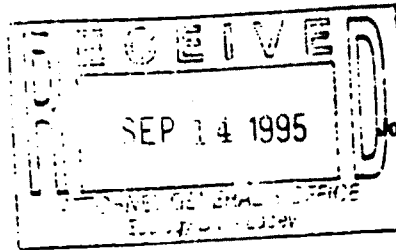


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JoAnne McBride, Clerk, Clark Co.



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SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON)	
DEPARTMENT OF ECOLOGY,)	No. <u>95-2-03268-4</u>
)	
Plaintiff,)	
)	
v.)	CONSENT DECREE
)	
ALUMINUM COMPANY)	
OF AMERICA, INC.,)	
)	
Defendant.)	

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1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the
3 mutual objective of the Washington State Department of Ecology
4 (Ecology), and Aluminum Company of America (hereafter Alcoa) is
5 to provide for further remedial action and monitoring at a
6 facility where there has been a release of hazardous substances.
7 An independent remedial action was conducted by Alcoa during
8 1992. This independent remedial action removed polychlorinated
9 biphenyl (PCB) soil contamination found in and under sections
10 401, 402, 404 and 410 of the extrusion (Vanexco) and rod mill
11 building. This Decree requires Alcoa to undertake the following
12 additional remedial action(s):

- 13 (1) Recap previously excavated openings where the PCB
14 contamination is found in the concrete foundation
15 structures and soil beneath a portion of sections,
16 401, 402, 404 and 410 of the Vanexco/rod mill
17 building.
- 18 (2) Install, if water is present, one set of ground water
19 monitoring wells down gradient of the contaminated
20 area. These wells will monitor both the shallow and
21 intermediate aquifers found on the site.
- 22 (3) Install, if water is present, one set of up gradient
23 monitoring wells which will monitor the shallow and
24 intermediate zones found on the site.
- 25 (4) Perform ground water monitoring.
- 26

1 (5) Record restrictive covenant describing institutional
2 controls for the contaminated area that remains within
3 and below the site.

4 Ecology has determined that these actions are necessary to
5 protect public health and the environment.

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

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

16 D. By entering into this Decree, the parties do not
17 intend to discharge nonsettling parties from any liability they
18 may have with respect to matters alleged in the Complaint. The
19 parties retain the right to seek contribution, in whole or in
20 part, from any liable persons for sums expended under this
21 Decree.

22 E. This Decree shall not be construed as proof of
23 liability or responsibility for any releases of hazardous
24 substances or cost for remedial action nor an admission of any
25 facts; provided, however, that Alcoa shall not challenge the
26

1 jurisdiction of Ecology in any proceeding to enforce this
2 Decree.

3 F. The Court is fully advised of the reasons for entry of
4 this Decree, and good cause having been shown: IT IS HEREBY
5 ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

6 **II. JURISDICTION**

7 A. This Court has jurisdiction over the subject matter
8 and over the parties pursuant to Chapter 70.105D RCW, the Model
9 Toxics Control Act (MTCA).

10 B. Authority is conferred upon the Washington State
11 Attorney General by RCW 70.105D.040(4)(a) to agree to a
12 settlement with any potentially liable person if, after
13 public notice and hearing, Ecology finds the proposed
14 settlement would lead to a more expeditious cleanup of
15 hazardous substances in compliance with cleanup standards. RCW
16 70.105D.040(4)(b) requires that such a settlement be entered as
17 a consent decree issued by a court of competent jurisdiction.

18 C. Ecology has determined that a release of hazardous
19 substances has occurred at the site which is the subject of this
20 Decree.

21 D. Ecology gave notice to Alcoa by letter dated
22 September 22, 1993, as set forth in RCW 70.105D.020(8), of
23 Ecology's determination that Alcoa is a potentially liable
24 person for the site. Ecology has determined that past practices
25 at the site have given rise to a release of hazardous
26 substances, causing contamination of soils.

1 E. The actions to be taken pursuant to this Decree are
2 necessary to protect public health, welfare, and the
3 environment.

4 F. Alcoa has agreed to undertake the actions specified in
5 this Decree and consents to the entry of this Decree under the
6 MTCA.

7 **III. PARTIES BOUND**

8 This Decree shall apply to and be binding upon Alcoa and
9 Ecology, the signatories to this Decree (parties), their
10 successors and assigns. The undersigned representative of each
11 party hereby certifies that he or she is fully authorized to
12 enter into this Decree and to execute and legally bind such
13 party to comply with the Decree. Alcoa agrees to undertake all
14 actions required by the terms and conditions of this Decree and
15 not to contest state jurisdiction regarding this Decree. No
16 change in ownership or corporate status shall alter the
17 responsibility of Alcoa under this Decree. Alcoa shall provide
18 a copy of this Decree to all agents, contractors and
19 subcontractors retained to perform work required by this Decree
20 and shall ensure that all work undertaken by such contractors
21 and subcontractors will comply with this Decree.

22 **IV. DEFINITIONS**

23 Except as specified otherwise herein, all definitions in
24 WAC 173-340-200 apply to the terms in this Decree.

25 A. Site: The Site, referred to as the Alcoa Vancouver
26 rod and extrusion (Vanexco) mills, is located in the northeast

1 corner of the old Alcoa aluminum smelter complex at 5509 N. W.
2 Lower River Road, Vancouver, Washington. The Site consists of
3 the floor of the 401, 402, 404, and a portion of 410 sections of
4 a large manufacturing building, and subsurface areas below those
5 building sections contaminated by polychlorinated biphenyl (PCB)
6 compounds as documented by subsurface soil sampling performed by
7 Alcoa. The plan view of the Site is more particularly described
8 in Exhibit A to this Decree which is a detailed site diagram.

9 B. Parties: Refers to the Washington State Department of
10 Ecology and Aluminum Company of America.

11 C. Defendant: Refers to Aluminum Company of America.

12 D. Consent Decree or Decree: Refers to this Consent
13 Decree and each of the exhibits to the Decree. All exhibits are
14 integral and enforceable parts of this Consent Decree. The
15 terms "Consent Decree" or "Decree" shall include all Exhibits to
16 the Consent Decree.

