the Site and disposed of at another site or location;
 - (v) criminal liability; and
 - (vi) liability for violations of federal or state law which occur during or incident to the performance of any Restoration Activity under this Consent Decree.
- (c) With regard to state property interests, the State reserves full rights, title and interest in state-owned land.
- (d) With regard to federal property interests, the United States reserves full rights, title and interests in federally-owned land.

94. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Defendants may contest any claims reserved by the United States and the State in this Consent Decree, and Defendants may claim any defense available to them including a statute of limitations defense, except they shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the

subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph diminishes or otherwise impairs the enforceability of the covenants not to sue set forth in this Section XII (Covenants Not to Sue by the United States and the State of Texas).

XIII. COVENANT NOT TO SUE BY DEFENDANTS

95. Except as provided in Paragraphs 96 and 97 and as may be required to enforce its rights under this Consent Decree, Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State for any claims arising from or relating to the Restoration Activity or any claims arising from or relating to the Natural Resource Damages resulting from the release of hazardous substances from the Site, pursuant to any federal, state, or common law, including, but not limited to any direct or indirect claim for reimbursement for Natural Resource Damages from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 107, 111, 112, and 113 of CERCLA, 42 U.S.C. §§ 9607, 9611, 9612, and 9613, or any other provision of law.

96. Defendants' Federal Reservation of Rights. Defendants reserve, 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 the Trustees' selection of the Restoration Projects, and, except as permitted in this Consent Decree, their oversight of the Restoration Projects, nor their approval of Alcoa's plans or activities associated with the Restoration Projects. The foregoing applies only to claims that are brought pursuant to a statute other than CERCLA and the CWA for which the waiver of sovereign immunity is found in a statute other than CERCLA and the CWA.

97. Defendants' State Reservation of Rights. Defendants reserve, and this Consent Decree is without prejudice to, claims against the State, subject to the provisions of the Texas Tort Claims Act, Texas Civil Practices & Remedies Code, Chapter 101, 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 State while acting within the scope of his office or employment; 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 state employee; nor shall any such claim include a claim based on the Trustees' selection of the Restoration Projects, and, except as permitted in this Consent Decree, their oversight of the Restoration Projects, nor their approval of Defendants' plans or activities associated with the Restoration Projects.

98. 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).

XIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

99. 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 Consent Decree

may have under applicable law. Each of the Parties expressly reserves any and all rights (including but not limited to any right of contribution against third parties), 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 Natural Resource Damages against any person not a Party hereto.

100. The Parties agree, and by entering this Consent Decree this Court finds, that Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for Natural Resource Damages.

XV. ACCESS TO INFORMATION

101. Any record, document, data and other information that Defendants are required by this Consent Decree to provide directly to the Trustees shall be considered a public record and shall not be withheld or protected from release as containing confidential business information ("CBI") or under any claim of privilege by Defendants. No claim of privilege or confidentiality shall be made with respect to any sampling, analytical, monitoring, hydrologic, hydrogeologic, scientific, chemical, or engineering data generated through any Restoration Activity performed under this Consent Decree. Such non-privileged records, documents, data and other information may include surveying, design, construction, planting activities, analysis of data, chain of custody records, receipts, final reports, correspondence, or other records or materials related to the Restoration Activities.

102. Subject to Paragraph 101, except for records, documents, data and other information prepared in anticipation of litigation, protected by the attorney client privilege or any other privilege recognized by federal law, or declared by Defendants to be CBI, Alcoa shall make available to

Trustees copies of any non-privileged/non-confidential records, documents, data or information, whether in written or electronic form, maintained by or in the possession of Defendants, their contractors, agents or representatives, which relate to Restoration Activity performed under this Consent Decree that is reasonably requested by the Lead Administrative Trustee.

103. Except as provided in Paragraph 101 above, Defendants may assert certain records, documents or other information provided to the Trustees include or constitute CBI. Whenever Defendants submit a record, document or other information to the Trustees which Defendants assert includes or constitutes CBI, Defendants shall identify the record, document or information, or portion thereof, which is asserted to be CBI with particularity and explain the reasons the information is considered to be CBI. Records, documents or information, or portions thereof, that the Trustees determine to be CBI under applicable federal laws or regulations will be protected from further release to the extent and in the manner afforded by such laws. If CBI is not identified by Defendants at the time a record, document or information is submitted to the Trustees, or if the Trustees notify Defendants that the record, document or information is not determined to be CBI under applicable federal laws or regulations, the public may be given access to such documents or information without further notice to Defendants.

104. Defendants' employees, contractors, agents, or representatives with knowledge of facts relevant to the performance of Restoration Activities under this Consent Decree shall be available to provide information to the Trustees with regard to any investigation, information gathering, dispute resolution or other proceeding concerning Restoration Activities performed under this Consent Decree.

XVI. RETENTION OF JURISDICTION

105. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties 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 X (Dispute Resolution) hereof.

XVII. MODIFICATION

106. Material Modifications: Any modification to this Consent Decree, including the Exhibits hereto, that materially alters a Restoration Project or any requirements herein must be approved by the Court.

107. Modifications That Are Not Material:

- (a) Any modification to the Consent Decree, including the Exhibits hereto, that does not materially alter a Restoration Project or any requirement herein may be made by written agreement between the Parties, or in accordance with the dispute resolution process, as provided in Section X (Dispute Resolution).
- (b) In the course of performing the Restoration Activities required by this Consent Decree, including the Exhibits hereto, Alcoa may identify changes to its Work Plan or other construction activities which Alcoa believes are necessary to address or adapt to field conditions or circumstances, or may otherwise be desirable to achieve, enhance or expedite the Restoration Projects which are required to be implemented under this Consent Decree. In

implementing the Restoration Projects, such modifications are permissible provided such changes do not materially alter, and are not otherwise inconsistent with, the Restoration Project requirements and other requirements specified in this Consent Decree and the Exhibits attached hereto. Defendants shall notify the Lead Administrative Trustees of all such changes, including the reasons therefor, when they occur.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

108. The Parties agree and acknowledge that final approval by the United States and the State and entry of this Consent Decree is subject to a thirty day (30) period 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 and the State reserve the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate.

