

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
MAR 22 1999
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Aluminum Company of America
201 Isabella Street
Pittsburgh, PA 15219

Respondent

(Weaver)

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Director's Final
Findings and Orders

PREAMBLE

It is hereby agreed to by and among the Parties as follows:

I. JURISDICTION

1. These Director's Final Findings and Orders ("Orders") are issued pursuant to the authority vested in the Director of the Ohio EPA under Sections 3734.13, 3734.20, 6111.03, and 3745.01 of the Ohio Revised Code (ORC). Respondent consents to and agrees not to contest Ohio EPA's jurisdiction to issue and enforce these Orders.

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondent and its agents, successors, and assigns.

3. No change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in any way alter Respondent's obligations under these Orders.

4. Respondent shall provide a copy of these Orders to all contractors, subcontractors, laboratories and consultants retained to perform any portion of the Work performed pursuant to these Orders. Respondent shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform Work pursuant to these Orders comply with the provisions of these Orders.

5. The signatories to these Orders certify that they are fully authorized to execute and legally bind the Party they represent.

6. Nothing in these Orders is intended to be, and shall not be construed or interpreted to

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be, an admission of fact, violation, or liability by the Respondent to these Orders; and the Respondent hereto expressly denies any and all liability or responsibility with respect to the matters addressed in these Orders.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in these Orders or in any appendices shall have the same meaning as used in ORC Chapters 3734 and 6111. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

a. "Day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or State Holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or State Holiday, the period shall run until the close of the next business day.

b. "Decision Document" shall mean the document attached to these Orders as Appendix A.

c. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300 (1990), as amended.

d. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and its designated representatives.

e. "Paragraph" shall mean a portion of these Orders identified by an Arabic numeral or an upper or lower case letter.

f. "Parties" shall mean Respondent and the Ohio EPA.

g. "Remedial Action" ("RA") shall mean those activities to be undertaken by Respondents to implement and maintain the effectiveness of the final plans and specifications submitted by Respondents pursuant to the Remedial Design and Remedial Action Work Plan.

h. "Remedial Design" ("RD") shall mean those activities to be undertaken by Respondents to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design and Remedial Action Work Plan.

i. "Respondent" shall mean Aluminum Company of America (Alcoa).

j. "Response Costs" shall mean all costs including, but not limited to, payroll costs, contractor costs, travel costs, direct costs, indirect costs, legal and enforcement -related costs, oversight costs, laboratory costs, the costs of reviewing or developing plans, reports, and other items pursuant to these orders, verifying the Work, or otherwise implementing or enforcing

these Orders.

k. "Section" shall mean a portion of these Orders identified by a roman numeral.

l. "Site" shall mean the former Wearever Aluminum Facility located at 1089 Eastern Avenue, Chillicothe, Ross County, Ohio where the treatment, storage, and/or disposal of hazardous waste, and/or the discharge into waters of the state of industrial waste or other waste has occurred, including any other area where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate.

m. "Statement of Work" ("SOW") means the statement of work for the implementation of the Remedial Design and Remedial Action at the Site, as set forth in Appendix B to these Orders.

n. "Waste Material" shall mean (1) any "hazardous waste" under ORC Section 3734.01(J); (2) any "solid waste" under ORC Section 3734.01(E); (3) any "industrial waste" under ORC Section 6111.01(C); and (4) any "other waste" under ORC Section 6111.01(D).

o. "Work" shall mean all activities Respondent is required to perform under these Orders.

