

the "Settling Defendants." The DPNR, the Trustee, the Commissioner, the Government of the Virgin Islands, SCRG, SCA, and AWA each may be referred to herein as a "Settling Party" and collectively as the "Settling Parties."

I. BACKGROUND

1. On May 5, 2005, the Trustee filed a complaint against SCRG, SCA, AWA, Century Aluminum Company ("Century"), Virgin Islands Alumina Corporation (VIALCO), Lockheed Martin Corporation ("Lockheed"), HOVENSA, L.L.C ("HOVENSA"), and Hess Oil Virgin Islands Corporation ("HOVIC"), *Commissioner of the Dep't of Planning and Natural Resources v. Century Alumina Co., et al.*, Civ. No. 2005-0062 ("the Damages Action"), pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended ("CERCLA"), the Virgin Islands Water Pollution Control Act, V.I. Code Ann. Tit. 12 § 181 et seq. ("VIWPCA"), the Virgin Islands Oil Spill Prevention and Pollution Control Act, V.I. Code Ann. Tit. 12 § 701 et seq. ("VIOSPPCA"), and common law. On July 30, 2009, the Trustee and the Government filed an amended complaint against the same parties. Through the complaint the Trustee and the Government seek recovery of alleged Damages and Natural Resource Damages relating to the Oil Refinery Property and the Alumina Property. In response to the complaint, Defendants SCA, AWA, and SCRG brought counterclaims, cross-claims, and third-party claims.

2. On June 17, 2007, DPNR, acting on behalf of the Virgin Islands, filed a complaint against SCRG pursuant to CERCLA 107(a), *Department of*

Planning and Natural Resources v. St. Croix Renaissance Group, L.L.P., et al., Civ. No. 2007-0114 ("the Cost Recovery Action"), to recover past and future response costs, including oversight costs, due to the alleged release or threatened release of hazardous substances at the Alumina Property. On January 26, 2010, DPNR amended its complaint to also assert the same claims against SCA, AWA, VIALCO, Century, and Lockheed (with SCRG, collectively the "Cost Recovery Defendants"). DPNR also sought a declaratory judgment that these parties were jointly, severally and strictly liable to the DPNR for all past and future response costs. In answering the complaint, certain of the Cost Recovery Defendants brought counterclaims, cross-claims, and third-party claims. In response to cross-motions for summary judgment by the DPNR and the Cost Recovery Defendants, on March 4, 2011, this Court denied DPNR's motion and ruled in favor of motions by the Cost Recovery Defendants that DPNR had not incurred response costs, as that term is defined under CERCLA. This Court then dismissed the Cost Recovery Action in its entirety. On May 11, 2011, DPNR filed an appeal to the U.S. Court of Appeals for the Third Circuit regarding certain rulings by the court in the Cost Recovery Action. That appeal remains pending as of the Date of Lodging.

3. SCRG filed a complaint against SCA and AWA on December 28, 2003, and subsequently filed a first amended complaint on April 20, 2004, and a second amended complaint on October 10, 2008, *St. Croix Renaissance Group, L.L.P., et al. v. St. Croix Alumina, LLC, et al.*, 1:04-cv-67 (the "Contract Action"), alleging fraud in the inducement, breach of warranties, and negligence

with respect to SCA's sale of the Alumina Property to SCRG in 2002 and certain construction work done at the Alumina Property around the time of the sale. After a jury trial in January 2011, the jury returned a verdict for SCRG, and following post-trial motions, the District Court entered a judgment for \$18,760,723, plus \$1,613,527 in interest (or \$20,374,250 in total, "the Judgment") in SCRG's favor. SCA appealed the Judgment to the United States Court of Appeals for the Third Circuit, and SCRG cross-appealed the Judgment and certain interlocutory rulings to the Court of Appeals. Those appeals remain pending as of the Date of Lodging.

4. In December 2006, the Commissioner filed two complaints in the Superior Court of the United States Virgin Islands concerning the Alumina Property (the "Superior Court Cases"). In the first, the Commissioner filed a complaint against SCA, *Commissioner of the Dep't of Planning and Natural Resources v. St. Croix Alumina, LLC*, Civ. No. 2006/730, pursuant to the VIWPCA regarding alleged releases of pollutants from the Alumina Property. In the second, the Commissioner filed a complaint against SCRG, SCA and VIALCO, *Commissioner of the Dep't of Planning and Natural Resources v. Virgin Islands Alumina Co., et al.*, Civ. No. 2006/772, alleging violations by defendants of the VIWPCA and the Coastal Zone Management Act.

II. FINDINGS

5. The Trustee is the natural resource trustee for the U.S. Virgin Islands, with the authority to coordinate natural resources damage assessment and restoration activities as necessary.

6. The Trustee has concluded and finds that the performance of the Work as provided for in this Consent Decree will provide sufficient restoration of injured Natural Resources to satisfy Settling Defendants' several share of any liability that the Settling Defendants may have to Plaintiffs for Damages and Natural Resource Damages at and near to the Alumina Property.

7. The Trustee has not concluded that the restoration provided by the Work will compensate the Trustee for the Non-Settling Parties' share of liability to Plaintiffs for Damages and Natural Resource Damages at the Alumina Property. However, in consideration of the Work being performed by the Settling Defendants, the Trustee will not pursue from the Non-Settling Parties further stabilization, covering, or re-vegetation of the Upper Cooling Pond ("UCP") or "new" bauxite residue disposal area ("Area A ") or removal of material from the Settling Basin at the base of Area A at the Alumina Property.

8. A separate settlement agreement among SCRG, SCA, and AWA (the "SCA/SCRG Settlement Agreement") is binding as to the rights and duties among those three parties only, and in no way affects the obligations of the Settling Defendants to the Plaintiffs hereunder..

9. This Consent Decree resolves, compromises and settles, among the Settling Parties only: (a) the Damages Action, (b) the Cost Recovery Action, (c) the Superior Court Cases, (d) the Contract Action (subject to the SCA/SCRG Settlement Agreement), and (e) any and all other past, present, and/or future claims by or among the Settling Parties relating to remediation and response costs, damages, natural resource damages, and/or injunctive relief associated

with pollution or contamination alleged to have resulted from the presence of hazardous substances, petroleum, pollutants, contaminants, or wastes, including bauxite residue, generated by or associated with the alumina refining processes previously conducted on the Alumina Property, as well as construction of the alumina refinery and all activities and impacts associated with construction and operation of the alumina refinery.

10. Based on the information presently available to them, the Plaintiffs, believe that the Work will be properly and promptly conducted by Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

11. The Settling Defendants do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor is entering into this Consent Decree an admission of violation of any law, rule, or regulation by any of the Settling Defendants, nor shall any statement contained herein be construed to be an admission of any Settling Party.

12. The Settling Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Settling Parties in good faith, that implementation of this Consent Decree will expedite the cleanup of the Alumina Property, that settlement of this matter will avoid prolonged and complicated litigation between the Settling Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW THEREFORE, with the consent of the Parties to this Consent Decree, it is hereby ORDERED, ADJUDGED, AND DECREED:

III. JURISDICTION

13. This Court has jurisdiction over the subject matter of the Damages Action, the Cost Recovery Action, and the Contract Action pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over the territorial law claims in the Damages Action and the Contract Action pursuant to 28 U.S.C. § 1367, and V.I. Code Ann. Tit. 4 § 32(a). This Court also has personal jurisdiction over Settling Defendants. Solely for the purpose of this Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

IV. PARTIES BOUND

14. This Consent Decree is entered into voluntarily and applies to and is binding upon the Plaintiffs and upon Settling Defendants, and their successors and assigns. Any change in ownership or corporate or other legal status of a Settling Defendant, including but not limited to any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

V. DEFINITIONS

15. Unless otherwise expressly provided herein, the terms used in this Consent Decree that are defined in CERCLA, VIWPCA, and VIOSPPCA, or regulations promulgated thereunder, shall have the meaning assigned them

under such statutes or regulations. Whenever the terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply solely for purposes of this Consent Decree:

A. "Alumina Property" shall mean the site of the de-commissioned former alumina refinery operations located at 1 Estate Anguilla, Kingshill, St. Croix, U.S. Virgin Islands.

B. "Borrow Materials" shall mean surface soil, subsurface soil, caliche, and any other solid material appropriate for use in Major Corrective Activities.

C. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

D. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of a conflict between this Consent Decree and any appendix, the Consent Decree shall control.

E. "Damages" shall mean any and all damages, losses, and costs that are cognizable under federal law, territorial law, or common law and that are not Natural Resource Damages.

F. "Date of Lodging" shall mean the date on which this Consent Decree is first filed with the District Court of the Virgin Islands.

G. "Day" shall mean a calendar day unless expressly stated to be a working day. The term "working day" shall mean a day other than a Saturday, Sunday, Federal holiday or Virgin Islands holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, Federal holiday or Virgin Islands holiday, the period shall run until the close of business of the next working day.

H. "Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time interest accrues. The rate of interest is subject to change on October 1 of each year.

I. "Major Corrective Activity(ies)" shall mean those activities providing for closure, remediation and restoration of the Alumina Property as set forth in the Statement of Work and does not include the operation, maintenance, monitoring, and inspection activities that the Settling Defendants are required to perform under this Consent Decree as set forth in the SOW.

J. "Natural Resources" shall mean land, fish, wildlife, biota air, surface water, ground water, drinking water supplies, wetlands, habitats, species, estuarine and marine environments, wildlife and marine sanctuaries, archaeological, cultural, recreational and other biotic resources, and other such resources belonging to, managed by, held in

trust by, appertaining to, or otherwise controlled by the Virgin Islands, singly or jointly with another person or entity.

K. "Natural Resource Damages" or "NRD" shall mean compensatory, remedial and equitable relief available for injury to, destruction of or loss of any and all Natural Resources under CERCLA or any other currently existing federal law relating to the environment, including (1) the reasonable costs of assessment of damages; (2) compensation of loss, injury, impairment, damage, or destruction of Natural Resources, whether temporary or permanent, or for loss of use value, non-use value, option value, amenity value, bequest value, existence value, consumer surplus, economic rent, or any similar value of Natural Resources; and (3) costs of restoration, rehabilitation, or replacement of injured Natural Resources or the acquisition of equivalent resources.