17 V. STATEMENT OF FACTS

18 Ecology makes the following finding of facts.

19 A. The Site is situated on the flood plain of the nearby
20 Columbia River. The hydrogeology of the area has been
21 characterized by numerous borings in the vicinity of the rod
22 mill. The ground water system in the area can be divided into
23 four general hydrogeologic units: the shallow zone, the
24 intermediate zone, the deep zone, and the aquifer zone. The
25 predominant ground water flow direction beneath the Site is
26 toward the Columbia River in the deeper hydrogeologic units.

1 The shallow zone consists of dredged sand placed on the Site
2 during the late 1940's and early 1950's. A perched water table
3 is located in the shallow zone during the wetter months of the
4 year. The direction of the movement of water in the saturated
5 portions of the shallow zone beneath the Site is unknown.
6 Information from monitoring wells 600 feet southeast of the Site
7 indicate that the shallow zone is approximately 10 feet thick
8 and has a horizontal hydraulic conductivity of 10^{-3} to 10^{-4}
9 cm/sec. Materials directly beneath the dredged sand are the
10 intermediate zone silty clays and clayey silts that were
11 deposited in relatively low energy flood plain environments.
12 This zone is composed of relatively low energy flood plain
13 deposits and is saturated. The movement of water in the
14 intermediate zone is predominantly downward due to high vertical
15 hydraulic gradient. Information from monitoring wells 600 feet
16 southeast of the Site indicates that the intermediate zone silts
17 and clays are approximately 30 to 40 feet thick and have a
18 horizontal conductivity of 10^{-4} to 10^{-6} cm/sec. Laboratory
19 testing of the intermediate silts indicates that the vertical
20 conductivities of the material is often considerably less than
21 the horizontal values. The results of the testing show values
22 in the range of 10^{-7} to 10^{-8} cm/sec.

23 B. Aluminum Company of America is a Pennsylvania
24 corporation which started aluminum smelting operations in
25 Vancouver during the late 1940's. The facility contained an
26 aluminum smelter and a series of fabrication plants to form the

1 metal into finished goods such as wire, rod and extruded
2 channel. The rod mill building housed equipment that processed
3 aluminum billet into rod. The rod mill occupied only a portion
4 of a larger building. The rod mill was operated by Alcoa from
5 the early 1950's to 1985.

6 In 1986 Alcoa closed the aluminum smelter and adjacent
7 manufacturing facilities. In 1987 Alcoa sold the smelter
8 portion of the facility to Vanalco, Inc. and retained the title
9 to the manufacturing section of the property. The manufacturing
10 section of the property was divided into three portions in 1987.
11 Alcoa retained title to all the manufacturing facility land but
12 only operated the extrusion mill. In the wire mill portion of
13 the building, Alcoa sold the manufacturing operation to ACPC,
14 Inc. but retained ownership of the land. ACPC, Inc. continues
15 to operate the wire mill. Alcoa continued to operate the
16 extrusion mill as a separate company until 1991 when the
17 facility was closed and decommissioned. Alcoa closed the rod
18 mill section of the manufacturing facility, sections 404 and
19 410, in 1987 and started to decommission and remove the
20 machinery in 1990.

21 To make aluminum rod, Alcoa used a series of rolls to
22 reduce 7 inch by 7 inch billet into various size rod and bar.
23 The rolls were lubricated and cooled with an oil/water emulsion.
24 The coolant was collected and stored in underground storage
25 tanks located beneath the fabricating machinery. The
26 underground storage tanks were connected to the machinery by a

1 series of concrete sumps, buried pipes and raceways. During the
2 operation of the rod mill, hydraulic oil containing PCBs was
3 used in some systems. The PCB contaminated hydraulic oil
4 contacted and contaminated the concrete structures found beneath
5 the mill.

6 The extrusion plant used billet from the primary aluminum
7 smelter to make different aluminum product lines such as angle,
8 molding, channel and window frames. The rod was heated and
9 extruded through a die to form the different aluminum products.
10 Hydraulic oil containing PCB's was used in some of the extrusion
11 systems. The PCB contaminated oil contacted and contaminated
12 the concrete support structures, floor and soil beneath the
13 extrusion machinery.

14 C. During the demolition of the rod mill PCB
15 contamination was suspected and discovered in the concrete
16 structures and soil found beneath the floor. There are 26
17 different concrete storage tanks, pits, sumps and raceways in
18 the rod mill section of the fabrication facility. These
19 different structures ranged in depth from 1 foot to 17 feet
20 below the floor surface. In wipe tests, sections of each of the
21 concrete structures were found to have some PCB contamination.
22 Levels of PCB contamination range from non-detection to over
23 16,000 ppm PCB in concrete and 2000 ppm PCB in soil (each
24 measured as Arochlor # 1248). The PCB log normal mean
25 concentration of the final exposed soils in the excavation was
26 2.9 ppm PCB (measured as Arochlor # 1248).

1 contracted OHM Remediation Services Corporation to complete the
2 independent cleanup.

3 E. OHM Remediation Services Corporation (OHM) began the
4 removal and cleaning of concrete surfaces in February of 1992.
5 OHM contracted to perform a facility decontamination consisting
6 of

- 7 1. Excavation of soils and concrete contaminated with
8 PCBs at or above a concentration of 1.0 ppm (total
9 PCBs) and clean surfaces to a concentration of 10
10 ug/100 cm² in a wipe test. Alcoa used the Model
11 Toxics Control Act method A cleanup levels for soil
12 for this concentration.
- 13 2. Demolition and removal of PCB contaminated concrete
14 sumps and pits.
- 15 3. Coordination of the transportation and disposal of
16 contaminated soil and debris.
- 17 4. Backfilling and compaction of excavation pits.
- 18 5. Collection and treatment of contaminated waters.

19 Once the cleanup project was underway, it became obvious that
20 the original site assumptions were wrong and the contamination
21 was further widespread than originally thought.

22 F. Shot blasting and scarification in the rod mill did
23 not remove all of the PCB contamination from the subfloor
24 concrete structures. Wipe testing revealed that residual PCB
25 contamination ranged from 3.7 to 1300 ug/100cm² (Arochlor 1248).
26 Only 1 out of 17 concrete structures tested below the target

1 During the demolition of the extrusion mill PCB
2 contamination was suspected and discovered in the concrete
3 structures and soil found beneath the floor. There is one area
4 of concrete sumps and raceways in the extrusion mill. These
5 structures range in depth from one foot to approximately 12 feet
6 below the floor surface. In wipe tests, section of the concrete
7 structures and concrete floor were found to have some PCB
8 contamination. Levels of PCB contamination in concrete ranged
9 from non detection to 70 ppm in concrete chip samples and to
10 350,000 ppm in soil (each measured in Arochlor # 1248).

