

ROTT
U.S. DISTRICT COURT
WESTERN DISTRICT OF KY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY 01 OCT 17 AM 10:52
OWENSBORO DIVISION

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

COMMONWEALTH ALUMINUM)
CONCAST, INC.,)

Defendant.)

CIVIL ACTION NO.

4:01 CV 176-M

CONSENT DECREE

Brantley
Ft. Hartford
Stone Quarry
04-2001-9002 + 04-2000-0865
04-2002-0005

2

TABLE OF CONTENTS

I.	<u>BACKGROUND</u>	1
II.	<u>JURISDICTION</u>	4
III.	<u>PARTIES BOUND</u>	4
IV.	<u>DEFINITIONS</u>	5
V.	<u>REIMBURSEMENT OF RESPONSE COSTS</u>	9
VI.	<u>FAILURE TO MAKE TIMELY PAYMENTS</u>	18
VII.	<u>COVENANT NOT TO SUE BY PLAINTIFF</u>	19
VIII.	<u>RESERVATIONS OF RIGHTS BY PLAINTIFF</u>	20
IX.	<u>COVENANT NOT TO SUE BY SETTLING DEFENDANT</u>	22
X.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u>	24
XI.	<u>SITE ACCESS</u>	26
XII.	<u>ACCESS TO INFORMATION</u>	29
XIII.	<u>RETENTION OF RECORDS</u>	32
XIV.	<u>NOTICES AND SUBMISSIONS</u>	34
XV.	<u>RETENTION OF JURISDICTION</u>	35
XVI.	<u>INTEGRATION/APPENDICES</u>	35
XVII.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u>	35
XVIII.	<u>EFFECTIVE DATE</u>	36
XIX.	<u>SIGNATORIES/SERVICE</u>	36

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO.
)
)
COMMONWEALTH ALUMINUM)
CONCAST, INC.,)
)
 Defendant.)
_____)

I. BACKGROUND

A. On March 31, 1995 and September 6, 1995, respectively, the United States Environmental Protection Agency ("EPA") issued to Barmet Aluminum Corporation, now known as Commonwealth Aluminum Concast, Inc. ("Commonwealth") two separate Unilateral Administrative Orders ("UAOs"), pursuant to Section 106 of the CERCLA, 42 U.S.C. § 9606, for the performance of a Remedial Design and Remedial Action (RD/RA) with respect to two separate facilities listed on the National Priorities List: (1) The Fort Hartford Coal Co. Stone Quarry Site in Olaton, Ohio County, Kentucky ("Ft. Hartford Site") and (2) the Brantley Landfill Site in Island, McClean County, Kentucky ("Brantley Site") (together, the "Sites"). The UAOs, the Scopes of Work, and amendments to the same,

which are attached to and included as part of the UAOs, are attached to this Consent Decree in Appendix 1.

B. The Settling Defendant is currently financing and performing the RD/RA for each of the Sites.

C. In performing response actions at the Sites, including oversight of the RD/RAs, EPA has incurred Past Response Costs in response to a release or threatened release of hazardous substances at and from the two Sites, and will continue to incur such costs.

D. Settling Defendant has paid EPA's Past Response Costs incurred at the Ft. Hartford Site in the amount of \$163,495.76.

E. The purpose of this Consent Decree is as follows:

1. To reach a final settlement among the Parties with respect to the Sites that allows the Settling Defendant to make a cash payment to resolve its alleged civil liability under CERCLA, 42 U.S.C. § 9601 et seq., for Past Response Costs incurred at or in connection with the Sites;

2. To provide for the continued payment by Settling Defendant of EPA's Oversight Costs; and

3. To provide for contribution protection for the Settling Defendant with regard to the Sites pursuant to

Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

F. EPA alleges that Settling Defendant is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for the costs of responding to a release or threatened release of hazardous substances at each of the two Sites.

G. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a complaint, simultaneously with the lodging of this Consent Decree, pursuant to Section 107 of the CERCLA, 42 U.S.C. § 9607, seeking reimbursement for Past Response Costs in responding to a release or threatened release of hazardous substances at and from each of the two Sites and seeking a declaratory judgment as to Settling Defendant's liability for future costs of response.

H. The Settling Defendant does not admit any liability arising out of the transactions or occurrences alleged in the complaint.

I. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good

faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Settling Defendant shall not challenge the entry of this Consent Decree. The Parties consent to this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and its agencies, departments, and instrumentalities, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA, or in regulations promulgated under CERCLA, shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree the following definitions shall apply:

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

b. "Certified Cost Package" shall mean a compilation of supporting documentation broken down by sections for all costs related to the relevant Site for which EPA seeks reimbursement. This package shall include a certified Management and Reporting System Report, a certified SCORPIOS Report, all time sheets, travel vouchers, contractor vouchers, and interagency agreement vouchers.

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

d. "Day" shall mean a calendar day. In computing any

period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

g. "Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Interest" shall mean interest at the current rate specified for interest on investments of the 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).

i. "Matters Addressed in the Settlement" shall mean all Past Response Costs and Oversight Costs incurred by the United States at or in connection with the Sites, and the payment by the Settling Defendant of the Past Response Costs and

Oversight Costs, and all other actions required under this Consent Decree.

j. "National Contingency Plan" (NCP) shall mean the national contingency plan as defined in Section 101(31) of CERCLA, 42 U.S.C. 9601(31).

k. "Oversight Costs" shall mean all Response Costs not inconsistent with the NCP, including, but not limited to, direct and indirect costs, that the United States incurs at or in connection with the Sites on or after lodging of this Consent Decree in overseeing Settling Defendant's plans, reports, and work submitted or conducted pursuant to the existing UAOs and SOWs and any existing amendments thereto, including conducting response activities pursuant to Section XIV (EPA Review of Submissions); performing periodic remedial action reviews under the UAOs or Section 121 of CERCLA, 42 U.S.C. § 9621; or implementing, overseeing or enforcing this Consent Decree; including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, costs of attorney time, costs of obtaining access to either of the Sites, and Interest on all such costs accrued from the date payment of a specific amount is due under this Consent Decree.

l. "Paragraph" shall mean a portion of this Consent

Decree identified by an arabic numeral or a lower case letter.

m. "Parties" shall mean the United States and the Settling Defendant.

n. "Past Response Costs" shall mean all Response Costs not inconsistent with the NCP, including but not limited to direct and indirect costs and accrued interest, that the United States has incurred at or in connection with the Sites prior to the lodging of this Consent Decree. Settling Defendant's liability for Past Response Costs that as of the lodging of this Consent Decree have not been previously paid by Settling Defendant shall not exceed a total of \$1,225,000.

o. "Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

p. "Scope of Work" or SOW shall mean the existing scope of work for implementation of the Remedial Design, Remedial Action, Operation and Maintenance, and Performance Monitoring work at the Sites. The SOWs and any existing amendments thereto are attached as part of Appendix 1 for reference only.

q. "SCORPIOS Report" shall mean a report generated by the Superfund Cost Recovery Package Imaging and Online System. This report shall include itemized summaries of EPA payroll,

travel, indirect costs, and contractor costs related to the relevant Site.

r. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

s. "Settling Defendant" shall mean Commonwealth Aluminum Concast, Inc.

t. "Sites" shall mean the (1) The Fort Hartford Coal Co. Stone Quarry Site in Olaton, Ohio County, Kentucky and (2) the Brantley Landfill Site in Island, McClean County, Kentucky as listed on the National Priorities List.

u. "UAOs" shall mean the existing Unilateral Administrative Orders for Remedial Design and Remedial Action for the Sites issued respectively on September 6, 1995 and March 31, 1995 and any existing amendments thereto. The UAOs and any existing amendments thereto are attached hereto for reference only as Appendix 1.

v. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to the EPA Hazardous Substance Superfund. Within THIRTY (30) days of entry of this

Consent Decree, Settling Defendant shall pay to the EPA Hazardous Substance Superfund \$325,000 in Past Response Costs, as defined in this Consent Decree. Thereafter, on May 31, 2002, January 31, 2003, and September 30, 2003, Settling Defendant shall make additional payments of \$300,000 to the EPA Hazardous Substance Superfund. For all payments after the initial \$325,000 payment, Settling Defendant also will pay accrued Interest on the outstanding Past Response Cost balance calculated from the due date of the initial \$325,000 payment. Thus, by September 30, 2003, Settling Defendant will have paid \$1,225,000, plus Interest, in Past Response Costs as defined in this Consent Decree. This monetary payment total (\$1,225,000, plus Interest) resolves the United States' claim for the Past Response Costs with respect to or in connection with the Sites, as provided in Section VII (Covenant Not to Sue of Plaintiff) and Section VIII (Reservations of Rights by Plaintiff). Settling Defendant may, in its discretion, accelerate the payments or pay the entire outstanding Past Response Cost balance any time prior to September 30, 2003, in which case the Settling Defendant will have to pay only the Interest that has accrued until the date of payment. Each payment shall be made by FedWire Electronic Funds Transfer

