

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,)
)
 Plaintiffs,)
)
 v.)
)
 ALCOA INC.,)
)
 Defendant.)

CIVIL ACTION NO.

NEIGHBORS FOR NEIGHBORS, INC,)
 ENVIRONMENTAL DEFENSE,)
 PUBLIC CITIZEN, INC.)
)
 Plaintiffs,)
)
 v.)
)
 ALCOA INC.,)
)
 Defendant.)

CIVIL ACTION NO.
A-01-CA-881-SS

CONSENT DECREE

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WHEREAS, Alcoa Inc. (“Alcoa”), formerly the Aluminum Company of America, is a Pennsylvania corporation that owns and operates certain aluminum smelting facilities throughout the United States, including a smelter complex in Milam County, Rockdale, Texas;

WHEREAS, Alcoa also generates some of the electricity for its Rockdale Smelter facility by means of three electricity-generating units at the Rockdale facility known as Sandow Units 1, 2, and 3;

WHEREAS, the United States of America (“the United States”) on behalf of the United States Environmental Protection Agency (“EPA”) is filing with this Consent Decree a Complaint against Alcoa, pursuant to Sections 113(b) and 167 of the Clean Air Act, 42 U.S.C. §§ 7413(b) and 7467, against Alcoa for injunctive relief and civil penalties for alleged violations of: the Prevention of Significant Deterioration (“PSD”) provisions in Part C of Subpart I of the Act, 42 U.S.C. §§ 7470-92; and the federally-enforceable State Implementation Plan developed by the State of Texas (the “Texas SIP”), 30 T.A.C. § 116.160;

WHEREAS, on October 23, 2001, Neighbors for Neighbors, Inc., Environmental Defense, and Public Citizen, Inc., (collectively, the “Citizen Groups”) filed a notice of intent to sue Alcoa for declaratory and injunctive relief and civil penalties for violations of the Clean Air Act’s federal PSD regulations, 40 C.F.R. 52.21 *et seq.*, the federal New Source Performance Standards (“NSPS”), 40 C.F.R. § 60.1 *et seq.*, and the Texas SIP, 40 C.F.R. 52.2270 *et seq.*;

WHEREAS, the Citizen Groups filed their complaint in this action on December 26, 2001 alleging violations of the Clean Air Act as set forth in their notice letter;

WHEREAS, in both of these Complaints, Plaintiffs allege, *inter alia*, that Alcoa failed to obtain the necessary permits and install the controls necessary under the Act to reduce its sulfur

dioxide, nitrogen oxides, and/or particulate matter emissions;

WHEREAS, the Plaintiffs' Complaints allege claims upon which relief can be granted against Alcoa under Sections 113, 167, and 304 of the Act, 42 U.S.C. §§ 7413, 7477, and 7604, and 28 U.S.C. § 1355;

WHEREAS, on January 29, 2002 Alcoa provided an Answer to the Citizen's Group Complaint but has not answered or otherwise responded to the Complaint of the United States in light of the settlement memorialized in this Consent Decree;

WHEREAS, Alcoa denies the violations alleged in the Complaints, maintains that it has been and remains in compliance with the Act and is not liable for civil penalties or injunctive relief, and states that it is agreeing to the obligations imposed by this Consent Decree solely to avoid the costs and uncertainties of litigation and to improve the environment;

WHEREAS, on or before January 9, 2002, EPA provided Alcoa and the State of Texas with actual notice of Alcoa's alleged violations, in accordance with Section 113(a)(1) of the Clean Air Act, 42 U.S.C. § 7413(a)(1);

WHEREAS, on January 9, 2002, the Texas Commission on Environmental Quality ("TCEQ"), then known as the Texas Natural Resource Conservation Commission, issued an administrative notice of enforcement to Alcoa indicating that Alcoa had violated Texas Health and Safety Code § 382.085;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and at arm's length and that this Consent Decree is fair, reasonable, consistent with the goals of the Act, and in the public interest;

WHEREAS, the United States, the Citizen Groups and Alcoa support this settlement and agree that the provisions of this Consent Decree are in the public interest;

WHEREAS, the United States, the Citizen Groups, and Alcoa have consented to entry of this Consent Decree without trial of any issue;

NOW, THEREFORE, without any admission of fact or law, and without any admission of the violations alleged in the Complaint, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter herein and over this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and pursuant to Sections 113, 167, and 304 of the Act, 42 U.S.C. §§ 7413, 7477 and 7604. This Court also has personal jurisdiction over Alcoa.
2. Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c). Solely for the purposes of this Consent Decree and the underlying Complaints, Alcoa waives all objections and defenses that it may have to the claims set forth in the Complaints, the jurisdiction of the Court, or to venue in this District. Alcoa and the Citizen Groups shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Upon entry, no Party shall challenge the terms of this Consent Decree.
3. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its enforcement, interpretation, execution,

modification, or adjudication of disputes. During the term of this Consent Decree, any Party may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

II. APPLICABILITY

4. The provisions of this Consent Decree shall apply to and be binding upon the United States and the Citizen Groups, and upon Alcoa, its successors and assigns, as well as Alcoa's officers, employees, and agents solely in their capacities as such.
5. Alcoa shall provide a copy of this Consent Decree to all vendors, suppliers, consultants, contractors, agents, and any other company or other organization performing any of the work described in Sections IV (Pollution Controls and Reductions) or XI (Environmental Mitigation Projects) of this Consent Decree.
6. Notwithstanding any retention of contractors, subcontractors, or agents to perform any work required under this Consent Decree, Alcoa shall be responsible for ensuring that all work is performed in compliance with the requirements of this Consent Decree.
7. In any action to enforce this Consent Decree, Alcoa shall not assert as a defense the failure of its officers, directors, employees, servants, agents, or contractors to take actions necessary to comply with this Consent Decree, unless Alcoa establishes that such failure resulted from a Force Majeure event as defined in this Consent Decree.

III. DEFINITIONS

8. "30-Day Rolling Average Emission Rate" for a Unit means and is calculated by (a) summing the total pounds of pollutant in question emitted from the Unit during an Operating Day and the previous twenty-nine (29) Operating Days; (b) summing the total

heat input to the Unit in mmBTU during the Operating Day and during the previous twenty-nine (29) Operating Days; and (c) dividing the total number of pounds of pollutants emitted during the thirty (30) Operating Days by the total heat input during the thirty (30) Operating Days, and (d) converting the resulting figure to lbs/mmBTU. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Operating Day. Each 30-Day Rolling Average Emission Rate shall include all periods of startup, shutdown, and Malfunction that occur during an Operating Day. A Malfunction shall be excluded from this Emission Rate, however, if it is determined to be a Force Majeure Event and satisfies the Force Majeure provisions of this Consent Decree.

9. “30-Day Rolling Average Removal Efficiency” for a Unit means and is calculated by (a) summing Removal Efficiency for a pollutant at a Unit during an Operating Day and the previous twenty-nine (29) Operating Days and (b) dividing sum by thirty (30). A new 30-Day Rolling Average Removal Efficiency shall be calculated for each new Operating Day. Each 30-Day Rolling Average Removal Efficiency shall include all periods of startup, shutdown, and Malfunction that occur during an Operating Day. A Malfunction shall be excluded from this Removal Efficiency, however, if it is determined to be a Force Majeure Event and satisfies the Force Majeure provisions of this Consent Decree.
10. “Act” or the “Clean Air Act” shall mean the Federal Clean Air Act, 42 U.S.C. §§ 7401 through 7671q, and its implementing regulations.
11. “BACT” or “Best Available Control Technology” shall mean the emission limitations determined by technical study, analysis, review, and selection of pollution control recommendations performed in connection with an application for a federal PSD permit.

Such study, analysis, review, and selection of recommendations shall be carried out in conformance with all applicable federal and state regulations and guidance describing the process and analysis for determining BACT, as that term is defined in the Clean Air Act at 42 U.S.C. § 7479(3) and 40 C.F.R. § 52.21(b)(12), and in the Texas State Implementation Plan at 40 C.F.R. § 52.2270(c), and 30 T.A.C. § 116.160(a).

11. “CEMS” or “Continuous Emission Monitoring System,” for obligations involving NO_x and SO₂ under this Consent Decree, shall mean “CEMS” as defined in 40 C.F.R. § 72.2 and installed and maintained as required by 40 C.F.R. Part 75.
12. “Coal” shall include lignite.
13. “Commercial Operation” shall mean the generation of electricity for use at Alcoa’s Rockdale facility or for sale within or outside of Alcoa.
14. “COMS” or “Continuous Opacity Monitoring System” shall mean equipment that samples, analyzes, measures, and provides, by readings taken at frequent intervals, a permanent record of the opacity of Alcoa’s emissions, in accordance with 40 C.F.R. Part 60, Appendix B, Specification 1.
15. “Construction” shall mean physical, on-site construction.
16. “Consent Decree” shall mean this Consent Decree.
17. “Emission Rate” shall mean the number of pounds of pollutant emitted per million BTU of heat input (“lb/mmBTU”), measured in compliance with this Consent Decree.
18. “EPA” shall mean the United States Environmental Protection Agency.
19. “ESP” shall mean electrostatic precipitator, a pollution control device for the reduction of particulate matter (PM).

20. “Existing Sandow Units” shall mean the three lignite-fired, approximately 125-MW electricity generating units operated by Alcoa at its Milam County, Rockdale, Texas facility as of the date of lodging of this Consent Decree.
21. “Flue gas desulfurization system,” or “FGD,” means an add-on emission control device used to remove sulfur dioxide (SO₂) from a Unit’s flue gas.
22. “Fossil fuel” shall mean any hydrocarbon fuel, including Coal, petroleum coke, petroleum oil, lignite, or natural gas.
23. “lb/mmBTU” shall mean pounds per million British Thermal Units of heat input, based on higher heating value (“hhv”).
24. “MW” means a megawatt, or one million Watts. Each Watt is a unit of power equal to one ampere per volt.
25. “NO_x” shall mean oxides of nitrogen, as measured in compliance with the provisions of this Consent Decree .
26. “NO_x Allowance” shall mean an authorization under state or federal law to emit an amount of nitrogen oxide, where each allowance can be sold, traded, or otherwise transferred to achieve compliance with state or federal emissions limitations.
27. “NO_x Emission Rate” shall mean the number of pounds of NO_x emitted per million BTU of heat input (“lb/mmBTU”), with no bypass of NO_x emission control equipment, measured as required by this Consent Decree.
28. “NSR” shall mean the nonattainment area new source review program within the meaning of Part D of Subchapter I of the Act, 42 U.S.C. §§ 7510-7515, 40 C.F.R. Part 51, and 30 T.A.C. § 116.160.