11 D. In 1991 Alcoa finished removing all machinery from the
12 rod mill and extrusion buildings, removed all sludge from the
13 coolant tanks, cleaned concrete surfaces and conducted limited
14 soil core drilling beneath the floor of the building. This
15 drilling indicated limited soil contamination beneath the floor
16 of the building. Wipe testing indicated PCB contamination still
17 existed on the exposed cement surfaces. To satisfy some
18 requirements of the Washington State cleanup regulation (MTCA)
19 Alcoa elected to conduct an independent cleanup that consisted
20 of removing of the contaminated soils and shot blasting and
21 scarification of the PCB contaminated concrete structures. When
22 complete, Alcoa expected that the cleanup would also satisfy the
23 federal Toxics Substances Control Act (TSCA) PCB regulations.
24 The drilling indicated that a one-foot excavation was needed to
25 clean the soil beneath the concrete structures. Alcoa

26

1 concentration of 10 ug/100cm². Where feasible, the concrete
2 sumps, pits, and tanks were removed. Contaminated soil found
3 beneath the structures was removed and shipped to a hazardous
4 waste landfill. Originally chemical analysis of the soil was
5 used to determine if the soil was clean or contaminated. The
6 analyses were used to direct excavation. As the excavation
7 continued, only limited chemical analyses were taken and visible
8 stainage was utilized to guide the excavation. Random grab
9 samples of truck loads leaving the Site were used to verify that
10 viable stainage could be used as an excavation guide.
11 Operations were halted when the size of the excavation grew to a
12 point that threatened the two rows of center load bearing
13 columns which support the building roof. At this point,
14 approximately 8000 cubic yards of material had been excavated
15 leaving an 80 foot by 160 foot cavity. The deepest point of
16 excavation was 27 feet and several of the large concrete
17 structures had been removed. The deepest portion of the cavity
18 was adjacent to four load bearing roof columns found along
19 column line B. Several roof bearing column foundation piers
20 were exposed in the excavation. Along column line C a steep
21 excavated slope threatened the stability of several roof bearing
22 piers. A structural engineer was retained to examine the
23 excavation and determine what was required to continue the
24 remediation. The engineer recommended that all work stop and
25 the excavation be filled with crushed rock. Final sample
26 results from the excavation are given in Exhibit G. These

1 results indicate that soil and concrete PCB contamination still
2 exist above the MTCA method A cleanup levels in the rod mill
3 section of the Site.

4 In the extrusion mill, scarification did remove the
5 majority of the PCB contamination from the concrete structures
6 and floor. Three levels of scarification (1/2, 1, and 1 1/2
7 inches) were used to remove contaminated concrete floor. Where
8 scarification did not remove the contamination the concrete
9 floor was removed. In two of three areas the contamination
10 penetrated the floor and soil was excavated. The soil levels
11 ranged from 350,000 ppm to non-detection. All contaminated soil
12 was removed from each of the soil excavations. In the third
13 area soil was removed down to the three foot level where the
14 remains of an old asphalt road were discovered. The road
15 contained greater than 900 ppm PCBs. No further action was
16 taken in the area of the road. Soil above and below the road
17 had minor amounts of PCB contamination. The final cleanup level
18 achieved in the bottom of the other two excavations was less
19 than 0.3 ppm PCB.

20 G. When the structural integrity of the building was
21 threatened Alcoa requested that Region 10 of the Environmental
22 Protection Agency (EPA) grant a waiver from the TSCA cleanup
23 action level. The TSCA regulations require that a 25 ppm total
24 PCB cleanup level in soils and concrete be achieved at cleanup
25 sites. Because the structural integrity of the building was
26 threatened Alcoa was granted an alternative cleanup level for

1 PCB from Region 10. Alcoa requested that the remediation
2 project 'be halted and that the present excavation be filled and
3 the ground water monitored.' The EPA approval and Alcoa request
4 are set forth in Exhibit G.

5 H. On May 4, 1995, Ecology published a draft Cleanup
6 Action Plan (CAP) for the Alcoa Vanexco/rod mill building site.
7 In this document Ecology selected the cleanup remedy to be
8 implemented at the Site. The CAP is attached to this Decree as
9 Exhibit B. The selected remedy consists of capping the
10 excavations within the building and ground water monitoring of
11 the shallow and intermediate zones.

12 VI. WORK TO BE PERFORMED

13 This Decree contains a program designed to protect public
14 health, welfare and the environment from the known release, or
15 threatened release, of hazardous substances or contaminants at,
16 on, or from the Site. This program implements Ecology's CAP
17 and, with the remainder of this Consent Decree and exhibits,
18 implements the Model Toxics Control Act.

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

21 B. Scope of Work. Alcoa shall accomplish the following
22 work:

- 23 1. Obtain any and all state, federal or local permits
24 required by applicable law before work on-site can
25 continue;

26

- 1 2. Prepare and comply with a site health and safety plan
2 in accord with current requirements of OSHA, WISHA,
3 and their implementing regulations.
- 4 3. Prepare a ground water compliance monitoring plan that
5 meets the requirements of WAC 173-340-410 and
6 173-340-720 through 750. The ground water compliance
7 monitoring plan shall contain a description of the
8 location and construction of the wells, and a sampling
9 and analysis plan that meets the requirements of WAC
10 173-340-820. The plan also shall provide that all
11 analyses of soil and water performed pursuant to this
12 Decree be conducted by a laboratory accredited under
13 chapter 173-50 WAC.
- 14 4. Fill with clean material and cover the exposed
15 excavations which have PCB contamination above cleanup
16 levels found within building sections 401, 402, 404,
17 and 410 with an approved cap.
- 18 5. Install one set of ground water monitoring wells down
19 gradient of waste and contaminated structures left
20 under building sections 404 and 410. Complete ground
21 water monitoring network consisting of one set of up
22 gradient wells, and three downgradient wells. The
23 shallow zone well is not required if no water is found
24 in the shallow zone.
- 25 6. After the cap and ground water monitoring network have
26 been installed and the ground water compliance