L. "Non-Settling Parties" shall mean VIALCO, Century, Lockheed, HOVENSA, and HOVIC.

M. "Oil Refinery Property" shall mean the site of the oil refinery facility located at Limetree Bay, St. Croix, United States Virgin Islands.

N. "Response Action" shall mean any response, removal or remedial action as described in § 107(a)(1-4)(A) and (B) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(A) and (B), and as defined in § 101(23)-(25) of CERCLA, 42 U.S.C. § 9601(23)-(25).

O. "Response Costs" shall mean costs of response, as described in § 107(a)(1-4)(A) and (B) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(A) and (B), and as defined in § 101(25) of CERCLA, 42 U.S.C. § 9601(25).

P. "RSG" shall mean Richardson, Smith & Gardner, a consultant engaged by DPNR for the purposes of providing advice and oversight related to the Work.

Q. "Statement of Work" or "SOW" shall mean the statement of work for implementation of Major Corrective Activities and long-term operation, maintenance, monitoring, and inspection thereof, as set forth in Appendix A to this Consent Decree, and any agreed modifications to the SOW made in accordance with this Consent Decree.

R. "Term Sheet" shall mean the "Term Sheet for Consent Decree Among U.S. Virgin Islands Department of Planning and Natural Resources, the Government of the Virgin Islands, the Trustee for Natural Resources of the Virgin Islands, St. Croix Renaissance Group, L.L.L.P., St. Croix Alumina, L.L.C. and Alcoa World Alumina, L.L.C., Regarding the Former Alumina Refinery Property, Anguilla Estate, St. Croix, U.S. Virgin Islands," executed by the Settling Parties.

S. "Virgin Islands" shall mean the Territory of the United States Virgin Islands and shall include all departments, divisions, administrations, officers, agencies, and trustees of it or its government, including

specifically, but without limiting the foregoing, the Trustee, the DPNR and the Attorney General.

T. "Virgin Islands Waste Management Authority" shall mean the Virgin Islands Waste Management Authority.

U. "Work" shall mean the studies, the Major Corrective Activities, and the operation, maintenance, monitoring and inspection activities that the Settling Defendants are required to perform under this Consent Decree, as set forth in the SOW.

VI. PERFORMANCE OF WORK BY SETTLING DEFENDANTS

16. After the Effective Date of this Consent Decree as provided in paragraph 71, Settling Defendants shall proceed to perform the Work identified in the SOW in accordance with the schedule set forth in the SOW and with the terms of this Consent Decree.

17. The SOW is incorporated into, forms an integral part of, and is enforceable under this Consent Decree.

VII. PERMITTING

18. SCA/AWA and SCRG will confer with representatives of DPNR and of RSG throughout the period of performance of the Work for the purpose of ensuring that Settling Defendants obtain all permits necessary to perform the Work. SCRG will sign any such permit applications if required by permitting regulations or DPNR forms. DPNR and the Government will provide the Settling Defendants with such reasonable cooperation so as to avoid delaying the

issuance of any such permit(s). If there are delays in issuing permits due to DPNR's or another Government agency's delay in responding to submissions (as opposed to inadequate permit applications) that cause one or more of the Settling Defendants to miss one or more deadlines provided for in the SOW, deadlines shall be extended for a period of time no shorter than the period of the Government agency delay.

VIII. INSURANCE AND INDEMNIFICATION

19. Any Settling Defendant performing the Work shall obtain (or require its contractor(s) to obtain) and maintain insurance coverage appropriate and customary for the Work. Any liability insurance policy for the Work shall designate each of DPNR and the other Settling Defendant(s) as an additional insured. No later than 15 days before commencing on-site Work identified in the SOW, SCA shall secure (or require its contractor(s) to secure), and shall maintain until the date on which DPNR issues a No Further Action determination to SCA in accordance with Paragraph 6.n of the SOW, commercial general liability insurance with limits of five million dollars, for any one occurrence, and automobile liability insurance with limits of one million dollars, combined single limit, naming the DPNR and SCRG as additional insureds. In addition, SCA shall satisfy, or shall require that its contractors or subcontractors have similar liability insurance and satisfy all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of SCA. Upon request, and prior to commencement of on-site Work under

this Consent Decree, SCA shall make available to DPNR and SCRG evidence of each such insurance policy.

20. The Plaintiffs do not assume any liability by entering into this Consent Decree or by virtue of any claim that SCRG is or might be DPNR's authorized representatives to perform Work at the Alumina Property. SCRG shall indemnify, save and hold harmless the Plaintiffs and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of SCRG, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. Further, SCRG agrees to pay the Government all costs Plaintiffs incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the Plaintiffs based on negligent or other wrongful acts or omissions of SCRG, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The Plaintiffs shall not be held out as a party to any contract entered into by or on behalf of SCRG in carrying out activities pursuant to this Consent Decree. Neither SCRG nor any such contractor shall be considered an agent of the Plaintiffs. The Plaintiffs shall give SCRG notice of any claim for which the Plaintiffs plan to seek indemnification pursuant to this Paragraph, and shall consult with SCRG prior to settling such claim.

21. The Plaintiffs do not assume any liability by entering into this Consent Decree or by virtue of any claim that SCA and/or AWA are or might be DPNR's authorized representatives to perform Work at the Alumina Property. SCA and AWA shall indemnify, save and hold harmless the Plaintiffs and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of SCA and/or AWA, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Further, SCA and AWA agree to pay the Government all costs Plaintiffs incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the Plaintiffs based on negligent or other wrongful acts or omissions of SCA and/or AWA, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under their control, in carrying out activities pursuant to this Consent Decree. The Plaintiffs shall not be held out as a party to any contract entered into by or on behalf of SCA or AWA in carrying out activities pursuant to this Consent Decree. Neither SCA nor AWA nor any such contractor shall be considered an agent of the Plaintiffs. The Plaintiffs shall give SCA/AWA notice of any claim for which the Plaintiffs plan to seek indemnification pursuant to this Paragraph, and shall consult with SCA/AWA prior to settling such claim.

22. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the Plaintiffs for damages or reimbursement or for set-off of any payments made or to be made to the Plaintiffs, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Alumina Property, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the Plaintiffs with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Alumina Property, including, but not limited to, claims on account of construction delays.

IX. COMMUNICATIONS AND COOPERATION

23. **Regular Meetings.** Representatives of the Settling Defendants and DPNR/RSG will hold meetings on a quarterly basis to present and discuss progress of the Work.

24. **RSG Information.** DPNR agrees to share with the Settling Defendants all information collected and design concepts previously developed by RSG regarding the Alumina Property.

25. **Access and Cooperation by SCRG.** SCRG shall cooperate with DPNR/RSG, SCA and AWA in good faith concerning the Work and shall provide DPNR, RSG, SCA, their agents and contractors access to the Alumina Property for the design, development, performance and/or oversight of the Work at all

times, and at no cost to such parties. Such persons shall possess the necessary clearance papers for working within the secure port facility or have an escort with such clearances.

26. **Borrow Materials.** SCRG shall allow use by SCA of Borrow Materials from the Alumina Property to execute the Work. As part of the design of the Work, SCA will provide to SCRG an estimate of the volume of Borrow Materials required for the Work. SCRG shall allow use by SCA of Borrow Materials from the Alumina Property to execute the Work at no cost, to the extent that the volume is readily available at the Alumina Property. For any new excavations of on-site materials for use as Borrow Materials by SCA, SCA shall grade and vegetate such excavations in a manner that results in a safe area and requires no additional maintenance beyond that required prior to excavation.

27. **Area B Access.** Subject to the same limits of liability insurance requirements set forth above being fulfilled by the person or entity making entry, at the time of entry, SCRG shall cooperate in good faith and shall provide to DPNR, RSG and, if necessary in the future, any one or more of the Non-Settling Parties, their agents and contractors access to the Alumina Property to remediate and restore the "old" bauxite residue disposal area ("Area B"), the pond in Area B, and/or other areas of the Alumina Property as may be addressed in any subsequent settlement agreement, consent decree, or judgment involving one or more of the Non-Settling Parties.

28. **Cooperation by Virgin Islands Authorities.** Each of DPNR, the Trustee and the Government shall cooperate in good faith and shall actively seek

the cooperation by other agencies and independent authorities of the Government to provide for the use of on-island resources (including but not limited to treated sewage), if technically feasible, in order to effectuate the performance of the Settling Defendants' Work.

X. PAYMENTS TO PLAINTIFFS AND RSG

29. SCA or AWA will pay to the Government \$3,000,000.00 within 30 days of the Effective Date of this Consent Decree by wiring such funds to the following account:

Name of Bank: Bank of St. Croix
Address: 2025 Anchor Way, Christiansted, VI 00820
Routing Number: 021606690
Name of Account: John K. Dema, P.C., IOLTA Trust Account
Account Number: To Be Conveyed by John K. Dema, P.C. to SCA within
25 days of Effective Date.

30. **Interest on Late Payment.** In the event that the payment required under Paragraph 29 is not received when due, Interest shall begin to accrue on the unpaid balance on the day the payment is due through the date of payment and shall continue to accrue on the unpaid balance through the date of payment and shall be paid to the Government pursuant to the wiring instructions contained in Paragraph 29 above.

31. SCA will pay RSG's fees and costs in providing oversight (a) of Major Corrective Activities and (b) of operation, maintenance and monitoring ("OM&M") on behalf of DPNR, the Trustee and the Government until the date on which DPNR issues a No Further Action determination to SCA in accordance with Paragraph 6.n of the SOW. The oversight costs for the Major Corrective

Activities and OM&M until a No Further Action determination is issued to SCA as provided for in the SOW are estimated to be \$295,000 (in 2011 dollars), which RSG will use its best efforts not to exceed. RSG will invoice on a time and materials basis wherein only actual time and expenses will be charged. RSG shall invoice its fees and costs directly to SCA on a monthly basis. RSG shall make available backup documentation for its invoices upon request from SCA. The estimated amount may only be exceeded due to changes in scope, schedule, and/or category rates and so long as SCA is provided with prompt notice of any such changes and at least 60 days' advance notice of RSG invoicing any amounts exceeding \$295,000. For purposes of this paragraph, RSG shall not increase its category rates by an amount greater than any rate increase to its other clients and, in any event, by more than 4% annually. SCA agrees to pay RSG's invoices on a net 60 day basis. If RSG is not timely paid, DPNR may issue a stop work order for all Major Corrective Activities ongoing at the Alumina Property without providing any relief for the deadlines contained in this Consent Decree until such payment(s) is/are made.

