

Proj. 8/30 FS#25

DEPARTMENT OF ECOLOGY

JUN 22 1995

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

ALUMINUM COMPANY OF AMERICA,
a Pennsylvania corporation,

Defendant,

NO.

CONSENT DECREE

92-2-00783-9

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INTRODUCTION

1
2 A. In entering into this Consent Decree (Decree), the
3 mutual objective of the Washington State Department of Ecology
4 (Ecology) and the Aluminum Company of America (hereafter
5 Alcoa) is to provide for remedial action at a Site where
6 hazardous substances have been released. The Site was listed
7 by the U.S. Environmental Protection Agency on the "National
8 Priorities List" at 40 CFR Part 300 Appendix B.

9 This Decree requires Alcoa to undertake the following
10 remedial action:

- 11 1. Remove approximately 47,500 cubic yards of spent
12 potlining and reclaimed alumina insulation
13 materials, most of which are stored in three piles
14 located in the southeast corner of Vancouver
15 operations at the old Alcoa complex at 5509 N.W.
16 Lower River Road, Vancouver, Washington;
- 17 2. Transport removed spent potlining and reclaimed
18 alumina insulation material to a RCRA-permitted
19 hazardous waste landfill for permanent disposal;
- 20 3. Perform soil sampling and analyses after the spent
21 potlining and reclaimed alumina insulation materials
22 are removed;
- 23 4. Cap the area of the surface of the Site where three
24 piles are located;
- 25 5. Grade the Site and surrounding area;

- 1 6. Vegetate graded area and fence the Site;
2 7. Perform ongoing groundwater and surface water
3 monitoring.

4 B. The Complaint in this action is being filed
5 simultaneously with this Decree. An Answer has not been filed
6 and there has not been a trial on any issue of fact or law in
7 this case. However, the parties wish to resolve the issues
8 raised by Ecology's Complaint. In addition, the parties agree
9 that settlement of these matters without litigation is
10 reasonable and in the public interest and that entry of this
11 Decree is the most appropriate means of resolving these
12 matters.

13 C. In signing this Decree, Alcoa agrees to its entry
14 and agrees to be bound by its terms.

15 D. By entering into this Decree, the parties do not
16 intend to discharge nonsettling parties from any liability
17 they may have with respect to matters alleged in the
18 Complaint.

19 E. The Court is fully advised of the reasons for entry
20 of this Decree, and good cause having been shown, it is hereby

21 ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

22 I. JURISDICTION

23 A. This Court has jurisdiction over the subject matter
24 and over the parties pursuant to Chapter 90.48 RCW and the
25 Model Toxics Control Act (MTCA) which was passed by initiative

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1 (Initiative 97) and which took effect on March 1, 1989. The
2 MTCA has been codified as Chapter 70.105D RCW.

3 B. Authority is conferred upon the Washington State
4 Attorney General by RCW 70.105D.040(4)(a) to agree to a
5 settlement with any potentially liable person if, after public
6 notice and hearing, Ecology finds the proposed settlement
7 would lead to a more expeditious cleanup of hazardous
8 substances in compliance with cleanup standards under RCW
9 70.105D.030(2)(d). RCW 70.105D.040(4)(b) requires that such a
10 settlement be entered as a consent decree issued by a court of
11 competent jurisdiction.

12 C. Ecology has given notice to Alcoa, as set forth in
13 RCW 70.105D.020(8), of Ecology's determination that it is a
14 potentially liable person for the Site. Alcoa has been given
15 notice of the release of hazardous substances at the Site.

16 D. Ecology has determined that past practices at the
17 Site have given rise to a release of hazardous substances,
18 causing contamination of ground waters, surface waters and
19 soils, and will continue to cause contamination unless the
20 release is abated or mitigated.

21 E. The actions to be taken pursuant to this Decree will
22 protect the public health, welfare and the environment.

23 F. The U.S. Environmental Protection Agency (hereafter
24 EPA) listed the Site on the "National Priorities List" at 40
25 CFR Part 300 Appendix B. EPA and Ecology, through a written

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1 Memorandum of Agreement, have agreed that Ecology shall be the
2 lead agency to work with Alcoa in conducting and evaluating
3 Alcoa's Remedial Investigation/Feasibility Study (or RI/FS),
4 selecting a remedial alternative, preparing a Cleanup Action
5 Plan (or CAP), implementing the selected remedial action and
6 conducting post-action compliance monitoring. In carrying out
7 this work, Ecology has informed EPA, and obtained EPA's
8 comments on a draft version of this Decree. This Decree will
9 expedite remedial action which in Ecology's view is not
10 inconsistent with the National Contingency Plan and is
11 consistent with applicable laws.

12 G. By entering into this Decree, Alcoa agrees and shall
13 not challenge the jurisdiction of Ecology in any proceeding to
14 enforce this Decree.

15 II. PARTIES BOUND

16 This entire Decree shall apply to and be binding upon
17 Alcoa and Ecology, their successors and assigns. The
18 undersigned representative of each party hereby certifies that
19 he or she is fully authorized to enter into this Decree and to
20 execute and legally bind such party to comply with the Decree.
21 Alcoa agrees to undertake all actions required of it by the
22 terms and conditions of this Decree and agrees not to contest
23 state jurisdiction regarding this Decree. No change in
24 ownership or corporate status shall alter the responsibility
25 of Alcoa under this Decree. Alcoa shall provide a copy of

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1 this Decree to all contractors and subcontractors retained to
2 perform work required by this Decree and shall institute its
3 best efforts to assure that all work undertaken by such
4 contractors and subcontractors will be in compliance with this
5 Decree.

6 III. DEFINITIONS

7 A. Site: Refers to the three piles of spent potlining
8 and reclaimed alumina insulation materials in the southeast
9 corner of the old Alcoa complex at 5509 N.W. Lower River Road,
10 Vancouver, Washington. Also refers to subsurface areas
11 impacted by cyanide and fluoride, as documented through ground
12 water, subsurface sediment, and soil sampling performed by
13 Alcoa, within the shallow zone, intermediate zone, deep zone
14 and aquifer zone. The Site is more particularly described in
15 Exhibit A to this Decree which is a two-page, detailed Site
16 diagram. Alcoa shall supplement Exhibit A with a legal
17 description of the Site to be prepared during remedial action.

18 The Site shall not include the wastewater treatment
19 facility located at the old Alcoa complex, nor shall the Site
20 include any subsurface conveyances or utilities connected to
21 or relating to the use of the wastewater treatment facility.
22 Ownership, operation and maintenance of the wastewater
23 treatment facility and the related subsurface conveyances and
24 utilities shall not be affected by the terms of this Consent
25

1 Decree or any of the exhibits and attachments to this Consent
2 Decree.

3 B. Remedial Action: See definition of same at RCW
4 70.105D.020(11).

5 C. Model Toxics Control Act: Refers to Chapter 70.105D
6 RCW which took effect on March 1, 1989.

7 D. Days: Refers to calendar days unless specified
8 otherwise.

9 E. Parties: Refers to the State of Washington through
10 its Department of Ecology and Alcoa.

11 F. Consent Decree: Refers to this Consent Decree and
12 each of the exhibits to the Decree. All exhibits are integral
13 and enforceable parts of this Consent Decree.