("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2001V00040, EPA Region and Site Spill ID Number 04-W7, and DOJ Case Number 90-11-2-733/1. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Western District of Kentucky following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Settling Defendant shall send notice to EPA and DOJ that payment has been made in accordance with Section XIV (Notices and Submissions) and to:

Ms. Paula V. Batchelor
U.S. EPA, Region IV
Waste Management Division
Program Services Branch
61 Forsyth St., S.W.
Atlanta, Georgia 30303

5. Payment of Oversight Costs. Settling Defendant shall reimburse the United States for all Oversight Costs not inconsistent with the National Contingency Plan incurred by the United States after lodging of this Consent Decree. Annually, the United States will send Settling Defendant a bill requiring payment that includes an accounting of Oversight Costs incurred by the United States with respect to

the UAOs and this Consent Decree. This accounting will include an updated SCORPIOS Report, which reflects Oversight Costs incurred by the United States, and also will include a DOJ cost summary if DOJ attorney's fees are included in the bill. Settling Defendant also may, in its discretion, request in writing that EPA produce certain unredacted work-performed documents relating to the Oversight Costs incurred by the United States, and EPA will produce the unredacted work-performed documents, if they exist, within 45 days after receipt of the written request, pursuant to the Confidentiality Agreements executed with respect to the Ft. Hartford (January 25, 2001) and Brantley (July 24, 2001) Sites. If the requested work-performed documents are generated by contractors not listed in the Appendix A of the respective Confidentiality Agreements, then that list will be amended to reflect the new contractor and the Confidentiality Agreement re-executed. Settling Defendant also may, in its discretion, request in writing that EPA produce a Certified Cost Package relating to the Oversight Costs incurred by the United States, and EPA will produce the Certified Cost Package within 30 days after receipt of the written request. Settling Defendant shall make all payments within 60 days of Settling

Defendant's receipt of each bill requiring payment, except as otherwise provided in subparagraph 7(c). The Settling Defendant shall make all payments required by this Paragraph in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund" and referencing CERCLA Number 04-W7, Commonwealth Aluminum Concast, Inc., USAO File Number 2001V0040, and DOJ Case Number 90-11-2-733/1. The Settling Defendant shall forward the certified check(s) to:

U.S. Environmental Protection Agency
Region 4
Superfund Accounting
P.O. Box 100142
Atlanta, GA 30384
Attn: Collection Officer in Superfund

and shall send copies of the check(s) to the United States as specified in Section XIV (Notices and Submissions) and to:

Ms. Paula V. Batchelor
U.S. EPA, Region IV
Waste Management Division
Program Services Branch
61 Forsyth St., S.W.
Atlanta, Georgia 30303

6. The parties agree that this Consent Decree does not address Settling Defendant's obligations or continued performance under the UAO.

7. Dispute Resolution for Oversight Costs.

a. Standard. Settling Defendant may contest

payment of any Oversight Costs billed by the United States on the grounds that the United States has made an accounting error, has included costs outside the scope of this Consent Decree, or that the response actions are inconsistent with the NCP.

b. Procedures. The dispute resolution procedures set forth in Paragraph 7 shall be the exclusive mechanism for resolving disputes regarding the Settling Defendant's obligation to reimburse the United States for its Oversight Costs.

c. Dispute Resolution. The dispute resolution mechanism described in Paragraph 7 is only available if the Settling Defendant complies with the following conditions:

(1) Notice. Any objection to the payment of the United States' Oversight Costs shall be made in writing within 60 days of receipt of the bill and must be sent to the United States in accordance with Section XIV (Notices and Submissions). Any such objection (hereinafter referred to as the "Notice of Objection") shall specifically identify the contested Oversight Costs and the basis for objection.

(2) Payment of Undisputed Amounts. In the event of an objection to some but not all Oversight Costs, the Settling

Defendant shall within the 60 day period pay all uncontested Oversight Costs to the United States in the manner described in Paragraph 5 or 6, respectively.

(3) Escrow for Disputed Amounts. Within 60 days of receipt of a bill for Oversight Costs which are disputed, the Settling Defendant shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Kentucky and remit to that escrow account funds equivalent to the amount of the contested Oversight Costs. The Settling Defendant shall send to the United States, as provided in Section XIV, a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account.

d. Informal Dispute Resolution. Any dispute with respect to Oversight Costs shall in the first instance be the subject of good-faith, informal negotiations between the United States and the Settling Defendant.

e. Formal Dispute Resolution.