29. “Operating Day” shall mean any calendar day in which Coal is combusted in the boiler of a Unit for more than 12 hours including periods of startup, shutdown, and Malfunction. If Coal is combusted for more than 12 but less than 24 hours during a calendar day, the calculation of that day's emissions for the Unit shall be based upon the hourly CEMS data collected during hours in which Coal was combusted in the Unit, and shall not include any time in which Coal was not combusted. Any period of Malfunction shall be excluded from an Operating Day, however, if the Malfunction constitutes a Force Majeure Event and satisfies the Force Majeure provisions of this Consent Decree.
30. “Parties” shall mean the United States, the Citizen Groups, and Alcoa. “Party” shall refer to any one of these Parties.
31. “Permit Amendment” shall mean the uncontested final agency action respecting Alcoa’s application, filed on November 1, 2002, to amend TCEQ Permit No. 48437. A challenge by Alcoa of such final agency action shall render the final agency action “uncontested” for purposes of this Consent Decree.
32. “Plaintiffs” shall mean the United States and the Citizen Groups.
33. “PM” shall mean total particulate matter, as measured in compliance with the provisions of this Consent Decree.
34. “PM CEMS” or “PM continuous emission monitoring system” shall mean equipment that samples, analyzes, measures, and provides, by readings taken at frequent intervals, a permanent record of PM emissions.
35. “PM Emission Rate” shall mean the average number of pounds of PM emitted per million BTU of heat input (“lb/mmBTU”), with no bypass of PM emission control equipment, as

measured in compliance with the provisions of this Consent Decree.

36. “Project Dollars” shall mean Alcoa’s expenditures and payments incurred or made in carrying out the projects identified in Section XI (Environmental Mitigation Projects) of this Consent Decree to the extent that such expenditures or payments both: (a) comply with the Project Dollar and other requirements established in this Section of the Consent Decree for such expenditures and payments; and (b) constitute Alcoa’s documented external costs for contractors, vendors, as well as equipment, and its internal costs consisting of employee time, travel, and other out-of-pocket expenses specifically attributable to these particular projects and documented according to generally accepted accounting principles.
37. “PSD” shall mean Prevention of Significant Deterioration within the meaning of Part C, Subpart I of the Clean Air Act, 42 U.S.C. §§ 7470-7492 and 40 C.F.R. Part 52.
38. “Removal Efficiency” shall mean the percent reduction in the emitted mass of a pollutant achieved by a Unit’s pollution control device that Alcoa operates at a Unit. This percentage shall be calculated by subtracting the outlet Emission Rate from the inlet Emission Rate, dividing the difference by the inlet Emission Rate, and then multiplying the result by 100.
39. “Replacement Sandow Units” shall mean the Units installed at Alcoa’s Rockdale operations in Milam County, Rockdale, Texas to replace the Existing Sandow Units, such that the new Units generate electricity through the use of a fluidized-bed boiler or other comparable technology that reduces NO_x, SO₂, and PM emissions, and that is in compliance with this Consent Decree and any other requirements contained in any permit

issued by TCEQ to Alcoa for that Unit and with any other federal or state requirements. The Replacement Sandow Units may utilize all existing ancillary equipment or systems necessary for the production of electricity, including coal pulverizers or other equipment, but shall not use the existing lignite dryers after the shutdown of the Existing Sandow Units.

40. "SCR" shall mean a pollution control device that employs selective catalytic reduction technology for the reduction of NO_x.
41. "SO₂" shall mean sulfur dioxide, as measured in compliance with this Consent Decree.
42. "SO₂ Allowance" shall mean "allowance," as defined at 42 U.S.C. § 7651a(3): an authorization, allocated to an affected Unit, by the Administrator of EPA under Subchapter IV-A of the Act, to emit, during or after a specified calendar year, one ton of sulfur dioxide.
43. "SO₂ Emission Rate" shall mean the pounds of SO₂ emitted per million BTU of heat input ("lb/mmBTU"), with no bypass of SO₂ emission control equipment, measured as required by this Consent Decree.
44. "State" shall mean the State of Texas.
45. "State Permitting Process" shall mean the permitting procedures required by State regulations, which shall include, at a minimum, (a) a BACT determination for the Unit(s) in question, and (b) public notice and comment on the proposed permit.
46. "TCEQ" shall mean the Texas Commission on Environmental Quality.
47. "Title V Permit" shall mean the permit required of Alcoa's major sources under Subchapter V of the Clean Air Act, 42 U.S.C. §§ 7661-7661e and T.A.C. § 122.

48. “Unit” shall mean, collectively, the coal pulverizer, the stationary equipment that feeds coal to the boiler, the boiler that produces steam for the steam turbine, the steam turbine, the generator, the equipment necessary to operate the generator, steam turbine and boiler, and all ancillary equipment, including lignite dryers and pollution control equipment, or systems necessary for the production of electricity.

IV. POLLUTION CONTROLS AND REDUCTIONS

A. SELECTION OF POLLUTION REDUCTION APPROACH

49. Within twelve (12) months of the issuance of the Permit Amendment, Alcoa shall select one of the three pollution reduction options set forth below for the Existing Sandow Units, and shall notify the Plaintiffs and TCEQ in writing as to which option Alcoa has selected for these Units:
- a. the continued utilization of the Existing Sandow Units, and the installation of pollution control equipment at these Units in compliance with Paragraphs 51 through 59 of this Consent Decree (“Option A”);
 - b. the installation of Replacement Sandow Units for the Existing Sandow Units, with the installation and operation of pollution controls as required by the State Permitting Process, in compliance with Paragraphs 60 through 67 of this Consent Decree (“Option B”); or
 - c. the shutdown of the Existing Sandow Units, in compliance with Paragraph 68 of this Consent Decree (“Option C”).
50. After providing Plaintiffs and TCEQ with written notice of its selected approach, Alcoa shall implement the selected approach in compliance with the schedule set forth in this

Consent Decree for that selected approach.

B. INSTALLATION OF POLLUTION CONTROL EQUIPMENT
AT EXISTING SANDOW UNITS - Option A

51. If Alcoa elects to continue to utilize its Existing Sandow Units under Option A in Paragraph 49, above, Alcoa shall install and operate pollution control equipment for such Units in compliance with Paragraphs 52 through 59 of this Subsection, IV(B).

i. NO_x Emission Limits

52. By no later than the dates specified in the table below, Alcoa shall commence physical, on-site construction and install and commence operation of SCRs on the Existing Sandow Units in compliance with the requirements of this Consent Decree. Beginning on the dates specified below, Alcoa shall operate each SCR (or SCR-alternative technology approved by Plaintiffs pursuant to Paragraph 54 of this Consent Decree) to achieve and maintain a 30-Day Rolling Average NO_x Emission Rate of no greater than 0.10 lb/mmBTU at each of these Units.

Existing Sandow Unit	Construction Commencement Deadline	NO_x Compliance Deadline
Unit 1	June 30, 2004	December 31, 2005
Unit 2	June 30, 2005	December 31, 2006
Unit 3	September 1, 2005	March 1, 2007

53. Alcoa shall continuously operate each SCR at all times that Alcoa operates such Units, except that, as long as Alcoa is maximizing heat transfer to the SCR, Alcoa need not operate an SCR whenever the temperature of the flue gas at the SCR system inlet is less than the minimum operating temperature specified by the SCR catalyst manufacturer.

Within 30 days of executing a contract for each SCR, Alcoa shall provide to Plaintiffs the minimum operating temperature specified by the SCR catalyst manufacturer, as well as Alcoa's and the catalyst manufacturer's technical support and justification for this specified temperature.

54. Alcoa may install technology other than SCRs in satisfaction of the NO_x control obligations of this Section if the alternative technology is designed to achieve the same or better NO_x Emission Rate required in Paragraph 52, above, and is approved in writing by Plaintiffs prior to the time a contract for its purchase is executed.

ii. SO₂ Emission Limits

55. By no later than the dates specified in the table below, Alcoa shall commence physical on-site construction and install and commence operation of flue gas desulfurization systems ("FGDs") on Existing Sandow Units in compliance with the requirements of this Consent Decree. Beginning on these same dates, Alcoa shall operate each FGD (or FGD-alternative technology approved by Plaintiffs pursuant to Paragraph 57 of this Consent Decree) to achieve and maintain at each of these Units (a) a 30-Day Rolling Average SO₂ Emission Rate of no greater than 0.20 lb/mmBTU and (b) a 30-Day Rolling Average Removal Efficiency of 95%.

Existing Sandow Unit	Construction Commencement Deadline	SO₂ Compliance Deadline
Unit 1	June 30, 2004	December 31, 2005
Unit 2	June 30, 2005	December 31, 2006
Unit 3	September 1, 2005	March 1, 2007

56. Alcoa shall operate each FGD required by this Consent Decree at all times that the Unit it serves is in operation, except that following the startup of a Unit, Alcoa need not operate the FGD while the Unit it serves is not firing Coal.
57. Alcoa may install technology other than FGDs in satisfaction of the SO₂ control obligations of this Section if the alternative technology is designed to achieve the same or better SO₂ Emission Rate and Removal Efficiency required in Paragraph 55, above, and is approved in writing by Plaintiffs prior to its installation.

iii. PM Emission Controls

58. Beginning on the dates specified in the table below, Alcoa shall commence physical on-site construction and operate all necessary controls at each of the Existing Sandow Units to achieve and maintain at each of these Units (a) a PM Emission Rate of no greater than 0.030 lb/mmBTU and (b) an opacity limit of 10 percent on a 6-minute average, with only those exceptions as allowed by law. Alcoa shall complete all necessary upgrades to the PM emission control equipment at each of the Existing Sandow Units to ensure compliance with the PM Emission Rate, opacity limit and schedule.

Existing Sandow Unit	Construction Commencement Deadline	PM Compliance Deadline
Unit 1	June 30, 2004	December 31, 2005
Unit 2	June 30, 2005	December 31, 2006
Unit 3	September 1, 2005	March 1, 2007

59. Alcoa shall operate the PM control equipment at all times that the Unit it serves is in operation.

C. INSTALLATION OF REPLACEMENT SANDOW UNITS -
Option B

60. If Alcoa elects to install the Replacement Sandow Units under Option B of Paragraph 49, above, Alcoa shall shut down the boilers at the Existing Sandow Units, and shall construct the Replacement Sandow Units in compliance with Paragraphs 61 through 67 of this Subsection, IV(C). Alcoa shall install and operate emission controls on each of the Replacement Sandow Units to achieve and maintain the emission limitations established as BACT for SO₂, NO_x, and PM.
61. On November 1, 2002, Alcoa submitted an application to amend the Voluntary Emissions Reduction Permit (“VERP”), TCEQ Permit No. 48437 (“Permit”). This amendment application was submitted to determine the appropriate pollution controls and other requirements for each of the Replacement Sandow Units, and to comply with this Consent Decree’s State Permitting Process requirements for the construction and operation of the Replacement Sandow Units.
62. Within 30 days of EPA’s receipt of TCEQ’s issuance of an amendment to Alcoa’s VERP under the State Permitting Process, EPA shall notify Alcoa and TCEQ if it wishes to dispute TCEQ’s determination of BACT in the Permit Amendment. Such disputes shall be governed by Paragraph 147 in Section XVI (Dispute Resolution) of this Consent Decree. If EPA prevails in the dispute, Alcoa shall submit a revised permit application to TCEQ within 30 days that is consistent with the Court’s determination. If Alcoa prevails, it shall install pollution controls and achieve emission reductions that comply with the requirements of the permit issued by TCEQ.
63. Regardless of the emission rates and other limitations set forth in the Permit Amendment

issued by TCEQ, Alcoa shall operate its Replacement Sandow Units to achieve and maintain 30-Day Rolling Average Emission Rates that are no less stringent than the following 30-Day Rolling Average Emission Rates: 0.10 lbs/mmBTU NO_x, 0.20 lbs/mmBTU SO₂, and 0.015 lbs/mmBTU PM. Alcoa shall have six months from the commencement of commercial operation of each Replacement Sandow Unit to achieve compliance with these Emission Rates.