14 IV. LIABILITY AND RESERVATION OF RIGHTS

15 Subject to Section XXVI of this Consent Decree, nothing
16 in this Consent Decree shall constitute a release or waiver of
17 any claim, cause of action or demand in law or equity which
18 Alcoa may have against any person or entity for any liability
19 arising out of or relating in any way to any hazardous
20 substance found at, taken to or taken from the Site. Alcoa
21 expressly reserves any and all rights of contribution and
22 indemnity it has or may accrue against any person or entity.

23 Alcoa does not admit liability under any and all
24 applicable law for any costs or damages caused by or arising
25 out of conditions at or arising from the Site. However, Alcoa

1 agrees to comply with this Consent Decree. Further, by
2 agreeing to comply with this Decree, Alcoa does not admit any
3 allegations contained herein, nor does it admit liability for
4 any purpose or admit any issues of law or fact or any
5 responsibility for the alleged release or threat of release of
6 any hazardous substance into the environment.

7 V. STATEMENT OF FACTS

8 Ecology makes the following finding of facts without any
9 express or implied admissions by Alcoa.

10 A. The spent potliner and reclaimed alumina insulation
11 material is stored in three waste piles at Vancouver
12 operations in the southeast corner in the old Alcoa complex.
13 In addition, some spent potliner and reclaimed alumina
14 insulation materials have been spilled on the south side of
15 the largest waste pile, and along the south side of the
16 railroad track. The Vancouver operations are located on the
17 Columbia River in unincorporated Clark County, northwest of
18 the city of Vancouver, Washington.

19 B. The Site is situated on flood plains and terraces
20 laid down by the nearby Columbia River during recent and
21 Pleistocene times. The hydrogeology of the area has been
22 characterized by numerous borings in the vicinity of the three
23 waste piles. The groundwater system in the area can be
24 divided into four general hydrologic units: the shallow zone,
25 the intermediate zone, the deep zone, and the aquifer zone.

1 The predominant groundwater flow direction beneath the waste
2 piles is toward the Columbia River. The shallow zone consists
3 of 10 feet of dredged sand placed on the Site during the late
4 1940s and early 1950s. A perched water table is located in
5 the shallow zone during the wetter months of the year. The
6 movement of ground water in the saturated portions of the
7 shallow zone is to the northwest. The materials directly
8 below the dredged sand are the intermediate zone silty clays
9 and clayey silts that were deposited in relatively low energy
10 flood plain environments. This zone is of relatively low
11 permeability materials and is saturated. The movement of
12 ground water in the intermediate zone is predominantly
13 downward due to high vertical hydraulic gradient. The
14 intermediate zone silts and clays, which are approximately 30
15 to 40 feet thick, are underlain by a deposit of medium to fine
16 sand that is 40 to 50 feet thick. This sand deposit is the
17 deep zone. The groundwater flow in the deep zone is
18 predominantly toward the Columbia River. The zone is
19 recharged from the overlying intermediate zone. Beneath the
20 deep zone sand deposit is the aquifer zone, which is tapped by
21 Alcoa production wells. The aquifer zone is known in the
22 region as the Troutdale Formation and is composed of coarse
23 sands and gravel. The relative response of the aquifer and
24 the deep zones to well pumping indicates that the zones are
25 hydraulically separated. Three domestic wells are present

1 within one mile of the Site but only one of these wells is in
2 use currently. The wells are located either upgradient or
3 crossgradient from the three waste piles, and the potential
4 for these piles to contaminate the aquifer is extremely low.
5 The nearest municipal supply wells are located approximately
6 three miles to the northeast and upgradient of the waste
7 piles.

8 C. The Aluminum Company of America is a Pennsylvania
9 corporation which started aluminum smelting operations in
10 Vancouver during the late 1940s. Byproducts of the smelting
11 process included spent potlining materials and reclaimed
12 alumina insulation materials. These materials were stored
13 on-Site during the early years of operations. During the
14 early 1950s through 1973, waste materials were shipped
15 off-Site for disposal. Between 1973 and 1981, these waste
16 materials were stored on-Site in three waste piles. Some
17 waste materials also were spilled near the waste piles.

18 D. The largest waste pile contains primarily spent
19 potlining. The second largest waste pile contains primarily
20 reclaimed alumina insulation. The smallest pile contains a
21 mixture of the two materials. No detailed chemical analysis
22 of the spent potlining or reclaimed alumina insulation has
23 been completed, but the approximate composition of the waste
24 piles can be estimated based on knowledge of the composition
25 of fresh potlining and reclaimed alumina insulation. Fresh

1 potlining consists primarily of carbon, fluoride, oxides and
2 nitrides, aluminum, and sodium, with minor amounts of calcium,
3 silica, iron, and cyanide. Reclaimed alumina insulation
4 consists primarily of aluminum oxide. Bioassay and EP TOX
5 tests have been conducted on the waste.

6 E. The two large piles were covered with a synthetic
7 membrane and clean sand in 1978. The smaller pile was covered
8 in 1981.

9 F. Since 1982, Alcoa has been conducting an ongoing
10 groundwater monitoring program to assess the impact of the
11 piles on ground water at Vancouver. This study, and a
12 remedial investigation/feasibility study prepared by Alcoa
13 indicates groundwater and soil contamination exist at the Site
14 and have been caused by the leaching of chemicals from the
15 waste piles.

16 G. The spent potlining is a listed hazardous waste
17 (K088) under RCRA and bioassay results indicate that all three
18 piles contain Dangerous Waste under Ecology regulations.

19 H. A remedial investigation/feasibility study prepared
20 by Alcoa was submitted to Ecology on July 31, 1987. In the
21 feasibility study, Alcoa reviewed seven alternatives for
22 remedying any threat to human health and the environment
23 caused by Alcoa's spent potlining and alumina insulation waste
24 materials at the Site. The alternatives reviewed included:

- 25 1. Continued groundwater monitoring;

- 1 2. Earth cover with Site grading;
- 2 3. Earth cover with Site grading and paving;
- 3 4. Earth cover with Site grading and pumping and
- 4 treating ground water;
- 5 5. Waste disposal in landfill and grade Site;
- 6 6. Waste disposal in landfill with Site grading and
- 7 paving;
- 8 7. Waste disposal in landfill with Site grading, and
- 9 pumping and treating ground water.

10 See Hart Crowser, "Feasibility Study, Potlining Waste Piles,
11 Aluminum Company of America, Vancouver Operation, Vancouver,
12 Washington", July 27, 1987, pp. 35-42. Alcoa estimated the
13 cost for this range of alternatives to be from approximately
14 \$300,000 to \$14,700,000. In September 1990, Ecology informed
15 Alcoa that another alternative was available. This
16 alternative was to remove the three waste piles to an approved
17 storage building, and to begin treating or recycling the
18 material when an approved method was developed.