(1) Initiation. If the dispute is not resolved by

informal dispute resolution, either party may commence formal dispute resolution by sending a Notice of Formal Dispute Resolution to the other party to the dispute. The Notice of Formal Dispute Resolution shall be accompanied by a written Statement of Position by the party who serves the Notice, stating the basis of that party's position and citing all factual data, analysis, opinion or other material on which that party relies to support its position. The opposing party shall have 30 days in which to serve a Response setting forth the same information supporting its position.

(2) Administrative Record and Decision. EPA shall maintain an administrative record of any dispute as to Oversight Costs for which formal dispute resolution has been initiated. The administrative record shall include the disputed bill and all cost documentation produced by EPA to the Settling Defendant, the Notice of Objection served by Settling Defendant, the Notice of Formal Dispute Resolution and accompanying Statement of Position, the opposing party's Response, and any other documents or information sent to EPA by Settling Defendant for inclusion in the record or relied on by EPA in reaching an administrative resolution of the dispute. The Director of the Waste Management Division, EPA

Region IV, will issue a final administrative decision determining whether the disputed Oversight Costs, or any part of them, shall be disallowed as inconsistent with the NCP, as the result of an accounting error, or as costs outside the scope of this Consent Decree.

(3) Judicial Appeal. The Settling Defendant may appeal EPA's administrative decision made pursuant to the preceding subparagraph to this Court within 10 days of its receipt of EPA's decision. The Court's review of EPA's decision shall be limited to EPA's administrative record. Applicable principles of administrative law shall govern whether any supplemental materials may be considered by the Court.

f. Payment Following Dispute Resolution. Payments determined to be owing to the United States following formal dispute resolution, including judicial appeal to this Court and all appeals thereafter, shall be paid from the escrow account (including accrued interest on the amounts owed) to the United States in the manner described in Paragraph 5, as applicable, within 10 days after receipt of the final court's decision or, if the decision is not timely appealed to this Court in the first instance, within 10 days of EPA's final

administrative decision. To the extent that any amounts are determined not to be owed, the Settling Defendant shall be disbursed the remainder of the escrow account.

VI. FAILURE TO MAKE TIMELY PAYMENTS

8. Interest on Late Payments. In the event that any payment[s] required by Section V are not either made when due or paid into escrow in accordance with Paragraph 7(c)(3), Interest shall continue to accrue on the unpaid balance.

9. Stipulated Penalties for Late Payments. If any amounts due to the United States under this Consent Decree are not either paid by the required date or paid into escrow in accordance with Paragraph 7(c)(3), the Settling Defendant shall pay to EPA, in addition to the Interest required in Paragraph 8, the following stipulated penalties which shall accrue per violation per day:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 30th day
\$1000	31st day and beyond

Stipulated penalties are due and payable within 30 days of the Settling Defendant's receipt from EPA of a written demand for payment of the penalties. All payments under this Paragraph shall be made by certified check made payable to "EPA

Hazardous Substance Superfund," and shall be mailed to:

U.S. Environmental Protection Agency
Region 4
Superfund Accounting
P.O. Box 100142
Atlanta, GA 30384
Attn: Collection Officer in Superfund

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, CERCLA number 04-W7, USAO File Number 2001V0040, and DOJ Case Number 90-11-2-733/1. Copies of check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter, shall be sent to the United States as provided in Section XIV (Notices and Submissions) and to:

Ms. Paula V. Batchelor
U.S. EPA, Region IV
Waste Management Division
Program Services Branch
61 Forsyth St., S.W.
Atlanta, Georgia 30303

10. Payments under Paragraphs 8-9 shall be in addition to any other remedies or sanctions available to the United States by virtue of Settling Defendant's failure to make timely payments required by this Decree.