IV. FINDINGS OF FACT, DETERMINATIONS, AND CONCLUSIONS OF LAW

8. All findings of fact, determinations, and conclusions of law necessary for the issuance of these Orders pursuant to Sections 3734.20, 3734.13, 3745.01 and 6111.03 of the Revised Code have been made and are outlined below. Ohio EPA has determined the following:

a. The Respondent and other entities currently and/or previously owned or operated the Site from 1948 to date.

b. From 1948 until 1990, the Respondent and other entities manufactured aluminum coated cookware and small household appliances. The manufacturing processes included cleaning, coating, polishing and brazing cookware.

c. The manufacturing process created four (4) known contaminant waste streams at the Site: 1) an industrial wastewater stream which contained lead and cadmium; 2) walnut shell dust, which contained lead absorbed during the cleaning of porcelain spray line fixtures; 3) trichloroethylene (TCE) waste from degreasing operations; and 4) waste solvent blend which was ignitable and contained TCE along with other chlorinated hydrocarbons.

d. During the manufacturing process, Waste Material was generated, and later deposited, spilled, leaked, discharged or otherwise disposed of in various areas of the Site.

e. On May 6, 1993, Director's Final Findings and Orders, which require the

performance of a Remedial Investigation and Feasibility Study (RI/FS) by the Respondent and other entities, was entered in the Director's Journal and became effective.

f. Results of the RI revealed the presence of metals in surface materials and soils, and volatile organic compounds (VOCs) in subsurface soils and groundwater.

g. The RI Report was approved by the Ohio EPA on August 7, 1996. The reported maximum concentration of lead in surface soils was 71,900 parts per million (ppm). Maximum concentrations of TCE were 220 ppm in subsurface soils and 13 ppm in groundwater.

h. The RI Report included a risk assessment which concluded that on-site worker exposure to contaminated soils may pose an unacceptable risk.

i. The FS Report, approved by the Ohio EPA on January 30, 1997, evaluated potential remedial alternatives to address metals contamination in surface materials and soils, and VOC contamination in subsurface soils and groundwater.

j. The Decision Document, released on March 9, 1998, identifies the remedy selected by the Ohio EPA to address conditions at the Site. The selected remedy includes consolidation and capping of the metals contaminated surface soils and soil vapor extraction and air sparging to address the VOC contaminated subsurface soils and groundwater.

k. The wastes described in "c" above, including TCE, became Waste Material, as defined in Section IV above, when they were disposed of into the soil and/or waters of the State.

l. The discharge deposit, injection, dumping, leaking, spilling, or placing of TCE on the soil, in the groundwater, in the surface water, or from the Site constitutes "disposal" of hazardous waste, as defined in ORC Section 3734.01(F).

m. Respondent is a "person" as defined under Sections 3734.01(G) and 6111.01(I) of the ORC.

n. The migration and threatened migration of the Waste Material into soil, groundwater, and surface water at or from the Site constitutes a discharge of industrial waste and/or hazardous wastes into "waters of the State," as that term is defined in ORC Section 6111.01(H).

o. The Director of Ohio EPA has determined that the actions referred to in paragraphs c and e, above, constitute an unlawful "placement" or "disposal" or threatened placement of disposal of industrial wastes and/or hazardous wastes into waters of the State in violation of ORC Section 6111.04, 3734.20 and 3734.11.

p. The Director of Ohio EPA has determined that conditions at the Site constitute a substantial threat to public health or safety or are causing or contributing or threatening to

cause or contribute to air or water pollution or soil contamination within the meaning of ORC Section 3734.20(B).

q. The actions to be taken pursuant to these Orders are reasonable and necessary to protect the public health or welfare or the environment.

r. A reasonable time for beginning and completing the actions required by these Orders has been provided herein.

V. GENERAL PROVISIONS

9. Objectives of the Parties

The objective of the Parties in entering into these Orders is to contribute to the protection of public health, safety, and welfare and the environment from the disposal, discharge, or release of Waste Material at the Site through the design, construction, operation and maintenance of the remedy as set forth in the Decision Document.

10. Commitment of Respondent

Respondent shall perform the Work in accordance with these Orders, relevant guidance documents, and all standards, specifications, and schedules set forth in or developed pursuant to these Orders. Respondent shall also reimburse Ohio EPA for Response Costs, as provided in these Orders.