XI. FUTURE PROPERTY USE

32. Notwithstanding any requirements set forth herein with respect to the performance of the Major Corrective Activity, this Consent Decree does not affect future uses of the Alumina Property except for the use of any part of the UCP and Area A to the extent they are restricted so as to not compromise the integrity of the vegetative cover of the units during and upon completion of Major Corrective Activity at those units. Future uses of the Alumina Property that may

result in modifications to the Lower Cooling Pond ("LCP") are outside the scope of this Consent Decree and will be subject to all ordinary legal requirements applicable to land ownership and use in the coastal zone of the U.S. Virgin Islands. To the extent that a future legally permitted use of the Alumina Property conflicts with the requirements of a Major Corrective Activity as required by this Consent Decree and the SOW, the legally permitted use shall govern and the Settling Defendants shall have no liability with respect to the portion of the Major Corrective Activity requirement that cannot be met as a result of such legally permitted use.

XII. REASONABLE EXTENSION AND FORCE MAJEURE

33. Notwithstanding anything in this Consent Decree to the contrary, a reasonable extension for any deadline missed by any one or more of the Settling Defendants for good cause (including force majeure) shall be granted.

34. For purposes of this Consent Decree, "Force Majeure" is defined as any event arising from causes beyond the control of a Settling Defendant, of any entity controlled by a Settling Defendant, or of a Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree (other than an obligation to pay any sum due) despite such Settling Defendant's best efforts to fulfill the obligation. The requirement to exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure and best efforts to address the effects of any potential Force Majeure (i) as it is occurring and (ii) following the potential Force Majeure such that the delay and any adverse effects of the delay are minimized to the

greatest extent possible. "Force Majeure" does not include financial inability to complete any Work or increased cost of performance of the Work or failure to meet the goals set forth in the SOW.

35. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure, the Settling Defendant that has responsibility for such obligation (the "Obligated Settling Defendant") shall notify DPNR or RSG and the other Settling Defendants within 120 hours after it becomes aware that the event might cause a delay. Within seven days thereafter, the Obligated Settling Defendant shall provide to DPNR, RSG and the other Settling Defendants, in writing, an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; its rationale for attributing such delay to a Force Majeure if it intends to assert such a claim; the proposed extension required to meet the delayed obligation if a claim of Force Majeure is made; and a statement as to whether, in the opinion of the Obligated Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. To the extent the Obligated Settling Defendant claims Force Majeure, it shall include with any notice all available supporting documentation supporting its claim that the delay was attributable to a Force Majeure.

36. In the event of a Force Majeure, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure will

be extended by DPNR/RSG for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure shall not, of itself, extend the time for performance of any other obligation. If DPNR/RSG does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure, DPNR or RSG will notify Settling Defendants in writing of its decision within seven (7) days of receipt of the Obligated Defendant's written claim of Force Majeure. If DPNR/RSG agrees that the delay is attributable to a Force Majeure, DPNR or RSG will notify Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure. If DPNR or RSG does not respond in writing to the Obligated Settling Defendants' notice of a claim of Force Majeure within seven (7) Days of receiving notice such notice, the claim of Force Majeure is deemed valid and the proposed extension for meeting the delayed obligation shall be deemed approved by DPNR/RSG.

XIII. PERFORMANCE GUARANTEE

37. To ensure that sufficient funds are available from SCA to complete its Work obligations as set forth in the SOW, including OM&M following completion of the Major Corrective Activities until the date on which DPNR issues a No Further Action determination to SCA in accordance with Paragraph 6.n of the SOW, AWA will arrange for a corporate guarantee of performance of the Work for which SCA is responsible as set forth in the SOW. The performance guarantee will meet the substantive elements (but need not include the procedural requirements) of the "financial test" as set forth at 40 C.F.R.

§ 264.143(f) and shall be provided to all Parties to this Consent Decree within 72 hours of the Effective Date.

38. After DPNR makes a No Further Action determination as provided in paragraph 6.n of the SOW with respect to the Work performed by SCA, SCRG shall be financially responsible for all subsequent obligations of maintenance, monitoring and inspection for so long as it is the owner of the Alumina Property, and shall make the obligations an explicit obligation and requirement of any subsequent purchaser(s) of the Alumina Property or any portion thereof at which Major Corrective Activities are to be performed hereunder. Within fifteen (15) days of the Effective Date, a 'Notice of Consent Decree' may be recorded in the property records of the U.S. Virgin Islands by counsel for Plaintiffs. At that time and in the future, only this Notice will be recorded with reference to this Consent Decree or the Statement of Work. Said Notice will be in the form set forth in APPENDIX B hereto. Moreover, an Amended Notice in the same form will be filed when the Major Corrective Activities are completed by SCA and approved by DPNR, with an 'as built' map attached showing the encumbered areas.

XIV. DISPUTE RESOLUTION

39. If a Settling Defendant disputes the decision of DPNR/RSG on any plan, schedule, report, permit application, or other deliverable submitted to DPNR/RSG under the SOW, a stipulated penalty, or a claim of Force Majeure, or does not receive a response within 15 days of the time for DPNR/RSG to respond pursuant to the SOW, such Settling Defendant (the "Disputing Party") may notify DPNR/RSG in writing of such dispute no later than 15 days after it

receives written notice of DPNR's/RSG's decision. The Disputing Party and DPNR/RSG thereafter shall engage in informal negotiations for a period up to, but no longer than, twenty-one (21) days. If the Disputing Party and DPNR/RSG are unable to resolve the dispute informally, the decision of DPNR/RSG (as originally presented or as DPNR/RSG may revise it during informal negotiations or otherwise) shall become final unless, within ten (10) days after the end of the informal negotiation period, the Disputing Party provides DPNR/RSG with written notice of a continuing dispute, in which case the Parties shall submit the dispute for resolution to (a) Eric D. Green of Resolutions, LLC or (b) any other arbitrator mutually agreeable to all Parties to the dispute (in either case, the "Arbitrator"). The Settling Defendant that is not the Disputing Party may participate in any dispute resolution procedure before the Arbitrator if any substantive rights of such Party under this Consent Decree, or otherwise, may be affected by such proceeding. The decision of the Arbitrator shall be binding on the Parties and non-appealable. In resolving any dispute, the Arbitrator will consider the functional purposes set out in this Consent Decree and the SOW, and will afford to the Parties the ability to achieve those purposes in as cost-effective of a manner as possible while still effectively achieving the purposes set out in this Consent Decree and the SOW. The Parties recognize that the Arbitrator may need to employ a neutral technical advisor to assist him/her in any dispute resolution proceeding. All costs of dispute resolution shall be paid by the Settling Defendants and not by DPNR, the Government, or the Trustee, except where the Arbitrator concludes that the decision of DPNR/RSG that is the subject of the

dispute was arbitrary and capricious (as that phrase in the Administrative Procedures Act has been interpreted by the federal courts with jurisdiction over the Alumina Property), in which case DPNR or the Government shall be responsible for a share of the costs equal to that of each of the other Settling Party(ies) to the dispute.

40. If a Settling Defendant disputes the cooperation, action or inaction of another Settling Defendant concerning any plan, schedule, report, permit application or other deliverable, including implementation of any such document by the other Settling Defendant, the Disputing Party may notify the other Settling Defendant in writing of such dispute no later than fourteen (14) days after the Disputing Party obtains knowledge of the disputed cooperation, action or inaction. The Settling Defendants thereafter shall engage in informal negotiations for a period up to, but no longer than, fourteen (14) days. If the Settling Defendants are unable to resolve the dispute informally, the Disputing Party will have the right, but not an obligation, within ten (10) days after the end of the informal negotiation period, to submit in writing to DPNR and RSG a request that DPNR/RSG take action to resolve the dispute in a manner satisfactory to the Disputing Party. DPNR and RSG shall have twenty-one (21) days to respond to the Disputing Party's request. If a response from DPNR/RSG (i) does not resolve the dispute to the satisfaction of the Disputing Party or (ii) is not forthcoming within such twenty-one (21) day period, the Disputing Party will have the right, but not an obligation, within ten (10) days after either (i) or (ii) above, to provide DPNR and RSG and the other Settling Defendant(s) written

notice of a continuing dispute, in which case the Parties shall submit the dispute for resolution to the Arbitrator, and the procedures and authorities set forth in Paragraph 39 above shall apply except as to costs. Any decision under this Paragraph 40 by DPNR/RSG that a Settling Defendant other than a Disputing Party under this Paragraph 40 disputes will be subject to the dispute resolution provisions of Paragraph 39. All costs of dispute resolution of DPNR, the Government, or the Trustee, under this Paragraph 40 shall be paid by the Settling Defendants and not by DPNR, the Government, or the Trustee. All reasonable attorneys' fees of DPNR, the Government, or the Trustee, shall be paid by the Settling Defendants and not by DPNR, the Government, or the Trustee, unless DPNR, the Government, or the Trustee is deemed by the Arbitrator to be the party at fault for the dispute among the Settling Defendants.