64. All emission rates and limitations within the Permit Amendment, as well as all subsequent renewals and revisions of the requirements in the Permit Amendment, shall be enforceable under this Consent Decree by the United States and, subject to the limitations of this Consent Decree, the Citizen Groups.
65. On or before forty-three (43) months after receiving the Permit Amendment, Alcoa shall (a) begin operation of the first Replacement Sandow Unit in accordance with all State permit requirements and (b) shut down the same amount of electricity generating capacity (in MW) at the Existing Sandow Units as the electricity generating capacity of the first Replacement Sandow Unit.
66. On or before forty-seven (47) months after receiving the Permit Amendment, but no later than December 31, 2007, Alcoa shall (a) operate each Replacement Sandow Unit in accordance with all State permit requirements and (b) complete the permanent shutdown of all of the Existing Sandow Units.
67. No later than the dates specified in the table below, Alcoa shall commence physical, on-site construction and operate all necessary controls at the Replacement Sandow Units to achieve and maintain at each of these Units the emission rates and other limitations and

requirements in accordance with the State permits.

Unit	Construction Commencement Deadline	Commencement of Operation
First Replacement Sandow Unit	19 months after Permit Amendment issuance	43 months after Permit Amendment issuance
Other Replacement Sandow Units	23 months after Permit Amendment issuance	47 months after Permit Amendment issuance or by December 31, 2007, whichever is earlier

D. SHUTDOWN OF ELECTRICITY GENERATING UNITS - Option C

68. If Alcoa elects to shut down the Existing Sandow Units under Option C of Paragraph 49, above, Alcoa shall complete the shutdown of these Units by no later than December 31, 2006.

E. INTERIM POLLUTION REDUCTION MEASURES

i. NO_x Reductions

69. Commencing January 1, 2003, Alcoa shall operate low-NO_x burners and overfire air on each of the Existing Sandow Units to achieve and maintain a NO_x Emission Rate of no greater than 0.60 lbs/mmBTU and shall not emit more than 9,730 tons of NO_x from all three Existing Sandow Units on a calendar year basis (“annual NO_x tonnage limitation”). The annual tonnage of NO_x emitted by Alcoa in a calendar year shall be calculated using Alcoa’s NO_x Emission Rate(s) for that year in accordance with TCEQ Agreed Order No. 2000-0032-SIP. For periods of time less than a calendar year, compliance with the annual NO_x tonnage limitation shall be determined on a prorated basis.

ii. SO₂ Reductions and Fuel Limitations

70. Alcoa shall not burn Coal or other Fossil Fuel having a sulfur content greater than any amount authorized by regulation or permit at the Existing or Replacement Sandow Units. The sulfur content of Coal or other fuels shall be expressed as pound(s) of SO₂ per mmBTU (lb SO₂ / mm BTU) as determined by the testing requirements described in TCEQ Agreed Order No. 95-0583-SIP, as incorporated into the Texas SIP at 40 C.F.R. § 52.2270(c)(101). In addition, Alcoa shall not burn any fuel other than Coal, except as authorized by regulation or permit, at the Existing or Replacement Sandow Units.
71. Beginning three months after the entry of this Consent Decree, Alcoa shall operate the Existing Sandow Units to limit annual tons of SO₂ emitted to an amount equal to or less than the product of 3.50 lbs of SO₂/mmBTU multiplied by the total annual heat input of lignite combusted at Alcoa's Existing Sandow Units in a particular calendar year. For periods of time less than a calendar year, compliance with this annual SO₂ tonnage limitation shall be determined on a prorated basis. The obligation in this Paragraph terminates as follows: If Alcoa elects and complies with Compliance Option A, December 31, 2005. If Alcoa elects and complies with Compliance Option B, December 31 of the year Alcoa commences Commercial Operation of the first Replacement Sandow Unit. If Alcoa elects and complies with Compliance Option C, December 31, 2006.

iii. PM Reductions

72. Within 45 days after entry of this Consent Decree and continuing thereafter, Alcoa shall operate each of the Existing Sandow Units to maximize PM emission reductions, consistent with the operational and maintenance limitations of the Units. Specifically,

Alcoa shall, at a minimum: (a) energize each section of the ESP for each of the Existing Sandow Units, regardless of whether that action is needed to comply with opacity limits, and (b) maintain the energy or power levels delivered to the ESPs for each of the Existing Sandow Units to achieve the greatest possible removal of PM; and (c) make best efforts to expeditiously repair and return to service transformer-rectifier sets when they fail.

iv. Opacity Compliance

73. Beginning on the date of entry of this Consent Decree, Alcoa shall not allow emissions from the Existing Sandow Units to exceed an opacity limitation of 30 percent on a 6-minute average, with only those exceptions as allowed by law.
74. Alcoa shall demonstrate compliance with the interim opacity limits in this Consent Decree with Continuous Opacity Monitors at each stack.

F. NO_x, SO₂, AND PM EMISSIONS MONITORING

75. If Alcoa elects to install pollution controls on its Existing Sandow Units (Option A), Alcoa shall commence operation of CEMS for NO_x and SO₂ and PM, and COMS for opacity, no later than the date required by this Consent Decree for the commencement of operation of the pollution control equipment at these Units. If Alcoa elects to install Replacement Sandow Units (Option B), Alcoa shall commence operation of CEMS for NO_x and SO₂ and PM, and COMS for opacity, no later than the date required by this Consent Decree for the commencement of operation of the Replacement Sandow Units. If Alcoa elects to permanently shut down the Existing Sandow Units (Option C), Alcoa shall not be required to install and operate CEMS for NO_x and SO₂ and PM CEMS at any of the existing Units.

76. At least six (6) months prior to the installation of CEMS for NO_x, SO₂, and PM, and COMS for opacity, at the Existing or Replacement Sandow Units, Alcoa shall submit to EPA for approval pursuant to Section XII (Review and Approval of Submittals) a plan showing the proposed placement of the CEMS on these Units and the protocol that shall be followed in calibrating such CEMS. Upon approval by EPA, after EPA consults with the Citizen Groups and TCEQ, Alcoa shall install, calibrate, and operate the CEMS in compliance with the EPA-approved protocol and all applicable statutes, regulations, and EPA guidance governing such CEMS. EPA shall approve or disapprove the plan within 180 days of receipt.
77. Following installation of each CEMS for NO_x, SO₂, and PM at the Existing or Replacement Sandow Units, Alcoa shall include in its periodic reports to the Plaintiffs pursuant to Section X (Periodic Reporting) of this Consent Decree all data recorded by the CEMS in electronic format.
- A. For purposes of determining compliance with the NO_x Emission Rates in this Consent Decree, Alcoa shall measure all NO_x emissions using CEMS certified and operated in compliance with 40 C.F.R. Part 75 and the NO_x CEMS protocol submitted by Alcoa and approved by EPA.
- B. For the purposes of determining compliance with the SO₂ Emission Rates in this Consent Decree, Alcoa shall measure all SO₂ emissions using CEMS certified and operated in compliance with 40 C.F.R. Part 75 and the SO₂ CEMS protocol submitted by Alcoa and approved by EPA.
- C. For the purposes of determining compliance with the PM Emission Rates in this

Consent Decree, Alcoa shall measure PM emissions using stack testing and the reference methods in 40 C.F.R. Part 60; provided, however, that Alcoa shall measure PM emissions using PM CEMS once EPA issues a final rulemaking promulgating a reference method or methods for PM CEMS. Alcoa shall install and calibrate such PM CEMS protocol submitted by Alcoa and approved by EPA.

78. Beginning in 2003, and semi-annually every calendar year thereafter until one year after the PM CEMS required by Paragraphs 75 are operational (or, if Alcoa elects Option C, until Alcoa shuts down the Existing Sandow Units), Alcoa shall conduct stack testing for PM emissions at the Existing and Replacement Sandow Units in compliance with the reference method and emission calculation set forth in Paragraph 77, above, the requirements set forth in Alcoa's permits issued by TCEQ, and State regulations.
 - A. Alcoa shall calculate the PM Emission Rates from all stack tests in compliance with 40 C.F.R. § 60.8(f).
 - B. Alcoa shall report to EPA the results of its stack tests within 60 days of conducting such tests, unless EPA provides Alcoa with additional time in which to submit such test results. Alcoa's stack tests conducted as required by its permits from the State of Texas may be used to satisfy the annual stack test requirement imposed by this Paragraph.
79. For the purposes of determining compliance with the opacity limits in this Consent Decree, Alcoa shall maintain, calibrate and operate Continuous Opacity Monitors to measure accurately the opacity of emissions at the Existing Sandow Units (and, if Alcoa elects Option B, the Replacement Sandow Units) in compliance with the requirements

found at 40 C.F.R. Part 60, Appendix B, Specification 1 and Part 75.

G. SURRENDER OF EMISSION ALLOWANCES

80. The requirements of Paragraphs 81 through 87 of this Subsection regarding the surrender of emission allowances shall apply only to the extent that the Units participate in a state or federal emissions trading program such as the Acid Rain Program under Title IV of the Act.

81. For purposes of this Subsection, the term “surrender of allowances” means permanently surrendering allowances from the Existing Sandow Units or Replacement Sandow Units accounts administered by EPA or the State of Texas so that such allowances can never be used to meet any compliance requirement under the Clean Air Act, the Texas State Implementation Plan, or this Consent Decree.

i. Surrender of SO₂ Allowances

82. Beginning during the year specified in Paragraph 55 for the commencement of operation of an FGD on each Existing Sandow Unit if Alcoa elects Option A, or beginning during the year specified in Paragraphs 65 and 66 for the commencement of the Replacement Sandow Units if Alcoa elects Option B, Alcoa shall retain SO₂ Allowances for those Units only for purposes of compliance with federal law, and shall surrender all other SO₂ Allowances. Alcoa shall not sell, trade, or otherwise transfer any SO₂ Allowances to a third party or use such SO₂ Allowances in any other facility owned or operated by Alcoa or by any affiliate of Alcoa, except as provided in Paragraph 89, below. By March 30 of the year following the calendar year for which the SO₂ Allowances were allocated, Alcoa shall surrender to the EPA any SO₂ Allowances required to be surrendered under this

Consent Decree, or transfer them to a non-profit third party selected by Alcoa for purposes of surrender.