11. Notwithstanding any other provision of this Section, the United States, in its unreviewable discretion, may waive payment of any portion of the stipulated penalties that have

accrued pursuant to this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

12. Except as specifically provided in Section VIII (Reservations of Rights by Plaintiff), the United States covenants not to sue Settling Defendant pursuant to CERCLA, 42 U.S.C. § 9601 et seq., to recover Past Response Costs or Oversight Costs as defined in this Consent Decree. This covenant shall take effect as to Past Response Costs upon receipt by the United States of all amounts required by Paragraph 4 of Section V (Reimbursement of Response Costs), and Paragraphs 8 (Interest on Late Payments) and 9 (Stipulated Penalties for Late Payments) of Section VI. This covenant shall take effect as to Oversight Costs upon receipt by the United States of all amounts required by Paragraph 5 of Section V (Reimbursement of Response Costs), and Paragraphs 8 (Interest on Late Payments) and 9 (Stipulated Penalties for Late Payments) of Section VI. This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY PLAINTIFF

13. The covenant not to sue by the United States set forth in Paragraph 12 does not pertain to any matters other than those expressly identified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definitions of Past Response Costs or Oversight Costs;
- c. liability for injunctive relief, administrative order enforcement, fines, and/or punitive damages under Section 106 or 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606 and 9607(c)(3);
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability for any and all Response Costs incurred by EPA in the event that Settling Defendant violates,

or fails or refuses to comply with, the either of the UAOs.

14. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, or corporation other than the Settling Defendant.

IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT

15. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Sites, including but not limited to: any direct or indirect claim against the United States for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law, relating to Past Response Costs or Oversight Costs; any claim arising out of response actions at the Site for which the Past Response Costs were incurred; and any claim against the United States, including any department, agency or instrumentality of the United States, pursuant to CERCLA Sections 107 or 113 related to Past Response Costs or

Oversight Costs.

16. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

17. Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendant's plans or activities. The foregoing

applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

18. 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 which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto.

19. The United States and Settling Defendant agree that the actions undertaken by Settling Defendant in accordance with this Consent Decree do not constitute an admission of any fact or liability by Settling Defendant. Settling Defendant does not admit, and retains the right to controvert in any subsequent proceedings the validity of the facts or allegations contained in Section I (Background) of this Consent Decree.

20. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled,

as of the date this Consent Decree is entered by this Court, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "Matters Addressed in the Settlement" as defined in Section IV (Definitions) of this Consent Decree.

21. Settling Defendant agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 15 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 15 days of service or receipt of any Motion for Summary Judgment and within 15 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

22. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of Response costs, or other relief relating to one or both Sites, Settling Defendant 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 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 covenant not to sue by the United States set forth in Paragraph 12. For purposes of the statute of limitations for filing a subsequent action under Section 113 (g) (2) of CERCLA, 42 U.S.C. § 9613 (g) (2), the civil action filed by the United States in this case and settled by this Consent Decree constitutes an initial action and satisfies all requirements relating to such initial action.

XI. SITE ACCESS

23. Commencing upon the date of lodging of this Consent Decree, Settling Defendant agrees to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Sites and to any other property owned or controlled by Settling Defendant to which access is determined by EPA to be required for the implementation of this Consent Decree, or for the purpose of conducting any response activity related to the Sites,

including but not limited to:

a. Monitoring of investigation, removal, remedial or other activities at the Sites;

b. Verifying any data or information submitted to the United States;

c. Conducting investigations relating to contamination at or near the Sites;

d. Obtaining samples;

e. Assessing the need for, planning, or implementing response actions at or near the Sites;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XII (Access to Information); and

g. Assessing Settling Defendant's compliance with this Consent Decree.

24. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. § 6927, and any other applicable statutes or regulations.

25. Notice of Obligations to Successors-in-Title.

a. Within 15 days after entry of this Consent Decree, Settling Defendant shall record a notice of entry of this Consent Decree with the Recorder's Office for each county where each Site is located. 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 this Consent Decree and shall reference the Court where a copy of the Consent Decree can be located and reviewed.

b. The obligations of the Settling Defendant with respect to the provision of access under Section XI (Site Access) shall be binding upon any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, the Settling Defendant shall record at the Register's Office for each county where each Site is located, a notice of obligation to provide access under Section XI (Site Access) and related covenants, if any. Each subsequent instrument conveying an interest to any such property included in either one of the Sites shall reference the recorded location of such notice and covenants applicable

to the property.

c. The Settling Defendant shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In no event shall any such conveyance release or otherwise affect the liability of the Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of the United States.

XII. ACCESS TO INFORMATION

26. Except for documents and information that are privileged under the attorney-client privilege, the attorney-work product privilege, or any other privilege recognized by federal law, Settling Defendant shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of their contractors or agents relating to activities at the Sites including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to

the Sites.

27. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). This claim shall be substantiated by Settling Defendant at the time the assertion is made. Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendant.

b. Settling Defendant may assert that certain documents, records or other information are privileged under the attorney-client privilege or any other privilege

recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of and after the entry of this Consent Decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

28. No claim of confidentiality 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 Sites.

XIII. RETENTION OF RECORDS

29. Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Sites or the liability of any person for response actions conducted and to be conducted at the Sites, regardless of any corporate retention policy to the contrary, except that after the expiration of 10 years from Settling Defendant's receipt of a Certificate of Completion from EPA or 10 years after a judicial or administrative action rescinds the UAO relating to a particular Site, whichever comes sooner, the Settling Defendant need no longer preserve and retain all records relating to that particular Site.

30. After the conclusion of the document retention period in the preceding Paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such records or documents to EPA. Settling Defendant may assert that certain

documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following:

- 1) the title of the document, record, or information;
- 2) the date of the document, record, or information;
- 3) the name and title of the author of the document, record, or information;
- 4) the name and title of each addressee and recipient;
- 5) a description of the subject of the document, record, or information; and
- 6) the privilege asserted.

However, no documents, reports, or other information created or generated pursuant to the requirements of and after the entry of this Consent Decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

XIV. NOTICES AND SUBMISSIONS

31. 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. Except as provided in Paragraphs 4, 5, and 9, written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to EPA, DOJ, and Settling Defendant.

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ #90-11-2-733/1)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Remedial Project Manager	Assistant Regional Counsel
Kentucky Section	U.S. EPA, Region IV
Waste Management Division	61 Forsyth St., S.W.
U.S. EPA, Region IV	Atlanta, Georgia 30303
61 Forsyth Street, S.W.	
Atlanta, GA 30303-8960	

As to Settling Defendant:

Mark V. Kaminski
President and CEO
Commonwealth Aluminum Concast, Inc.

500 West Jefferson St., 19th Floor
Louisville, KY 40202

XV. RETENTION OF JURISDICTION

32. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDICES

33. 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. The following appendix is attached to this Agreement for reference only: Appendix 1 is the Unilateral Administrative Orders (UAOs) dated respectively and the Scopes of Work and Amendments thereto incorporated in each of the UAOs.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

34. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent

Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

35. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. EFFECTIVE DATE

36. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XIX. SIGNATORIES/SERVICE

37. Each undersigned representative of the Settling Defendant to this Consent Decree and the Deputy Chief for the Environmental Enforcement Section, Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

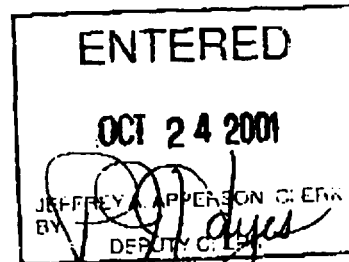
38. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any

provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

39. 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 Defendant hereby agrees 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, including but not limited to, service of a summons.

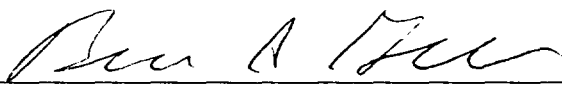
SO ORDERED THIS 24th DAY OF October, 2001.


United States District Judge



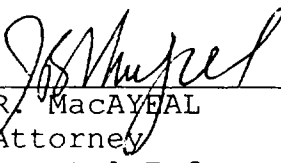
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Commonwealth Aluminum Concast, Inc., relating to the (1) The Fort Hartford Coal Co. Stone Quarry Site in Olaton, Ohio County, Kentucky and (2) the Brantley Landfill Site, in Island, McClean County, Kentucky.
FOR THE UNITED STATES OF AMERICA

Date: Sept. 13, 2001



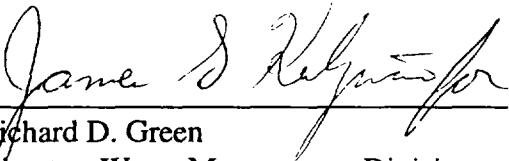
BRUCE S. GELBER
Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, DC 20044-7611

Date: _____



JAMES R. MacAYEAL
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Date: 9/27/01


Richard D. Green
Director, Waste Management Division
Region IV
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

OF COUNSEL:

STEDMAN S. SOUTHALL
ELIZABETH DAVIS
Assistant Regional Counsel
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

FOR DEFENDANT COMMONWEALTH ALUMINUM CONCAST, INC.

Date: 8/29/01



MARK V. KAMINSKI
President and CEO
Commonwealth Aluminum Concast, Inc.
500 West Jefferson St., 19th Floor
Louisville, KY 40202

Agent authorized to accept service on behalf of above-signed party:

Name: United States Corporation Co.

Title: Registered Agent

Address: 421 West Main St.

Frankfort, KY 40601