19 I. On February 7, 1992, Ecology published a draft
20 Cleanup Action Plan (CAP) for the Alcoa Vancouver Site. In
21 this document, Ecology selected the cleanup remedy to be
22 implemented at the Site. The CAP is attached as Exhibit B to
23 this Consent Decree. The selected remedy consists of:

- 24 1. Removal of approximately 47,500 cubic yards of spent
25 potlining and reclaimed alumina insulation

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materials, most of which are stored in three waste piles at Vancouver and removal of spent potlining and reclaimed alumina insulation materials spilled on the south side of the largest waste pile and along the south side of the railroad track;

2. Transport of these materials to a RCRA-permitted hazardous waste disposal site for permanent disposal;
3. Determine levels of fluoride and total cyanide in soils beneath the waste piles;
4. Cap only the area of the surface of the Site where the three waste piles were located with either a 40 mil PVC liner or a 50 mil HDPE liner and cover liner with two feet of clean fill including 4 to 6 inches of top soil. (No other area of the Site need be capped to comply with this Consent Decree.);
5. Grade the Site and surrounding area insuring that 4 to 6 inches of top soil remain on-Site;
6. Vegetate graded area and fence the area of the surface of the Site where the three waste piles were located; and
7. Continued monitoring of ground water and surface water quality.

VI. WORK TO BE PERFORMED

The program of work to be performed by Alcoa at the Site is provided below. This program implements Ecology's CAP and, with the remainder of this Consent Decree and appendices, implements the Model Toxics Control Act.

A. Cleanup Action Plan. Ecology's CAP constitutes an integral part of this Decree and is attached as Exhibit B.

B. Scope of Work. The scope of work for the Site consists of the following. Alcoa, through its contractor and subcontractors as necessary, shall accomplish the following work:

1. Obtain any and all state, federal or local permits required by applicable law before work on-Site can begin;
2. Prepare Site health and safety plan in accord with most recent OSHA, WISHA, Department of Ecology and EPA guidance as well as applicable regulations. Specific elements to be included in the Site safety plan are decontamination areas for personnel and equipment, measures to limit generation of dust and airborne transport of contaminated soil or waste, and measures to ensure that trucks transporting removed waste from the Site are lined and covered before leaving the contaminated area. Alcoa's health and safety plan shall be submitted to Ecology

1 for review and comment within 30 days of the
2 effective date of this Decree.

- 3 3. Prepare a compliance monitoring plan that meets the
4 requirements of WAC 173-340-410 and 173-340-720
5 through -750. The compliance monitoring plan shall
6 contain a sampling and analysis plan that meets the
7 requirements of WAC 173-340-820, and shall provide
8 that all analyses of soil and water performed
9 pursuant to this Decree be conducted by a laboratory
10 accredited under chapter 173-50 WAC. The compliance
11 monitoring plan shall be submitted to Ecology for
12 approval within 60 days of the effective date of
13 this Decree. Upon approval, the compliance
14 monitoring plan shall become an integral and
15 enforceable part of this Decree;
- 16 4. Provide security at the Site to discourage entry by
17 unauthorized persons. Site security shall include
18 installation of barrier tape and signing.
- 19 5. Remove three waste piles and spillage containing
20 spent potlining and alumina insulation materials and
21 synthetic membrane covers over those piles. The
22 amount of waste to be removed is about 47,500 cubic
23 yards. The removed waste shall be transported to a
24 RCRA-permitted hazardous waste landfill and placed
25 there for final disposal. Sand placed as cover over

1 the waste pile's PVC liners shall be stockpiled
2 on-site for use as final cover. Sand placed under
3 the PVC liners shall be stockpiled separately on-
4 site for use under the synthetic liner or clay cap.

5 6. After the waste piles have been removed, soil
6 located under the piles will be characterized as
7 follows. The area beneath each pile will be divided
8 into equal quarters. One random sample location
9 will be chosen in each quarter. A systematic grid
10 of nine equal areas in each quarter will be used to
11 select the sample point. At each sample location,
12 the soil will be sampled down to a depth of ten feet
13 or one foot into the intermediate zone, whichever is
14 deeper. Two composite samples, one from the zero to
15 five-foot depth and one from the five-foot to ten-
16 foot or lowest point drilled will be collected from
17 each sample location. A total of 24 composite
18 samples will be collected at the Site. Samples
19 shall be analyzed for fluoride using EPA 340.1,
20 340.2 or 340.3 with a preliminary distillation step
21 (Standard Methods of the Examination of Water and
22 Wastewater, 17th edition, 4500-F B) distilling up to
23 10 grams of soil in place of liquid sample (4.b).
24 Two duplicate analyses must be conducted and
25 reported. Samples shall be analyzed for total

1 cyanide using EPA Method 335.2 or 335.3 with a
2 preliminary distillation step (Standard Methods for
3 the Examination of Water and Wastewater, 17th
4 edition, 4500-CN C) modified to use a 250 mL flask.

5 Distill 2 gm of soil in 50 ml distilled water with
6 2 mL 1+1 H₂SO₄ and 2 mL of MgCl₂, reagent. Two
7 duplicate analyses must be conducted and reported.

- 8 7. Alcoa shall cap the entire area where the waste
9 piles were located. Alcoa may cap this area with
10 either a synthetic liner (50 mil HDPE or 40 mil PVC)
11 covered with two feet of clean sand and topsoil
12 including vegetation, or with two feet of
13 recompacted clay or other material with a
14 permeability of no more than 1×10^{-6} cm/sec. that is
15 covered by six inches of topsoil and is revegetated.
16 The area shall then be graded for proper surface
17 water drainage. Install fencing that completely
18 surrounds the liner, and post signs warning persons
19 not to enter the fenced area.

- 20 8. Waste removal shall be accomplished in compliance
21 with all state, federal and local requirements,
22 including the provision of manifests for waste
23 shipment, permits and reports and other
24 record-keeping as appropriate.

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9. Prepare project completion report documenting all phases of the waste removal program, soil replacement and revegetation, cap installation, and grading and sampling elements of this scope of work. This report shall be certified by a professional engineer and submitted to Ecology with appendices made up of original documentation for the work.
10. After the three waste piles and the spillage has been removed and/or the cap has been installed Alcoa shall perform groundwater monitoring for five years. At the end of the five-year period, Ecology and Alcoa shall exchange proposals to amend this Consent Decree (pursuant to Section XV. AMENDMENT OF CONSENT DECREE) with regard to whether continued groundwater monitoring is necessary to protect public health or the environment and, if so, what would constitute an appropriate monitoring regime. Ecology and Alcoa shall exchange proposals to amend, in the manner just described, at five-year intervals thereafter until the levels of free cyanide (Standard Method 4500-CN G, or Standard Method 4500-CN I, if promulgated by EPA as the method for determining the drinking water MCL) and total fluoride (EPA 340.2) in the intermediate, deep and aquifer zones drop to or below 0.2 parts per million

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and 4 parts per million, respectively. Groundwater monitoring of the following wells shall be performed quarterly during years one through five:

- Shallow zone: MW6S, MW8S, MW30S, MW38S.
- Intermediate zone: MW8I, MW11I, MW19I, MW16I, MW20I, MW28I, MW36I, MW38I.
- Deep zone: MW8D, MW10D, MW19D, MW20D, MW21D.
- Aquifer zone: MW8A, MW18A, MW21A, MW22A, MW23A.