1 monitoring plan has been approved, conduct quarterly
2 ground water monitoring for five years. At the end of
3 the five-year period, Ecology and Alcoa shall exchange
4 proposals to amend this Consent Decree (pursuant to
5 Section XIV AMENDMENT OF CONSENT DECREE) with regard
6 to whether continued ground water monitoring is
7 necessary to protect public health or the environment
8 and, if so, what would constitute an appropriate
9 monitoring regime. Ground water monitoring of the
10 following wells shall be performed quarterly during
11 years one through five:

12 Shallow Zone: None if water not present.

13 Intermediate zone: MW-43i, MW-45i, ACPC-1, MW-V2i

14 At the March 1994 sampling event, the EPA priority pollutant
15 analysis and fluoride analysis will be conducted on samples from
16 the down gradient monitoring well MW-45i. Fluoride and the
17 following priority pollutant parameters will be included in the
18 scan: organic acid extractables, organic base neutral
19 extractables, polychlorinated biphenyls, volatile organic
20 analysis, metals and cyanide. The following general chemistry
21 parameters will be sampled: temperature, conductivity, and pH.
22 Following the first quarterly sampling, each well shall have the
23 following parameters analyzed: pH, temperature, polychlorinated
24 biphenyls. Wells shall be tested for an immiscible floating
25 layer once a year. Monitoring well sampling shall conform to
26 QA/QC standards established in the compliance monitoring plan.

1 Monitoring wells shall be flushed at least one pore volume for
2 low-yield formations and at least three pore volumes for
3 high-yield formations. The monitoring well shall be allowed to
4 recover for up to 24 hours prior to sampling. If the well
5 contains less than one-half a pore volume after a 24-hour
6 recovery period then it need not be sampled.

7 C. Schedule. The following schedule for performance
8 (Exhibit C) of the work identified above is as follows:

- 9 1. Permits: Consult with state and local government
10 agencies pursuant to Section XVIII of this Decree
11 within 60 days of effective date of Decree. If
12 Ecology makes the determination described in section
13 XVIII.C, then apply for applicable permits within 30
14 days of that determination.
- 15 2. Health and safety plan: Submit within 60 days of
16 effective date of Decree.
- 17 3. Ground water monitoring plan: Submit within 90 days
18 of effective date of Decree. Upon approval, the
19 compliance monitoring plan shall become an integral
20 and enforceable part of this Decree.
- 21 4. Cap installation: Complete within 360 days of
22 effective date of Decree.
- 23 5. Ground water monitoring: Quarterly for the first five
24 years, starting with the installation of the cap, and
25 thereafter determined pursuant to this Decree.

26

- 1 6. Deed restriction: File with Clark County Auditor
2 within 180 days of the effective date of this Decree.
3 7. Project completion report: Submit within 180 days of
4 effective completion of the cap.
5 D. Alcoa agrees not to perform any remedial actions to
6 address PCB contamination outside the scope of this Decree
7 unless the parties agree to amend the scope of work to cover
8 these actions. All work conducted under this Decree shall be
9 done in accordance with ch. 173-340 WAC unless otherwise
10 provided herein.

11 **VII. DESIGNATED PROJECT COORDINATORS**

12 The project coordinator for Ecology is:

13 Mr. Paul Skyllingstad
14 Industrial Section
15 Department of Ecology
16 P.O. Box 47600
17 Olympia, Washington 98504-7600
18 Phone (360) 407-6949
19 FAX (360) 407-6902

20 The project coordinator for Alcoa is:

21 Mr. Al Piecka
22 Aluminum Company of America
23 Wenatchee Works
24 Post Office Box 221
25 Wenatchee, Washington 98801
26 Phone (509) 663-9273
FAX (509) 663-9399

Each project coordinator shall be responsible for overseeing the implementation of this Decree. The Ecology project coordinator will be Ecology's designated representative at the Site. To the maximum extent possible, communications

1 between Ecology and Alcoa and all documents, including reports,
2 approvals, and other correspondence concerning the activities
3 performed pursuant to the terms and conditions of this Decree,
4 shall be directed through the project coordinators. The project
5 coordinators may designate, in writing, working level staff
6 contacts for all or portions of the implementation of the
7 remedial work required by this Decree. The project coordinators
8 may agree to minor modifications to the work to be performed
9 without formal amendments to this Decree. Minor modifications
10 will be documented in writing by Ecology.

11 Any party may change its respective project coordinator.
12 Written notification shall be given to the other party at least
13 ten (10) days prior to the change.

14 VIII. PERFORMANCE

15 All work performed pursuant to this Decree shall be under
16 the direction and supervision, as necessary, of a professional
17 engineer or hydrogeologist, or equivalent, with experience and
18 expertise in hazardous waste site investigation and cleanup.
19 Any construction work must be under the supervision of a
20 professional engineer. Alcoa shall notify Ecology in writing of
21 the identity of such engineer(s) or hydrogeologist(s), or
22 equivalents and of any contractors and subcontractors to be used
23 in carrying out the terms of this Decree, in advance of their
24 involvement at the Site.

25 IX. ACCESS

26

1 seven (7) days in advance of any sample collection or work
2 activity at the Site. Ecology shall, upon request, allow split
3 or duplicates to be taken by Alcoa or its authorized
4 representatives of any samples collected by Ecology pursuant to
5 the implementation of this Decree unless Alcoa fails to make
6 available a representative for such purpose. Without limitation
7 on Ecology's rights under Section IX, Ecology shall endeavor to
8 give Alcoa seven (7) days notice prior to any sample collection
9 activity at the Site.

10 **XI. RETENTION OF RECORDS**

11 Alcoa shall preserve, during the pendency of this Decree
12 and for ten (10) years from the date this Decree is no longer in
13 effect as provided in Section XXVI, all records, reports,
14 documents, and underlying data in its possession relevant to the
15 implementation of this Decree and shall insert in contracts with
16 project contractors and subcontractors a similar record
17 retention requirement. Upon request of Ecology, Alcoa shall
18 make all nonarchived records available to Ecology and allow
19 access for review. All archived records shall be made available
20 to Ecology within a reasonable period of time.