41. If DPNR or RSG finds that a Settling Defendant has failed to comply with its obligations pursuant to this Consent Decree, the SOW, and/or a decision issued pursuant to the Consent Decree and/or SOW, whether DPNR's or RSG's finding stems from a delay in performance, lack of performance, or otherwise by a Settling Defendant, DPNR or RSG may notify Settling Defendants in writing of the finding that one or more of the Settling Defendants has failed to perform its duties pursuant to the Consent Decree, SOW, or a decision issued pursuant to the Consent Decree or SOW. DPNR/RSG and the Settling Defendant thereafter shall engage in informal negotiations for a period up to, but no longer than, twenty-one (21) days. If DPNR/RSG and the Settling Defendant are unable to resolve the dispute informally, DPNR or RSG, on behalf of DPNR,

may submit the dispute for resolution to (a) Eric D. Green of Resolutions, LLC or (b) any other arbitrator mutually agreeable to all Parties to the dispute (in either case, the "Arbitrator"). The Settling Defendants that are not the subject of the finding of non-compliance may participate in any dispute resolution procedure before the Arbitrator if any substantive rights of such Parties under this Consent Decree, or otherwise, may be affected by such proceeding. The decision of the Arbitrator shall be binding on the Parties and non-appealable. In resolving any dispute, the Arbitrator will consider the functional purposes set out in this Consent Decree and the SOW, and will afford to the Parties the ability to achieve those purposes in as cost-effective of a manner as possible while still effectively achieving the purposes set out in this Consent Decree and the SOW. The Parties recognize that the Arbitrator may need to employ a neutral technical advisor to assist him/her in any dispute resolution proceeding. All costs of dispute resolution shall be paid by the Settling Defendants and not by DPNR, the Government, or the Trustee, except where the Arbitrator concludes that the decision of DPNR/RSG that is the subject of the dispute was arbitrary and capricious (as that phrase in the Administrative Procedures Act has been interpreted by the federal courts with jurisdiction over the Alumina Property), in which case DPNR or the Government shall be responsible for a share of the costs equal to that of each of the other Settling Party(ies) to the dispute.

42. If DPNR or RSG finds that a Settling Defendant has had a "significant failure of compliance" with the obligations of the Consent Decree, the SOW and/or a decision issued pursuant to the Consent Decree and/or the SOW,

DPNR or RSG may indicate in writing to such Settling Defendant that it has deemed the alleged significant non-compliance to constitute a "significant failure of compliance," in which case DPNR/RSG will have the authority to submit the dispute for resolution to (a) Eric D. Green of Resolutions, LLC or (b) any other arbitrator mutually agreeable to all Parties to the dispute (in either case, the "Arbitrator") for an expedited decision from the Arbitrator, but such submission to the Arbitrator may be made no earlier than 72 hours after DPNR or RSG provides written notice of DPNR's/RSG's finding of the "significant failure of compliance" to the Settling Defendant allegedly out of compliance. The Settling Defendant alleged to be responsible for a "significant failure of compliance" shall have the right to present a response to the Arbitrator addressing DPNR/RSG's allegations in a form and timeframe to be determined by the Arbitrator. The Settling Defendant that is not the subject of the dispute may participate in any dispute resolution procedure before the Arbitrator if any substantive rights of such Party under this Consent Decree, or otherwise, may be affected by such proceeding. DPNR or RSG shall have the burden to demonstrate based on a preponderance of the evidence standard that there has been a "significant failure of compliance." In the sole discretion of the Arbitrator, the Arbitrator shall issue his/her decision within fourteen (14) days of the Arbitration being submitted by DPNR or RSG, or within such longer period on which the Parties to the dispute and the Arbitrator may agree. The decision of the Arbitrator shall be binding on the Parties and non-appealable. In resolving any dispute, the Arbitrator will consider the functional purposes set out in this Consent Decree and the SOW,

and will afford to the Parties the ability to achieve those purposes in as cost-effective of a manner as possible while still effectively achieving the purposes set out in this Consent Decree and the SOW. The Parties recognize that the Arbitrator may need to employ a neutral technical advisor to assist him/her in any dispute resolution proceeding. All costs of dispute resolution shall be paid by the Settling Defendants and not by DPNR, the Government, or the Trustee, except where the Arbitrator concludes that the decision of DPNR/RSG that is the subject of the dispute was arbitrary and capricious (as that phrase in the Administrative Procedures Act has been interpreted by the federal courts with jurisdiction over the Alumina Property), in which case DPNR or the Government shall be responsible for a share of the costs equal to that of each of the other Settling Party(ies) to the dispute.

XV. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE OR A DECISION OF THE ARBITRATOR UNDER PARAGRAPH 42

43. **Enforcement of the Consent Decree.** If DPNR, the Trustee, the Government, and/or Commissioner (collectively referred to as "Plaintiffs") file a motion with the Court to enforce matters not committed to dispute resolution in this Consent Decree or bring an action to enforce this Consent Decree, and Plaintiffs obtain the relief requested in such motion or action, the Settling Defendant found to be in noncompliance with this Consent Decree shall reimburse DPNR for all reasonable costs of filing such motion or action, including but not limited to reasonable attorneys fees. Notwithstanding any other provisions of this Consent Decree, the non-payment of the \$3,000,000 due under Paragraph 27 is not a matter of dispute resolution and is a matter that may be

brought to the Court unless the Plaintiffs choose to rely upon the Dispute Resolution provisions of Section XIV. The Settling Parties shall be permitted to seek relief from the Court to enforce all arbitrator decisions issued pursuant to Section XIV.

44. **Stipulated Penalties For Failure to Comply With Arbitrator’s Decision Under Paragraph 42.** Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 45 and 46 to the Government of the Virgin Islands for failure to comply with any decision and/or schedule set forth by the Arbitrator under Paragraph 42.

45. The following stipulated penalties shall accrue per day for any noncompliance with a decision of the Arbitrator under Paragraph 42 that occurs prior to the issuance of the No Further Action determination to SCA pursuant to the SOW unless excused in writing by the Arbitrator:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,500	1st through 14 th day
\$10,000	15 th through 30 th day
\$15,000	31 st day and beyond

46. The following stipulated penalties shall accrue per day for any noncompliance by SCRG and/or a future property owner with a decision of the Arbitrator under Paragraph 42 that occurs within 3 years after the issuance of the No Further Action determination to SCA pursuant to Paragraph 6.n of the SOW unless excused in writing by the Arbitrator:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14 th day
\$3,500	15 th through 30 th day
\$5,000	31 st day and beyond

47. Once 3 years have passed after the issuance of the No Further Action determination, enforcement of SCRG's and/or a future property owner's responsibility for implementation of the Maintenance/Monitoring/Inspection Plan and ongoing operation, maintenance, monitoring and inspection of the Group A Units shall be pursuant to Paragraph 43 of this Consent Decree or DPNR's reserved rights pursuant to Paragraph 55, but not through the Dispute Resolution procedures set forth in Section XIV of this Consent Decree.

48. All penalties shall continue to accrue through the final day of the correction of the noncompliance as determined by the Arbitrator.

49. All penalties accruing under this Section shall be due and payable to the Government of the Virgin Islands within 30 days after Settling Defendants' receipt from DPNR of a demand for payment of the penalties to the Government. Notwithstanding any other provision of this Consent Decree, the Government may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XVI. DISMISSAL OF PENDING ACTIONS

50. Within 15 days of the date on which the Government receives the payment as provided for in Paragraph 29, the Government and the Trustee will move to dismiss with prejudice their claims against the Settling Defendants and

the Settling Defendants will move to dismiss with prejudice their counterclaims, cross-claims, and third-party claims in the Damages Action; DPNR will move to dismiss with prejudice as to the Settling Defendants its claims and the Settling Defendants will move to dismiss with prejudice their counterclaims, cross-claims, and third-party claims in the Cost Recovery Action; the Settling Parties also will dismiss with prejudice their claims against each other in DPNR's appeal to the Third Circuit of certain rulings by the Court in that action; the Commissioner will move to dismiss without prejudice as to SCA the Superior Court Cases; and DPNR will withdraw all outstanding administrative orders and decisions as to the Settling Parties with respect to the UCP, the Settling Basin, and discharges from Area A.

51. In the event that any of the Settling Parties fails to move to dismiss its claims against all the other Settling Parties in a pending action as provided in Paragraph 50, any of the Settling Parties may seek redress from the Court as provided in Paragraph 43, including an order compelling the non-compliant Settling Party to comply with Paragraph 50.

XVII. RELEASE AND COVENANT NOT TO SUE FOR SUPERIOR COURT ACTIONS

52. Within 15 days after DPNR issues to SCA a No Further Action determination as provided in Paragraph 6.n of the SOW, DPNR and the Commissioner will issue a covenant not to sue and release to the Settling Defendants with respect to the matters addressed in the two Superior Court Actions referenced in paragraph 50 above.

XVIII. RELEASE, COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

53. **Release**. This Consent Decree constitutes a release of all claims that DPNR, the Trustee, the Commissioner and the Government have brought or could bring against the Settling Defendants and their predecessors and affiliates and, with the exception of the matters addressed in the SCA/SCRG Settlement Agreement, of all claims that any of the Settling Defendants do or could have against one another, with respect to response costs, damages, natural resource damages, and/or injunctive relief associated with pollution or contamination alleged to have resulted from the presence of hazardous substances, petroleum, pollutants, contaminants or wastes, including bauxite residue, generated by or associated with the alumina refining processes previously conducted on the Alumina Property, as well as construction of the alumina refinery and all activities and impacts associated with construction and operation of the alumina refinery that occurred prior to the date of entry of this Consent Decree except for the claims brought in the Superior Court Actions, which shall not be released until the time set forth in Paragraph 52 above.

54. **Covenants Not to Sue**. In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under the terms of this Consent Decree, except as specifically provided in Paragraph 55 (Reservation of Rights by the Plaintiffs), Plaintiffs covenant not to sue or to take other civil or administrative action against the Settling Defendants, their successors and assigns, and subsequent transferees of the Alumina Facility, whether in whole or in part, and with the exception of the matters addressed in

the SCA/SCRG Settlement Agreement, the Settling Defendants covenant not to sue one another, for any and all civil or administrative liability to the Virgin Islands with respect to response costs, damages, natural resource damages, and/or injunctive relief associated with pollution or contamination resulting from hazardous substances, petroleum, contaminants, pollutants or wastes, including bauxite residue, resulting from or associated with the bauxite refining processes previously conducted on the Alumina Property, as well as construction of the alumina refinery and all activities and impacts associated with construction and operation of the alumina refinery that occurred prior to the date of entry of this Consent Decree, under territorial law (including the common law), CERCLA or any other federal law. These covenants not to sue shall take effect upon the date on which the Government receives the payment as provided for in Paragraph 29. The Plaintiffs' covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendants, their successors and assigns, and subsequent transferees of all or part of the Alumina Facility, and does not extend to any other person.

