

Aluminum Company of America MOA
Page 1

**MEMORANDUM OF AGREEMENT BETWEEN THE NATURAL RESOURCE
TRUSTEES AND ALUMINUM COMPANY OF AMERICA**

This Memorandum of Agreement (MOA) is among the Texas Parks and Wildlife Department (TPWD), Texas General Land Office (TGLO), Texas Natural Resource Conservation Commission (TNRCC), United States Department of the Interior (USDOI), and the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce (NOAA) (collectively, "Trustees"), and Aluminum Company of America ("Alcoa"). The Trustees and Alcoa are hereafter collectively referred to as "Parties." This MOA shall become effective as of the last date of its execution by the authorized representatives of the Parties.

I. INTRODUCTION

In May 1948, Alcoa purchased approximately 3000 acres of land in Point Comfort, Texas on the east side of Lavaca Bay for the construction of an alumina and aluminum manufacturing facility. Between 1948 and the present, Alcoa has constructed and operated several types of manufacturing processes at this location including aluminum smelting, carbon paste and briquettes manufacturing, gas processing, chlor-alkali processing and alumina refining. The plant and all of Alcoa's operations conducted thereon are known as the Point Comfort Operations (PCO).

The "Alcoa Point Comfort/Lavaca Bay" Superfund Site (Site) was placed on the National Priority List effective March 1994. The Site was evaluated and listed due to the presence of mercury in several species of fish and crab in Lavaca Bay and the existence of a fishing advisory imposed by the Texas Department of Health related to mercury in fish. During March 1994, Alcoa and the United States Environmental Protection Agency, Region 6 (EPA) signed an Administrative Order on Consent (AOC) for the Site, under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The AOC provides for conducting a Remedial Investigation (RI), a Baseline Risk Assessment (RA), and a Feasibility Study (FS) for the Site.

The execution of this MOA recognizes the Parties' common interests in (1) determining whether natural resources have been affected as a result of Alcoa's operations at the PCO and (2) expeditiously restoring natural resources which have been affected in coordination with the remedial process required under CERCLA.

II. PURPOSE AND GENERAL APPROACH

This MOA provides the structure under which the Parties agree to undertake a cooperative assessment of natural resource injuries associated with the Site and such actions as may be necessary or appropriate to provide for the restoration, rehabilitation, replacement or acquisition of the equivalent of injured natural resources. More specifically, this MOA provides the framework by which the Parties will endeavor to agree upon the following:

- Identify potential natural resource injuries to be evaluated,
- Evaluate existing data to determine suitability for injury determination and injury quantification for the identified resource injuries.
- Identify potential additional data needs,
- Develop plans for obtaining necessary additional data, and
- Develop appropriate restoration alternatives.

The applicable section of the National Contingency Plan (NCP), 40 C.F.R. §300.615 (d)(2) provides Trustees and potentially responsible parties (PRP) the opportunity to reach negotiated agreements in order to obtain PRP-financed or PRP-conducted assessments. This MOA is intended to provide for the development of a cost-effective and efficient natural resource injury assessment, quantification and restoration process to be jointly implemented by the Parties. The Parties agree that, where appropriate, the process to be developed should:

- **Concentrate on restoration of Service losses.** Service losses means services to humans and ecological services.
- **Provide for an injury assessment sufficient to determine the appropriate type and extent of restoration.** To the extent practicable, the injury assessment will be integrated with the CERCLA Risk Assessment process.
- **To the extent possible, be integrated with any selection and implementation of early restoration to enable restoration in coordination with any expedited remedial actions under CERCLA.**
- **Identify a process for public participation.**

The detailed plans for this cost-effective and efficient natural resource injury assessment, quantification and restoration process will be described in one or more Attachments to be developed and incorporated into this MOA.