21 **XII. TRANSFER OF INTEREST IN PROPERTY**

22 Prior to any voluntary or involuntary conveyance or
23 relinquishment of title, easement, leasehold, or other interest
24 in any portion of the Site, Alcoa shall provide for continued
25 operation and maintenance of any containment system, treatment
26 system, and monitoring system installed or implemented pursuant

1 to this Decree. This requirement shall not apply to an
2 involuntary conveyance or relinquishment of any interest in any
3 portion of the Site if it is impossible for Alcoa to provide for
4 such continued operation and maintenance. "Involuntary," for
5 the purpose of this section, includes, but is not limited to,
6 taking of property by condemnation or inverse condemnation,
7 appointment of a receiver or an involuntary petition under the
8 bankruptcy code.

9 Prior to transfer of any legal or equitable interest in all
10 or any portion of the Site, and during the effective period of
11 this Decree, Alcoa shall serve a copy of this Decree upon any
12 prospective purchaser, lessee, transferee, assignee, or other
13 successor in interest of the property; and, at least thirty (30)
14 days prior to any transfer, Alcoa shall notify Ecology of said
15 contemplated transfer.

16 **XIII. RESOLUTION OF DISPUTES**

17 A. In the event a dispute arises as to an approval,
18 disapproval, proposed modification or other decision or action
19 by Ecology or Ecology's project coordinator, the parties shall
20 utilize the dispute resolution procedure set forth below.

21 (1) Upon receipt of Ecology's or the Ecology project
22 coordinator's decision, Alcoa has fourteen (14) days
23 within which to notify Ecology's project coordinator
24 of its objection to the decision.

25 (2) The parties' project coordinators shall then confer in
26 an effort to resolve the dispute. If the project

1 coordinators cannot resolve the dispute within
2 fourteen (14) days, Ecology's project coordinator
3 shall issue a written decision.

4 (3) Alcoa may then request Ecology management review of
5 the decision. This request shall be submitted in
6 writing to Ecology's Toxics Cleanup Program Manager
7 within seven (7) days of Alcoa's receipt of Ecology's
8 project coordinator's decision.

9 (4) Ecology's Toxics Program Manager shall conduct a
10 review of the dispute and shall issue a written
11 decision regarding the dispute within thirty (30) days
12 of Alcoa's Request for Review. The Toxics Program
13 Manager's decision shall be Ecology's final decision
14 on the disputed matter.

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

24 C. The parties agree to utilize the dispute resolution
25 process only in good faith and agree to expedite, to the extent
26 possible, the dispute resolution process whenever it is used.

1 Where either party utilizes the dispute resolution process in
2 bad faith or for purposes of delay, the other party may seek
3 sanctions.

4 Implementation of these dispute resolution procedures shall
5 not provide a basis for delay of any activities required in this
6 Decree, unless Ecology agrees in writing to a schedule extension
7 or the Court so orders.

8 **XIV. AMENDMENT OF CONSENT DECREE**

9 Except as provided in sections VII or XIV, this Decree may
10 only be amended by a written stipulation among the parties to
11 this Decree that is entered by the Court or by order of the
12 Court. Such amendment shall become effective upon entry by the
13 Court. Agreement to amend shall not be unreasonably withheld by
14 any party to the Decree.

15 Alcoa shall submit any request for an amendment to Ecology
16 for approval. Ecology shall indicate its approval or
17 disapproval in a timely manner after the request for amendment
18 is received. If the amendment to the Decree is substantial,
19 Ecology will provide public notice and opportunity for comment.
20 Reasons for the disapproval shall be stated in writing. If
21 Ecology does not agree to any proposed amendment, the
22 disagreement may be addressed through the dispute resolution
23 procedures described in Section XIV of this Decree.

24 **XV. EXTENSION OF SCHEDULE**

25 A. An extension of schedule shall be granted only when a
26 request for an extension is submitted in a timely fashion and

1 good cause exists for granting the extension. All extensions
2 shall be requested in writing. The request shall specify the
3 reason(s) the extension is needed.

4 An extension shall be granted only for such period of time
5 as Ecology determines is reasonable under the circumstances. A
6 requested extension shall not be effective until approved by
7 Ecology. Ecology shall act upon any written request for
8 extension in a timely fashion generally not to exceed fourteen
9 (14) days after receipt of Alcoa's written request for an
10 extension. It shall not be necessary to formally amend this
11 Decree pursuant to Section XIV when a schedule extension is
12 granted.

13 B. The burden shall be on Alcoa to demonstrate to the
14 satisfaction of Ecology that the request for such extension has
15 been submitted in a timely fashion and that good cause exists
16 for granting the extension. Good cause includes, but is not
17 limited to, the following:

- 18 (1) Circumstances beyond the reasonable control and
19 despite the due diligence of Alcoa including delays
20 caused by unrelated third parties or Ecology, such as
21 (but not limited to) delays by Ecology in reviewing,
22 approving, or modifying documents submitted by Alcoa;
23 or
24 (2) Delays directly attributable to any agency permit
25 application review period or public comment period,
26 or to any changes in or need to comply with permit

1 terms or conditions, or to good faith appeals on or
2 lack of a permit, concurrence, or approval needed to
3 implement this Decree, if Alcoa filed a timely and
4 complete application for such permit, concurrence, or
5 approval.

6 (3) Acts of God, including fire, flood, blizzard, extreme
7 temperatures, storm, or other unavoidable casualty;

8 (4) Endangerment as described in Section XVI.

9 However, neither increased costs of performance of the
10 terms of the Decree nor changed economic circumstances shall be
11 considered circumstances beyond the reasonable control of Alcoa.

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

- 15 (1) Delays in the issuance of a necessary permit which was
16 applied for in a timely manner; or
- 17 (2) Other circumstances deemed exceptional or
18 extraordinary by Ecology; or
- 19 (3) Endangerment as described in Section XVI.

20 In any of the three situations described above, Ecology may
21 extend the schedule for a period Ecology determines is
22 reasonable under the circumstances. Extensions of more than 90
23 days may not be granted unless the public is given an
24 opportunity to comment on the proposed extension. Ecology shall
25 give Alcoa written notice in a timely fashion of any extensions
26 granted pursuant to this Decree.