55. **Reservation of Rights by Plaintiffs.** Notwithstanding any other provision of this Consent Decree, Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants and subsequent transferees of all or part of the Alumina Facility with respect to:

- a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

- b. liability based on Settling Defendants' transportation, treatment, storage, or active disposal, or the arrangement for the transportation, treatment, storage, or active disposal of wastes at a location other than the Alumina Property within the USVI;
- c. criminal liability that is unrelated to implementation of the Work and any of the matters being released by Plaintiffs under this Agreement;
- d. liability for violations of federal or territorial law that occur during or after implementation of the Work that are unrelated to implementation of the Work and any of the matters being released by Plaintiffs under this Agreement;
- e. liability of SCRG or a future owner and/or operator of the Alumina Property arising from future releases or discharges at the Alumina Property after DPNR issues its No Further Action determination as required by the SOW; and
- f. DPNR's ability to communicate about site conditions.

56. **Covenant Not to Sue Plaintiffs or Related Entities by Settling Defendants.** Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against DPNR, the Government, the Trustee, the Commissioner, any other agency or instrumentality of the Government, with respect to the matters addressed in this Consent Decree, including but not

limited to any direct or indirect claim for reimbursement of the costs of complying with this Consent Decree.

57. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for injunctive relief, recovery of response costs, or other appropriate relief relating to the Alumina Property, the current or future property owners shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the plaintiff(s) in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraph 54 (Covenants by Plaintiffs).

XIX. CONTRIBUTION PROTECTION

58. The Parties agree, and by entering this Consent Decree the Court finds, that this Consent Decree constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims to the maximum extent authorized under Section 113(f)(2) of CERCLA, common law, and Virgin Islands law, for all matters addressed in this Consent Decree, including but not limited to response costs, natural resource damages, damages, and injunctive relief. The “matters addressed” in this Consent Decree are (i) Natural Resources Damages, (ii) Damages, (iii) injunctive relief, (iv) all Response Actions taken or to be taken and

all Response Costs incurred or to be incurred, at or in connection with pollution or contamination alleged to have resulted from the presence of hazardous substances, petroleum, pollutants, contaminants, or wastes, including bauxite residue, generated by or associated with the alumina refining processes previously conducted on the Alumina Property, and (v) any other civil or administrative liability to the Virgin Islands associated with pollution or contamination resulting from hazardous substances, petroleum, pollutants, contaminants, or wastes, including bauxite residue, resulting from or associated with the bauxite refining processes previously conducted on the Alumina Property, as well as construction of the alumina refinery and all activities and impacts associated with construction and operation of the alumina refinery that occurred prior to the date of entry of this Consent Decree, under territorial law (including the common law), CERCLA or any other federal law.

XX. EFFECT OF SETTLEMENT

59. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Alumina Property against any person not a Party hereto.

XXI. COMPLIANCE WITH APPLICABLE LAW

60. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and territorial laws and regulations.

XXII. WAIVER OF JUDGMENTS

61. This Consent Decree constitutes a waiver by DPNR, the Trustee and the Government of any portion of any judgment that has been or may be obtained from or against any Non-Settling Party(ies) or other persons or entities that may be allocated to any of the Settling Defendants for which the Non-Settling Party(ies) could collect against any one or more of the Settling Defendants.

XXIII. ACCESS TO INFORMATION AND RETENTION OF RECORDS

62. Subject to the limitations set forth in the next sentence, Settling Defendants shall make available to DPNR/RSG, upon request, for inspection, copying, and/or scanning all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to the implementation of this Consent Decree (which shall be deemed to include all of the historical bauxite refining owner/operator records currently stored at the Alumina Property but which does not include any documents already produced in discovery to Plaintiffs in the cases being dismissed pursuant to the Consent Decree), including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs,

receipts, reports, sample traffic routing, non-privileged correspondence with third parties, and other documents or information regarding the Work. Settling Defendants shall not be obligated to make available to DPNR/RSG internal communications, briefings, presentations, privileged communications and other records, reports, documents and other information that do not pertain to the Work. Settling Defendants also shall make available to DPNR, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work. Nothing in this Consent Decree shall require SCRG to maintain the documents at their current location or prohibit SCRG from making exact scanned copies in lieu of maintaining the hard copies so long as SCRG provides DPNR with at least 30 days advance notice.

63. Until five years after the issuance of a No Further Action Determination as contemplated by the SOW, each Settling Defendant shall preserve and retain all records and documents in its possession or control and that relate in any manner to the bauxite refining processes previously conducted on the Alumina Property and the performance of the Major Corrective Activity to be undertaken at the Alumina Property pursuant to the SOW, regardless of any corporate retention policy to the contrary.

64. After the conclusion of the document retention period in the preceding paragraph 63, a Settling Defendant shall notify DPNR at least 90 days prior to the destruction of any such records or documents, and, upon request by DPNR, Settling Defendant shall deliver any such records or documents to DPNR.

If DPNR requests documents, Settling Defendants may withhold certain documents, records, or other information that they believe in good faith are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing records, they shall provide DPNR with a privilege log that provides sufficient information to DPNR in order for DPNR to evaluate the assertion of the privilege. Settling Defendants may rely upon privilege logs previously prepared for any of the litigation to fulfill the obligation to provide DPNR with a privilege log. Settling Defendants shall retain all records that they claim to be privileged until DPNR has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. Notwithstanding, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged. Moreover, no claim of confidentiality or privilege shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Alumina Property. If a claim of privilege applies only to a portion of a document requested by DPNR, the document shall be provided to DPNR in redacted form to mask the privileged information only.

XXIV. NOTICES AND SUBMISSIONS

65. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to

another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the Plaintiffs and Settling Defendants, respectively:

Virgin Islands:

Vincent F. Frazer, Attorney General, or Successor
Territory of the United States Virgin Islands
488-50C Kronprindsens Gade, GERS Complex
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00802
Tel: 340-774-5666
Fax: 340-774-9710

Alicia Barnes, Commissioner, or Successor
U.S. Virgin Islands Department of Planning & Natural Resources
Foster's Plaza, 398- I Anna's Retreat
St. Thomas, U.S.V.I. 00802
Tel: 340-774-3320
Fax: 340-775-5706

John K. Dema Esquire
Law Offices of John K. Dema, P.C.
1236 Strand Street, Suite 103
Christiansted, St. Croix
U.S. Virgin Islands 00820-5008
Tel: 340-773-6142
Fax: 340-773-3944

St. Croix Renaissance Group, L.L.L.P. :

ATTN: Jack Thomas
1 Estate Anguilla
P. O. Box 1525
Kingshill, St. Croix
U.S. Virgin Islands 00851-1525
Tel: 340-778-2323 x672
Fax: 340-778-1400

St. Croix Alumina/Alcoa World Alumina:

ATTN: Group Counsel, Global Primary Products
Alcoa Inc.

201 Isabella Street
Pittsburgh, PA 15212
Tel: 412-553-3856
Fax: 412-553-4064

XXV. MODIFICATION

66. Material modifications to this Consent Decree may only be made in writing, signed by the Plaintiffs and Settling Defendants, and shall only be effective upon approval by the Court. Non-material modifications to this Consent Decree shall be in writing and shall be effective when signed by the Attorney General and the Settling Defendants.

XXVI. RETENTION OF JURISDICTION

67. The Court shall retain jurisdiction over the Damages Action and the Cost Recovery Action for the purpose of entering such further order, direction, or relief as may be necessary or appropriate for the implementation or enforcement of this Consent Decree.

XXVII. VOIDABILITY

68. In the event that a formal judicial determination is made by this Court or, upon appellate review, by a higher court, that the entry of this Consent Decree shall not be approved, and all applicable appeal periods have expired, this Consent Decree and the settlement embodied herein shall automatically be voided. If this Consent Decree is voided pursuant to this Paragraph, the terms of this Consent Decree may not be used as evidence in any litigation or other proceeding. Effective on the Date of Lodging, all discovery, pleadings and motions between the Settling Defendants and the Plaintiffs in the Damages

Action, the Cost Recovery Action and the Superior Court Cases are stayed with regard to the Settling Parties except as specifically provided otherwise under this Consent Decree.

XXVIII. APPENDICES

69. The following appendix is attached to and incorporated into this Consent Decree:

“Appendix A” is the Statement of Work.

“Appendix B” is the Notice of Consent Decree Obligations.

XXIX. COMMUNITY RELATIONS

70. If requested by DPNR, Settling Defendants will cooperate with community relations activities pursuant to the community relations plan to be developed by DPNR. Settling Defendants will cooperate with DPNR in providing information regarding the Work to the public. As requested by DPNR, Settling Defendants will cooperate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by DPNR to explain activities at or relating to the Alumina Property.

XXX. EFFECTIVE DATE

71. The “Effective Date” of this Consent Decree shall be the date upon which it is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the docket.

XXXI. SIGNATORIES/SERVICE

72. Each undersigned representative of a Settling Defendant and the DPNR, Trustee and Government of the Virgin Islands certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

73. Each Settling Defendant hereby agrees to support entry of this Consent Decree by this Court and not to challenge any provision of this Consent Decree unless the Plaintiffs have notified Settling Defendants in writing that they no longer support entry of the Consent Decree.

74. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.


XXXII. FINAL JUDGMENT

75. With the exception of the separate settlement agreement between SCA/AWA and SCRG, this Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings

relating to the settlement other than those expressly contained in this Consent Decree.

76. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the Plaintiffs and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.


SO ORDERED THIS 16th DAY OF February, 2012.