11. Compliance With Law

a. All activities undertaken by Respondent pursuant to these Orders shall be performed in accordance with the requirements of all applicable federal and state laws and regulations.

b. Respondent shall perform the activities required pursuant to these Orders in a manner which is not inconsistent with the NCP. The Ohio EPA believes that activities conducted pursuant to these Orders, if conducted pursuant to work plans approved by the Ohio EPA, shall be considered to be consistent with the NCP.

c. Where any portion of the Work requires a permit or approval, Respondent shall timely submit applications and take all other actions necessary to obtain such permits or approval. These Orders are not, and shall not be construed to be, a permit issued pursuant to any statute or regulation.

VI. PERFORMANCE OF THE WORK BY RESPONDENTS

12. Supervising Contractor

All Work performed pursuant to these Orders shall be under the direction and supervision of a contractor with expertise in hazardous waste site investigation and remediation. Prior to the initiation of the Work, Respondent shall notify Ohio EPA in writing of the name of the supervising contractor and any subcontractor to be used in carrying out the terms of these Orders.

13. Remedial Design and Remedial Action

a. Within sixty (60) days after the effective date of these Orders, Respondent shall submit to Ohio EPA a work plan for implementation of the Remedial Design and Remedial Action ("RD/RA") for the Site ("RD/RA Work Plan"). The RD/RA Work Plan shall provide for the design, construction, operation and maintenance of the remedy set forth in the Decision Document.

b. The RD/RA Work Plan shall be developed in conformance with the SOW and the guidance documents listed in Appendix C to these Orders, attached thereto and incorporated herein. If the Ohio EPA determines that any additional or revised guidance documents affect the Work to be performed in implementing the RD/RA, Ohio EPA will notify Respondent, and the RD/RA Work Plan and other affected documents shall be modified accordingly. Tasks required under the approved RD/RA Work Plan, which have already been implemented, shall not be subject to any revised or additional guidance documents.

c. Should Respondent identify any inconsistency between any of the laws and regulations and guidance documents which they are required to follow by these Orders, Respondent shall notify the Ohio EPA in writing of each inconsistency and the effect of the inconsistencies upon the Work to be performed. Respondent shall also recommend, along with a supportable rationale justifying each recommendation, the requirement Respondent believes should be followed. Respondent shall implement the affected Work as directed by the Ohio EPA.

d. Ohio EPA will review the RD/RA Work Plan pursuant to the procedures set forth in Section XII, Review of Submittals. Upon approval of the RD/RA Work Plan by the Ohio EPA, Respondent shall implement the RD/RA Work Plan. Respondent shall submit all plans, reports, or other deliverables required under the approved RD/RA Work Plan, in accordance with the approved schedule, for review and approval pursuant to Section XII, Review of Submittals.

e. Within fourteen (14) days of the effective date of these Orders, Respondent shall meet with the Ohio EPA to discuss the requirements of the RD/RA Work Plan, unless otherwise mutually agreed to by the Parties.

14. Within sixty (60) days of the effective date of these Orders, Respondent shall submit to the Ohio EPA for review and comment a health and safety plan developed in conformance with the criteria listed in Appendix C.

15. Respondent may invoke the procedures in Section XIII, Dispute Resolution, to dispute the requirements and/or matters at 13. b and c in this section.

VII. ADDITIONAL WORK

16. Ohio EPA or Respondent may determine that in addition to the tasks defined in the RD/DA Work Plan, additional work may be necessary to accomplish the objectives of these Orders as set forth in Paragraph 9 of these Orders and the SOW.

17. Within thirty (30) days of receipt of written notice from Ohio EPA that additional work is necessary, Respondent shall submit a work plan for the performance of the additional work. The work plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendices B and C (SOW and relevant guidance documents). Upon approval of the work plan by Ohio EPA pursuant to Section XII, Review of Submittals, Respondent shall implement the work plan for additional work in accordance with the schedules contained therein.

18. In the event that Respondent determines that additional work is necessary, Respondent shall submit a work plan for the performance of additional work. The work plan shall conform to the standards and requirements set forth in the documents attached to these Orders as Appendices B and C. Upon approval of the work plan by the Ohio EPA pursuant to Section XII, Review of Submittals, Respondent shall implement the work plan for additional work in accordance with the schedules contained therein.

