

APPENDIX E

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ENVIRONMENTAL COVENANT

This Environmental Covenant is established and executed pursuant to 2005 Iowa Acts, Senate File 375 (SF 375) (to be codified as Iowa Code chapter 455L and hereafter cited as Iowa Code chapter 455L) by ALCOA, INC., a Pennsylvania corporation, whose mailing address is _____.

The signatories hereto have entered into this Environmental Covenant for the purpose of subjecting the property described below to certain activity and use limitations in accordance with the terms and conditions specified below and the provisions of SF 375.

1. **The Property.** Alcoa, Inc. is the fee simple title owner of that real property legally described in Exhibit A hereto, and located south of Highway 67 in Riverdale, Scott County, Iowa (the "Property"). [INCLUDE SOUTH BELLINGHAM ROAD PROPERTIES]

2. **Purpose.** Because contamination will remain at the Property at levels above those appropriate for unlimited use and unrestricted exposure, this Environmental Covenant is being imposed on the Property for the purposes of protecting public health and the environment, and to prevent interference with the performance, and the operation and maintenance, of any environmental response project required under the terms of the below-referenced Consent Decree. The signatories acknowledge that failure of these activity and use limitations to serve their intended purpose of preventing exposure to contamination at the Property could require the performance of additional work by Alcoa, Inc. at the Property, in accordance with the Consent Decree, to ensure the protectiveness of the environmental response project.

3. **Background.** Alcoa, Inc. conducted a Remedial Investigation ("RI"), which was approved by EPA on July 31, 2002, and a Feasibility Study ("FS"), which was approved by EPA on November 23, 2004, to address groundwater contamination at the Property. On September 28, 2004, the EPA issued a Record of Decision ("ROD") which selected an environmental response project to address contamination in the groundwater at the Property. The ROD included institutional controls as part of this environmental response project. Alcoa, Inc. has entered into a Consent Decree, Docket No. _____, with the United States which is on file in the United States District Court for the Southern District of Iowa, Davenport Division, which provides for

the imposition of the activity and use limitations required hereby. The ROD (and any amendments or modifications thereto) constitute the final decision document for the environmental response project required by the Consent Decree to be implemented at the Property. The ROD and the administrative record for the ROD may be reviewed at the offices of the U.S. Environmental Protection Agency at the address specified in Section 17 below.

4. Identity of Grantor, Grantee/Holder, and Agency, as each is defined in this Environmental Covenant and as provided in Iowa's Uniform Environmental Covenants Act (SF 375):

Grantor: Alcoa, Inc. is the current owner of the Property and the Grantor of this Environmental Covenant.

Grantee/Holder: Alcoa, Inc. is the Grantee/Holder of this Environmental Covenant.

Agency: The Iowa Department of Natural Resources (IDNR) and the U.S. Environmental Protection Agency (EPA) are each an Agency under this Environmental Covenant.

5. Representations and Warranties. Alcoa, Inc. warrants to IDNR and EPA the following:

- A. that it is the sole fee simple title owner of the Property;
- B. that it holds sufficient fee simple title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
- C. that it has identified all other persons holding legal or equitable interests to the Property, including, but not limited to, contract buyers, mortgagees, other consensual lien holders, and lessees and secured their consent to this Environmental Covenant either by obtaining their signatures hereto or by a separate subordination agreement attached hereto as Exhibit B.

6. Running with the Property. This Environmental Covenant is perpetual and runs with the Property as provided in SF 375 until modified or terminated as provided below in Section 11. This Environmental Covenant is binding on Alcoa, Inc. and all of Alcoa, Inc.'s successors, assigns, and all transferees acquiring or owning any right, title, lien or interest in the Property and their heirs, successors, assigns, grantees, executors, administrators, and devisees. The term "transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, contract buyers, mortgagees, easement holders, and/or lessees.

7. **Activity and Use Limitations and Terms.** The Property is subject to the following activity and use limitations:

- A. the Property shall be used only for industrial uses or purposes;
- B. installation of drinking water wells on or in the Property is prohibited; and
- C. groundwater taken from beneath the Property shall not be used for domestic purposes such as drinking, cooking or bathing.

8. **Notice of Non-Compliance.** Alcoa, Inc. and any subsequent transferee of the Property shall notify IDNR and EPA as soon as possible of any conditions that would constitute a breach of the activity and use limitations specified above in Section 7.