III. TRUSTEE AUTHORITY

The Trustees enter into this MOA in accordance with the legal authorities provided to each Trustee by Section 107(f) of CERCLA, 42 U.S.C. Section 9607(f); Section 311(f) of the Clean Water Act, 33 U.S.C. Section 1321(f); and any other applicable Federal and State laws including Subpart G of the NCP, 40 C.F.R. Section 300.600-300.615, and the Natural Resource Damage Assessment Regulations at 43 C.F.R. Part 11.

IV. EXPEDITED INJURY ASSESSMENT AND RESTORATION PROCESS

The Parties have determined that it is appropriate to develop a focused and expedited process for assessing potential natural resource injuries resulting from Alcoa's PCO and for planning restoration of any injured resources/service losses. The process will be set forth in the Attachments to be developed and incorporated into this MOA. The parties agree to implement the process to be described in the Attachments. The Parties stipulate that the process for natural resource injury assessment and restoration described in this MOA, including all incorporated Attachments, shall be comprised of and shall represent appropriate and reliable scientific methodologies for determining natural resource injuries and losses attributable to PCO and for determining appropriate restoration measures. Disputes regarding the conduct and implementation of the process shall be governed by Paragraph XII.

V. PUBLIC PARTICIPATION

The Trustees are required by law to give public notice and to solicit public review and comment during certain phases of the injury assessment and restoration planning process. The Parties agree to develop an appropriate public participation plan that will become an Attachment to this MOA.

VI. IMPLEMENTATION OF THE PROCESS

As may be appropriate to efficiently achieve the objectives of this MOA, the Parties agree that Technical Committees may be formed to assist in the development of plans for use in implementing a natural resource injury assessment, quantification and restoration process pursuant to this MOA. Technical Committees, membership in those committees and roles and responsibilities of Committees and members shall all be set forth in Attachments to this MOA.

The Parties agree that the technical representatives of any Party may be present at any and all locations where work that is part of the injury assessment and restoration process as described in Paragraph IV and in any Attachments incorporated herein is being performed. The Parties will fully and freely share all data developed for the purposes of the studies as well as study design and procedures, including quality assurance/quality control procedures, and the Parties' representatives shall have access to and use of all such data collected during the period of this MOA.

The Parties will endeavor to enter into stipulations, when appropriate, during the course of the cooperative natural resource injury assessment, quantification and restoration process. Any Party may propose a stipulation at any time. A stipulation may address issues of fact or law or both. A stipulation, agreed to by all the Parties, shall be attached to this MOA and shall survive the termination of this MOA. Any matter covered by a stipulation or other form of agreement under this MOA shall not be subject to objection or challenge by any party.

VII. DISBURSEMENT OF FUNDS

Cost Related to Assessment and Restoration Actions

Alcoa agrees to pay the reasonable costs associated with natural resource injury assessment and restoration actions identified in any Attachment(s) to this MOA.

Sums, procedures, and directions for disbursement of funds to implement such actions, including amounts needed to provide for reimbursement of trustee administrative or oversight costs related to specific assessment or restoration actions, will be identified in the Attachment(s) identifying such actions.

Cost Related to Participation in this MOA

Further, in proceeding under this MOA, the Trustees will incur administrative costs and expenses as they participate with Alcoa in the joint development of cooperative assessment and restoration actions within the framework of this MOA. Alcoa agrees to fund such Trustee costs and expenses incurred within the scope of this MOA. This agreement relates only to costs and expenses incurred incident to this MOA.

Via two separate Funding Agreements executed in 1996, Alcoa previously transferred \$50,000.00 to each of the Trustees for use, at their sole discretion, to participate in certain Consultations with Alcoa related to the Site over a two-year period. As of the Effective Date of this MOA, this MOA supersedes and replaces those earlier Funding Agreements. To the extent funds provided by Alcoa under the previous Funding Agreements have not been expended or committed, such funds are to be retained by each Trustee and are immediately available for use, at the sole discretion of each Trustee, to participate in the natural resource injury assessment, quantification and restoration process outlined in this MOA.