VIII. SAMPLING AND DATA AVAILABILITY

19. Respondent shall notify Ohio EPA not less than ten (10) days in advance of all sample collection activity. Upon request, Respondent shall allow split and/or duplicate samples to be taken by Ohio EPA. Ohio EPA shall also have the right to take any additional samples it deems necessary. Upon request, Ohio EPA shall allow Respondent to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Respondent's implementation of the Work. Similarly, Ohio EPA shall notify Respondent not less than ten (10) days in advance of all independent sample collection activity performed by Ohio EPA or its contractors. Upon request, Ohio EPA shall allow split and/or duplicate samples to be taken by Respondent. Respondent shall also have the right to take any additional samples it deems necessary.

20. Within fourteen (14) days of receipt of a request by Ohio EPA, Respondent shall submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Respondent with respect to the Site and/or the implementation of these Orders. Respondent may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should Respondent subsequently discover an error in any report or raw data, Respondent shall promptly notify Ohio EPA of such discovery and

provide the correct information.

IX. ACCESS

21. Ohio EPA shall have access at all times to the Site and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondent. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including, but not limited to the following:

- a. Monitoring the Work;
- b. Conducting sampling;
- c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;
- d. Conducting investigations and tests related to the implementation of these Orders; and
- e. Verifying any data and/or other information submitted to Ohio EPA.

22. To the extent that the Site or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondent, Respondent shall use its best efforts to secure from such persons access for Respondent and the Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided promptly to Ohio EPA. If any access required to effectuate these Orders is not obtained within sixty (60) days of the effective date of these Orders, or within sixty (60) days of the date Ohio EPA notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access.

23. Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulations.

X. DESIGNATED SITE COORDINATORS

24. Within five (5) days of the effective date of these Orders, Respondent shall notify Ohio EPA, in writing, of the name, address and telephone number of its designated Site Coordinator and Alternate Site Coordinator. If a designated Site Coordinator or Alternate Site Coordinator is changed, the identity of the successor will be given to the other Party at least five (5) days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

25. To the maximum extent practicable, except as specifically provided in these Orders, communications between Respondent and Ohio EPA concerning the implementation of these Orders shall be made between the Site Coordinators. Respondent's Site Coordinator shall be available for communication with Ohio EPA regarding the implementation of these Orders for the duration of these Orders. Each Site Coordinator shall be responsible for assuring that all communications from the other Party are appropriately disseminated and processed. Respondent's Site Coordinator or alternate shall be present on the Site or on call during all hours of work at the Site.

26. Without limitation of any authority conferred on Ohio EPA by statute or regulation, the Ohio EPA Site Coordinator's authority includes, but is not limited to the following:

- a. Taking samples and directing the type, quantity and location of samples to be taken by Respondent pursuant to an approved work plan;
- b. Observing, taking photographs, or otherwise recording information related to the implementation of these Orders, including the use of any mechanical or photographic device;
- c. Directing that the Work stop whenever the Site Coordinator for Ohio EPA determines that the activities at the Site may create or exacerbate a threat to public health or safety, or threaten to cause or contribute to air or water pollution or soil contamination;
- d. Conducting investigations and tests related to the implementation of these Orders;
- e. Inspecting and copying records, operating logs, contracts and/or other documents related to the implementation of these Orders; and
- f. Assessing for Ohio EPA Respondent's compliance with these Orders.

XI. PROGRESS REPORTS AND NOTICE

27. Unless otherwise directed by Ohio EPA or agreed to by the Parties, Respondent shall submit a written progress report (one copy only) to the Ohio EPA by the tenth (10) day of every month. At a minimum, the progress reports shall:

- a. Describe the status of the Work and actions taken toward achieving compliance with the Orders during the reporting period;
- b. Describe difficulties encountered during the reporting period and actions taken to rectify any difficulties;
- c. Describe activities planned for the next month;

d. Identify changes in key personnel;

f. List target and actual completion dates for each element of activity, including project completion, if a completion date can be reasonably estimated;

g. Provide an explanation for any deviation from any applicable schedules; and

h. Indicate how much contaminated soil was moved within the Site or removed from the Site, how much liquid waste was generated, and indicate where such contaminated media were disposed of.