9. **Access to the Property.** Reasonable access to the Property is hereby granted to IDNR and EPA, and their authorized representatives. Access shall be granted to any private party or its contractors which may be required by law or authorized by IDNR or EPA to conduct environmental activities at the Property to ascertain or ensure the effectiveness of the environmental response project. These activities may include, but are not limited to, repair and maintenance of response project equipment, soil caps, groundwater monitoring wells and associated aboveground or subsurface structures, and fencing and other technological controls. To determine Property conditions and compliance with the terms of this Environmental Covenant, access may include groundwater sampling and monitoring, additional drilling and construction of soil borings and/or groundwater monitoring wells and other activities authorized or otherwise directed by IDNR or EPA.

10. **Groundwater Hazard Statement.** Iowa Code section 558.69 requires submission of a groundwater hazard statement and notice if "hazardous waste", as defined in Iowa Code sub-sections 455B.411(3), 455B.412(2) or section 455B.464, is present on real property. If hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with IDNR rules. Alcoa, Inc. and all subsequent transferees required to submit a groundwater hazard statement under Iowa Code section 558.69 for the Property shall make reference to this Environmental Covenant in any instrument conveying an interest in the Property. Such reference shall be in substantially the following form:

THE INTEREST CONVEYED IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 200_, RECORDED IN THE SCOTT COUNTY RECORDER/REGISTRAR OFFICE ON _____, 200_, AS [DOCUMENT ___, BOOK ___, PAGE ___, OR BY PARCEL NUMBER ___]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: (1) THE PROPERTY SHALL BE LIMITED TO ONLY INDUSTRIAL USES OR PURPOSES; (2) INSTALLATION OF DRINKING WATER WELLS ON OR IN THE PROPERTY IS

PROHIBITED; AND (3) GROUNDWATER TAKEN FROM BENEATH THE PROPERTY SHALL NOT BE USED FOR DOMESTIC PURPOSES SUCH AS DRINKING, COOKING OR BATHING.

11. **Modification and Termination.** This Environmental Covenant may be modified or terminated in accordance with and subject to the provisions of SF 375. The termination or modification of this Environmental Covenant is not effective until the document evidencing consent of all necessary persons is properly recorded.

12. **Enforcement.** The terms of this Environmental Covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with SF 375.

13. **Severability.** If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. **Governing Law.** This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the state of Iowa.

15. **Recordation.** Within thirty (30) days following execution of this Environmental Covenant by all parties hereto, Grantor shall properly record this Environmental Covenant with the Scott County, Iowa, Recorder/Registrar Office.

16. **Effective Date.** The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been properly recorded with the Scott County, Iowa, Recorder/Registrar Office.

17. **Notice.** Unless otherwise notified in writing by an Agency, any document or notice required by this Environmental Covenant shall be submitted to:

Director
Iowa Department of Natural Resources
Wallace State Office Building
Des Moines, Iowa 50319

and

Director, Superfund Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

GRANTOR/GRANTEE/HOLDER:

ALCOA, INC.

_____, 200__

By: _____
Title: _____

State of _____)
County of _____) SS.

On this ____ day of _____, 2005, before me personally appeared _____ and _____, who being duly sworn, did say that they are the corporation, that (the seal affixed to said instrument is the seal of said corporation or no seal has been procured by said corporation) and that the instrument was signed and sealed on behalf of said corporation by authority of its board of directors and that the said officers acknowledge the execution of said instrument to be the voluntary act and deed of said corporation by them voluntarily executed.

Notary Public, State of _____:

AGENCY:

IOWA DEPARTMENT OF NATURAL RESOURCES

_____, 2005

Jeffery R. Vonk
Director, Iowa Department of Natural
Resources

State of _____)
County of _____) ss.

On this ____ day of _____, 2005, before me personally appeared _____, known to me to be the Director of the Iowa Department of Natural Resources or the lawful designee of the Director who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.

Notary Public, State of Iowa :

AGENCY:

U.S. ENVIRONMENTAL PROTECTION AGENCY

_____, 2005

By: Cecilia Tapia, Director
Superfund Division

State of _____)
County of _____) ss.

On this ____ day of _____, 2005, before me personally appeared Cecilia Tapia, the Director of the Superfund Division of Region VII of the U.S. Environmental Protection Agency, who being duly sworn, did sign this Environmental Covenant.