United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Commissioner of the Department of Natural Resources, et al. v. Century Alumina Company, et al.*, relating to the former alumina refinery property on St. Croix, U.S. Virgin Islands:

FOR THE VIRGIN ISLANDS
DEPARTMENT OF PLANNING AND
NATURAL RESOURCES

2/15/2012
Date:




JOHN K. DEMA
Law Offices of John K. Dema, P.C.
1236 Strand Street, Suite 103
Christiansted, St. Croix
U.S. Virgin Islands 00820-0508

Vincent F. Frazer, Attorney General
Territory of the U.S. Virgin Islands
488-50C Kronprindsens Gade, GERS
Complex
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00802

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Commissioner of the Department of Natural Resources, et al. v. Century Alumina Company, et al.*, relating to the former alumina refinery property on St. Croix, U.S. Virgin Islands:

FOR THE COMMISSIONER OF THE
DEPARTMENT OF PLANNING AND
NATURAL RESOURCES, ALICIA V.
BARNES, IN HER CAPACITY AS
COMMISSIONER AND TRUSTEE FOR
NATURAL RESOURCES OF THE
TERRITORY OF THE U.S. VIRGIN
ISLANDS

2/15/2012
Date:



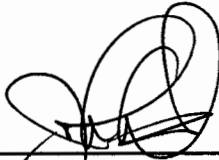
JOHN K. DEMA
Law Offices of John K. Dema, P.C.
1236 Strand Street, Suite 103
Christiansted, St. Croix
U.S. Virgin Islands 00820-0508

Vincent F. Frazer, Attorney General
Territory of the U.S. Virgin Islands
488-50C Kronprindsens Gade, GERS
Complex
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00802

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Commissioner of the Department of Natural Resources, et al. v. Century Alumina Company, et al.*, relating to the former alumina refinery property on St. Croix, U.S. Virgin Islands:

FOR THE GOVERNMENT OF THE
U.S. VIRGIN ISLANDS

2/15/2012
Date: _____



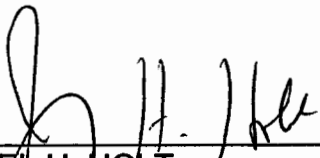
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Charlotte Amalie, St. Thomas
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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Commissioner of the Department of Natural Resources, et al. v. Century Alumina Company, et al.*, relating to the former alumina refinery property on St. Croix, U.S. Virgin Islands:

FOR ST. CROIX RENAISSANCE
GROUP, L.L.L.P.

Feb. 14 2012
Date: _____




JOEL H. HOLT
Law Offices of Joel H. Holt
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U.S. Virgin Islands 00820

Carl J. Hartmann
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U.S. Virgin Islands 00820

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Commissioner of the Department of Natural Resources, et al. v. Century Alumina Company, et al.*, relating to the former alumina refinery property on St. Croix, U.S. Virgin Islands:

FOR ST. CROIX ALUMINA, L.L.C.

February 15, 2012
Date:



DAN J. JORDANGER
LORI ELLIOTT JARVIS
Hunton & Williams LLP
951 East Byrd Street
Richmond, Virginia 23219

Simone R.D. Francis
Ogletree, Deakins, Nash, Smoak &
Stewart, LLC
1336 Beltjen Road, Suite 201
St. Thomas, U.S. Virgin Islands 00802

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *Commissioner of the Department of Natural Resources, et al. v. Century Alumina Company, et al.*, relating to the former alumina refinery property on St. Croix, U.S. Virgin Islands:

FOR ALCOA WORLD ALUMINA, L.L.C.

February 15, 2012
Date:


DAN J. JORDANGER
LORI ELLIOTT JARVIS
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APPENDIX A

STATEMENT OF WORK FOR MAJOR CORRECTIVE ACTIVITY AT AND CONCERNING
AREA A UNITS OF THE FORMER ALUMINA REFINERY PROPERTY, ANGUILLA ESTATE,
ST. CROIX, U.S. VIRGIN ISLANDS ("ALUMINA PROPERTY")

1. This Statement of Work ("SOW") outlines the Work to be performed by the Settling Defendants at the Alumina Property. The Work outlined is intended to fully implement, monitor and maintain the Major Corrective Activity required under the Consent Decree in Civ. No. 2005-0062 between and among the Settling Defendants, DPNR, the Trustee and the Government, and shall include the following:

- a. Studies as set forth in Paragraph 6.a, below;
- b. The stabilization, contouring, and closure of the dry-stack bauxite residue disposal area ("Area A") as set forth in this SOW;
- c. Remediation/restoration of the storm water settling basin at the base of Area A (the "Settling Basin") as set forth in this SOW;
- d. The closure of the Upper Cooling Pond ("UCP") as set forth in this SOW
- e. Implementation of stormwater management facilities as set forth in this SOW; and
- f. Operation, maintenance, monitoring and inspection of the units following completion of Major Corrective Activities, as set forth in this SOW.

2. The requirements of this SOW will be detailed further in work plans and other documents to be submitted by the Settling Defendants for approval as set forth in this SOW. It is not the intent of this SOW to provide task-specific engineering or geological guidance; rather, this SOW provides the agreed framework for performance of the Work. The definitions set forth in Section IV of the Consent Decree also shall apply to this SOW unless expressly provided otherwise herein.

3. Settling Defendants are responsible for performing the Work to implement the Major Corrective Activities as set forth in the Consent Decree and herein. Through its contractor, Richardson Smith Gardner & Associates, Inc. (RSG), DPNR shall conduct oversight of the Settling Defendants' activities throughout the performance of the Work.

SCA-AWA shall provide financial assistance to DPNR with respect to the oversight activities.

4. SCA will be responsible for implementing Major Corrective Activities to address Area A, the Settling Basin and the UCP (together, the "Group A Units") on the Alumina Property as follows:

a. The UCP – This is part of the cooling pond system. This area currently receives discharge from the desalinization plant and surface water runoff from Area A and other portions of the Alumina Property. In the past it received process water discharge from the desalinization plant and the alumina refinery, and heated water from the coal-fired power plant. Over time, portions of the UCP have silted in with bauxite residue. Subject to the results of pre-closure studies to be performed as part of the design process, bauxite residue in the UCP may be left in place, in which case Major Corrective Activity for the UCP will focus on vegetation. This will require studies to evaluate/determine the proper soil amendments to allow vegetation of residue to remain in the UCP. Further evaluation of the UCP, in the manner set forth in Paragraph 6 below, is necessary before a final plan for Major Corrective Activity involving the UCP can be established.

Prior to conducting treatability (Pilot) studies to evaluate vegetation work in the silted portions of the UCP and for Area A, SCA will complete a detailed hydrology/ hydraulics ("H/H") study. The H/H study will redefine and reestablish the limits and function of the UCP and its relationship to the Lower Cooling Pond ("LCP") and Settling Basin with respect to SCRG's reasonable and permitted operating needs and the surface water regime for all areas up-gradient (upstream) of the Settling Basin, UCP and LCP. The phrase "SCRG's reasonable and permitted operating needs" means discharges from the desalinization plant operating at its currently permitted capacity, discharges from the coal-fired power plant operating at its currently permitted capacity, and discharges in compliance with law

and permits from current commercial tenants' operations. The H/H study will help ensure that Major Corrective Activity by SCA at the UCP and the Settling Basin will not present unacceptable impacts to the plant hydraulics or surface water hydrology.

If the H/H study demonstrates that the removal of bauxite residue from the UCP is necessary for restoration of the hydraulic capacity of the UCP to meet SCRG's reasonable and permitted operating needs, any bauxite residue required to be removed from the UCP to meet these capacity requirements will be placed in an appropriate on-site location authorized in writing by SCRG and DPNR. The proposed location(s) for placement of any bauxite residue that might be removed from the UCP will be identified in the Implementation Design/Work Plan provided for in Paragraph 6.f below.

A ditch that runs along the western boundary of the property ("West Ditch") currently discharges to the LCP. Prior to 2004, it discharged to mangrove wetlands and the sea. The H/H study will include an evaluation of existing as well as potential alternate future stormwater flows with completion of the Major Corrective Activity and of alternatives for management of stormwater discharge from the property, including the possible future use of the West Ditch and restoration of the drainage to the mangrove wetland and the sea.

Future use of any portions of the UCP in which bauxite residue is closed in place with a vegetative cover will be restricted so as not to compromise the integrity of the cover unless an alternative use is accepted by DPNR. Any future alternative, equally protective use proposed by SCRG (or a subsequent owner, operator or tenant of the Alumina Property) must be accepted in writing by DPNR prior to implementation of such use.

b. Area A and the Settling Basin require Major Corrective Activity and will be considered together in the design process. The goals for Area A are (A) stabilizing the bauxite residue pile, (B) keeping the bauxite residue

in place, and (C) providing effective mechanisms for long-term management and maintenance of the pile, including slope stability, drainage and clearing of drainage mechanisms, as well as a healthy vegetated cover. These goals are intended to provide:

- i. Protection against catastrophic release of storm water and/or bauxite residue;
- ii. Protection against erosion of the vegetative cover and bauxite residue;
- iii. Protection against dusting (wind erosion);
- iv. Protection of surface water quality;
- v. Restoration of vegetation on the surface of Area A; and
- vi. Protection of and long term restoration of areas of the Property down gradient from Area A.

The goals for closing Area A will be accomplished by: (i) re-contouring and vegetating the bauxite residue pile (including any other engineering controls identified in the design process and as needed to accomplish the stated goals) in such a manner as (A) to provide for both stabilization of the residue pile and effective storm water conveyance systems and (B) to facilitate long-term operation and maintenance ("O&M") of Area A; and (ii) as needed, constructing, cleaning, and maintaining open ditches and catchments surrounding Area A for management of stormwater.

In addition to Major Corrective Activity at Area A, material that has accumulated in the Settling Basin will be removed to allow that area to continue to act as a settling basin that receives stormwater runoff from Area A after completion of the Major Corrective Activity in Area A. After Major Corrective Activity is completed, the Settling Basin will act as a stormwater surge buffer unit prior to discharge to the UCP system. (The Settling Basin currently discharges to the

UCP. This will continue unless the Parties mutually agree to an alternative drainage plan). The design of the Major Corrective Activity for Area A and the Settling Basin will include provisions intended to prevent the migration of bauxite residue and high pH materials from Area A to the UCP and to remove, as needed, residue or other materials that may accumulate in the Settling Basin. Future use of Area A and the Settling Basin for development will be restricted so as not to compromise the integrity of the closed/remediated units unless an alternative, equally protective use is proposed by SCRG (or a subsequent owner, operator or tenant of the Alumina Property) and accepted in writing by DPNR.

The Alumina Property's hydrology, drainage and stormwater flows and the capacity of the existing UCP and LCP to meet SCRG's reasonable and permitted operating needs will be included in the H/H Study. The objective of the study is to identify alternatives that will ensure that Major Corrective Activity for the UCP and Settling Basin will not present unacceptable impacts to the Property hydraulics or surface water hydrology. Findings from the H/H study will be incorporated into the design discussed in Paragraphs 6.f to 6.i below.