28. Progress reports (one copy only) and all other documents (two copies) required to be submitted pursuant to these Orders shall be sent by certified mail return receipt requested, or equivalent, to the following address:

Ohio EPA
South East District Office
2195 Front Street
Logan, Ohio 43138
ATTN: DERR Site Coordinator, Wearever Site Coordinator
(2 copies)

All correspondence to Respondent shall be directed to the following address:

Deborah T. Marsh, P.E.
Wearever Coordinator
The Marsh Consulting Group, Ltd.
1615 Mt. Nebo Road, Suite 201
Sewickley, PA 15143

29. Either Party may change the individuals designated to receive notice under these Orders. If a Party desires to make a change, the identity of the successor will be given to the other Party at least five (5) days before the change occurs.

XII. REVIEW OF SUBMITTALS

30. Ohio EPA shall review any work plan, report, or other item required to be submitted pursuant to these Orders. Upon review, Ohio EPA may in its sole discretion: (a) approve the submission in whole or in part; (b) approve the submission upon specified conditions; (c) modify the submission; (d) disapprove the submission in whole or in part, notifying Respondent of deficiencies; or (e) any combination of the above.

31. In the event of approval, approval upon condition, or modification of any submission by the Ohio EPA, Respondent shall proceed to take any action required by the submission as approved, conditionally approved, or modified by Ohio EPA.

32. In the event that Ohio EPA initially disapproves a submission, in whole or in part, and notifies Respondent of the deficiencies, Respondent shall within fourteen (14) days, or such longer period of time as specified by Ohio EPA in writing, correct the deficiencies and resubmit to Ohio EPA for approval a revised submission. The revised submission shall incorporate all of the uncontested changes, additions, and/or deletions specified by Ohio EPA in its notice of deficiency. To the extent that Respondent contests any changes, additions, and/or deletions specified by the Ohio EPA, Respondent shall initiate the procedures for dispute resolution set forth in Section XIII, Dispute Resolution, within fourteen (14) days after receipt of Ohio EPA's notification of disapproval of a submission. Notwithstanding the notice of deficiency, Respondent shall proceed to take any action required by a non-deficient portion of the submission.

33. In the event that Ohio EPA disapproves a revised submission, in whole or in part, Ohio EPA may again require Respondent to correct the deficiencies and incorporate all changes, additions, and/or deletions within fourteen (14) days, or such period of time as specified by Ohio EPA in writing. Or, in the alternative, Ohio EPA retains the right to terminate these Orders, perform any additional remediation, conduct a complete or partial Remedial Design or Remedial Action and/or enforce the terms of these Orders.

34. All work plans, reports, or other items required to be submitted to Ohio EPA under these Orders shall, upon approval by Ohio EPA, be deemed to be incorporated in and made an enforceable part of these Orders. In the event that Ohio EPA approves a portion of a work plan, report, or other item, the approved portion shall be deemed to be incorporated in and made an enforceable part of these Orders.

35. Respondent may invoke the procedures in Section XIII, Dispute Resolution, to dispute matters in this section.

XIII. DISPUTE RESOLUTION

36. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a dispute about the requirements and/or duties and obligations of the Parties under these Orders, a Party may invoke the dispute resolution procedures of this section by providing written notice of said dispute to the other Party. The dispute will be deemed as arising upon the date of the written notice and the Parties shall have fourteen (14) days from that date to set forth their positions with respect to the dispute in writing and exchange said writing with the other Party. The written positions of the Parties shall include the technical rationale supporting the Party's position. The fourteen (14) day period for the exchange of written positions may be extended by mutual agreement of the Parties. Such agreement shall not be unreasonably withheld.

37. Following the exchange of written positions, the Parties shall have an additional fourteen (14) days to resolve the dispute. If Ohio EPA concurs with the position of Respondent, then the work plan, report, or other item required pursuant to these Orders shall be modified accordingly.