MW20D shall be monitored in accordance with this schedule after it is repaired or replaced. Alcoa shall construct a new deep zone monitoring well, MW41D, between MW11 and MW20, and after constructing it shall monitor MW41D in accordance with this schedule. In the first year of monitoring and in the fifth year of monitoring all monitoring wells shown on Exhibit C at the Vancouver Operations of the old Alcoa complex shall be sampled. Water wells 14, 15, 18, 19, and 22 will not be sampled unless they are in production. Parameters to be analyzed include Ph, conductivity, temperature, fluoride (through EPA method 340.2), and total cyanide (through EPA method 9012), and free cyanide by Standard Method 4500-CN G, or Standard Method 4500-

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CN I, if promulgated by EPA as the method for determining the drinking water MCL.

Monitoring well sampling shall conform to QA/QC standards established in the compliance monitoring plan. Monitoring wells shall be flushed at least one pore volume for low-yield formations and at least three pore volumes for high-yield formations prior to sampling. The monitoring well shall be allowed to recover for up to 24 hours prior to sampling. If the well contains less than one-half a pore volume after the 24-hour recovery period then it need not be sampled.

11. Perform surface water sampling of the Columbia River. Samples shall be collected from two locations: the first, no more than fifteen feet from the shoreline at a point approximately one thousand feet southeast of Alcoa's property boundary; and the second, no more than fifteen feet from the shoreline at a point due south of MW19. At each location Alcoa shall collect a grab sample as close as possible to the river bed. Samples shall be collected during the first hour of flood tide and, if possible, during low river stages. Samples shall be analyzed for fluoride using EPA method 340.2 and weak acid dissociable cyanide using

1 Standard Method 4500-CN I. Alcoa shall collect and
2 analyze such samples once each quarter for two years
3 and then annually if cyanide and fluoride are below
4 0.01 mg/L and 4 mg/L for a total period of five
5 years. At the end of the five-year period, Ecology
6 shall reevaluate the surface water monitoring
7 program. If required by Ecology, Alcoa shall
8 perform additional surface water monitoring.

9 12. Perform maintenance on final cap quarterly during
10 regularly scheduled groundwater monitoring
11 activities. The frequency of final cap inspections
12 shall be modified, as required by Ecology, to
13 reflect changes in post-remediation Site conditions
14 and uses. Alcoa shall notify Ecology prior to
15 changing cap inspection schedules. Maintenance
16 requirements for the final cap shall include grading
17 to maintain proper Site drainage, repair of any
18 erosion or areas of distressed vegetation, and
19 repair of Site perimeter fencing and warning signs.

20 C. Schedule. The schedule for performance of the work
21 identified above is as follows:

- 22 1. Permits: Apply within 30 days of effective date of
23 Decree.
24 2. Health and safety plan: Submit within 30 days of
25 effective date of Decree.

- 1 3. Waste removal/soil sampling: Complete within 180
- 2 days of effective date of Decree.
- 3 4. Cap installation: Complete within 270 days of
- 4 effective date of Decree.
- 5 5. Project completion report: Submit within 366 days
- 6 of effective date of Decree.
- 7 6. Groundwater monitoring: Quarterly for years one
- 8 through five starting with the installation of the
- 9 cap, and thereafter as determined pursuant to this
- 10 Decree.
- 11 7. Surface water monitoring: Quarterly for the first
- 12 two years and then annually if weak acid dissociable
- 13 cyanide and total fluoride are below 0.01 mg/L and
- 14 4.0 mg/L, and thereafter as deemed necessary by
- 15 Ecology.

16 VII. DESIGNATED PROJECT COORDINATORS

17 On or before the entry of this Decree, Ecology and Alcoa

18 shall each designate a project coordinator. Each project

19 coordinator shall be responsible for overseeing the

20 implementation of this Decree. The Ecology project

21 coordinator will be Ecology's designated representative at the

22 Site. To the maximum extent possible, communications between

23 Ecology and Alcoa, and all documents, including reports,

24 approvals and other correspondence concerning the activities

25 performed pursuant to the terms and conditions of this Decree,

1 shall be directed through the project coordinators. The
2 project coordinators may designate, in writing, working level
3 staff contacts for all or portions of the implementation of
4 the remedial work required by this Decree.

5 Any party may change its respective project coordinator.
6 Written notification shall be given to the other party at
7 least ten (10) calendar days prior to the change.

8 The initial project coordinator for Ecology is:

9 Mr. Paul Skyllingstad
10 Industrial Section
11 Department of Ecology
12 P.O. Box 47706
13 Olympia, Washington 98504-7706

14 Ph: (206) 586-0583
15 Fax: (206) 586-1469

16 The initial project coordinator for Alcoa is:

17 Mr. S.H. Myers
18 Aluminum Company of America
19 P.O. Box 970
20 Vancouver, Washington 98666

21 Ph: (206) 699-5842
22 Fax: (206) 696-4798

23 VIII. PERFORMANCE

24 All work performed pursuant to this Decree shall be under
25 the direction and supervision, as necessary, of a professional
26 engineer registered in the State of Washington or
hydrogeologist, or equivalent. Alcoa shall notify Ecology in
writing as to the identity of such engineer(s) or
hydrogeologist(s) or others and of any contractors and

1 subcontractors to be used in carrying out the terms of this
2 Decree in advance of their involvement at the Site.

3 IX. ACCESS

4 ~~Alcoa agrees that Ecology or any Ecology authorized~~
5 representatives shall have the authority to enter and freely
6 move about all property at the Site at all reasonable times
7 for the purposes of, inter alia: inspecting records,
8 operation logs and contracts related to the work being
9 performed pursuant to this Decree; reviewing the progress in
10 carrying out the terms of this Decree; conducting such tests
11 or collecting samples as Ecology may deem necessary; using a
12 camera, sound recording, or other recording equipment to
13 record work done pursuant to this Decree; and verifying the
14 data submitted to Ecology by Alcoa. Upon request, Ecology
15 shall split any samples taken during an inspection unless
16 Alcoa fails to make available a representative for the purpose
17 of splitting samples. All parties with access to the Site
18 pursuant to this paragraph shall comply with approved health
19 and safety plans. Except in emergency situations, Ecology
20 personnel and authorized representatives shall give Alcoa
21 reasonable notice prior to entering the Site.