1 **XVI. ENDANGERMENT**

2 In the event Ecology determines that activities
3 implementing or in compliance with this Decree, or any other
4 circumstances or activities, are creating or have the potential
5 to create a danger to the health or welfare of the people on the
6 Site or in the surrounding area or to the environment, Ecology
7 may order Alcoa to stop further implementation of this Decree
8 for such period of time as needed to abate the danger or may
9 petition the Court for an order as appropriate. During any
10 stoppage of work under this section, the obligations of Alcoa
11 with respect to the work under this Decree which is ordered to
12 be stopped shall be suspended and the time periods for
13 performance of that work, as well as the time period for any
14 other work dependent upon the work which is stopped, shall be
15 extended, pursuant to Section XV of this Decree, for such period
16 of time as Ecology determines is reasonable under the
17 circumstances. In the event Alcoa determines that activities
18 undertaken in furtherance of this Decree or any other
19 circumstances or activities are creating an endangerment to the
20 people on the Site or in the surrounding area or to the
21 environment, Alcoa may stop implementation of this Decree for
22 such period of time necessary for Ecology to evaluate the
23 situation and determine whether Alcoa should proceed with
24 implementation of the Decree or whether the work stoppage should
25 be continued until the danger is abated. Alcoa shall notify
26 Ecology's project coordinator as soon as possible, but no later

1 | than twenty-four (24) hours after such stoppage of work, and
2 | thereafter provide Ecology with documentation of the basis for
3 | the work stoppage. If Ecology disagrees with Alcoa's
4 | determination, it may order Alcoa to resume implementation of
5 | this Decree. If Ecology concurs with the work stoppage, Alcoa's
6 | obligations shall be suspended and the time period for
7 | performance of that work, as well as the time period for any
8 | other work dependent upon the work which was stopped, shall be
9 | extended, pursuant to Section XV of this Decree, for such period
10 | of time as Ecology determines is reasonable under the
11 | circumstances. Any disagreements pursuant to this clause shall
12 | be resolved through the dispute resolution procedures in
13 | Section XIII.

14 | **XVII. INDEMNIFICATION**

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

1 B. As Washington has a comparative fault statute (ch.
2 4.22 RCW) which provides a right of contribution between
3 tortfeasors (RCW 4.22.040), Alcoa and Ecology agree to the
4 following provisions concerning Alcoa's obligation to indemnify
5 the State of Washington with regard to a loss which is not
6 caused solely by the negligence of Alcoa, its officers,
7 employees, agents or contractors, or by the sole negligence of
8 the State or any agent or employee of the State. In the event
9 that a claim or cause of action for death or injuries to persons
10 or for loss or damage to property is asserted against the State
11 of Washington, or any of its employees or agents, and the basis
12 of the claim or cause of action includes an allegation that the
13 negligence of Alcoa, its officers, employees, agents, or
14 contractors and the negligence of any other party caused the
15 death or injury to persons or loss or damage to property, then
16 Alcoa shall not be obliged to indemnify and save and hold the
17 State of Washington harmless, but in the event that costs or
18 fees are incurred by the State of Washington in defending
19 against the claim or cause of action, or in the event that a
20 judgment is entered against the State of Washington and
21 satisfied by the State of Washington, Alcoa agrees to reimburse
22 the State for the share of the State's costs, fees and the
23 judgment as satisfied by the State in an amount representing
24 that percentage of the loss adjudged to have been caused by the
25 negligence of Alcoa, its officers, employees, agents or
26 contractors.

1 **XVIII. COMPLIANCE WITH APPLICABLE LAWS**

2 A. All actions carried out by Alcoa pursuant to this
3 Decree shall be done in accordance with all applicable federal,
4 state, and local requirements, including requirements to obtain
5 necessary permits, except as provided in paragraph B of this
6 section.

7 B. Pursuant to RCW 70.105D.090(1), the substantive
8 requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and
9 90.58 RCW and of any laws requiring or authorizing local
10 government permits or approvals for the remedial action under
11 this Decree that are known to be applicable at the time of entry
12 of the Decree have been included in Exhibit B, the Cleanup
13 Action Plan, and are binding and enforceable requirements of the
14 Decree.

15 Alcoa has a continuing obligation to determine whether
16 additional permits or approvals addressed in RCW 70.105D.090(1)
17 would otherwise be required for the remedial action under this
18 Decree. In the event either Alcoa or Ecology determines that
19 additional permits or approvals addressed in RCW 70.105D.090(1)
20 would otherwise be required for the remedial action under this
21 Decree, it shall promptly notify the other party of this
22 determination. Ecology shall determine whether Ecology or Alcoa
23 shall be responsible to contact the appropriate state and/or
24 local agencies. If Ecology so requires, Alcoa shall promptly
25 consult with the appropriate state and/or local agencies and
26 provide Ecology with written documentation from those agencies

1 of the substantive requirements those agencies believe are
2 applicable to the remedial action. Ecology shall make the final
3 determination on the additional substantive requirements that
4 must be met by Alcoa and on how Alcoa must meet those
5 requirements. Once established by Ecology, the additional
6 requirements shall be enforceable requirements of this Decree.
7 Alcoa shall not begin or continue the remedial action
8 potentially subject to the additional requirements until Ecology
9 makes its final determination.

10 Ecology shall ensure that notice and opportunity for
11 comment is provided to the public and appropriate agencies prior
12 to establishing the substantive requirements under this section.

13 C. Pursuant to RCW 70.105D.090(2), in the event Ecology
14 determines that the exemption from complying with the procedural
15 requirements of the laws referenced in RCW 70.105D.090(1) would
16 result in the loss of approval from a federal agency which is
17 necessary for the State to administer any federal law, the
18 exemption shall not apply and Alcoa shall comply with both the
19 procedural and substantive requirements of the laws referenced
20 in RCW 70.105D.090(1), including any requirements to obtain
21 permits.

22 **XIX. REMEDIAL AND INVESTIGATIVE COSTS**

23 Alcoa agrees to pay costs incurred by Ecology pursuant to
24 this Decree. These costs shall include work performed by
25 Ecology or its contractors for, or on, the Site under ch.
26 70.105D RCW both prior to and subsequent to the issuance of this

1 Decree for investigations, remedial actions, and Decree
2 preparation, negotiations, oversight and administration.
3 Ecology costs shall include costs of direct activities and
4 support costs of direct activities as defined in WAC
5 173-340-550(2). Alcoa agrees to pay the required amount within
6 ninety (90) days of receiving from Ecology an itemized statement
7 of costs that includes a summary of costs incurred, an
8 identification of involved staff, and the amount of time spent
9 by involved staff members on the project. A general statement
10 of work performed will be provided upon request. Itemized
11 statements shall be prepared quarterly.