5. Scope of Responsibilities for Group A Units:
 - a. The Settling Defendants need not perform active remediation or restoration of groundwater. It is the judgment of the Government, DPNR and Trustee that the Major Corrective Activity will assist in the long-term restoration of groundwater underlying and migrating from the Group A Units by eliminating significant pathways for existing contaminants.
 - b. The Government agrees that, other than the permit(s) to be issued by the Government as provided in the Consent Decree and as necessary for the Major Corrective Activity, no permit will be necessary to place into

the UCP any soil amendments or other materials provided for in the approved Implementation Plan and Schedule that are intended to accomplish the closure and vegetation of the UCP.

c. A waiver of penalties for past and future TPDES permit violations for pH will be afforded until DPNR issues a No Further Action Determination to SCA for the Group A Units in accordance with paragraph 6.n below and the permitted pH limit has been restored after the completion of the Major Corrective Activities. Until DPNR issues such No Further Action Determination, any penalties for noncompliance with the effluent limit for pH under the TPDES permit up to that point will be considered waived and discharged in full because the construction and implementation is being performed in part to prevent future violations.

d. DPNR, the Government, and the Trustee will continue to pursue a resolution of their ongoing disputes with the Non-Settling Defendants. Except as set forth in the separate SCA-AWA and SCRG settlement agreement, the pursuit of a resolution of the ongoing disputes with the Non-Settling Defendants will not alter or expand the duties of the Settling Defendants set forth in this SOW or in the Consent Decree. The Settling Defendants shall have no responsibility to DPNR, the Government or the Trustee beyond the requirements of this SOW and the Consent Decree.

e. SCA shall have no responsibility for, or obligation to incorporate into any document or Work provided for in this SOW or under the Consent Decree, any change in law or term of a permit, license or other authorization applicable to the Alumina Property, if such change in law or term occurs after the Effective Date of the Consent Decree, unless a permit must be modified to bring it into compliance with the Virgin Islands Water Pollution Control Act or Clean Water Act. For illustration purposes only, if an effluent limitation in SCRG's TPDES permit changes after the Court enters the Consent Decree, SCA shall not be required to incorporate such change in any subsequent document or Work for which it

is responsible under this SOW or the Consent Decree. The phrase “change in law” as set forth above does not include orders, if any, issued to SCA, AWA or SCRG by the U.S. Environmental Protection Agency.

6. Schedule For Implementation of Group A Requirements:

a. Within 120 days of the Effective Date of the Consent Decree, after consultation with SCRG, SCA will submit to DPNR and RSG a Pre-Design Work Plan and Schedule for conducting (i) an H/H study, (ii) any engineering and geotechnical studies SCA deems necessary to evaluate elements necessary for the design of the Major Corrective Activity, and (iii) pilot studies to evaluate alternatives for re-vegetation, cover materials, and soil amendments needed as part of the final cover systems for Area A and the UCP. The pilot studies to evaluate cover materials and amendment alternatives shall consist of:

- i. Borrow area study(ies) to evaluate the availability of on-island resources in sufficient quantities for closure activities to be fully implemented, and
- ii. Study(ies) to address soil profiles, nutrient levels, plant species, moisture levels, slope angles and elevations, slope orientations, coverage densities (*i.e.*, plant densities), and required versus available material balances.

b. Within 30 days of submission of such Pre-Design Work Plan and Schedule, SCA will meet with SCRG and DPNR/RSG to discuss the specifics of the Pre-Design Work Plan and Schedule. DPNR/RSG shall provide written comments to SCA on the draft Pre-Design Work Plan and Schedule either during or within 15 days of such meeting.

c. Within 45 days after SCA receives written comments from DPNR/RSG, and after consultation with SCRG, SCA will submit a revised Pre-Design Work Plan and Schedule to DPNR and RSG addressing their comments.

d. DPNR/RSG shall make a decision to approve or comment further on the revised Pre-Design Work Plan and Schedule within 30 days of receipt. Once the Pre-Design Work Plan and Schedule are approved in writing by DPNR/RSG, SCA shall undertake the work approved in the Pre-Design Work Plan pursuant to the approved Schedule.

e. No less frequently than once per quarter, SCA will schedule meetings with and/or provide status reports to SCRG and DPNR/RSG to assess progress, and SCRG and DPNR/RSG will provide review and comments throughout the conduct of the Work set forth in the Pre-Design Work Plan.

f. Once SCA's Work provided for in the Pre-Design Work Plan is completed, and after consultation with SCRG, SCA will submit to DPNR and RSG either (i) a revised Pre-Design Work Plan and Schedule to allow for further study (in which case the steps in Paragraphs 6.a through 6.e will be repeated), or (ii) an Implementation Design/Work Plan and Schedule ("Implementation Plan and Schedule"), which will include the proposed final designs for the Group A Unit Major Corrective Activities that meet the project goals set forth in Paragraph 4 above and will present the findings of the studies contemplated under Paragraph 6.a above and their relationship to the final Implementation Plan and Schedule. SCA will develop the Implementation Plan and Schedule after consultation with SCRG. The Implementation Plan and Schedule also must contain technical specifications, a Construction Quality Assurance Plan for implementation of the work, a construction cost estimate, and a detailed schedule for implementation.

g. Within 45 days of submission of such Implementation Plan and Schedule, SCA will meet with SCRG and DPNR/RSG to discuss the specifics of the plan and schedule. DPNR/RSG shall provide written comments to SCA on the draft Implementation Plan and Schedule either during or within 15 days of such meeting.

h. Within 45 days after SCA receives written comments from DPNR/RSG, and after consultation with SCRG, SCA will submit a revised Implementation Plan and Schedule addressing DPNR's/RSG's comments.

i. DPNR/RSG shall make a decision to approve or comment further on the revised Implementation Plan and Schedule within 30 days of receipt. Once the Implementation Plan and Schedule are approved in writing by DPNR/RSG, SCA shall undertake the work authorized in the Implementation Plan pursuant to the approved Schedule.

j. No less frequently than once per quarter, SCA will schedule meetings with and/or provide status reports to SCRG and DPNR/RSG to assess progress, and SCRG and DPNR/RSG will provide review and comments throughout the conduct of the Work set forth in the Implementation Plan. SCA will submit a written monthly progress report to DPNR and RSG, with a copy sent to SCRG, during any period of construction of Major Corrective Activities on the Alumina Property under the approved Implementation Plan and Schedule.

k. Within 60 days after construction of Major Corrective Activities in all Group A Units is complete, and after consultation with SCRG, SCA shall submit to DPNR and RSG an As-Built Implementation Report. The report will evaluate and demonstrate compliance with each of the goals outlined herein and in the Implementation Plan. If SCRG believes the As-Built Implementation Report demonstrates material non-compliance with any goals outlined herein or in the Implementation Plan, SCRG may submit written comments to DPNR and RSG, with a copy sent to SCA, identifying the basis for its belief of material non-compliance within 10 days of receipt of the As-Built Implementation Report.

l. Within 45 days after construction of Major Corrective Activities in all Group A Units is complete, the Settling Defendants jointly shall submit to DPNR and RSG a Maintenance/Monitoring/Inspection Plan. In the event that the Settling Defendants are unable to agree upon material terms of

the Maintenance/Monitoring/Inspection Plan, then they shall submit their respective proposed Maintenance/Monitoring/Inspection Plans to DPNR and RSG, and pursuant to Paragraph 6.m, DPNR/RSG shall approve the plan they prefer, or may for good cause reject both plans for further action by the Settling Defendants, subject to the dispute resolution procedures referenced in Section XIV of the Consent Decree.

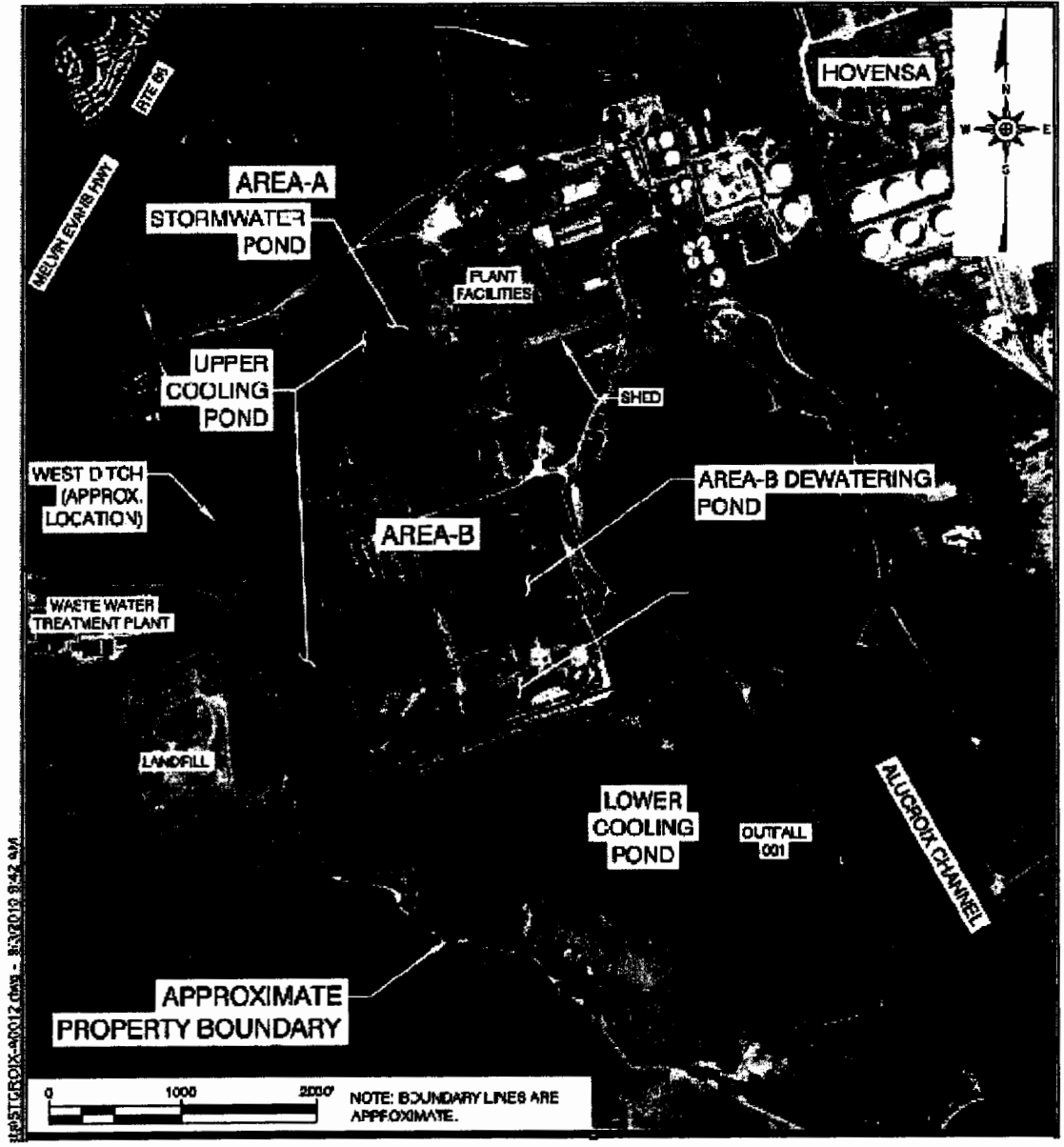
m. DPNR/RSG shall make a decision to approve or provide comments on the As-Built Implementation Report and Maintenance/Monitoring/Inspection Plan within 30 days of receipt of each such document. Once DPNR/RSG approves in writing both the As-Built Implementation Report and the Maintenance/Monitoring/Inspection Plan, SCA shall submit quarterly maintenance/monitoring/inspection reports to DPNR and RSG, with a copy sent to SCRG, demonstrating that the goals for closure/remediation/restoration have been met. The first of such reports shall be submitted within 90 days after approval of both the As-Built Implementation Report and the Maintenance/Monitoring/Inspection Plan.

