

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of	:	
	:	
WearEver Realty Associates	:	
330 South Street	:	
P.O. Box 1975	:	
Morristown, New Jersey	:	
	:	
Hamilton Beach-Proctor Silex, Inc.	:	
4421 Waterfront Drive	:	DIRECTOR'S FINAL
Glen Allen, Virginia	:	FINDINGS & ORDERS
	:	
Aluminum Company of America	:	
1501 ALCOA Building	:	
Pittsburgh, Pennsylvania	:	
	:	
Newell Co.	:	
4000 Auburn Street	:	
Rockford, Illinois	:	
	:	
Respondents		

I. JURISDICTION

This Administrative Order on Consent (Consent Order) constitutes Director's Final Findings and Orders and is issued pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (OEPA) by Ohio Revised Code (ORC) Sections 3734.13, 3734.20, and 3745.01.

II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of OEPA and Respondents are to: 1). complete a full remedial investigation in order to determine the nature and extent of contamination of the Site, (as "Site is described in Section III), caused by the disposal of hazardous, industrial and/or other waste, and 2). develop and evaluate a program of appropriate remedies employing sound scientific, engineering and construction practices which shall be consistent with federal, state and local law.

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### III. DEFINITIONS

The terms used in this Consent Order, and the Workplan, shall have the same meaning as used in ORC Chapters 3734. and 6111. and/or as defined below:

- A. "Contractor" shall mean a qualified contractor retained by Respondents pursuant to this Consent Order, and any subcontractor, representative, agent, employee, or designee thereof.
- B. "Days" shall mean calendar days, including weekends and holidays.
- C. "Document" shall mean any record, report, photograph, videotape, correspondence, computer disk or tape, recorded or retrievable information of any kind, raw data, narrative reports, and any and all documentary evidence, relating to treatment, storage, or disposal and concerning the investigation and remediation of hazardous waste or industrial waste or pollutants or other wastes at the Site. "Document" shall be construed broadly to promote the effective sharing of information and views concerning the work to be done between Respondents and OEPA.
- D. "Feasibility Study" ("FS") shall mean the development, evaluation, and analysis of remedial alternatives for cleanup action conducted by Respondents in accordance with environmental laws of the State of Ohio and this Consent Order.
- E. "Hazardous constituent or constituents" shall have the same meaning as defined in Ohio Administrative Code (OAC) Rule 3745-50-10(A).
- F. "Hazardous substances" shall have the same meaning as defined in Section 101(14) of The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. 9601 et. seq.
- G. "Hazardous waste" shall have the same meaning as defined at ORC 3734.01(J).
- H. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, referred to in CERCLA as the National Contingency Plan, and codified at 40 C.F.R. Part 300 (1990) (as subsequently amended).
- I. "OEPA" shall mean the Ohio Environmental Protection Agency and its designated representatives.

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- J. "Party" or "Parties" shall mean Respondents and/or OEPA.
- K. "Remedial Investigation" ("RI") shall mean the investigation conducted by Respondents, in accordance with the environmental laws of the State of Ohio and this Consent Order, to determine the nature and extent of the contamination at the Site, and includes the gathering of all data necessary to support the Feasibility Study.
- L. "Remedial Investigation/Feasibility Study" ("RI/FS") shall mean the Remedial Investigation and Feasibility Study together.
- M. "Respondents" shall mean, Newell Co.; Aluminum Company of America (ALCOA); WearEver Realty Associates; and Hamilton Beach-Proctor Silex, Inc.
- N. "Site" shall include the "Facility" as defined in ORC 3734.01(N) which is located at 1089 Eastern Avenue, in Chillicothe, Ohio and shall mean the entire area where treatment, storage, placement or disposal of hazardous constituents, hazardous substances, hazardous waste, industrial waste and/or other waste were conducted, including any other area contaminated or threatened to be contaminated by hazardous constituents, hazardous substances, hazardous waste, industrial waste and/or other waste migrating therefrom.
- O. "U.S. EPA" shall mean the United States Environmental Protection Agency.
- P. "Workplan" shall mean that document detailing the requirements for characterizing the Site and in support of the Remedial Investigation and Feasibility Study. The Workplan shall include a detailed description of the proposed investigations and/or implementation activities, a time schedule for those actions, and personnel and equipment requirements. The Workplan, which includes sampling as an element, shall also include a sampling plan together with the rationale for sampling activities; locations, quantity and frequency of sampling; sampling and analytical methods; constituents for analysis; and quality control/quality assurance procedures. The required content of the Workplan is outlined in the Generic Statement of Work (SOW) for the RI/FS attached hereto and incorporated herein as Attachment A.