109. 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.

XIX. TERMINATION

110. Any Party may apply to the Court to terminate this Consent Decree after Trustees have issued the Certification of Completion of Restoration Activity Obligations pursuant to Paragraph 52, and Alcoa has fulfilled its obligations under Section VII (Payment of Past Assessment Costs and Future Costs) and Section XI (Stipulated Penalties). Termination of this Consent Decree shall not affect the covenants, reservations, and effects of settlement set forth in Section XII

(Covenants Not to Sue by the United States and the State of Texas); Section XIII (Covenant Not to Sue by Defendants); and Section XIV (Effect of Settlement; Contribution Protection).

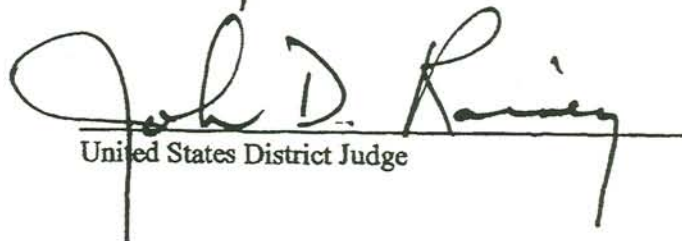
XX. SIGNATORIES/SERVICE

111. Each undersigned representative of a Party to this Consent Decree 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.

112. Defendants 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 its behalf with respect to all matters arising under or relating to this Consent 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 rules of this Court, including, but not limited to, service of a summons. The Parties agree that Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

113. This Consent Decree may be executed in any number of counterparts and, as executed, shall constitute one agreement, binding on all of the Parties hereto, even though all of the Parties do not sign the original or the same counterpart.

SO ORDERED THIS 27th DAY OF February, 2005.


United States District Judge

FOR THE UNITED STATES OF AMERICA

11.30.04
Date

Tom Sansonetti
Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

October 28, 2004
Date

Elizabeth A. Edmonds
Elizabeth A. Edmonds, Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Tel: (202) 514-1032
Fax: (202) 514-8395

Michael T. Shelby, U.S. Attorney
Southern District of Texas

Larry Luka
Assistant United States Attorney
Southern District of Texas
Corpus Christi Division
U.S. Department of Justice
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Corpus Christi, TX 78476-2001

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FOR THE STATE OF TEXAS:


9/26/04
Date

Albert M. Bronson
Albert M. Bronson
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Office of the Attorney General, State of Texas
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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Texas v. Alcoa, Inc. et al., relating to the Alcoa/Lavaca Bay Superfund Site.

FOR ALCOA INC.:

10/22/04
Date

Signature:  *RWR*
Name (print): Bernt Reitan
Title: Vice President
Address: 201 Isabella Street
Pittsburgh, PA 15212

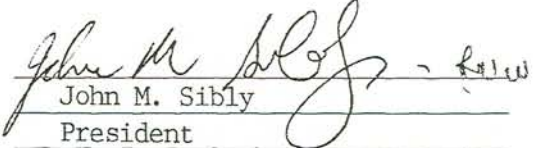
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Ralph W. Waechter
Title: Remediation Manager
Address: 201 Isabella Street
Pittsburgh, PA 15212

Tel: (412) 553-4259
Fax: (412) 553-4498

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Texas v. Alcoa, Inc. et al., relating to the Alcoa/Lavaca Bay Superfund Site.
FOR ALCOA WORLD ALUMINA L.L.C.:

10/22/04
Date

Signature: 
Name (print): John M. Sibly
Title: President
Address: 201 Isabella Street
Pittsburgh, PA 15212

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

Name (print): Ralph W. Waechter
Title: Remediation Manager
Address: 201 Isabella Street
Pittsburgh, PA 15212

Tel: (412) 553-4259
Fax: (412) 553-4498

**EXHIBITS TO THE CONSENT DECREE FOR
NATURAL RESOURCE DAMAGES**

The following Exhibits were previously lodged with the Court on December 10, 2004:

Exhibit 1 - Vicinity/Location Map for Project sites

Exhibit 2 - Description of Whitmire Property and Identification of Encumbrances

Exhibit 3 - Marsh Implementation Plan

Exhibit 4 - Oyster Reef Implementation Plan

Exhibit 5 - Implementation Plan for Recreational Projects

Exhibit 6 - DOI/FWS Special Use Permit (for Marsh Project Implementation)

Exhibit 7 - TGLO Coastal Surface Lease (for Marsh Project Implementation)

Exhibit 8 - TGLO Coastal Surface Lease (for Oyster Reef Project Implementation)

These Exhibits have not been attached to this Consent Decree for Natural Resource Damages. However, the Exhibits, which were included with the lodged Consent Decree for Natural Resource Damages as Docket No. 3, #(2) Exhibit 1, #(3) Exhibit 2; #(4) Exhibit 3; #(5) Exhibit 4; #(6) Exhibit 5; #(7) Exhibit 6; #(8) Exhibit 7; #(9) Exhibit 8, are referenced herein as if they are a part of the Consent Decree and shall be deemed to be entered as if they were attached to this Consent Decree for Natural Resource Damages.