12 Failure to pay Ecology's costs within ninety (90) days of
13 receipt of the itemized statement will result in interest
14 charges at the rate of 12 percent per annum.

15 **XX. IMPLEMENTATION OF REMEDIAL ACTION**

16 If Ecology determines that Alcoa has failed without good
17 cause to implement the remedial action, Ecology may, after
18 notice to Alcoa and except in emergency situations, provide
19 Alcoa an opportunity to adequately perform any or all portions
20 of the remedial action required by this Decree that remain
21 incomplete. If Ecology performs all or portions of the remedial
22 action because of Alcoa's failure to comply with its obligations
23 under this Decree, Alcoa shall reimburse Ecology for the costs
24 of doing such work, provided that Alcoa is not obligated under
25 this section to reimburse Ecology for costs incurred for work
26 inconsistent with or beyond the scope of this Decree.

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XXI. FIVE YEAR REVIEW

As remedial action, including ground water monitoring, continues at the Site, the parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of site monitoring as often as is necessary and appropriate under the circumstances. At least every five years the parties shall meet to discuss the status of the Site. At the end of the five year period, Alcoa and Ecology shall exchange proposals to amend this Consent Decree (pursuant to Section XIV AMENDMENT OF CONSENT DECREE) with regard to whether continued ground water monitoring is necessary to protect public health or the environment and if so, what would constitute an appropriate monitoring regime. Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of the Decree.

XXII. PUBLIC PARTICIPATION

Ecology shall maintain the responsibility for public participation at the Site. Ecology has developed a Public Participation Plan that is attached to this Decree as Exhibit D. However, Alcoa shall cooperate with Ecology and, if agreed to by Ecology, shall:

- A. Prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans and engineering design reports. Ecology will finalize (including editing if necessary) and distribute such

1 fact sheets and prepare and distribute public notices of
2 Ecology's presentations and meetings;

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

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

13 D. In cooperation with Ecology, arrange and/or continue
14 information repositories to be located at Ecology's Industrial
15 Section at 300 Desmond Drive, Lacey, Washington. At a minimum,
16 copies of all public notices, fact sheets, and press releases;
17 all quality assured ground water, surface water, soil sediment,
18 and air monitoring data; remedial actions plans, supplemental
19 remedial planning documents, and all other similar documents
20 relating to performance of the remedial action required by this
21 Decree shall be promptly placed in these repositories.

22 **XXIII. COVENANT NOT TO SUE**

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

1 This covenant is strictly limited in its application to the
2 Site specifically defined in Exhibit A and to PCB contamination
3 which Ecology knows to be located at the Site as of the entry of
4 this Decree. Ecology currently has no knowledge of any ground
5 water contamination at the site. This covenant is not
6 applicable to any other hazardous substances or area and the
7 state retains all of its authority relative to such substances
8 and areas.

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

- 14 1. In the event Alcoa fails to comply with the terms and
15 conditions of this Consent Decree, including all
16 exhibits, and Alcoa, after written notice of
17 noncompliance, fails to come into compliance;
- 18 2. In the event new information becomes available
19 regarding factors previously unknown to Ecology,
20 including the nature or quantity of hazardous
21 substances at the Site, and Ecology determines that
22 these factors present a previously unknown threat to
23 human health or the environment; or
- 24 3. Upon Ecology's determination that action beyond the
25 terms of this Decree is necessary to abate an
26

1 emergency situation that threatens public health or
2 welfare or the environment.

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

- 5 1. Criminal liability;
- 6 2. Any Ecology action against any potentially liable
7 person not a party to this Decree;
- 8 3. Liability for damages to natural resources.

9 **XXIV. DURATION OF DECREE**

10 This Decree shall remain in effect and the remedial program
11 described in the Decree shall be maintained and continued until
12 Alcoa has received written notification from Ecology that the
13 requirements of this Decree have been satisfactorily completed.

14 **XXV. CLAIMS AGAINST THE STATE**

15 Alcoa hereby agrees that it will not seek to recover any
16 costs accrued in implementing the remedial action required by
17 this Decree from the State of Washington or any of its agencies;
18 and further, that Alcoa will make no claim against the State
19 Toxics Control Account or any Local Toxics Control Account for
20 any costs incurred in implementing this Decree. Except as
21 provided above, however, Alcoa expressly reserves its right to
22 seek to recover any costs incurred in implementing this Decree
23 from any other potentially liable person.

24 **XXVI. LAND USE RESTRICTIONS**

25 Alcoa shall, within 180 days of the effective date of this
26 Decree, record with the Office of the Clark County Auditor the

1 restrictive covenant attached to this Decree as Exhibit F. This
2 covenant is executed in compliance with WAC 173-340-440, and
3 restricts the future uses of the Site. With Ecology's approval,
4 after completion of the remedial actions required under this
5 Decree, and consistent with WAC 173-340-720 through 740, Alcoa
6 may record an instrument providing that the restrictive covenant
7 attached to this Decree as Exhibit F shall no longer limit the
8 uses of the Site or be of any further force or effect. Ecology
9 shall not grant approval until all soil samples or ground water
10 samples taken from the monitoring wells on Site are found to
11 contain levels of PCB lower than 1.0 ppm for soil and 0.1 ppb
12 for water. Monitoring well samples shall be taken in accordance
13 with requirements set forth in Section VI of this Decree and the
14 compliance monitoring plan.

15 **XXVII. EFFECTIVE DATE**

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

18 **XXVIII. 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 more
22 expeditious cleanup of hazardous substances at the Site in
23 compliance with 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 and
26 the accompanying Complaint shall be dismissed without costs and

1 without prejudice. In such an event, no party shall be bound by
2 the requirements of this Decree.