Alcoa and the Trustees agree to meet in January of each calendar year during the term of this MOA to discuss and agree upon funding levels necessary for the upcoming calendar year. Agreed-upon funding levels, payment dates, means by which payment shall be made, and means by which costs and expenses shall be accounted for shall all be provided in annual attachments to this MOA providing for funding.

Reservation of Rights

The payment of any costs and expenses under this section is without prejudice to any Trustee claims for assessment costs, or any defenses thereto, which are beyond the funding levels provided from time to time under this MOA or have been or are incurred outside the scope or effective period of this MOA or the 1996 Funding Agreements.

VIII. THE PARTIES' INDEPENDENT FINDINGS AND RIGHTS

The Parties will employ good faith efforts to reach agreement on the interpretation of the data resulting from the implementation of any process

described in Paragraph IV and any Attachments hereto. Unless otherwise agreed to in this MOA or in an Attachment or stipulation incorporated into this MOA, the Parties expressly reserve and maintain the right to join or not join, in a timely manner, in the interpretation of the data resulting from any study or, alternatively, to produce separate and independent findings and conclusions. The Parties will also endeavor to jointly conduct all injury assessment studies. The Parties agree that independent injury assessment studies under this MOA will not be undertaken unless such study proposals have first been presented to all the Parties for joint study consideration. Further, the conduct and implementation of an independent study shall be in accordance with the access, observation and data sharing requirements of Section VI, IMPLEMENTATION OF THE PROCESS. However, unless otherwise agreed to in this MOA or in an Attachment or stipulation incorporated into this MOA, the Parties expressly reserve the right to perform independent injury assessment studies.

IX. RESERVATION OF RIGHTS AND CLAIMS

Except as specifically provided in this MOA or in any Attachments or stipulations incorporated into this MOA, the Parties agree that none of them is making any admission of fact or law by entering into this MOA. This MOA shall not be admissible as evidence or proof of liability or non-liability. Except as provided in this MOA or in any Attachments or stipulations incorporated into this MOA, this MOA shall not be admissible as to the validity or non-validity of any claim or defense in any proceeding relating to this matter. Nothing in this MOA is to be construed to abrogate the right of any Party to pursue contribution from another Party. Except as provided in this MOA or in any Attachments or stipulations entered into pursuant to this MOA, nothing in this MOA is intended nor shall be construed as a waiver by any of the Parties of any defenses or affirmative claims in any proceedings relating to Alcoa's operations of its Point Comfort, Texas facilities or of any other rights or remedies.

Nothing in this agreement is intended, nor shall be interpreted, to limit the scope of the natural resource injury assessment appropriate for this Site or to otherwise restrict or abrogate the authority or discretion of the Trustees to determine the scope of that assessment.

Nothing in this agreement is intended, nor shall it be construed as a waiver of any attorney-client privilege, work product privilege, work product protection, or

any other privilege that has been or may be asserted in this or any other matter unless explicitly stated herein. Raw or factual data collected pursuant to this MOA shall not be considered work product or attorney-client privileged.

Alcoa is not released from any liability, including but not limited to claims for damage, injury, loss or destruction of natural resources or their services, claims for the costs of assessing damage, injury, loss or destruction of natural resources or their services, claims for restoration, rehabilitation, replacement or acquisition of the equivalent of natural resources or lost services of those resources, or any other causes of action or requests for relief, either administratively or judicially, under either state or federal law, as well as any claims, causes of action, or requests for relief in admiralty, arising from the releases described above.

X. SETTLEMENT NEGOTIATIONS

Upon completion of the cooperative natural resource assessment, the Parties will employ good faith efforts to resolve any outstanding issues necessary for a final resolution of all natural resource issues associated with Alcoa's operations at PCO. These may include but are not limited to: (1) the location and scope of any natural resource restoration, replacement, and/or acquisition of equivalent natural resources to be undertaken and assessment costs to be paid by Alcoa; (2) the amount of any natural resource damages and assessment costs to be paid to the Trustees by Alcoa; and (3) the contents and details of the final settlement agreement.