22 X. SAMPLING, DATA REPORTING AND AVAILABILITY

23 With respect to the implementation of this Decree, Alcoa
24 shall make the results of all sampling, laboratory reports
25 and/or test results generated by it or on its behalf available

1 to Ecology. Alcoa shall submit these results in quarterly
2 progress reports submitted in accordance with Section XI of
3 this Decree.

4 If requested by Ecology, Alcoa shall allow split or
5 duplicate samples to be taken by Ecology and/or its authorized
6 representatives of any samples collected by it pursuant to the
7 implementation of this Decree. Alcoa shall notify Ecology
8 five (5) working days in advance of any sample collection or
9 work activity at the Site.

10 Ecology shall, upon request, allow split or duplicate
11 samples to be taken by Alcoa or their authorized
12 representatives of any samples collected by Ecology pursuant
13 to the implementation of this Decree. Without limitation on
14 Ecology's authority to enter the Site without notice, as set
15 forth in Section IX of this Consent Decree, Ecology shall
16 endeavor to give five (5) days' notice prior to taking samples
17 at the Site.

18 The requirements of this Section do not include reports,
19 test results and data which must be submitted to Ecology under
20 Alcoa's NPDES permit.

21 XI. PROGRESS REPORTS

22 Alcoa shall submit to Ecology written progress reports
23 every three months, beginning on the date three months after
24 the effective date of this Decree. The reports shall describe
25 the actions taken during the previous three months to

1 implement the requirements of this Decree. The progress
2 reports shall include the following:

3 A. A list of on-site activities that have taken place
4 during the prior three months;

5 B. Detailed description of any deviations from required
6 tasks not otherwise documented in project plans or amendment
7 requests;

8 C. Description of all deviations from the schedule
9 (Section VI.C.) during the previous three months and any
10 planned deviations in the upcoming three months;

11 D. For any deviations in schedule, a plan for
12 recovering lost time and maintaining compliance with the
13 schedule;

14 E. All raw data (including laboratory analysis)
15 received by Alcoa during the past three months and an
16 identification of the source of the sample; and

17 F. A list of deliverables for the upcoming three months
18 if different from the schedule.

19 All progress reports shall be submitted by the tenth day
20 of the month in which they are due after the effective date of
21 this Decree. Unless otherwise specified, progress reports and
22 any other documents submitted pursuant to this Decree shall be
23 sent to Ecology's project coordinator. Progress reports shall
24 be submitted every three months until all construction
25

1 activity required by this Decree is completed. Thereafter,
2 Alcoa shall agree to a modified progress report interval.

3 XII. RETENTION OF RECORDS

4 Alcoa shall preserve, during the pendency of this Decree
5 and for ten (10) years from the date of completion of
6 compliance monitoring, all records, reports, documents and
7 underlying data in its possession relevant to the
8 implementation of this Decree, and shall insert in contracts
9 with project contractors a similar record retention
10 requirement. Upon request of Ecology, Alcoa shall make all
11 non-archived records available to Ecology and allow access for
12 review. All archived records shall be made available to
13 Ecology within a reasonable period of time.

14 XIII. TRANSFER OF INTEREST IN PROPERTY

15 Alcoa shall not convey or relinquish title, any easement,
16 any leasehold or any other interest in any portion of the Site
17 unless, prior to said transfer, it has provided for continued
18 performance of all of Alcoa's obligations under this Decree.
19 This requirement shall not apply to the conveyance or
20 relinquishment of any interest in any portion of the Site
21 which is "involuntary". "Involuntary", for the purposes of
22 this section, includes, but is not limited to, taking of
23 property by condemnation or inverse condemnation, appointment
24 of a receiver or an involuntary petition under the bankruptcy
25 code.

1 While this Decree remains in effect (see XXV. DURATION
2 OF DECREE), Alcoa shall serve a copy of this Decree on any
3 prospective purchaser, lessee, transferee, assignee or other
4 successor in interest to the Site or portion of the Site.

5 Alcoa shall serve a copy of this Decree as provided herein at
6 least ten (10) days prior to any transfer and it shall notify
7 Ecology of any contemplated transfer at least ten (10) days
8 prior to any transfer.

9 XIV. RESOLUTION OF DISPUTES

10 A. In the event Alcoa disputes an approval,
11 disapproval, proposed modification or other decision or action
12 by Ecology's project coordinator, Alcoa shall utilize the
13 dispute resolution procedure set forth below.

- 14 1. Upon receipt of the Ecology project coordinator's
15 decision, Alcoa has fourteen (14) days within which
16 to notify Ecology's project coordinator of its
17 objection to the decision.
- 18 2. The parties' project coordinators shall then confer
19 in an effort to resolve the dispute. If the project
20 coordinators cannot resolve the dispute within
21 fourteen (14) days, Ecology's project coordinator
22 shall issue a written decision.
- 23 3. Alcoa may then request Ecology management review of
24 the decision. This request shall be submitted in
25 writing to Ecology's Toxics Cleanup Program Manager

1 or her or his designee within seven (7) days of
2 receipt of Ecology's project coordinator's decision.

3 4. Ecology's Toxics Cleanup Program Manager or her or
4 his designee shall conduct a review of the dispute
5 and shall issue a written decision regarding the
6 dispute within thirty (30) days of Alcoa's request
7 for review.

8 B. If Ecology's final written decision is unacceptable
9 to Alcoa, Alcoa has the right to submit the dispute to the
10 Court for resolution. Alcoa and Ecology agree that one judge
11 should retain jurisdiction over this case and shall, as
12 necessary, resolve any dispute arising under this Decree. In
13 the event Alcoa presents an issue to the Court for review, the
14 Court shall review the action or decision of Ecology on the
15 basis of whether such action or decision was arbitrary and
16 capricious or contrary to law and render a decision based on
17 such standard of review.

18 C. Ecology and Alcoa agree to only utilize the dispute
19 resolution process in good faith and agree to expedite, to the
20 extent possible, the dispute resolution process whenever it is
21 used. Where any party utilizes the dispute resolution process
22 in bad faith or for purposes of delay, the other party may
23 seek sanctions.

1 Implementation of these dispute resolution procedures may
2 provide a basis for delay of any activities required in this
3 Decree.

4 XV. AMENDMENT OF CONSENT DECREE

5 This Decree may be amended by a written stipulation among
6 the parties to this Decree that is entered by the Court. Such
7 amendment shall become effective upon entry by the Court.
8 Agreement to amend shall not be unreasonably withheld by any
9 party to the Decree.

10 Alcoa shall submit any request for an amendment to
11 Ecology for approval. Ecology shall indicate its approval or
12 disapproval in a timely manner after the request for amendment
13 is received. If Ecology disapproves, reasons for disapproval
14 shall be stated in writing. If Ecology disapproves, then the
15 parties' project managers shall confer in an effort to resolve
16 the dispute. If the project managers cannot resolve the
17 dispute within 14 working days of Alcoa's receipt of Ecology's
18 disapproval, then Alcoa may petition the Court for relief.