3 STATE OF WASHINGTON,
4 DEPARTMENT OF ECOLOGY

STATE OF WASHINGTON
ATTORNEY GENERAL'S OFFICE

5 By: Wm. Ray Jr
6 MARY BURG
7 Program Manager
8 Toxics Cleanup Program

By: Tanya Barnett
TANYA BARNETT
Assistant Attorney General

9 Date: September 6, 1995

Date: September 6, 1995

10 ALUMINUM COMPANY OF AMERICA

11 By: Richard R. Nelson

12 Title: Executive V.P., Environment,
Health & Safety and General Counsel

13 Date: 8/23/95

14 DATED this _____ day of _____, 1995.

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17
18 JUDGE
19 Clark County Superior Court

20 cases\consent\alcoa.csd



Christine O. Gregoire

ATTORNEY GENERAL OF WASHINGTON

Ecology Division

629 Woodland Square Loop SE 4th Floor • Lacey WA 98503

Mailing Address: PO Box 40117 • Olympia WA 98504-0117

September 15, 1995

Sanford W. Harvey, Jr.
Legal Department
Aluminum Company of America
1501 Alcoa Building
Pittsburgh, Pennsylvania 15219-1850

Susan W. Troppmann
Etter, McMahon & Lamberson
Suite 450 Fernwell Building
West 505 Riverside Avenue
Spokane, Washington 99201

Re: Consent Decree for Vancouver Facility

Dear Sandy and Susan:

Enclosed please find the front and signature pages for the following pleadings: Joint Motion for Entry of Consent Decree; Affidavit of Tanya Barnett; Order Entering Consent Decree; and Consent Decree. All were filed with the Clark County Superior Court on September 12.

You will notice that the judge neglected to sign the consent decree itself. Nevertheless, I am satisfied that the decree has been properly entered, since the judge did sign the Order Entering Consent Decree. Please let me know if you disagree. If so, we can certainly request that the judge add his signature to the consent decree.

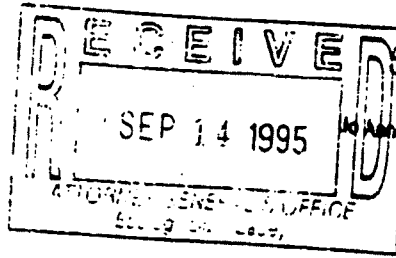
Thank you both for your assistance. It has been a pleasure working with you on this matter.

Very truly yours,

Tanya Barnett
Assistant Attorney General
(360) 459-6157

enc.

cc w/enc: Paul Skyllingstad



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SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,)
)
Plaintiff,)
)
v.)
)
ALUMINUM COMPANY)
OF AMERICA, INC.,)
)
Defendant.)

No. 95-2-03268-4

JOINT MOTION FOR ENTRY
OF CONSENT DECREE

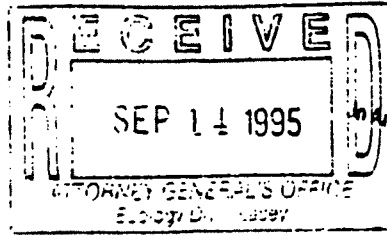
The parties to this action hereby jointly move for entry of the Consent Decree in the above-entitled matter. The Consent Decree has been signed by the parties to this action, and has been the subject of public notice and a public hearing.

Sanford W. Harvey, Jr.
SANFORD W. HARVEY, JR.
Pro Hac Vice
Attorney for Aluminum Company of America
Date August 23, 1995

ETTER, McMAHON & LAMBERSON
Susan Troppman
SUSAN TROPPEMAN, WSBA #22235
Attorney for Aluminum Company of America
Date August 24, 1995

Tanya Barnett
TANYA BARNETT, WSBA# 17491
Attorney for Department of Ecology
Date September 6, 1995

CASES\CONSENT\JOINTMOT/CSD



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SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,)
)
Plaintiff,)
)
v.)
)
ALUMINUM COMPANY)
OF AMERICA, INC.,)
)
Defendant.)

No. 95-2-03268-4

AFFIDAVIT OF TANYA BARNETT

STATE OF WASHINGTON)
) : ss.
COUNTY OF THURSTON)

I, TANYA BARNETT, being first duly sworn on oath, depose and say:

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this Affidavit are from my own personal knowledge.

2. I am an Assistant Attorney General assigned to the Ecology Division of the Attorney General's Office. I have represented the Department of Ecology in negotiations that led to the Consent Decree being presented to the Court.

3. The Consent Decree was the subject of public notice and a public hearing as required by RCW 70.105D.040(4)(a). Nine persons attended the public hearing. However, Ecology received

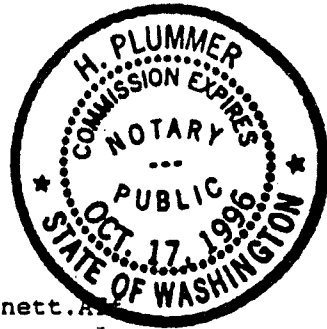
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no public comments regarding the Consent Decree, either in writing or at the public hearing.

Tanya Barnett
TANYA BARNETT

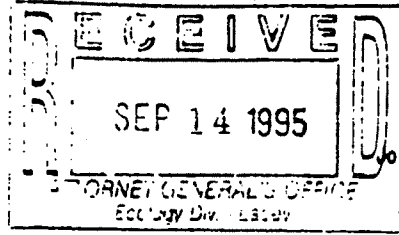
Signed or attested before me, H. Plummer, by Tanya Barnett.

DATED this 7th day of September, 1995.



H. Plummer
NOTARY PUBLIC, in and for the State of Washington.
My commission expires on: 10.17.96

JTB\Barnett.A



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to Anna McBride, Clerk, Clark Co.

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SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,)
)
Plaintiff,)
)
v.)
)
ALUMINUM COMPANY)
OF AMERICA, INC.,)
)
Defendant.)

No. 95-2-03268-4

ORDER ENTERING
CONSENT DECREE

Having reviewed the Consent Decree signed by the parties to this matter, the Joint Motion for Entry of the Consent Decree, the Affidavit of Tanya Barnett, and the file herein, it is hereby

ORDERED AND ADJUDGED that the Consent Decree in this matter is Entered and that the Court shall retain jurisdiction over the Consent Decree to enforce its terms.

DATED this 12 day of Sept 1995.

/s/ ROBERT L. HARRIS
JUDGE/COMMISSIONER

COPY

ORDER ENTERING
CONSENT DECREE

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117

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Presented by:

CHRISTINE O. GREGOIRE
Attorney General

Tanya Barnett

TANYA BARNETT, WSBA #17491
Attorney for Department of Ecology
(360) 459-6157

APPROVED FOR ENTRY AND NOTICE
OF PRESENTATION WAIVED:

Sanford W. Harvey, Jr.

SANFORD W. HARVEY, JR.
Pro Hac Vice
Attorney for Aluminum Company of America

ETTER, McMAHON & LAMBERSON

Susan Troppman

SUSAN TROPPEMAN, WSBA #22235
Attorney for Aluminum Company of America

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