Notary Public, State of Kansas

EXHIBIT A

Legal Description

Alcoa Property Located South of Highway 67 in Riverdale, Iowa

Aluminum Company of America owns the following described property located in Sections 23, 24, 25 and 26, Township 78 North, Range 4 East of the Fifth Principal Meridian in Scott County in the State of Iowa:

A tract of land situated in Section 23, commencing at the Southwest Corner of the Southeast $\frac{1}{4}$, said point being the point of beginning, and running North to U.S. Highway 67, thence Northeasterly along the Southerly boundary of U.S. Route 67 to the midpoint of said Southeast $\frac{1}{4}$ of Section 23, thence North 90° East to the Eastern boundary of Section 23, thence South 0° West to the Southwest corner of said Section 23, thence South 90° West to the point of beginning; excepting therefrom the tract conveyed to the Davenport, Rock Island & Northwestern Railroad by instrument dated March 1, 1949;

and

The Northeast $\frac{1}{4}$ of Section 26, including the Southeast portion of said Northeast $\frac{1}{4}$ that is submerged in the Mississippi River; excepting therefrom the tract conveyed to the Davenport, Rock Island & Northwestern Railroad by instrument dated March 1, 1949;

and

A portion of the Northwest $\frac{1}{4}$ of Section 26 beginning at the midpoint of said Section, thence North 0° West to the Southerly boundary of the tract conveyed to the Davenport, Rock Island & Northwestern Railroad by instrument dated March 1, 1949, thence running Southwesterly along the Southern boundary of said tract to the Northerly boundary of South Bellingham Road, thence Southeasterly along said Northerly boundary of South Bellingham Road to East-West center line of Section 26, thence South 90° East along said East-West center line to the point of beginning; excepting therefrom a tract owned of record by Iowa-Illinois Gas and Electric Company and described as follows: commencing at the midpoint of the Northeast $\frac{1}{4}$ of Section 26, such point being the point of beginning, thence South $52^{\circ}26'30''$ East 240 feet, thence South $37^{\circ}33'30''$ West 344.6 feet, thence North $52^{\circ}26'30''$ West 240 feet, thence North $37^{\circ}33'30''$ East 344.60 feet to the point of beginning;

and

A tract of land situated in Sections 24, 25 and 26, commencing at the midpoint of Section 26, being the point of beginning, thence North 90° West to the Easterly line of South Bellingham Road, thence Southeasterly along South Bellingham Road to the Northwesterly boundary of the tract formerly owned by the Davenport, Rock Island and Northwestern Railroad and conveyed to the Aluminum Company of America by instrument dated March 1, 1949, thence Southwesterly along the Northwesterly boundary of said former Davenport, Rock Island & Northwestern Railroad tract to the Northerly line of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 26, thence South 90° West to the Northwest Corner of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 26, thence South 0° West to the Southwest Corner of the Southwest $\frac{1}{4}$ of said Section 26, thence South 90° East to the Southeast Corner of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section,

thence Northeasterly along the banks of the Mississippi River approximately 1,367.7 feet to the Southwesterly boundary of the tract currently owned by PDV Midwest Refining, thence North 38°17' West approximately 920 feet, thence South 48°42' West 385 feet, thence North 36°23' West 867.1 feet to the Southerly boundary of the former Davenport, Rock Island and Northwestern Railroad tract conveyed to the Aluminum Company of America by instrument dated March 1, 1949, thence following the Southeasterly boundary of the former Davenport, Rock Island & Northwestern Railroad tract in a Northeasterly direction approximately 1,520 feet to the Northeasterly boundary of the tract currently owned by PDV Midwest Refining, thence South 40° East 2,020 feet, thence Northeasterly along the shore of the Mississippi River 1,336.2 feet, thence South 51°38' East 270 feet along a line commonly known as the wharf line of the Mississippi River, thence North 40°46' East 2,985 feet along said wharf line, thence North 51°38' West 610 feet, thence North 42°28' East 1,510 feet, thence North 40°21' East 150 feet, thence North 0°54'20" West 399.41 feet, thence North 49°58'20" West 1,153.45 feet to the North line of the Southwest ¼ of the Southwest ¼ of Section 24, thence North 90° West along the North line of said Southwest ¼ of the Southwest ¼ of Section 24 to the Easterly line of the property conveyed to the Davenport, Rock Island and Northwestern Railroad by instrument dated November 12, 1940, thence South 10°31' West 403.1 feet, thence South 49°44' East to the Northwestern corner of the tract conveyed to Aluminum Company of America by deed dated May 27, 1969, thence South 59°36'10" West to the Southeast corner of a tract conveyed to Iowa Illinois Gas & Electric Company by instrument dated January 5, 1942, thence North 56°45'30" West to the Section line between Sections 23 and 24, thence South 0° West to the Southeast Corner of the Northeast ¼ of Section 26, thence South 90° West to the point of beginning;

All of the above subject to all covenants and easements of record.