XI. GENERAL

This MOA in no way affects or relieves the Parties of their responsibility to comply with any applicable federal, state, or local law, regulation, or permit.

XII. PROCEDURE UPON DISAGREEMENTS

The Parties agree to attempt to resolve any disputes concerning the implementation of this agreement through good faith informal negotiations between Alcoa and Trustee representatives. Any disputes arising from the conduct or implementation of study plans shall be addressed first by the

technical committee responsible for their formulation. The period for informal negotiations shall not exceed 30 days from the time the dispute arises unless otherwise agreed in writing between all Parties involved. A dispute shall be considered to have arisen when one Party sends the other Parties a written Notice of Dispute. The notice shall describe the dispute with enough specificity to allow the other Parties to identify the issues involved and to respond effectively.

To the extent practicable, such notice will be provided at least 30 days prior to the initiation of any field, analytical, or other assessment work which is the subject of the disagreement or upon such other period for notice as may be agreed upon by the Parties.

XIII. MODIFICATION AND TERMINATION

Any modification of this MOA or its attachment(s) must be in writing and executed by all of the Parties. Any Party may terminate its participation in this MOA at any time by giving 30 days written notice to all Parties. Notice of intent to terminate participation in the MOA must clearly state the reasons for such termination and must be signed by an authorized official of the terminating Party(ies). Termination by a single Trustee Party shall not void the agreement as to the remaining Parties. The decision of any Party(ies) to conduct independent studies pursuant to Paragraph VIII shall not, in and of itself, be deemed to constitute termination of participation in the MOA.

Termination of this MOA, either as between the Trustees and Alcoa or by a single Trustee Party, is prospective only. As such, this MOA, including agreements therein and all Attachments and stipulations incorporated prior to the effective date of termination, survives and will remain in effect following any termination.

XIV. EFFECTIVE DATE

This MOA may be executed in one or more counterparts, all of which shall be considered an original. The Effective Date of this MOA shall be the last date of execution of any counterpart hereto. The Effective Date of any Attachment hereafter developed and incorporated into this MOA shall be the date set forth in such Attachment.

XV. NATURAL RESOURCE TRUSTEE CONTACT PERSONNEL

This MOA establishes that NOAA will serve as the Lead Administrative Trustee (LAT) for this matter. Duties of the LAT include, but are not limited to, the following: scheduling of meetings between the Parties; acting as the central point of contact for the Parties; maintaining records and documents relating to the injury assessment; and preparing, issuing or arranging for public notices or reports as determined necessary by the Trustees or by the Parties.

A. Each Trustee agency hereby respectively designates the following person(s) to implement this MOA:

1. For TPWD: Dr. David Sager
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744
Phone: (512) 389-4503
Fax: (512) 389-4394

2. For TGLO: Ms. Diane B. Hyatt
Texas General Land Office
Natural Resource Damage Assessment Division
1700 N. Congress Ave., Rm. 1125
Austin, Texas 78701-1495
Phone: (512) 476-1395
Fax: (512) 463-5367

3. For TNRCC: Mr. Richard Seiler
Texas Natural Resource Conservation Commission
Emergency Response & Assessment
Natural Resource Trustee Program
P.O. Box 13087, Capitol Station
Austin, Texas 78711-3087
Phone: (512) 239-2523
Fax: (512) 239-2527

4. For DOI: Mr. Tom Schultz
United States Fish and Wildlife Service
Division of Ecological Services
c/o Corpus Christi State University
Campus Box 338
6300 Ocean Drive
Corpus Christi, Texas 78412
Phone: (512) 994-9005
Fax: (512) 994-8262

5. For NOAA: Mr. Ron Gouguet
NOAA Coastal Resource Coordinator (6SF-L)
Office of Ocean Resources Conservation and Assessment
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202
Phone: (214) 665-6749
Fax: (214) 665-6460

XVI. ALCOA CONTACT PERSONNEL

Alcoa hereby designates the following person(s) as their representative contact regarding this matter:

Ronald W. (Ron) Weddell
Environmental Remediation Manager
Alcoa Point Comfort Operations
State Highway 35
Point Comfort, TX 77978
Phone: (512) 987-6607
Fax: (512) 987-6180

XVII. SIGNATURES

TEXAS PARKS AND WILDLIFE
DEPARTMENT
Authorized Official



Andrew Sansom
Executive Director

Date: December 3, 1996

U.S. DEPARTMENT OF THE INTERIOR
Authorized Official

Willie R. Taylor
Director, Office of Environmental Policy
and Compliance

Date: _____

TEXAS GENERAL LAND OFFICE
Authorized Official

Diane B. Hyatt
Director, Natural Resource Damage
Assessment

Date: _____

NATIONAL OCEANIC & ATMOSPHERIC
ADMINISTRATION
Authorized Official

Charles N. Ehler
Director, Office of Ocean Resources
Conservation and Assessment

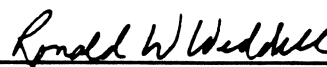
Date: _____

TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION
Authorized Official

Dan Pearson
Executive Director

Date: _____

ALUMINUM COMPANY OF AMERICA
Authorized Official



Ronald W. (Ron) Weddell
Environmental Remediation Manager
Alcoa Point Comfort Operations

Date: November 14, 1996

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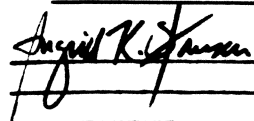


~~Diane B. Hyatt~~ Spencer Reid
~~Director, Natural Resource Damage~~
~~Assessment~~ Senior Deputy
Commissioner

Charles N. Ehler
Director, Office of Ocean Resources
Conservation and Assessment

Date: _____

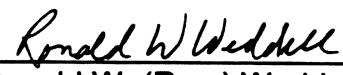
Date: _____



S.A.
G.C.
D.C.
TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION
Authorized Official

ALUMINUM COMPANY OF AMERICA
Authorized Official

Dan Pearson
Executive Director



Ronald W. (Ron) Weddell
Environmental Remediation Manager
Alcoa Point Comfort Operations

Date: _____

Date: November 14, 1996

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Diane B. Hyatt
Director, Natural Resource Damage
Assessment

Charles N. Ehler
Director, Office of Ocean Resources
Conservation and Assessment

Date: _____


Date: _____

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ALUMINUM COMPANY OF AMERICA
Authorized Official



Dan Pearson
Executive Director



Ronald W. (Ron) Weddell
Environmental Remediation Manager
Alcoa Point Comfort Operations

Date: 1/3/97

Date: November 14, 1996

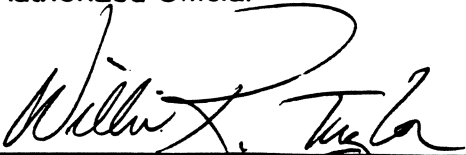
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Andrew Sansom
Executive Director

Date: _____

U.S. DEPARTMENT OF THE INTERIOR
Authorized Official



Willie R. Taylor
Director, Office of Environmental Policy
and Compliance

Date: 12/20/96

TEXAS GENERAL LAND OFFICE
Authorized Official

Diane B. Hyatt
Director, Natural Resource Damage
Assessment

Date: _____

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Authorized Official

Charles N. Ehler
Director, Office of Ocean Resources
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Date: _____

TEXAS NATURAL RESOURCE
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Dan Pearson
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ALUMINUM COMPANY OF AMERICA
Authorized Official



Ronald W. (Ron) Weddell
Environmental Remediation Manager
Alcoa Point Comfort Operations

Date: November 14, 1996

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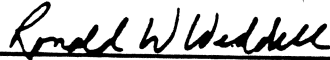
Date: 1/1/97

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Authorized Official

Dan Pearson
Executive Director

Date: _____

ALUMINUM COMPANY OF AMERICA
Authorized Official



Ronald W. (Ron) Weddell
Environmental Remediation Manager
Alcoa Point Comfort Operations

Date: November 14, 1996