83. If any SO₂ Allowances are transferred directly to a non-profit third party, Alcoa shall submit a report of such transfer to Plaintiffs within seven (7) business days of such transfer, in compliance with Section XVIII (Notices) of this Consent Decree. Such report shall: (i) provide the identity of the non-profit third-party recipient(s) of the SO₂ Allowances and a listing of the serial numbers of the transferred SO₂ Allowances; and (ii) include a certification by the third-party recipient(s) stating that the recipient will not sell, trade, or otherwise exchange any of the SO₂ Allowances and will not use any of the SO₂ Allowances to meet any obligation imposed by any environmental law. Alcoa shall also demonstrate, in the periodic reports submitted to EPA pursuant to Section X (Periodic Reporting) of this Consent Decree, that the third-party recipient(s) surrendered the SO₂ Allowances for permanent surrender to EPA within one year after Alcoa transferred the SO₂ Allowances to them. Alcoa shall not have complied with the SO₂ Allowance surrender requirements of this Paragraph until all third-party recipient(s) shall have actually surrendered the transferred SO₂ Allowances to EPA for surrender.
84. For all SO₂ Allowances surrendered to EPA, Alcoa shall first submit an SO₂ Allowance transfer request form to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of the SO₂ Allowances held or controlled by Alcoa to the EPA Enforcement Surrender Account or to any other EPA account that the Agency may direct. As part of submitting these transfer requests, Alcoa shall irrevocably authorize the transfer of these SO₂ Allowances and identify -- by name of account and any applicable

serial or other identification numbers or station names -- the source and location of the SO₂ Allowances being surrendered.

ii. Surrender of NO_x Allowances

85. Beginning during the year specified in Paragraphs 52 for the commencement of operation of an SCR on each Existing Sandow Unit if Alcoa elects Option A, or beginning during the year specified in Paragraphs 65 and 66 for the commencement of the Replacement Sandow Units if Alcoa elects Option B, Alcoa shall retain NO_x Allowances for those Units only for purposes of compliance with federal law, and shall surrender all other NO_x Allowances. Alcoa shall not sell, trade, or otherwise transfer any NO_x Allowances to a third party or use such NO_x Allowances in any other facility owned or operated by Alcoa or by any affiliate of Alcoa, except as provided in Paragraph 89, below. By March 30 of the year following the calendar year for which the NO_x Allowances were allocated, Alcoa shall surrender to the EPA (or to the State, if the State is the authority granting the NO_x Allowances) any NO_x Allowances required to be surrendered under this Consent Decree, or transfer them to a non-profit third party selected by Alcoa for purposes of surrender.
86. If any NO_x Allowances are transferred directly to a non-profit third party, Alcoa shall submit a report of such transfer to Plaintiffs within seven (7) business days of such transfer, in accordance with Section XVIII (Notices) of this Consent Decree. Such report shall: (i) provide the identity of the non-profit third-party recipient(s) of the allowances and a listing of the serial numbers of the transferred NO_x Allowances; (ii) demonstrate that the third-party recipient(s) will not sell, trade, or otherwise exchange any of the NO_x Allowances; (iii) demonstrate that the third party recipient(s) will not use any of the NO_x Allowances;

Allowances to meet any obligation imposed by any environmental law; and (iv) demonstrate that the third-party recipient(s) will surrender the NO_x Allowances for permanent surrender to EPA within one year after Alcoa transfers the NO_x Allowances to the third-party recipient(s). Alcoa shall not have complied with the NO_x Allowance surrender requirements of this Paragraph until all third-party recipient(s) shall have actually surrendered the transferred NO_x Allowances to EPA for surrender.

87. For all NO_x Allowances surrendered to EPA, Alcoa shall first submit a NO_x Allowance transfer request form to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of the NO_x Allowances held or controlled by Alcoa to the EPA Enforcement Surrender Account or to any other EPA account that the Agency may direct. As part of submitting these transfer requests, Alcoa shall irrevocably authorize the transfer of these NO_x Allowances and identify - by name of account and any applicable serial or other identification numbers or station names - the source and location of the NO_x Allowances being surrendered.

V. USE OF EMISSION ALLOWANCES

88. For any and all actions taken by Alcoa pursuant to the terms of this Consent Decree, Alcoa shall not use or sell any resulting NO_x or SO₂ Allowances in any emission trading or marketing program of any kind.
89. Nothing in this Consent Decree shall preclude Alcoa from using, selling, or transferring emission allowances allocated to the Existing Sandow Units or to the Replacement Sandow Units arising from either: (a) Alcoa's emission reductions at these Units that occur prior to the date of entry of this Consent Decree; or (b) Alcoa's emission

reductions at these Units to the extent that they go beyond the requirements of this Consent Decree and that occur after the date of entry of this Consent Decree. If Alcoa elects Option B, for example, Alcoa may use, sell, or transfer NO_x or SO₂ Allowances allocated to the Replacement Sandow Units to the extent that Alcoa reduces its NO_x or SO₂ emissions beyond the reductions required by this Consent Decree.

90. Nothing in this Consent Decree shall preclude Alcoa from purchasing emission allowances from another source or obtaining them from the EPA or any state with respect to facilities other than Sandow for purposes of complying with state or federal Clean Air Act requirements.

**VI. PROHIBITION ON NETTING CREDITS OR OFFSETS
FROM REQUIRED CONTROLS**

91. For any and all actions taken by Alcoa to comply with the terms of this Consent Decree, including but not limited to the upgrade or installation of particulate matter controls, FGDs, and SCRs, any emission reductions generated shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining netting credits or offsets under the Act's PSD or NSR programs. This prohibition shall not prohibit Alcoa from seeking to amend its existing VERP for any and all actions taken by Alcoa to comply with the terms of this Consent Decree under Option B, including the construction of Replacement Sandow Units, any emission reductions generated shall be considered as a creditable contemporaneous emission decrease for the purpose of obtaining netting credits or offsets under the Act's PSD or NSR programs solely to the extent that such credits are necessary under the State Permitting Process for authorization of the Permit Amendment. In addition, this prohibition shall not preclude Alcoa from

applying emission decreases from the elimination of its lignite dryers to potential emission increases from any ancillary equipment at the source necessary for the operation of the Replacement Sandow Units.

VII. PERMITS

Timely Application for Permits

92. Except as otherwise stated in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires Alcoa to secure a permit to authorize the construction, modification, or operation of any Unit or Unit component under this Consent Decree, Alcoa shall make such application in a timely and complete manner. Such applications shall be completed and submitted to the appropriate authorities to allow sufficient time for all legally required processing and review of the permit request. Any failure by Alcoa to submit a timely permit application for the Existing Sandow Units or Replacement Sandow Units shall bar any use by Alcoa of the Force Majeure provisions of this Consent Decree to allege that it failed to install or operate a Unit as required by this Consent Decree because a permitting authority failed to issue a necessary permit in a timely manner. Nothing in this Consent Decree shall be construed to relieve Alcoa of any obligation to comply with Texas's permitting requirements pursuant to 30 Tex. Admin. Code. § 116.

Title V Permits.

93. Within sixty (60) days of entry of this Consent Decree, Alcoa shall amend its existing Title V Permit application covering the Existing Sandow Units or apply for an amendment of its Title V Permit covering the Existing Sandow Units, to include a

schedule for interim performance, operational, maintenance, and control technology requirements established by this Consent Decree, including but not limited to emission limits, limits on fuel use, and operation and maintenance requirements.

94. Within sixty (60) days after commencement of operation of each pollution control device in Section IV (Pollution Controls and Reductions) of this Consent Decree, and in compliance with 30 Tex. Admin. Code § 122, Alcoa shall submit a proposed modification to its Title V permit for the Rockdale facility to reflect the emission limitations and other requirements for each Sandow Unit as set forth in Section IV, which shall become federally-enforceable under Alcoa's Title V permit once it is modified. Such proposed modification shall include, to the extent applicable, the surrender of allowances under Subsection IV(G) (Surrender of Emission Allowances) of this Consent Decree. Alcoa shall also include the emission limitations and other requirements in Section IV of this Consent Decree in any subsequent renewal or revision of its Title V permit.
95. Except as this Consent Decree requires a State Permitting Process for the replacement of the Existing Sandow Units with Replacement Sandow Units, this Consent Decree shall not be construed to require Alcoa to apply for or obtain a permit pursuant to Parts C and D in Title I of the Clean Air Act for any work performed by Alcoa within the scope of the Resolution of Claims provisions of Paragraphs 96 and 97, below. Nothing in this Consent Decree shall be construed to relieve Alcoa of any obligation to comply with Title V of the Clean Air Act and TCEQ's implementing regulations.

VIII. RESOLUTION OF PAST CLAIMS

96. Compliance with this Consent Decree shall resolve Alcoa's civil liability for violations at the Existing Sandow Units that have arisen from its actions at these Units prior to the date on which this Consent Decree is lodged with the Court of: (a) the Prevention of Significant Deterioration ("PSD") or Non-Attainment New Source Review ("NSR") provisions of Parts C and D in Title I of the Clean Air Act; and (b) the Federally-enforceable PSD and NSR provisions incorporated into 30 Tex. Admin. Code § 116.160.

IX. RESOLUTION OF FUTURE CIVIL CLAIMS - COVENANTS NOT TO SUE

97. As long as Alcoa remains in compliance with the deadlines contained in Section IV (Pollution Controls and Reductions) of this Consent Decree, and subject to the limitations specified in Paragraphs 98 and 99, the Plaintiffs covenant not to sue Alcoa and its successors and assigns for civil claims arising from the PSD or Nonattainment NSR provisions of Parts C and D in Title I of the Clean Air Act, 42 U.S.C. § 7401 et seq., at the Existing Sandow Units or Replacement Sandow Units based on failure to obtain PSD or Nonattainment NSR permits for:
- a. physical changes or changes in the method of operation at the Existing Sandow Units or the Replacement Sandow Units, after the date of lodging of this Consent Decree, that this Consent Decree expressly directs Alcoa to undertake; or
 - b. physical changes or changes in the method of operation at the Existing Sandow Units or the Replacement Sandow Units, after the date of lodging of this Consent Decree, that are not required by this Consent Decree, if and only if Alcoa is

otherwise in compliance with: Section IV (Pollution Controls and Reductions), other than the 30-Day and PM Emission Rates contained in Paragraphs 52, 55, and 58 (if Alcoa elects Option A) and Paragraphs 60, 62, and 63 (if Alcoa elects Option B); and Section VII (Permits) of this Consent Decree.