38. If Ohio EPA does not concur with Respondent, Ohio EPA will resolve the dispute based upon and consistent with these Orders, the RD/RA Work Plan, and other appropriate federal and state laws and regulations. The pendency of a dispute under this Section shall not affect the time period for completion of the Work, except that upon mutual agreement of the Parties, any time period may be extended as appropriate under the circumstances. Such agreement shall not be unreasonably withheld by Ohio EPA. Elements of the Work not affected by the dispute shall be completed in accordance with applicable schedules and timeframes. The opportunity to invoke dispute resolution under this Section shall not be available to Respondent unless otherwise expressly stated with respect to an individual provision of these Orders.

XIV. UNAVOIDABLE DELAYS

39. Respondent shall cause all Work to be performed in accordance with applicable schedules and timeframes unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondent which prevents or delays performance of any obligation required by these Orders and which could not be overcome by due diligence on the part of Respondent. Increased cost of compliance shall not be considered an event beyond the control of Respondent.

40. Respondent shall notify Ohio EPA in writing within five (5) days after the occurrence of an event which Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable under which these measures will be implemented. Respondent shall have the burden of demonstrating that the event constitutes an unavoidable delay.

41. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Respondent in writing. Ohio EPA reserves the right to terminate these Orders, perform any additional remediation, conduct a partial or complete RD/RA, and/or enforce the terms of these Orders in the event that Ohio EPA determines that the delay has not been caused by an unavoidable delay. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA will notify Respondent in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

42. Respondent may invoke the procedures in Section XIII, Dispute Resolution, to dispute matters in this section.

XV. REIMBURSEMENT OF COSTS

43. Ohio EPA has incurred and continues to incur Response Costs in connection with the Site. Respondent shall reimburse Ohio EPA for all Response Costs incurred both prior to and after the effective date of these Orders.

44. Within thirty (30) days of receipt of an accounting of Response Costs incurred prior to the effective date of these Orders and not yet reimbursed, Respondent shall remit a check to the Ohio EPA for the full amount claimed.

45. With respect to Response Costs incurred after the effective date of these Orders, within sixty (60) days of the end of each calendar year, Ohio EPA will submit to Respondent an itemized statement of its Response Costs for the previous year. Within thirty (30) days of receipt of such itemized statement, Respondent shall remit payment for all of Ohio EPA's Response Costs for the previous year.

46. Respondent shall remit payments to Ohio EPA pursuant to this Section as follows:

a. Payment shall be made by certified check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Ohio EPA, P.O. Box 1049, Lazarus Government Center, 122 S. Front Street, Columbus, Ohio 43216-0149, ATTN: Edith Long.

b. A copy of the transmittal letter and check shall be sent to the Fiscal Officer, DERR, Ohio EPA, P.O. Box 1049, Lazarus Government Center, 122 S. Front Street, Columbus, Ohio 43216-0149, ATTN: Patricia Campbell, and to the Site Coordinator.

47. The provisions of Section XIII, Dispute Resolution, shall apply if Respondent objects to the accuracy of any request for payment of Response Costs. Should Respondent contest a portion of the Response Costs set forth in an itemized statement, but not all of the costs, Respondent shall timely pay the uncontested portion of Response Costs pursuant to the provisions of this Section, Reimbursement of Costs. Any Response Costs which Respondent must pay as a result of dispute resolution shall be paid within thirty (30) days after the date of the resolution of the dispute.

XVI. RESERVATION OF RIGHTS

48. Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondent for noncompliance with these Orders. Except as provided herein, Respondent reserves any rights it may have to raise any legal or equitable defense in any action brought by Ohio EPA to enforce the terms and conditions of these Orders.

49. Ohio EPA reserves the right to terminate these Orders and/or perform all or any portion of the Work or any other measures in the event that the requirements of these Orders are not wholly complied with within the timeframes required by these Orders.

50. Ohio EPA reserves the right to take any action, including but not limited to any enforcement action, action to recover costs, or action to recover damages for injury to natural resources, pursuant to any available legal authority as a result of past, present, or future violations of state or federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Site.

51. Respondent reserves the right to bring any contribution action or any other action against non-parties for costs incurred in connection with Respondent's compliance with these Orders.