19 Ecology shall submit any request for an amendment to
20 Alcoa for approval. Alcoa shall indicate its approval or
21 disapproval in a timely manner after the request for amendment
22 is received. If Alcoa disapproves, reasons for disapproval
23 shall be stated in writing. If Alcoa disapproves, then the
24 parties' project managers shall confer in an effort to resolve
25 the dispute. If the project managers cannot resolve the

1 dispute within 14 working days of Ecology's receipt of Alcoa's
2 disapproval, then Ecology may petition the Court for relief.

3 No guidance, suggestions or comments by Ecology will be
4 construed as relieving Alcoa of its obligation to obtain
5 formal approval as may be required by this Decree. No verbal
6 communication by Ecology shall relieve Alcoa of the obligation
7 specified herein.

8 XVI. EXTENSION OF SCHEDULE

9 A. An extension of schedule shall be granted only when
10 a request for an extension is submitted in a timely fashion
11 and good cause exists for granting the extension. All
12 extensions shall be requested in writing. The request shall
13 specify the reason(s) the extension is needed.

14 An extension shall only be granted for such period of
15 time as Ecology determines is reasonable under the
16 circumstances. A requested extension shall not be effective
17 until approved by Ecology. Ecology shall act upon any written
18 request for extension in a timely fashion not to exceed ten
19 (10) working days after receipt of Alcoa's written request for
20 an extension. It shall not be necessary to formally amend
21 this Decree pursuant to Section XV when a schedule extension
22 is granted.

23 B. The burden shall be on Alcoa to demonstrate to the
24 satisfaction of Ecology that the request for such extension
25 has been submitted in a timely fashion and that good cause

1 exists for granting the extension. Good cause includes, but
2 is not limited to, the following:

- 3 1. Circumstances beyond the reasonable control and
4 despite the due diligence of Alcoa, including but
5 not limited to delays caused by unrelated third
6 parties or Ecology, such as delays by Ecology in
7 reviewing, approving or modifying documents
8 submitted by Alcoa or the unavailability of the
9 Chemical Waste Management of the Northwest Site in
10 Arlington, Oregon; or
- 11 2. Delays directly attributable to any agency permit
12 application review period or public comment period
13 or other cause related to any permit(s) or to any
14 changes in or need to comply with permit terms or
15 conditions or to appeals on or lack of a permit,
16 concurrence, or approval needed to implement this
17 Decree, if Alcoa filed a timely application for such
18 permit, concurrence, or approval.
- 19 3. Acts of God, including fire, flood, blizzard,
20 extreme temperatures, storm, wave or water
21 conditions, or other unavoidable casualty; or
- 22 4. Endangerment as described in Section XVII.

23 However, neither increased costs of performance of the
24 terms of the Decree nor changed economic circumstances shall
25

1 be considered circumstances beyond the reasonable control of
2 Alcoa.

3 C. Ecology may extend the schedule for a period not to
4 exceed ninety (90) days, except where an extension is needed
5 as a result of:

- 6 1. Delays in the issuance of a necessary permit which
7 was timely applied for; or
- 8 2. Other circumstances deemed exceptional or
9 extraordinary by Ecology; or
- 10 3. Endangerment as described in Section XVII.

11 In any of the three situations described above, Ecology
12 may extend the schedule for a period Ecology determines is
13 reasonable under the circumstances. Extensions of more than
14 90 days may not be granted unless the public is given an
15 opportunity to comment on the proposed extension. Ecology
16 shall give Alcoa written notice in a timely fashion of any
17 extensions granted pursuant to the Decree.

18 XVII. ENDANGERMENT

19 In the event Ecology determines that activities
20 implementing or in compliance with this Decree, or any other
21 circumstances or activities, are creating or have the
22 potential to create a danger to the health or welfare of the
23 people on the Site or in the surrounding area or to the
24 environment, Ecology may order Alcoa to stop further
25 implementation of this Decree for such period of time as

1 needed to abate the danger or may petition the Court for an
2 order as appropriate. During any stoppage of work under this
3 section, the obligations of Alcoa with respect to the work
4 under this Decree which is ordered to be stopped shall be
5 suspended and the time periods for performance of that work,
6 as well as the time period for any other work dependent upon
7 the work which is stopped, shall be extended, pursuant to
8 Section XVI of this Decree, for such period of time as Ecology
9 determines is reasonable under the circumstances.

10 In the event Alcoa determines that activities undertaken
11 in furtherance of this Decree or any other circumstances or
12 activities are creating an endangerment to the people on the
13 Site or in the surrounding area or to the environment, Alcoa
14 may stop implementation of this Decree for such periods of
15 time necessary for Ecology to evaluate the situation and
16 determine whether Alcoa should proceed with implementation of
17 the Decree or whether the work stoppage should be continued
18 until the danger is abated. Alcoa shall notify Ecology's
19 project coordinator as soon as is possible, but no later than
20 twenty-four (24) hours after such stoppage of work, and
21 thereafter provide Ecology with documentation of the basis for
22 the work stoppage. If Ecology disagrees with Alcoa's
23 determination, it may order Alcoa to resume implementation of
24 this Decree. If Ecology concurs in the work stoppage, Alcoa's
25 obligations shall be suspended and the time period for

1 performance of that work, as well as the time period for any
2 other work dependent upon the work which was stopped, shall be
3 extended, pursuant to Section XVI of this Decree, for such
4 period of time as Ecology determines is reasonable under the
5 circumstances. Any disagreements pursuant to this clause
6 shall be resolved through the dispute resolution procedures in
7 Section XIV.

8 XVIII. INDEMNIFICATION

9 A. Alcoa agrees to indemnify and save and hold the
10 State of Washington, its employees and agents harmless from
11 any and all claims or causes of action for death or injuries
12 to persons or for loss or damage to property arising solely
13 from or on account of the negligent acts or omissions of
14 Alcoa, its officers, employees, agents or contractors in
15 entering into and implementing this Decree. However, Alcoa
16 shall not indemnify the State of Washington nor save nor hold
17 its employees and agents harmless from any claims or causes of
18 action arising solely out of the negligent acts or omissions
19 of the State of Washington, or the employees or agents of the
20 State, in implementing the activities pursuant to this Decree.

21 B. As Washington has a comparative fault statute
22 (Ch. 4.22 RCW) which provides a right of contribution between
23 tortfeasors (RCW 4.22.040), Alcoa and Ecology agree to the
24 following provision concerning Alcoa's obligation to indemnify
25 the State of Washington with regard to a loss which is not

1 caused solely by the negligence of Alcoa, its officers,
2 employees, agents or contractors, or by the sole negligence of
3 the State or any agent or employee of the State. In the event
4 that a claim or cause of action for death or injuries to
5 persons or for loss or damage to property is asserted against
6 the State of Washington, or any of its employees or agents,
7 and the basis of the claim or cause of action includes an
8 allegation that the negligence of Alcoa, its officers,
9 employees, agents, or contractors and the negligence of any
10 other party caused the death or injury to persons or loss or
11 damage to property, then Alcoa shall not be obliged to
12 indemnify and save and hold the State of Washington harmless,
13 but in the event that costs or fees are incurred by the State
14 of Washington in defending against the claim or cause of
15 action, or in the event that a judgment is entered against the
16 State of Washington and satisfied by the State of Washington,
17 Alcoa agrees to reimburse the State for the share of the
18 State's costs, fees and the judgment as satisfied by the State
19 in an amount representing that percentage of the loss adjudged
20 to have been caused by the negligence of Alcoa, its officers,
21 employees, agents or contractors.