Limitations on the Future Covenant Not To Sue

98. The covenant not to sue in Paragraph 97 does not apply to physical changes or changes in the method of operation, either individually or collectively for a Unit, at the Existing Sandow Units or the Replacement Sandow Units which constitute a “modification” as determined according to 40 C.F.R. § 60.14(h), and which increase by more than 10 percent the maximum hourly emission rates for NO_x, SO₂, or any other pollutant regulated under the applicable New Source Performance Standard.
99. Notwithstanding any other provisions of this Consent Decree, the covenant not to sue in Paragraph 97 shall continue in effect until, and terminate on, December 31, 2009, and is without any force or effect as to any physical change or change in the method of operation of a Unit commenced or completed after that date.

Effect of this Section on Alcoa.

100. This Section of the Consent Decree does not: (a) impose any affirmative obligation on Alcoa; (b) preclude Alcoa from obtaining a PSD or Nonattainment NSR permit for a modification of a Unit that would be subject to the limitations contained in Paragraphs 98 and 99 of this Section; or (c) relieve Alcoa of any obligation imposed on it by other Sections of this Consent Decree.

X. PERIODIC REPORTING

101. Within 180 days after each date established by this Consent Decree for Alcoa to achieve and maintain a certain Emission Rate or limit at the Existing Sandow Units or the Replacement Sandow Units, Alcoa shall: (a) conduct performance tests to determine its compliance with the Emission Rate or limit required by this Consent Decree; and (b) submit the results of the performance test to EPA, TCEQ, and the Citizen Groups at the addresses specified in Section XVIII (Notices) of this Consent Decree.
102. Beginning thirty days after the end of the first full calendar quarter following the entry of this Consent Decree and continuing on a semi-annual basis, Alcoa shall submit to the Plaintiffs a report containing the following information:
 - a. all information necessary to determine compliance with Section IV (Pollution Controls and Reductions) of this Consent Decree;
 - b. all information necessary to determine whether Alcoa has complied with the future covenant restriction and reopener contained in Paragraph 98; and
 - c. all information relating to emission allowances and credits that Alcoa claims to have generated in accordance with Paragraph 89 by compliance beyond the requirements of this Consent Decree.
103. In any periodic progress report submitted pursuant to this Section, Alcoa may incorporate by reference information previously submitted under its Title V permitting requirements, provided that Alcoa attaches the Title V permit report and provides a specific reference to the provisions of the Title V permit report that are responsive to the information sought in the periodic progress report.

104. In addition to the progress reports required pursuant to this Section, Alcoa shall report to the Plaintiffs any violation of the requirements of this Consent Decree, including exceedances of the required Emission Rates, within 10 days of when Alcoa knew or should have known of any such violation or exceedance. In this report, Alcoa shall explain the cause or causes of the violation or exceedance and all measures taken or to be taken by Alcoa to prevent such event in the future. Alcoa shall also report, in the periodic progress reports submitted pursuant to this Section, any violations of this Consent Decree that Alcoa anticipates regarding the deadlines for installing and commencing operation of any new or upgraded pollution control device required by this Consent Decree.
105. Each Alcoa report shall be signed by Alcoa's Rockdale Power and Mine Manager, or, in his or her absence, a higher ranking official, and shall contain the following certification:
- This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.
106. If any allowances are surrendered to any third party pursuant to Subsection IV(G) of this

Consent Decree, the third party's certification shall be signed by a managing officer of the third party and shall contain the following language:

I certify under penalty of law that _____ [name of third party] will not sell, trade, or otherwise exchange any of the allowances and will not use any of the allowances to meet any obligation imposed by any environmental law. I understand that there are significant penalties for making false, inaccurate, or incomplete information to the United States.

XI. ENVIRONMENTAL MITIGATION PROJECTS

107. Within 30 days of entry of this Consent Decree, Alcoa shall deposit the sum of \$2,500,000 into an interest bearing escrow account within the Court registry. Such amount and all accrued interest shall be dedicated to the environmental mitigation projects set forth in this Section of the Consent Decree.
108. Within 60 days of entry of this Consent Decree Alcoa shall direct the Court escrow registry to provide funding in the amount of \$1,750,000, plus accrued interest, to the Trust for Public Land for the purchase and/or maintenance of property and/or conservation easements designed to extend and protect the clean air and existing Houston toad habitat of the "Lost Pines" and Post Oak Savannah areas of Bastrop and Lee Counties in Central Texas. Alcoa shall further specify in its directions to the Court escrow registry the following:
 - A. All purchases or projects undertaken with these funds by the Trust for Public Land must first be approved by Pines & Prairies Land Trust;
 - B. All deeds and easements purchased by the Trust for Public Land must be held

jointly by the Pines & Prairies Land Trust and the Trust for Public Land;

C. the Trust for Public Land may convey its property interest to Pines and Prairie Land Trust; and

D. The Trust for Public Lands and the Pines & Prairies Land Trust may not encumber any property or property interest acquired pursuant to this Consent Decree with any deed of trust, mortgage, pledge, security interest, or other lien or interest of similar nature granted to secure any loan, financing or other indebtedness (referred to herein as a "Lien"). The Trust for Public Land and Pines and Prairie Land Trust must encumber each property and easement acquired pursuant to this Consent Decree with a restrictive covenant prohibiting the grant of any Lien upon such property or easement, and further providing that the grant of any such Lien shall be null and void, ab initio. The restrictive covenant may be created in the deed for the acquisition of the property or easement, or created in a separate instrument recorded in the appropriate real property records, and shall provide that it is enforceable by the Trust for Public Lands, the Pines & Prairies Land Trust, and the Parties. Furthermore, the Trust for Public Lands and the Pines & Prairies Land Trust shall create a conditional limitation in each acquisition of property pursuant to the Consent Decree (either in the deed or by separate instrument recorded in the appropriate real property records) providing that, for the seventy-five (75) year period following such acquisition, if either the Trust for Public Lands or the Pines & Prairies Land Trust dissolve, become insolvent, or grants or attempts to grant a Lien upon any property interests

acquired pursuant to this Consent Decree (a "Dissolving/Defaulting Trust Entity"), then the subject property interest, if held by the Dissolving/Defaulting Trust Entity, shall automatically revert to and vest in the other trust entity (the "Conforming Entity") without the necessity of any further act on the part of or behalf of either entities. If for any reason this conditional limitation does not create a determinable estate, then it shall be deemed to grant and create in the Conforming Entity an option to purchase such property interest for \$10.00.

109. Within 60 days of entry of this Consent Decree, Alcoa shall direct the Court escrow registry provide funding in the amount of \$750,000, plus accrued interest, to implement a school bus emission reduction program for the greater Austin, Texas area similar to the Adopt-A-School-Bus program in the Dallas, Texas area. Within 120 days of entry of this Consent Decree, the Parties shall agree on an administrator (the "Administrator") for this school bus emission reduction program. The school bus emission reduction program shall cover at least the following counties: Milam, Lee, Bastrop, Caldwell, Hays, Travis, and Williamson. In providing this funding, Alcoa shall specify that the following conditions must be met:
- a. \$700,000 is to be used directly for bus improvement projects and not for any administrative costs;
 - b. While the Administrator may use administrative funds for the greater Austin program, with respect to the funds specified in Subparagraph (a) above, the Administrator shall first seek to obtain emission reductions from the school bus fleets for the public school districts in Rockdale Independent School District,

Lexington Independent School District, Elgin Independent School District, Cameron Independent School District, and McDade Independent School District.

If any funds remain, the Administrator shall obtain emission reductions from school bus fleets in other public school districts in Milam, Lee, and Bastrop Counties, in that order;

- c. The Administrator shall expend the funds in a way to minimize the cost per unit of pollution reduced from the school bus fleets identified in Subparagraph (b) above; and
 - d. The school bus improvement projects funded must be other than those already required by law or already under contract.
110. All plans and reports prepared by Alcoa pursuant to the requirements of this Section of the Consent Decree shall be publicly available without charge.
111. Alcoa shall certify, as part of each plan submitted to Plaintiffs for any Mitigation Project, that it is unaware that any person other than Alcoa is required by law to perform the Project described in the plan.
112. Alcoa acknowledges that it will receive credit for the expenditure of such funds as Project Dollars only if Alcoa demonstrates that the funds have been actually spent by either Alcoa or by the person or instrumentality receiving them, and that such expenditures met all requirements of this Consent Decree.
113. No later than the periodic report due sixty (60) or more days following the completion of each approved Project, Alcoa shall submit to Plaintiffs for review and approval pursuant to Section XII (Review and Approval of Submittals) of this Consent Decree a report that

documents the date that all aspects of the project were implemented, Alcoa's results in implementing the project, including the emission reductions or other environmental benefits achieved, and the Project Dollars expended by Alcoa in implementing the project.

XII. REVIEW AND APPROVAL OF SUBMITTALS

114. Alcoa shall submit a complete plan, report, or other item to EPA, TCEQ, and the Citizen Groups whenever such a document is required to be submitted to EPA for review and approval pursuant to this Consent Decree. EPA may approve the submittal or decline to approve it and provide written comments. Within 60 days of receiving EPA's written comments, Alcoa shall either: (i) alter the submittal consistent with the written comments and provide the revised submittal to EPA for final approval; or (ii) submit the matter for dispute resolution, including the period of informal negotiations, under Section XVI (Dispute Resolution) of this Consent Decree.
115. Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, Alcoa shall implement the submittal in compliance with the approved submittal.

XIII. CIVIL PENALTY

116. Within thirty (30) calendar days of entry of this Consent Decree, Alcoa shall pay to the United States a civil penalty in the amount of \$1.5 million. The civil penalty shall be paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in compliance with current EFT procedures, referencing the **USAO File Number** _____ and DOJ Case Number 90-5-2-1-07723, and the civil action case names and case

numbers referenced in the caption of this Consent Decree. The costs of such EFT shall be Alcoa’s responsibility. Payment shall be made in compliance with instructions provided to Alcoa by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Texas. Any funds received after 4:00 p.m. (CST) shall be credited on the next business day. At the time of payment, Alcoa shall provide notice of payment, referencing the USAO File Number, DOJ Case Number, and the civil action case name and case number, to the Department of Justice and to EPA, as provided in Section XVIII (Notices) of this Consent Decree.

117. Failure to timely pay the civil penalty shall subject Alcoa to interest accruing from the date payment is due until the date payment is made at the rate prescribed by 28 U.S.C. § 1961, and shall render Alcoa liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States in securing payment.