XVII. ACCESS TO INFORMATION

52. Respondent shall provide to Ohio EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to events or conditions at the Site including, but not limited to manifests, reports, correspondence, or other documents or information related to the Work.

53. Respondent may assert a claim that documents or other information submitted to the Ohio EPA pursuant to these Orders is confidential under the provisions of OAC 3745-50-30(A) or ORC 6111.05(A). If no such claim of confidentiality accompanies the documents or other information when it is submitted to the Ohio EPA, it may be made available to the public without notice to Respondent.

54. Respondent may assert that certain documents or other information are privileged under the attorney-client or any other privilege recognized by state law. If Respondent makes such an assertion, it shall provide the Ohio EPA with the following: (1) the title of the document or information; (2) the date of the document or information; (3) the name and title of the author of the document or information; (4) the name and title of each addressee and recipient; (5) a general description of the contents of the document or information; and (6) the privilege being asserted by Respondent.

55. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical monitoring, or laboratory or interpretive reports relating to the Work under these Orders.

56. Respondent shall preserve for the duration of these Orders and for a minimum of seven (7) years after its termination, all documents and other information within its possession or control, or within the possession or control of its contractors or agents, which in any way relate to the Work notwithstanding any document retention policy to the contrary. Respondent may preserve such documents by microfiche, or other electronic or photographic device. At the conclusion of this document retention period, Respondent shall notify Ohio EPA at least sixty (60) days prior to the destruction of these documents or other information; and upon request, shall deliver such documents and other information to Ohio EPA.

XVIII. INDEMNITY

57. Respondent agrees to indemnify, save and hold harmless the State of Ohio from any and all claims or causes of action arising from, or on account of, the State of Ohio's oversight activities at the Site during the duration of these Orders, and acts or omissions of the Respondent, its employees, agents or assigns. Said indemnification shall not apply to acts or omissions of the State of Ohio, its employees, agents or assigns at, on, upon, or related to the Site if said acts are negligent, performed outside the scope of employment or official responsibilities, or performed with malicious purpose, in bad faith, or in a wanton or reckless manner. The State of Ohio shall not be considered a party to and shall not be held liable under any contract entered into by Respondent in carrying out the activities pursuant to these Orders. The State of Ohio agrees to provide notice to Respondent within thirty (30) days of receipt of any claim which may be the subject of indemnity as provided in this Section. Respondent and the State of Ohio agree to cooperate in the defense of any such claim or action against the State of Ohio.

XIX. OTHER CLAIMS

58. Nothing in these orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation, not subject to these Orders for any liability arising from, or related to, events or conditions at the Site.

XX. LAND USE AND CONVEYANCE OF TITLE

59. Within thirty (30) days of the effective date of these Orders, or as otherwise agreed to by the Parties or after acquiring an interest in property which is part of the Site, the Respondent shall record a notice on the deed to property that is part of the Site and owned by the Respondent with the County Recorder's Office for Ross County, Ohio. The notice shall reference the existence of these Orders and shall describe any monitoring and containment devices present on the property. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to these Orders and shall reference any restrictions applicable to the property under these Orders.

60. Respondent shall use its best efforts to ensure that no portion of the Site will be used in any manner which would adversely affect the integrity of any containment or monitoring systems at the Site or violate any restrictions applicable to the Site under these Orders, including without limitation any institutional controls applicable to the Site. In no event shall the conveyance of any interest in the property that includes, or is a portion of, the Site release or otherwise affect the liability of Respondent to comply with these Orders.

XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

61. The effective date of these Orders shall be the date on which it is entered in the Journal of the Director of the Ohio EPA.

62. These Orders may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of the Ohio EPA.

XXII. PERIODIC REVIEW

63. Respondent shall conduct studies and investigations as requested by the Ohio EPA in order to permit the Ohio EPA to conduct reviews at least every five (5) years as described in section 121(c) of CERCLA and any applicable regulations.