22 XIX. COMPLIANCE WITH APPLICABLE LAWS

23 All actions carried out by Alcoa pursuant to this Decree
24 shall be done in accordance with all applicable federal, state
25 and local requirements.

1 All facilities used by Alcoa for the off-Site treatment,
2 storage or disposal of hazardous waste removed from the Site
3 must be in compliance with the applicable requirements of the
4 Resource Conservation and Recovery Act, as amended, 42 U.S.C.
5 §9601, et seq. and Chapter 70.105 RCW. Alcoa proposes to use
6 Chemical Waste Management of the Northwest's RCRA-permitted
7 landfill at Arlington, Oregon for disposal of hazardous waste.

8 XX. LIABILITY INSURANCE

9 Within thirty (30) days of the entry of this Decree and
10 for the duration of the remedial action required by this
11 Decree, Alcoa shall provide Ecology with Alcoa's contractor's
12 current certificates of insurance certifying coverage for
13 general liability which may arise in carrying out this Decree
14 with minimum limits of One Million Dollars (\$1,000,000.00) per
15 occurrence and an annual aggregate of at least Five Million
16 Dollars (\$5,000,000.00), exclusive of legal defense costs, for
17 bodily injury and property damage liability combined. Alcoa
18 shall provide thirty (30) days written notice prior to
19 canceling such insurance.

20 These insurance limits are not to be construed as maximum
21 limits. Alcoa is solely responsible for determining the
22 appropriate amount of insurance it should carry for injuries
23 or damages that may result from the implementation of this
24 Decree.

1 Account for Ecology's cost of direct activities,
2 including but not limited to employee salaries,
3 laboratory costs, travel costs, contractor fees, and
4 employee benefits; indirect costs of direct
5 activities; and interest charges at 12 percent per
6 annum for delayed payments.

7 B. Alcoa shall pay the amount set forth in
8 Paragraph A(1), above, within 90 days of the effective date of
9 this Decree. With regard to future oversight costs, Ecology
10 shall, within 90 days of the end of each fiscal quarter,
11 submit to Alcoa an itemized statement documenting Ecology's
12 expenses for the quarter. Within 90 days of receiving this
13 statement, Alcoa shall pay into the State Toxics Control
14 Account the required sum.

15 XXIII. PUBLIC PARTICIPATION

16 Ecology has developed a Public Participation Plan that is
17 attached to this Decree as Exhibit D. Ecology shall maintain
18 the responsibility for public participation at the Site.
19 Ecology shall notify Alcoa's project coordinator prior to the
20 issuance of all press releases and fact sheets, and before
21 major meetings with the interested public and local
22 governments. However, Alcoa shall:

23 A. Provide assistance as requested when Ecology
24 prepares drafts of public notices and fact sheets at important
25 stages of the remedial action, such as the issuance of the CAP

1 and the start of remedial action. Ecology will finalize
2 (including editing if necessary) and distribute such fact
3 sheets and prepare and distribute public notices of Ecology's
4 presentations and meetings;

5 B. Notify Ecology's project coordinator prior to the
6 issuance of all press releases and fact sheets, and before
7 major meetings with the interested public and local
8 governments.

9 C. Participate in public presentations on the progress
10 of remedial action at the Site. Participation may be through
11 attendance at public meetings to assist in answering
12 questions; and

13 D. In cooperation with Ecology, arrange and/or continue
14 information repositories to be located at the main branch of
15 the Vancouver Library, 1007 East Mill Plain Boulevard,
16 Vancouver, Washington 98663 and Ecology's Industrial Section
17 in Olympia. At a minimum, copies of all public notices, fact
18 sheets and press releases, all quality assured ground water,
19 surface water, soil sediment and air monitoring data, remedial
20 action plans, supplemental remedial planning documents and all
21 other similar documents relating to performance of the
22 remedial action required by this Decree shall be promptly
23 placed in these repositories.

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XXIV. COVENANT NOT TO SUE

In consideration of Alcoa's compliance with the terms and conditions of this Decree, the State of Washington covenants not to institute legal, equitable or administrative actions against Alcoa regarding matters within the scope of this Decree.

This covenant is strictly limited in its application to the Site specifically defined in Exhibit A and to those hazardous substances which Ecology knows to be located at the Site as of the entry of this Decree. This covenant is not applicable to any other hazardous substance or area and the state retains all of its authority relative to such substances and areas.

A. Reopeners: In the following circumstances, the State of Washington may exercise its full legal authority to address releases and/or threatened releases of hazardous substances at the Site notwithstanding the Covenant Not to Sue set forth above:

1. In the event Alcoa fails to comply with the terms and conditions of this Consent Decree, including all exhibits, and Alcoa, after written notice of noncompliance, fails to come into compliance;
2. In the event new information becomes available regarding factors previously unknown to Ecology, including the nature or quantity of hazardous

1 substances at the Site, and Ecology determines that
2 these factors present a previously unknown threat to
3 human health or the environment. For purposes of
4 this paragraph, and this is not necessarily an
5 exhaustive list, information which is contained in
6 the documents listed below is known to Ecology and
7 cannot constitute new information: Remedial
8 Investigation and Feasibility Study, with
9 appendices, for Alcoa's waste potlining piles at
10 Vancouver operations; Hart Crowser, Inc., "Interim
11 Report, Remedial Investigation/Feasibility Study,
12 Vancouver Operation, Vancouver, WA," February 1987;
13 Robinson and Noble, Inc., Investigation for
14 Contamination at Vancouver Plant, Phase I, September
15 1984; Robinson and Noble, Inc., Cyanide
16 Contamination Study of Aluminum Company of America
17 at Vancouver, Washington, December 1982; Robinson
18 and Noble, Inc., Investigation of Possible
19 Groundwater Contamination for Alcoa, Vancouver,
20 September 1979; Robinson, Noble & Carr, Inc.,
21 Interim Report on Potential Contamination of Shallow
22 Groundwater at Aluminum Company of America, April
23 1981; documents reporting results of groundwater
24 sampling and analyses that have been received by
25 Ecology prior to the effective date of this Decree;

1 Ecology's Order DE 86-419 and all documents
2 submitted to and actually received by Ecology under
3 the terms of that Order, or created by Ecology in
4 the course of working on that Order; all files and
5 records that have been received by the Department of
6 Ecology's Industrial Section prior to the effective
7 date of this Decree and that pertain to Alcoa's
8 Vancouver operations; and Waste Pile Character-
9 ization, Vancouver, Washington Site, Alcoa Report
10 70-90-11, 1990 May 15;

11 3. In the event the results of groundwater monitoring
12 (see Section VI.B.9.) at monitoring wells 18D, 19D,
13 20D or 21D indicate that concentrations of free
14 cyanide or total fluoride in ground water as
15 measured under this Decree have increased one order
16 of magnitude over average levels found in those
17 wells from 1986 through 1990;

18 4. In the event conditions at the Site cause an
19 endangerment to human health or the environment.