XIV. STIPULATED PENALTIES

118. For any failure by Alcoa to comply with the terms of this Consent Decree, and subject to the provisions of Sections XV (Force Majeure) and XVI (Dispute Resolution), Alcoa shall pay, within 30 days after written demand to Alcoa by either by the United States or by the United States and the Citizen Groups jointly, the following stipulated penalties to EPA:

Consent Decree Violation	Stipulated Penalty (Per day per violation, unless otherwise specified)
A. Failure to pay the civil penalty as specified in Section XIII (Civil Penalty) of this Consent Decree	\$10,000

B. Each 30-Day Rolling Average Emission Rate, each 30-Day Rolling Average Removal Efficiency, and any other Emission Rate or emission limitation (including any emissions limitation in any State permit relating to the Replacement Sandow Units) that is less than 5% in excess of the limits set forth in this Consent Decree	\$2,500
C. Each 30-Day Rolling Average Emission Rate, each 30-Day Rolling Average Removal Efficiency, and any other Emission Rate or emission limitation (including any emissions limitation in any State permit relating to the Replacement Sandow Units) that is greater than 5% but less than 10% in excess of the limits set forth in this Consent Decree	\$5,000
D. Each 30-Day Rolling Average Emission Rate, each 30-Day Rolling Average Removal Efficiency, and any other Emission Rate or emission limitation (including any emissions limitation in any State permit relating to the Replacement Sandow Units) that is greater than 10% in excess of the limits set forth in this Consent Decree	\$10,000
E. Violation of an applicable opacity limit, as required by Paragraph 73 (opacity compliance)	\$5,000 per each six minute period
F. Failure to meet the annual SO ₂ emission limitations in Paragraph 71	The acquisition and retirement, in accordance with this Consent Decree, of one and one half SO ₂ Allowances for every ton of SO ₂ in excess of the annual SO ₂ emissions limitation.
G. Burning any fuel other than Coal, except as authorized by regulation or permit, as required in Paragraph 70	\$10,000
H. Failure to install, commence operation, or continue operation of the NO _x and PM pollution control devices on the Existing Sandow Units, as specified in Subsection IV(E) (Interim Pollution Reduction Measures), unless Alcoa elects to shut down these Units in accordance with Subsection IV(A) (Selection of Pollution Reduction Approach)	\$10,000 during the first 30 days, \$27,500 thereafter

<p>I. Failure to commence physical, on-site construction of the NO_x, SO₂, and PM pollution control devices on the Existing Sandow Units, in accordance with the schedule in Paragraphs 52, 55, and 58 (Option A); or</p> <p>Failure to commence physical, on-site construction of the Replacement Sandow Units, in accordance with the schedule in Paragraph 67 (Option B); or</p> <p>Failure to shut down the Existing Sandow Units in accordance with the schedule in Paragraph 68 (Option C)</p>	<p>Payment by Alcoa of either (a) \$2,500 directly to the United States or (b) \$5,000 placed by Alcoa in an escrow account. Any amounts placed by Alcoa into escrow shall be be refunded to Alcoa when Alcoa either (i) commences timely operation of the emission controls on the Existing Sandow Units (Option A) or commences operation of the Replacement Sandow Units (Option B) in accordance with the schedules and Emission Rates set forth in this Consent Decree; or (ii) permanently shuts down by the Existing Sandow Units by December 31, 2006.</p>
<p>J. Failure to install or operate CEMS or COMS as required by Paragraphs 75 through 77, and 79</p>	<p>\$1,000</p>
<p>K. Failure to conduct any stack test or annual performance test of PM emissions, as required in Paragraph 78</p>	<p>\$2,500</p>
<p>L. Failure to apply for the permits required by Paragraphs 92 through 94</p>	<p>\$1,000</p>
<p>M. Failure to timely submit, modify, or implement as approved the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree</p>	<p>\$750 for the first ten days \$1,500 for the eleventh through the 30th day \$2,000 thereafter</p>
<p>N. Using, selling, or transferring SO₂ Allowances, except as permitted by Paragraphs 80 through 84, and 88 through 91</p>	<p>(a) \$2,000 per SO₂ Allowance ton, plus (b) the surrender, pursuant to the procedures set forth in Subsection IV(G) of this Consent Decree, of SO₂ Allowances in an amount equal to the SO₂ Allowances used, sold, or transferred in violation of this Consent Decree</p>

O. Using, selling, or transferring NO _x Allowances or credits, except as permitted in Paragraphs 85 through 91	(a) \$4,000 per NO _x Allowance or credit ton, plus (b) the surrender, pursuant to the procedures set forth in Subsection IV(G) of this Consent Decree, of NO _x Allowances or credits in an amount equal to the NO _x Allowances or credits used, sold, or transferred in violation of this Consent Decree
P. Failure to demonstrate the third party surrender of a SO ₂ Allowance to EPA within one year after Alcoa's transfer of such Allowance to the third party pursuant to Paragraph 83	(a) \$2,000 per SO ₂ Allowance ton, plus (b) the surrender, pursuant to the procedures set forth in Subsection IV(G) of this Consent Decree, of SO ₂ Allowances in an amount equal to the SO ₂ Allowances used, sold, or transferred in violation of this Consent Decree
Q. Failure to demonstrate the third party surrender of a NO _x Allowance or credit to EPA within one year after Alcoa's transfer of such allowance or credit to the third party as required by Paragraph 86	(a) \$4,000 per NO _x Allowance or credit ton, plus (b) the surrender, pursuant to the procedures set forth in Subsection IV(G) of this Consent Decree, of NO _x Allowances or credits in an amount equal to the NO _x Allowances or credits used, sold, or transferred in violation of this Consent Decree
R. Failure to undertake and complete any of the Environmental Mitigation Projects in compliance with Section XI (Environmental Mitigation Projects)	\$2,500 for the first 15 days, \$5,000 thereafter
S. Any other violation of this Consent Decree	\$1,000

119. Violation of an Emission Rate or Removal Efficiency that is based on a 30-Day Rolling Average is a violation on every day of the 30-day period on which the average is based.

120. Where a violation of a 30-Day Rolling Average Emission Rate or Removal Efficiency

(for the same pollutant and from the same source) recurs within periods less than 30 days, Alcoa shall not pay a daily stipulated penalty for any day of the recurrence for which a stipulated penalty has already been paid.

121. All stipulated penalties shall begin to accrue on the day after the performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.
122. Alcoa shall pay all stipulated penalties due to the United States under Paragraph 118 within 30 days of any violation of this Consent Decree, and shall continue to make such payments every 30 days thereafter until the violation(s) no longer continues, unless Alcoa elects within 20 days of the violation to dispute the accrual of stipulated penalties in accordance with the provisions in Section XVI (Dispute Resolution) of this Consent Decree.
123. Penalties shall continue to accrue as provided in accordance with Paragraph 121 during any dispute, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:
 - a. If the dispute is resolved by agreement or by a decision of the United States, or by agreement of the Plaintiffs if stipulated penalties are jointly assessed by the Plaintiffs, and the agreement or decision is not appealed to the Court, accrued penalties determined to be owing, together with accrued interest, shall be paid to

the United States within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision or order;

- b. If the dispute is appealed to the Court, and the United States prevails in whole or in part, (or, if the Plaintiffs jointly assess stipulated penalties, the Plaintiffs prevail in whole or in part), Alcoa shall, within sixty (60) days of receipt of the Court's decision or order, pay all accrued penalties determined by the Court to be owing, together with accrued interest, except as provided in Subparagraph c, below;
- c. If the District Court's decision is appealed by any Party, Alcoa shall, within fifteen (15) days of receipt of the final appellate court decision, pay all accrued penalties determined to be owing to the United States, together with accrued interest.

- 124. All stipulated penalties must be paid in the manner set forth in Section XIII (Civil Penalty) of this Consent Decree.
- 125. Should Alcoa fail to pay stipulated penalties in compliance with the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961, together with the costs (including attorneys fees) incurred in any action necessary to collect any such stipulated penalties or interest thereon.
- 126. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to any Plaintiff by reason of Alcoa's failure to comply with any requirement of this Consent Decree or applicable law, except that for any violation of the Act for which this Consent Decree also provides for payment of a

stipulated penalty, Alcoa shall be allowed a credit for stipulated penalties paid against any statutory penalties imposed for such violation.

XV. FORCE MAJEURE

127. Force Majeure. For purposes of this Consent Decree, a “Force Majeure Event” shall mean an event that has been or will be caused by circumstances beyond the control of Alcoa, its contractors, or any entity controlled by Alcoa that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite Alcoa’s best efforts to fulfill the obligation. “Best efforts” include using best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay or violation is minimized to the greatest extent possible.
128. Notice. If any event occurs or has occurred that may delay compliance with or otherwise cause a violation of any obligation under this Consent Decree, as to which Alcoa intends to assert a claim of force majeure, Alcoa shall notify the Plaintiffs in writing as soon as practicable, but in no event later than seven (7) business days following the date Alcoa first knew, or by the exercise of due diligence should have known, that the Force Majeure Event caused or may cause such delay or violation. In this notice Alcoa shall reference this Paragraph of this Consent Decree and describe the anticipated length of time that the delay or violation may persist, the cause or causes of the delay or violation, all measures taken or to be taken by Alcoa to prevent or minimize the delay or violation, the schedule by which those measures will be implemented, and Alcoa’s rationale for attributing a delay or violation to Force Majeure Event. Alcoa shall adopt all reasonable measures to

avoid or minimize such delays or violations. Alcoa shall be deemed to know of any circumstance of which Alcoa, its contractors, or any entity controlled by Alcoa knew or should have known.

129. Failure to Give Notice. Failure by Alcoa to comply with the notice requirements of this Section shall render Alcoa's claim of Force Majeure voidable by any Plaintiff as to the specific event for which Alcoa has failed to comply with such notice requirement.

130. Plaintiffs' Response. The United States shall notify the Parties, in writing, of its position regarding Alcoa's claim of Force Majeure within (30) thirty business days of receipt of the notice provided under Paragraph 128. Any Party that disagrees with the stated position of the United States may invoke the dispute resolution provisions of this Consent Decree. If the Parties agree that a delay in performance has been or will be caused by a Force Majeure Event, then the Parties shall stipulate to an extension of deadline(s) for performance of the affected compliance requirement by a period not to exceed the delay actually caused by the event.

131. Burden of Proof. In any dispute regarding Force Majeure, Alcoa shall bear the burden of proving by a preponderance of the evidence that any delay in performance or any other violation of any requirement of this Consent Decree was caused by or will be caused by a Force Majeure Event. Alcoa shall also bear the burden of proving that Alcoa gave the notice required by this Section and the duration and extent of any delay(s) attributable to a Force Majeure Event. An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date.

132. Events Excluded. Unanticipated or increased costs or expenses associated with the

performance of Alcoa's obligations under this Consent Decree shall not constitute a Force Majeure Event.