64. If the Ohio EPA determines that information received, in whole or in part, during a review conducted pursuant to Paragraph 63 of this Section XXII, Periodic Review, indicates that the Remedial Action is not protective of human health and the environment, the Respondent shall undertake any further response actions Ohio EPA has determined are appropriate. Respondent shall submit a plan for such work to the Ohio EPA for approval in accordance with the procedures set forth in Section XII, Review of Submittals, within sixty (60) days of receiving a written request from the Ohio EPA to submit such a work plan.

65. Respondent may invoke the procedures in Section XIII, Dispute Resolution, to dispute matters arising from Paragraph 64 of this section.

XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK

66. Respondent does hereby certify that it has sufficient assets, reserves, net working capital and tangible net worth to cover any and all amounts required to cover the costs of performance of the Work required under these Orders. In the event that Ohio EPA determines that this certification is insufficient, it may request in writing that Respondent provide financial assurance for the Work as follows:

a. Within thirty (30) days of the receipt of such written request for financial assurance, Respondent shall provide financial assurance for performance of the RD/RA in the amount requested in accordance with OAC 3745-66-43 or an alternative approved by the Ohio EPA in writing. Thereafter, but not more than annually, Ohio EPA may request that Respondent submit an update of such financial assurance in accordance with OAC 3745-66-42 and OAC 3745-66-43. Respondent agrees to submit such update within thirty (30) days of receipt of Ohio EPA's written request for such update.

b. Within thirty (30) days of receipt of such written request for financial assurance, Respondent shall provide financial assurance for O&M in the amount requested in

accordance with OAC 3745-66-43 or an alternative approved by the Ohio EPA in writing. Thereafter, but not more than annually, Ohio EPA may request that Respondent submit an update of such financial assurance in accordance with OAC 3745-66-44 and OAC 3745-66-45. Respondent agrees to submit such update within thirty (30) days of receipt of Ohio EPA's written request for such update.

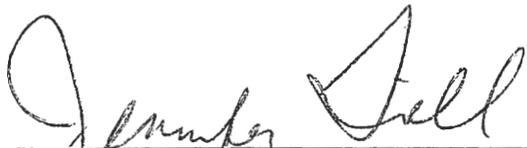
XXIV. AGREEMENT NOT TO REFER

67. Upon termination of these Orders pursuant to Section XXV, Ohio EPA agrees not to refer Respondent to the Ohio Attorney General's Office, or take administrative enforcement action against Respondent for the Work required under these Orders. During the implementation of these Orders, and provided Respondent is in compliance with these Orders Ohio EPA agrees not to refer Respondent to the Ohio Attorney General's Office, or take administrative enforcement action against Respondent, for Work required by these Orders.

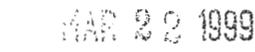
XXV. TERMINATION

68. These Orders shall terminate upon Ohio EPA's approval in writing of Respondent's written certification to Ohio EPA that all Work required to be performed under these Orders, including the payment of Response Costs, has been completed. The termination of these Orders shall not affect the terms and conditions of Section XVI, XVIII, XIX, and XX.

IT IS SO ORDERED:



Director
Ohio Environmental Protection Agency



Date

WAIVER AND AGREEMENT

A. In order to resolve disputed claims, without admission of fact, violation, or liability, Aluminum Company of America agrees that these Findings and Orders are lawful and reasonable, and agrees to perform all actions required by these Orders.

B. Aluminum Company of America hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders and hereby waives any and all rights that it may have to seek judicial review of the issuance, terms and conditions, and service of these Orders either in law or equity.

C. Notwithstanding the limitations herein on Aluminum Company of America's right to appeal or seek judicial review, the Ohio EPA and Aluminum Company of America agree that in the event that these Orders are appealed by any other party to the Environmental Board of Review, or any court, Aluminum Company of America retains the right to intervene and participate in such appeal. In such event, Aluminum Company of America shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

IT IS SO AGREED:

ALUMINUM COMPANY OF AMERICA

By: *JR Russell* *1/28/99*
Date
Title: *Executive Vice President*

OHIO ENVIRONMENTAL PROTECTION AGENCY

By: *Jeanne Dill* *MAR 22 1999*
Director Date