20 B. Applicability: The Covenant Not to Sue set forth
21 above shall have no applicability whatsoever to:

- 22 1. Criminal liability;
- 23 2. Any Ecology action against potentially liable
24 persons not a party to this Decree.
- 25 3. Liability for damages to natural resources.

1 XXV. DURATION OF DECREE

2 The remedial action required by this Decree can be
3 divided into two phases -- the construction phase and the
4 operation and maintenance (O&M) phase. The construction phase
5 includes removal of waste piles, installation of a cap, and
6 soil sampling. The O&M phase includes groundwater monitoring
7 and maintenance of the final cap.

8 When the construction phase of the remedial action has
9 been completed to Ecology's satisfaction, Ecology shall issue
10 a written notification that the construction requirements of
11 this Decree have been met. Upon issuance of this
12 notification, Ecology shall not require further construction
13 activity at the Site except consistent with the Covenant Not
14 to Sue in this Decree, Section XXIV. Issuance of the
15 notification of completion of construction shall represent
16 Ecology's concurrence in any EPA-issued notice proposing that
17 the Site be deleted from the NPL. The Site shall be
18 considered cleaned up for the purposes of EPA review of
19 documents which precedes a decision by EPA to delist the Site
20 from the NPL and the State shall certify that Alcoa has
21 completed all appropriate response action at the Site.
22 However, this Decree shall remain in effect and Alcoa's
23 obligations to comply with the O&M requirements of this Decree
24 shall continue until Ecology issues a written notification
25

1 stating that all requirements of this Consent Decree have been
2 completed.

3 XXVI. CLAIMS AGAINST THE STATE

4 Alcoa hereby agrees that it will not seek to recover any
5 costs accrued in implementing the remedial action required by
6 this Decree from the State of Washington or any of its
7 agencies; and, further, that Alcoa will make no claim against
8 the State Toxics Control Account or any local toxics control
9 account for any costs incurred in implementing this Decree.
10 Except as provided above, however, Alcoa expressly reserves
11 its rights to seek to recover any costs incurred in
12 implementing this Decree from any other potentially liable
13 person.

14 XXVII. LAND USE RESTRICTIONS

15 Alcoa shall, within 180 days of the effective date of
16 this Decree, record with the Office of the Clark County
17 Auditor the restrictive covenant attached to this Decree as
18 Exhibit E. (The Site legal description shall be appended to
19 Exhibit E as soon as the description is available.) This
20 covenant is executed in compliance with WAC 173-340-440, and
21 restricts future uses of the Site. With Ecology's approval,
22 after completion of the remedial actions required under this
23 Decree, and consistent with WAC 173-340-720 and applicable
24 cleanup standards for soils, Alcoa may record an instrument
25 providing that the restrictive covenant attached to this

1 Decree as Exhibit E shall no longer limit uses of the Site or
2 be of any further force or effect. Ecology shall not grant
3 approval until all ground water samples taken from monitoring
4 wells in the intermediate, deep and aquifer zones during one
5 sampling period are found to contain levels of total fluoride
6 (EPA 340.2) lower than 4 parts per million, and of free
7 cyanide (Standard Method 4500-CN G or Standard Method 4500-CN
8 I, if promulgated by EPA as the method for determining the
9 drinking water MCL) lower than 0.2 parts per million.

10 Monitoring well sampling shall conform to QA/QC standards
11 established in the compliance monitoring plan. Monitoring
12 wells shall be flushed at least one pore volume for low-yield
13 formations and at least three pore volumes for high-yield
14 formations prior to sampling. The monitoring well shall be
15 allowed to recover for up to 24 hours prior to sampling. If
16 the well contains less than one-half a pore volume after the
17 24-hour recovery period then it need not be sampled.

18 XXVIII. OTHER REMEDIAL ACTIONS

19 Alcoa shall not perform any remedial actions at the Site,
20 other than those required under this Decree, without providing
21 prior notice to, and receiving the concurrence of, Ecology.

22 XXIX. HAZARDOUS WASTE REDUCTION PLAN

23 Alcoa shall be excused from any requirement to prepare
24 and submit a hazardous waste reduction plan for Alcoa's
25 Vancouver Operations under Ch. 70.105E RCW and Ch. 173-307 WAC

1 due to Alcoa's performing work under this Consent Decree
2 because performance of the work at the Site is due to unique
3 circumstances not likely to be repeated and as Alcoa is
4 unlikely to generate sufficient waste at the old Vancouver
5 complex to require a plan within the next five (5) years. The
6 parties stipulate that Alcoa shall be deemed to have
7 petitioned to be excused from the waste reduction plan
8 requirement under WAC 173-307-120.

9 XXX. PRIOR AGREEMENTS OR UNDERSTANDINGS

10 The terms of this Consent Decree, unless modified by the
11 Court, shall control and shall supersede any prior agreement
12 or understanding between the parties if any prior agreement or
13 understanding has any effect at variance with this Consent
14 Decree.

15 XXXI. EFFECTIVE DATE

16 This Decree is effective upon the date it is entered by
17 the Court.

18 XXXII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

19 This Decree has been the subject of public notice and
20 comment under RCW 70.105D.040(4)(a). As a result of this
21 process, Ecology has found that this Decree will lead to a
22 more expeditious cleanup of hazardous substances at the Site
23 in compliance with applicable cleanup standards.

24 If the Court withholds or withdraws its consent to this
25 Decree, it shall be null and void at the option of any party

1 and the accompanying Complaint shall be dismissed without
2 costs and without prejudice. In such an event, no party shall
3 be bound by the requirements of this Decree.
4

5 STATE OF WASHINGTON,
6 DEPARTMENT OF ECOLOGY

STATE OF WASHINGTON,
ATTORNEY GENERAL'S OFFICE

7 By: Carol L. Fleskes
8 CAROL FLESKES
9 Program Manager
10 Hazardous Waste
11 Investigation and Cleanup

By: Tanya Barnett
TANYA BARNETT
Assistant Attorney General

12 Date: March 25, 1992

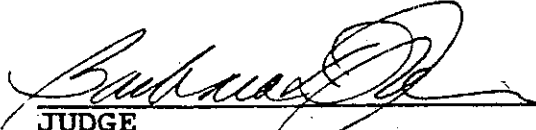
Date: March 25, 1992

13 ALUMINUM COMPANY OF AMERICA

14 By: Richard C. Rowe

15 Date: Mar 23, 1992

16
17 DATED this 27 day of March, 1992.
18

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20 
21 JUDGE
22 Clark County Superior Court
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CONSENT DECREE

-49-

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