133. Potential Force Majeure Events. The Plaintiffs agree that, depending upon the circumstances related to an event and Alcoa's response to such circumstances, the kinds of events listed below could qualify as Force Majeure Events within the meaning of this Section: construction, labor, or equipment delays; acts of God; acts of war; acts of terrorism; and Malfunctions, as defined herein.
134. Failure of a permitting authority to issue a necessary permit in a timely fashion may constitute a Force Majeure Event where the failure of the permitting authority to act is beyond the control of Alcoa and Alcoa has taken all steps available to it to obtain the necessary permit, including, but not limited to, submitting a complete permit application, responding to requests for additional information by the permitting authority in a timely fashion, accepting lawful permit terms and conditions, and prosecuting in an expeditious fashion appeals of any allegedly unlawful terms and conditions imposed by the permitting authority. Notwithstanding the foregoing, no Force Majeure Event arising from permitting delays shall alter Alcoa's obligations to comply with the deadline and requirements set forth in Paragraph 66 of this Consent Decree regarding the shut down of the Existing Sandow Units.
135. In the event any Force Majeure Event or Events cause Alcoa to fail to comply with any deadline in this Consent Decree for more than six months, any Plaintiff may go to this Court to seek further relief consistent with the objectives of this Consent Decree.
136. Notwithstanding any other provision of this Consent Decree, this Court shall not draw

any inferences nor establish any presumptions adverse to any Party as a result of Alcoa delivering a notice pursuant to this Section or the inability of Alcoa and the Plaintiffs to reach agreement on a dispute under this Section.

137. For purposes of this Section, a “Malfunction” shall have the meaning set forth in 40 C.F.R. § 60.2: any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not Malfunctions.
138. As part of the resolution of any matter submitted to this Court under this Section, the Plaintiffs and Alcoa by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any delay agreed to by the United States or approved by this Court. Alcoa shall be liable for stipulated penalties for its failure thereafter to complete the work in compliance with the extended or modified schedule.

XVI. DISPUTE RESOLUTION

139. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, provided that the Party making such application has first made a good faith attempt to resolve the matter with the other Parties.
140. The dispute resolution procedure required herein shall be invoked by a Plaintiff giving written notice to Alcoa or by Alcoa giving notice to Plaintiffs advising of a dispute

pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice, and the Parties shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days following receipt of such notice.

141. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations among the Parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting among the Parties' representatives unless they agree to shorten or extend this period.
142. If the Parties are unable to reach agreement during the informal negotiation period, the Plaintiffs shall provide Alcoa with a written summary of their position regarding the dispute. In disputes between the Citizen Groups and Alcoa, Alcoa shall file with this Court a petition which describes the nature of the dispute and seeks resolution, within 30 days of receiving the written summary of the Citizen Groups' position. In disputes between the United States and Alcoa, the written position of the United States shall be considered binding unless Alcoa files with this Court a petition which describes the nature of the dispute and seeks resolution, within thirty (30) calendar days of receiving the United States' written summary of its position. In either case, the Plaintiffs may respond to a petition by Alcoa within forty-five (45) calendar days of its filing.
143. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Section may be shortened upon motion of one of

the Parties to the dispute.

144. This Court shall not draw any inferences nor establish any presumptions adverse to either Party as a result of invocation of this Section or the Parties' inability to reach agreement.
145. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. The Parties, in their initial filings with the Court under Paragraph 142, above, shall state their position regarding what the applicable standard of law should be for resolving the particular dispute.
146. As part of the resolution of any dispute under this Section, in appropriate circumstances the Parties may agree, or this Court may order, an extension or modification of the schedule for completion of work under this Consent Decree to account for the delay that occurred as a result of dispute resolution. Alcoa shall be liable for stipulated penalties for its failure thereafter to complete the work in compliance with the extended or modified schedule.
147. As to disputes by the United States regarding the Permit Amendment issued by TCEQ, the following provisions shall apply:
 - a. EPA shall have the a right to dispute the BACT determination in the State Permitting Process and to resolve such dispute before this Court.
 - b. Within 30 days of receipt of the Permit amendment issued by TCEQ under the State Permitting Process, if EPA does not agree with any provision of the TCEQ-issued permit, including but not limited to TCEQ's determination of the Best Available Control Technology (BACT), EPA shall notify Alcoa and TCEQ. The notice shall describe the reason for disagreeing with the provisions in the TCEQ-issued Permit

Amendment. The EPA, TCEQ, and Alcoa shall endeavor to resolve the dispute informally for not more than twenty (20) days following issuance of such notice. If the parties do not reach an agreement during this informal process, EPA shall provide Alcoa with a written summary of their positions regarding their objections to the TCEQ-issued Permit Amendment.

- c. If EPA disputes TCEQ's Permit Amendment pursuant to Subparagraph 147(b), above, then the written position(s) provided by the United States shall be considered binding unless, within fifteen (15) calendar days thereafter, Alcoa files with this Court a petition which describes the nature of the dispute and seeks resolution. EPA shall respond to Alcoa's petition within fifteen (15) calendar days of its filing.
- d. Disputes arising under this Paragraph shall be determined by this Court under a *de novo* standard of review. This Court shall not draw any inferences nor establish any presumptions adverse to either party as a result of invocation of this Section or the parties' inability to reach agreement.

XVII. INFORMATION COLLECTION AND RETENTION

- 148. Any authorized representative of United States or TCEQ, including their attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry upon the Rockdale Plant, at any reasonable time for the purpose of:
 - a. monitoring the progress of activities required under this Consent Decree;
 - b. verifying any data or information submitted in accordance with the terms of this Consent Decree;
 - c. obtaining samples; and

- d. assessing Alcoa's compliance with this Consent Decree.
149. Until five (5) years after the expiration of the covenant not to sue in Paragraph 97, Alcoa shall retain, and instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records and documents in electronic form) now in its or its contractors' or agents' possession or control, and that relate in any manner to Alcoa's performance of its obligations under this Consent Decree. This record retention requirement shall apply regardless of any corporate document-retention policy to the contrary.
150. At the conclusion of the document-retention period provided in the preceding Paragraph, Alcoa shall notify EPA at least ninety (90) days prior to the destruction of any records or documents subject to the requirements of the preceding Paragraph, and, upon request by EPA, Alcoa shall deliver any such records or documents to EPA. Alcoa may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Alcoa asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Alcoa. No documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree, however, shall be withheld on the grounds that they are privileged.
151. Public Documents. All information and documents submitted by Alcoa to the United States pursuant to this Consent Decree shall be publicly available unless subject to legal privileges

or protection or identified and supported as business confidential by Alcoa in compliance with 40 C.F.R. Part 2.

152. Nothing in this Consent Decree shall limit the authority of EPA to conduct tests and inspections at Alcoa's facilities under Section 114 of the Act, 42 U.S.C. § 7414, or any other applicable federal or state laws, regulations, or permits.

XVIII. NOTICES

153. Notices. Unless otherwise provided herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States of America:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
DJ# 90-5-2-1-07723

and

Director, Compliance Assurance and Enforcement Division
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

As to the Citizen Groups

Regional Director
Environmental Defense
44 East Avenue
Austin, TX 78701

(Alcoa agrees to send e-mail notification of these submissions to counsel for Citizen Groups: rzars@lariat.org for Reed Zars and georgehays@mindspring.com for George Hays. No stipulated penalties shall apply to this obligation.)

As to TCEQ:

Director, Field Operations Division
P.O. Box 13087, MC-174
Austin, TX 78711-3087

As to Alcoa:

Environmental Superintendent
Alcoa Inc.
Rockdale Operations
Off Route 79, FM 1786
P.O. Box 1231
Rockdale, Texas 76567-1231

154. Notwithstanding any other provision of this Consent Decree, Alcoa shall supply to TCEQ a copy of all notices, reports, applications, elections, and any other written statement that the Consent Decree requires Alcoa to supply to any Plaintiff. Such copies shall be sent to the address noted in Paragraph 153, above.
155. Notifications, communications, and submissions submitted pursuant to this Section shall be deemed submitted on the date they are postmarked and sent either by overnight mail, return receipt requested, or by certified or registered mail, return receipt requested, unless otherwise provided by mutual agreement of the Parties in writing.
156. Any Party may change either the notice recipient or the address for providing notices to it by serving all other Parties with a notice setting forth such new notice recipient or address.

XIX. SALES OR TRANSFERS OF OWNERSHIP INTERESTS

157. If Alcoa proposes to sell or transfer part or all of its ownership interest in any of the Existing Sandow Units or Replacement Sandow Units (“Ownership Interest”), it shall advise the purchaser or transferee in writing of the existence of this Consent Decree prior to such sale or transfer, and shall send a copy of such written notification to the Plaintiffs pursuant to Section XVIII (Notices) at least sixty (60) days before such proposed sale or transfer. Plaintiffs shall maintain the confidentiality of any information in such notice that is identified and supported by Alcoa as business confidential in compliance with 40 C.F.R. Part 2.
158. No sale or transfer of an Ownership Interest shall take place before the purchaser or transferee and the United States has executed, and the Court has approved, a modification pursuant to Section XX (Modification) of this Consent Decree making the purchaser or transferee a party defendant to this Consent Decree and jointly and severally liable with Alcoa for all the requirements of this Consent Decree that may be applicable to the transferred or purchased Ownership Interests, including joint and several liability with Alcoa for all requirements specific to the Existing Sandow Units and the Replacement Sandow Units, as well as all requirements in this Consent Decree that are not specific to these Units.
159. This Consent Decree shall not be construed to impede the transfer of any Ownership Interests between Alcoa and any purchaser or transferee as long the requirements of this Consent Decree are met. The Citizen Groups expressly waive and hereby consent to any transfer of any Ownership Interests between Alcoa and any purchaser or transferee agreed to

by the United States under the provisions of this Section. This Consent Decree shall not be construed to prohibit a contractual allocation – as between Alcoa and any purchaser or transferee of Ownership Interests – of the burdens of compliance with this Consent Decree, provided that both Alcoa and such purchaser or transferee shall remain jointly and severally liable to the Plaintiffs for the obligations of this Consent Decree applicable to the transferred or purchased Ownership Interests.

160. If the United States agrees, the United States, Alcoa, and a purchaser or transferee that has become a party defendant to this Consent Decree pursuant to Paragraph 158, above, may execute a modification that relieves Alcoa of its liability under this Consent Decree for, and makes the purchaser or transferee liable for, all obligations and liabilities applicable to the purchased or transferred Ownership Interests. Notwithstanding the foregoing, however, Alcoa may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred Ownership Interests, including the obligations set forth in Sections XI (Environmental Mitigation Projects) and XIII (Civil Penalty). Alcoa may propose and the United States may agree to restrict the scope of joint and several liability of any purchaser or transferee for any obligations of this Consent Decree that are not specific to the Existing or Replacement Sandow Units, to the extent such obligations may be adequately separated in an enforceable manner.

XX. MODIFICATION

161. Except as provided in Section XIX (Sales or Transfers of Ownership Interests), this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties and approved by the Court.