n. After SCA submits eight (8) successive quarterly maintenance/monitoring/inspection reports demonstrating to DPNR/RSG that the specific criteria for closure/remediation/restoration set forth in the DPNR/RSG-approved Maintenance/Monitoring/Inspection Plan have been achieved and that any deficiencies have been corrected, DPNR shall issue a No Further Action determination with respect to SCA's obligations at the Alumina Property.

o. Once DPNR issues a No Further Action determination to SCA, SCRG shall be responsible for implementation of the Maintenance/Monitoring/Inspection Plan and ongoing operation, maintenance, monitoring and inspection of the Group A Units, and SCA shall have no further obligations for such units or any other portion of the Alumina Property (subject to the SCRG-SCA/AWA Agreement referenced above).

7. Exhibit A attached hereto represents the approximate geographic extent of the UCP, LCP, West Ditch, Area A, and Settling Basin.

Exhibit A



APPENDIX B

cover unless an alternative use is accepted by DPNR. Any future alternative, equally protective use proposed by SCRG (or a subsequent owner, operator or tenant of the Alumina Property) must be accepted in writing by DPNR prior to implementation of such use. Should the property that is described in Exhibit A attached ever be subdivided, this obligation shall run with all portion(s) of the property on which any portion of the Upper Cooling Pond is located.

3. Pursuant to paragraph 4(b) of the SOW, future use of Area A and the Settling Basin for development will be restricted so as not to compromise the integrity of the closed/remediated units unless an alternative, equally protective use is proposed by SCRG (or a subsequent owner, operator or tenant of the Alumina Property) and accepted in writing by DPNR. Should the property that is described in Exhibit A attached ever be subdivided, this obligation shall run with all portions of the property on which any portion of Area A and the Settling Basin are located.

Dated:

John K. Dema, Counsel for the Plaintiffs

Dated:

Joel H. Holt, Counsel for SCRG

EXHIBIT A

EXHIBIT A

LEGAL DESCRIPTION

Territory of the Virgin Islands - District of St. Croix

1. Parcel No. 12-A of V.I. Corp. Lands, King's Quarter, St. Croix, U.S. Virgin Islands, containing 35.245 U.S. acres, more or less, as shown on D.P.N.R. Drawing No. 4541-B and as detailed on D.P.N.R. Drawing No. 4541-E, both dated April 27, 1989.
2. Remainder of Parcel No. 12-D of V.I. Corp. Lands, King's Quarter, St. Croix, U.S. Virgin Islands, containing 0.868 U.S. acres, more or less, as shown on D.P.N.R. Drawing No. 4541-E, dated April 27, 1989.
3. Remainder of Parcel No. 12-E of V.I. Corp. Lands, King's Quarter, St. Croix, U.S. Virgin Islands, containing 0.358 U.S. acres, more or less, as shown on D.P.N.R. Drawing No. 4541-E, dated April 27, 1989.
4. Plot No. 1 Estate Anguilla, King's Quarter, St. Croix, U.S. Virgin Islands, containing 443.242 U.S. acres, more or less, as shown on D.P.N.R. Drawing Nos. 4541 and 4541-A and as detailed on D.P.N.R. Drawing Nos. 4541-F, 4541-G and 4541-H, all dated April 27, 1989, portions of which are filled land and formerly comprised a portion of Krause Lagoon together with its surrounding lands, marshes, islets, swampland and adjacent tidal flats (collectively, "Krause Lagoon"), the southerly coastal boundary of said Plot being the low water mark of the Caribbean Sea as it existed on May 16, 1962.
5. Plot No. 1 Estate Annaberg and Shannon Grove, King's Quarter, St. Croix, U.S. Virgin Islands, containing 123.990 U.S. acres, more or less, as shown on D.P.N.R. Drawing No. 4541 and as detailed on D.P.N.R. Drawing No. 4541-E, both dated April 27, 1989.
6. Plot No. 2 Estate Annaberg and Shannon Grove, King's Quarter, St. Croix, U.S. Virgin Islands, containing 357.342 U.S. acres, more or less, as shown on D.P.N.R. Drawing Nos. 4541 and 4541-A and as detailed on D.P.N.R. Drawing No. 4541-H, all dated April 27, 1989, portions of which are filled land and formerly comprised a portion of Krause Lagoon, the southerly coastal boundary of said Plot being the low water mark of the Caribbean Sea as it existed on May 16, 1962.
7. Plot No. 1 Estate Spanish Town, King's Quarter, St. Croix, U.S. Virgin Islands, containing 118.904 U.S. acres, more or less, as shown on D.P.N.R. Drawing No. 4541 and as detailed on D.P.N.R. Drawing Nos. 4541-D, 4541-E and 4541-J, all dated April 27, 1989.
8. Remainder Plot No. 5 Estate Blessing, King's Quarter, St. Croix, U.S. Virgin Islands, containing 67.837 U.S. acres, more or less, as shown on D.P.N.R. Drawing No. 4541-C,

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dated April 27, 1989, as revised May 30, 1999 and December 28, 1999, portions of which are filled land and formerly comprised a portion of Krause Lagoon, the southerly coastal boundary of said Plot being the low water mark of the Caribbean Sea as it existed on May 16, 1962..

9. All of the Seller's rights of reentry as set forth in that certain Quitclaim Deed dated August 31, 1999, recorded with the Office of the Recorder of Deeds for the District of St. Croix on January 24, 2000 in P.C. 711, Page 348, Document No. 213/2000 relating to the Plot No. 6 Estate Blessing, King's Quarter, St. Croix, U.S. Virgin Islands, containing 17.0098 U.S. acres, more or less, as shown on D.P.N.R. Drawing No. 4541-C, and as detailed D.P.N.R. Drawing No. 4541-I, both dated April 27, 1989, portions of which are filled land and formerly comprised a portion of Krause Lagoon, the southerly coastal boundary of said Plot being the low water mark of the Caribbean Sea as it existed on May 16, 1962.
10. Road Plot No. 7 Estate Blessing, King's Quarter, St. Croix, U.S. Virgin Islands, containing 2.875 U.S. acres, more or less, as shown on D.P.N.R. Drawing No. 4541-C and as detailed on D.P.N.R. Drawing Nos. 4541-J and 4541-K, all dated April 27, 1989.
11. A twenty-five foot (25') wide retained easement over the Port Authority Land for an access road to the end of a dike as described in a Quitclaim Deed and Access Road Easement dated January 10, 1967, recorded with the Office of the Recorder of Deeds for the District of St. Croix on January 25, 1967 in P.C. 46, page 112, as Document No. 359 and as shown on D.P.N.R. Drawing Nos. 4541-A and 4542-C, both dated April 27, 1989.
12. A twenty-five foot (25') wide retained easement over the Port Authority Land for a salt water intake channel as described in a Quitclaim Deed and Access Road Easement dated January 10, 1967, recorded with the Office of the Recorder of Deeds for the District of St. Croix on January 25, 1967 in P.C. 46, page 112, as Document No. 359 and as shown on D.P.N.R. Drawing Nos. 4541-A and 4541-C, both dated April 27, 1989.
13. A perpetual right-of-way easement from Plot No. 1 Estate Spanish Town, Plot No. 1. Estate Annaberg and Shannon Grove and Parcel 12-A VI Corps Land across the property conveyed pursuant to the Deed of Gift (as defined below) to the Melvin H. Evans Highway (the "Highway") or such other public or other road as may hereafter supercede the Highway, as set forth in Deed of Gift from Virgin Islands Alumina Corporation, a U.S. Virgin Islands corporation, to the Government of the United States Virgin Islands dated September 13, 1990, recorded February 4, 1992 in Photocopy 417, page 441, Document No. 475 (the "Deed of Gift").
14. Plot No. 10 Estate Blessing, King's Quarter, St. Croix, U.S. Virgin Islands, containing 34.5116 U.S. acres, more or less, as shown on D.P.N.R. No. 4541-A dated April 27, 1989, revised March 30, 1999 and December 28, 1999.

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15. Plot No. 11 Estate Blessing, King's Quarter, St. Croix, U.S. Virgin Islands, containing 67.979 U.S. acres, more or less, as shown on D.P.N.R. No. 4541-A dated April 27, 1989, revised March 30, 1999 and December 28, 1999.

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