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

OEPA has determined that all findings of fact necessary for the issuance of this Consent Order, pursuant to ORC Sections 3734.13 and 3734.20, have been made and are outlined below. OEPA has determined the following:

- A. One or more of the Respondents currently and/or previously owned or operated the Site from 1948 to date.
- B. From 1948 to 1990, one or more of the Respondents manufactured aluminum coated cookware and small household appliances. The manufacturing processes included cleaning, coating, plating, polishing and brazing cookware.
- C. The manufacturing process created four (4) known contaminant waste streams at the facility: 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 which was used for degreasing; and 4) waste solvent blend which was ignitable and contained TCE along with other chlorinated hydrocarbons.
- D. These wastes referred to in Paragraph C above, became "industrial waste" and/or "other wastes" as defined in ORC Section 6111.01(C) and (D), and/or "hazardous constituents" and "hazardous substances" or "hazardous waste" as defined in Section III Paragraphs E, F and G above, when they were disposed of into the soil and/or waters of the State.
- E. During the manufacturing process, hazardous waste, industrial waste and/or other wastes were generated and later deposited, spilled, leaked, discharged or otherwise disposed in various areas on the Site.
- F. Groundwater monitoring well and soil sampling results indicate the presence of contaminants in the soil, and groundwater. These contaminants are a direct result of operations conducted at the Site.
- G. The Site is a "facility" as that term is defined in ORC Section 3734.01(N).
- H. The discharge, deposit, injection, dumping, leaking, spilling or placing of the wastes described in Paragraph C above into or on the soil, groundwater and/or surface water at or from the Site constitutes a "disposal" as defined in ORC Section 3734.01(F).

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- I. The placement and migration of the industrial waste, other wastes and/or hazardous waste into the soil, groundwater and/or surface water at or from the Site constitutes a threat to public health or safety or is causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination within the meaning of ORC Section 3734.20(B).
- J. The Director has given consideration to the evidence related to documented activities which have occurred and/or will occur at the Site. Based upon the facts as presented, the Director believes that issuance of this Consent Order is furthering the intent of the General Assembly, that OEPA will prevent, control, or abate pollution of the environment for the protection and preservation of the health, safety, welfare, and property of the people of the State.
- K. Respondents do not admit liability or any finding of fact, determination, or conclusion of law and Respondents' agreement to undertake the activities in this Consent Order shall not constitute or be construed as an admission of liability or an admission of any finding of fact, determination or conclusion of law.

#### V. COMMITMENT OF RESPONDENTS

- A. Respondents consent to and will not challenge OEPA's jurisdiction to enter and enforce this Consent Order, and do hereby agree to undertake, at their expense, all actions required by the terms and conditions of this Consent Order within the time frames specified herein, except as the provisions of Section XXI are deemed to apply to the time for performance.
- B. Respondents shall assume any and all liability arising from or relating to their acts or omissions in the performance of the work or their failure to perform fully or complete the work under this Consent Order.

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## VI. PARTIES BOUND

- A. This Consent Order shall apply to and be binding upon Respondents, their successors and assigns. The signatories to this Consent Order certify that they are fully authorized to execute and legally bind the parties they represent to this Consent Order. Unless agreed upon by the parties, no change in ownership or corporate status of Respondents shall alter their responsibilities under this Consent Order. Respondents shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights are transferred. Respondents shall provide notice to OEPA that a copy of this Consent Order has been provided to any subsequent owners or successors.
- B. Respondents shall notify OEPA of the selection of all contractors and subcontractors, who are to perform work under this Consent Order.
- C. Notwithstanding the terms of any contract, Respondents shall be responsible for ensuring that all contractors, consultants, firms, and other persons acting for them, comply with the terms of this Consent Order.

## VII. ACCESS

- A. To the extent that portions of the Site or areas where work is to be performed are owned by parties other than Respondents, Respondents shall use their best efforts to obtain access agreements from the owners, including any agreements necessary to provide access to OEPA and its authorized representatives. Copies of these agreements are attached or will be provided to OEPA.
- B. If Respondents are unable to obtain such access, Respondents shall notify OEPA promptly in writing regarding both the lack of access agreements and the efforts to obtain such access agreements. In the event OEPA agrees that Respondents have used their best efforts, OEPA may contact the landowners and consider a range of options to facilitate implementation of this Consent Order.
- C. Pursuant to any access agreements, OEPA, through its authorized representatives, shall have authority to enter all property at the Site at reasonable times and to freely move about for purposes consistent

with this Consent Order, and ORC Chapter 3734 and 6111, including, but not limited to: inspection of records, operating logs, and contracts related to the purposes of this Consent Order at the Site; reviewing the progress of Respondents in carrying out the terms of this Consent Order; conducting such tests necessary to fulfill the purposes of this Consent Order; and verifying data submitted to OEPA by Respondents. Respondents shall permit such OEPA representatives to inspect and request copies of all records, files, photographs, documents and other writings, including all sampling and monitoring data, which pertain to this Consent Order.