XXI. ENFORCEMENT THROUGH TITLE V PERMIT

162. Once Alcoa has demonstrated that: (a) all requirements of the Consent Decree have been satisfied, including but not limited to either (i) all of the Existing Sandow Units achieved and maintained compliance with the emission limitations set forth in Paragraphs 52, 55, and 58 of this Consent Decree for at least 24 consecutive months, (ii) all of the Replacement Sandow Units achieved and maintained compliance with the emissions limitations set forth in Paragraphs 60, 62, and 63 for at least 24 consecutive months, or (iii) the Existing Sandow Units have been permanently shut down, in accordance with Paragraphs 68 of this Consent Decree; and (b) that the requirements of this Consent Decree have been incorporated into Alcoa's Title V operating permit for the Rockdale facility pursuant to Paragraphs 93 and 94 of this Consent Decree, then Alcoa shall so certify these facts to the Plaintiffs and to this Court. If Alcoa is in compliance with all the requirements set forth above, Alcoa may request that Plaintiffs join with it to seek a shorter time from the court by which such certification can be made.
- a. If the Plaintiffs do not object in writing with specific reasons within sixty (60) days of receipt of Alcoa's certification, or request additional information from Alcoa, then, for any violations that occur after the filing of certification, Plaintiffs shall pursue enforcement of the requirements contained in the Title V permit through only the applicable Title V permit, and not this Consent Decree.
- b. In the event that some aspect of the Title V permit does not allow for enforcement of a requirement found in this Consent Decree, however, or if a Consent Decree requirement was intended to be part of the Title V permit and did not become or

remain part of such permit, then the United States, or the Citizen Plaintiffs jointly with the United States, may enforce such requirement under this Consent Decree.

- c. If the Plaintiffs object in writing to Alcoa's certification, then the matter shall be submitted to this Court for resolution under Section XVI (Dispute Resolution) of this Consent Decree. In such case, Alcoa shall bear the burden of proving that it has complied with the requirements referenced in this Paragraph.

XXII. TERMINATION

163. No later than sixty (60) days after commencement of operation of each pollution control device in Subsections IV(B), IV(C), and IV(F) (Pollution Controls and Reductions) of this Consent Decree, Alcoa shall submit to TCEQ a request for a source-specific revision to the Texas SIP to reflect the emission limitations and emissions monitoring requirements for each Sandow Unit as set forth in this Consent Decree. Notwithstanding any other provision of this Consent Decree, this Consent Decree may be terminated upon motion of a Party and further Order of this Court upon (1) the incorporation of the emission limitations and emissions monitoring requirements of this Consent Decree into the Texas SIP, and (2) Alcoa's demonstration of continuous compliance with these emission limitations and emissions monitoring requirements for a period of at least 24 months.

XXIII. GENERAL PROVISIONS

164. This Consent Decree is not a permit. Compliance with its terms does not guarantee compliance with all applicable Federal, State or local laws or regulations.
165. Nothing in this Consent Decree shall preclude the Citizen Groups, or any member or representative thereof, from providing comment or otherwise participating in any public,

administrative, legislative, regulatory or judicial forum pertaining to Alcoa's Rockdale operations on any subject that is open to comment or participation by any appropriate member of the public not a party to this Consent Decree; provided, however, that the Citizen Groups shall not challenge or oppose the TCEQ's issuance of the Voluntary Emission Reduction Permit (TCEQ Permit No. 48437), the BACT analysis for the Permit Amendment, or the issuance of Permit Amendment under the State Permitting Process if the Permit Amendment includes emissions limitations at least as stringent as those specified in Paragraph 63. The Citizen Groups further agree to not challenge or oppose TCEQ's permitting of the facilities ancillary to the Replacement Sandow Units, with the exception of any permits related to the lignite mines, ancillary mining equipment, or conveyors from the mines to the Rockdale power plant facility.

166. This Consent Decree does not apply to any claim(s) of alleged criminal liability.
167. In any subsequent administrative or judicial action initiated by any Plaintiff for injunctive relief or civil penalties relating to the facilities covered by this Consent Decree, Alcoa shall not assert any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defense based upon any contention that the claims raised by that Plaintiff in the subsequent proceeding were brought, or should have been brought, in the instant cases; provided, however, that nothing in this Paragraph is intended to affect the enforceability of the Resolution of Future Civil Claims provisions in Section IX of this Consent Decree.
168. Other Laws. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Alcoa of its obligation to comply with all applicable Federal, State, and

Local laws and regulations. Subject to the resolution of claims in Paragraphs 96 and 97, nothing contained in this Consent Decree shall be construed to prevent or limit any Plaintiff's rights to obtain penalties or injunctive relief under the Act or other federal or state statutes, regulations, or permits.

169. Except as expressly provided otherwise by this Consent Decree, provisions of law expressly cited in this Consent Decree shall be construed to mean the provision as it exists on the date of entry of this Consent Decree.
170. Third Parties. This Consent Decree does not limit, enlarge or affect the rights of any Party to this Consent Decree as against any third parties.
171. Complete Agreement. This Consent Decree constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree, and supercedes all prior agreements and understandings among the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.
172. Effective Date. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.
173. Public Notice and Comment. The Parties agree and acknowledge that final approval by United States and entry of this Consent Decree is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw

or withhold consent if the comments disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate.

174. Alcoa's Waiver of Objection to Entry. Alcoa agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Alcoa in writing that the United States no longer supports entry of the Consent Decree.

XXIV. SIGNATORIES AND SERVICE

175. Each undersigned representative of Alcoa certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind Alcoa to this document.
176. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.
177. Alcoa hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXV. FINAL JUDGMENT

178. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States, the Citizen Groups, and Alcoa.

SO ORDERED, THIS _____ DAY OF _____, 2003.

UNITED STATES DISTRICT COURT JUDGE

FOR THE UNITED STATES OF AMERICA:

THOMAS J. SANSONETTI
Assistant Attorney General
Environmental and Natural Resources Division
United States Department of Justice

MATTHEW W. MORRISON
Senior Counsel
Environmental Enforcement Section
Environmental and Natural Resources Division
United States Department of Justice

JOHN PETER SUAREZ
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

BRUCE C. BUCKHEIT
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

RICHARD ALONSO
Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Signature Page for Consent Decree in United States v. Alcoa, Inc. (W.D. TX)

LAWRENCE STARFIELD
Regional Administrator
Region 6
United States Environmental Protection Agency

Signature Page for Consent Decree in United States v. Alcoa, Inc. (W.D. TX)

FOR NEIGHBORS FOR NEIGHBORS, INC.

Billie Woods
President, Neighbors for Neighbors, Inc.
P.O. Box 661
Elgin, Texas 78621

Signature Page for Consent Decree in United States v. Alcoa, Inc. (W.D. TX)

FOR ENVIRONMENTAL DEFENSE

James D. Marston
Director, Texas Office
Environmental Defense
44 East Avenue
Austin, Texas 78701

Signature Page for Consent Decree in United States v. Alcoa, Inc. (W.D. TX)

FOR PUBLIC CITIZEN, INC.

Thomas "Smitty" Smith
Director, Public Citizen's Texas Office
1002 West Avenue
Austin, Texas 78701

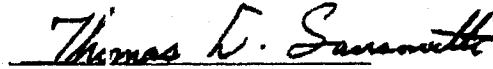
Signature Page for Consent Decree in United States v. Alcoa, Inc. (W.D. TX)

FOR ALCOA INC.

Bernt Reitan
Vice President
Alcoa Inc.
President, Primary Metals

Signature Page for Consent Decree in United States v. Alcoa, Inc. (W.D. TX)

FOR THE UNITED STATES OF AMERICA:

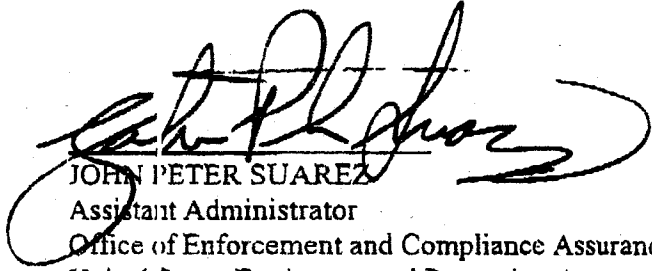


THOMAS L. SANSONETTI
Assistant Attorney General
Environmental and Natural Resources Division
United States Department of Justice

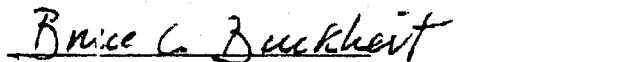


MATTHEW W. MORRISON
Senior Counsel
Environmental Enforcement Section
Environmental and Natural Resources Division
United States Department of Justice

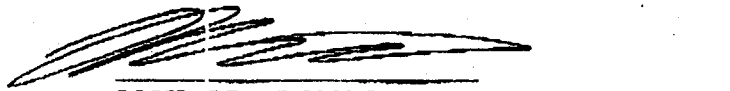
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JOHN PETER SUAREZ
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

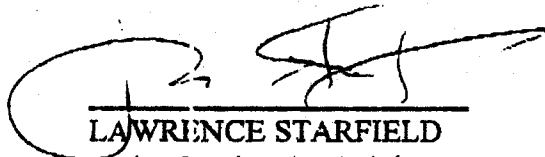


BRUCE C. BUCKHEIT
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency



RICHARD ALONSO
Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

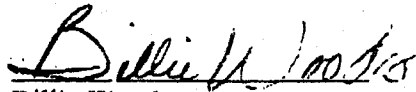
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LAWRENCE STARFIELD
Acting Regional Administrator
Region 6
United States Environmental Protection Agency

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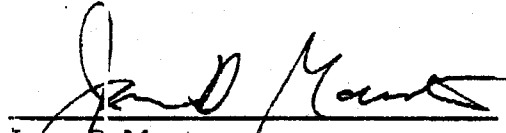
FOR NEIGHBORS FOR NEIGHBORS, INC.



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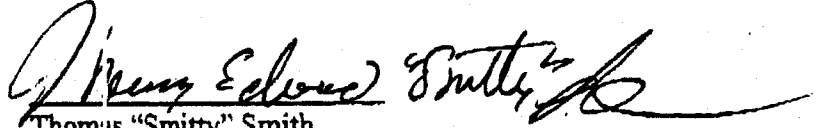
FOR ENVIRONMENTAL DEFENSE



James D. Marston
Director, Texas Office
Environmental Defense
44 East Avenue
Austin, Texas 78701

Signature Page for Consent Decree in United States v. Alcoa, Inc. (W.D. TX)

FOR PUBLIC CITIZEN, INC.

A handwritten signature in black ink, appearing to read "Thomas 'Smitty' Smith", with a long horizontal flourish extending to the right.

Thomas "Smitty" Smith
Director, Public Citizen's Texas Office
1002 West Avenue
Austin, Texas 78701

Signature Page for Consent Decree in United States v. Alcoa, Inc. (W.D. TX)

FOR ALCOA INC.

A handwritten signature in black ink, appearing to read "Bernt Reitan", is written over a solid horizontal line.

**Bernt Reitan
Vice President
Alcoa Inc.
President, Primary Metals**