- D. All parties with access to the Site and other areas where work is to be performed pursuant to this Section shall comply with all Health and Safety Plan(s).
- E. Nothing herein shall act to limit the statutory authority of OEPA to conduct inspections and gather information.

#### VIII. WORK TO BE PERFORMED

- A. All work to be performed by Respondents pursuant to this Consent Order shall be under the direction and supervision of a qualified environmental engineer, geologist, or other appropriate professional person with expertise in hazardous waste site investigation. Prior to the initiation of Site work, the Respondents shall notify OEPA in writing regarding the name, title, and qualifications of such engineer, geologist, or other appropriate professional person and of any contractors and/or subcontractors to be used in carrying out the terms of this Consent Order.
- B. Attachment A to this Consent Order contains the Generic Statement of Work (SOW) for implementation of the complete RI/FS which is incorporated into and made a part of this Consent Order. The SOW is not specific to this Site, and shall be used as a general outline in developing the Site specific Workplan.
- C. Respondents shall contact OEPA to schedule a meeting to discuss the Workplan to be submitted and will include all requirements as outlined in Task 2 of the Generic SOW. This meeting shall take place within fourteen (14) days of the effective date of this Consent Order unless otherwise agreed to by the parties.

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- D. Within sixty (60) days of the effective date of this Consent Order, Respondents shall submit a draft Workplan for the implementation of the RI/FS at the Site. This RI/FS Workplan shall be developed in conformance with this Consent Order, the Generic SOW, state law including ORC Chapters 3734. and 6111. and the regulations promulgated thereunder, the NCP and the guidance documents listed in Attachment B and incorporated herein. The FS portion of the RI/FS Workplan shall indicate the tasks that will be completed, provide a preliminary schedule for said tasks, and ensure that the RI and FS activities are performed as an integrated process. Preparation of the Workplan and OEPA's review of the Workplan shall be consistent with the version of the guidance documents that are in effect at the time the preparation of the Workplan is initiated by Respondents.
- If OEPA determines that any additional guidance documents affect the work to be performed under this Consent Order, OEPA will notify Respondents, and the Workplan shall be modified as applicable to the Site. Tasks initiated in accordance with the approved Workplan shall not be subject to any revised or additional guidance. Tasks called for in the approved Workplan, but not yet initiated, may be subject to revised or additional guidance if OEPA so determines.
- E. Should Respondents identify any inconsistency between any of the laws, rules, or regulations, which they are required to follow by this Consent Order or any inconsistencies contained within the guidance documents (Attachment B), which will affect any of the work required by this Consent Order, Respondents shall notify OEPA in writing of each such inconsistency and its affect on the work to be performed. Respondents shall recommend, along with a supportable rationale justifying each recommendation, the requirement which they believe should be followed. Respondents shall implement the affected work based upon OEPA's direction in resolving any inconsistencies.
- F. The draft RI/FS Workplan, any plans, proposals or reports required by this Consent Order or approved Workplan, and any amendments or supplements to the Workplan shall be subject to review, and approval or disapproval by OEPA in accordance with the procedures set forth in Section XIV of this Consent Order.

- G. Upon approval of the Workplan required by this Consent Order, Respondents shall implement the work detailed therein in accordance with applicable schedules.
- H. The provisions of Section XV, Dispute Resolution, shall apply to Paragraph E of this Section.

**IX. AMENDMENT OF THE WORKPLAN**

- A. OEPA may determine that in addition to tasks defined in the approved RI/FS Workplan and any previously approved amendments, additional work may be necessary to accomplish the purposes and objectives of this Consent Order as set forth in the Statement of Purpose and Generic SOW. OEPA may require, in a written notice, that Respondents perform this work in addition to the work required by the approved RI/FS Workplan and any previously approved amendments, if OEPA determines that such work is necessary. OEPA will provide the reason(s) and technical explanation(s) for requiring additional work. Respondents shall confirm their willingness to perform the work in writing and provide a proposed schedule for submitting the draft Amendment to OEPA within ten (10) days of receipt of OEPA's written notice. OEPA will respond with a time frame for submitting the draft Amendment after consideration of Respondents' proposed schedule. Respondents shall implement the tasks which OEPA determines are necessary. The work shall be completed according to the standards, specifications, and schedule approved by OEPA in a written amendment to the RI/FS Workplan.
- B. If at any time during the implementation of this Consent Order, Respondents seek to perform additional work which will require an amendment of the Workplan required under this Consent Order, including changes to any schedules, Respondents shall submit a prior written request for amendment to OEPA explaining the need for and nature of the additional work or extension. OEPA shall respond in writing in a timely manner to a Respondents' request and shall either approve or disapprove such request, and provide reasons for its disapproval if that is the action taken by OEPA.
- C. In the event Respondents fail to perform additional work pursuant to Paragraph A of this Section, OEPA reserves the right to conduct additional work to accomplish the purposes and objectives of this

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Consent Order, to seek reimbursement from Respondents, and/or to seek any other appropriate relief. OEPA shall provide written notice to Respondents of its intent to conduct additional work.

- D. The provisions of Section XV, Dispute Resolution, shall apply to this Section.

#### X. DESIGNATED SITE COORDINATORS

- A. Respondents and OEPA shall each designate a Site Coordinator and an alternate for the purpose of overseeing the implementation of this Consent Order. To the maximum extent possible, except as specifically provided in this Consent Order, communications between Respondents and OEPA concerning the terms and conditions of this Consent Order shall be made between the designated Site Coordinators. Each designated Site Coordinator shall be responsible for assuring that all communications from the other parties are appropriately disseminated and processed. The Site Coordinator designated by the Respondent shall send to each named Respondent a copy of all documents submitted to and received from OEPA. The Site Coordinators shall attempt to resolve disputes informally through good faith discussion on the technical issues.
- B. Without limitation of any authority conferred on OEPA by statutes or regulations, the OEPA Site Coordinator's authority includes, but is not limited to: (1) taking samples; (2) ensuring that the work performed is consistent with the Workplan; (3) observing, taking photographs, recording information, and making such other reports on the progress of the work as deemed appropriate; (4) directing that work stop, for a period not to exceed seventy-two (72) hours, whenever the OEPA Site Coordinator determines that activities at the Site may create or exacerbate a threat to public health or welfare or the environment; (5) reviewing Documents relevant to the Consent Order.
- C. Respondents' designated Site Coordinator or alternate shall be on-site or on-call at the Site during all hours of work at the Site and shall make himself/herself available for the duration of this Consent Order. The absence of the OEPA Site Coordinator from the Site shall not be cause for stoppage of work unless otherwise provided.

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- D. OEPA and Respondents each has the right to change their respective Site Coordinator. Such a change shall be accomplished by notifying the other party in writing prior to the change.

#### XI. REPORTING

- A. Respondents shall submit written progress reports which describe the activities which have been taken toward achieving compliance during the previous month, as well as activities which are scheduled for the next month, to OEPA by the tenth day of every month following the effective date of this Consent Order, unless otherwise designated pursuant to this Consent Order. At a minimum, these reports shall:

1. Identify the Site and activity;
2. Describe status of work at the Site and progress to date;
3. Demonstrate the percentage of work completed in accordance with the approved schedule;
4. Describe difficulties encountered during the reporting period;
5. Describe actions being taken to rectify problems;
6. Describe activities planned for the next month;
7. Identify changes in key personnel;
8. List target and actual completion dates for each element of activity, including the project completion; and
9. Provide an explanation of any deviation from the milestones in the Workplan schedules.

- B. Such progress reports and any other documents, reports, approvals, or correspondence submitted pursuant to this Consent Order shall be sent by certified mail return receipt requested (or the equivalent) to OEPA at the following addresses (or to such other address as OEPA may hereafter designate in writing):

- (1) Ohio EPA  
1800 Watermark Drive  
P. O. Box 1049  
Columbus, Ohio 43266-0149  
ATTN: Manager, Technical and Program Support Section, Division  
of Emergency and Remedial Response
- (2) Ohio EPA  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138  
ATTN: WearEver Aluminum Co. Site Coordinator,  
Division of Emergency and Remedial Response

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All correspondence to Respondents shall be directed to the following:

Aluminum Company of America  
1501 ALCOA Building  
Pittsburgh, Pennsylvania  
ATTN: (WearEver Site Coordinator/Manager or his/her successor)

- C. OEPA may, at its discretion, direct that reports or plans or proposals made pursuant to this Consent Order be submitted at extended intervals or that no further reports need be submitted.

#### XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

- A. OEPA and Respondents shall make available to each other the results of sampling, tests or other data, including raw data, generated by either of them, or on their behalf, with respect to the implementation of this Consent Order.
- B. Upon request of OEPA, Respondents shall submit all raw data and all original reports of analytical procedures and results to OEPA, according to the schedules set forth in the approved Workplan.
- C. Respondents may submit to OEPA any interpretive reports and written explanations concerning raw data and original laboratory reports. Such interpretive reports or explanations may not be submitted in lieu of original laboratory reports and raw data. Should Respondents subsequently discover any error in any report or raw data, Respondents shall promptly notify OEPA of such discovery and provide the correct information.
- D. At the request of OEPA, Respondents shall allow OEPA to take split samples and/or duplicates of samples collected by Respondents during the implementation of the Consent Order. Likewise, at the request of Respondents, OEPA shall allow Respondents to take split samples and/or duplicates of samples collected by OEPA related to fulfilling the purposes and objectives of this Consent Order. Respondents shall notify the OEPA Site Coordinator not less than fourteen (14) days (unless otherwise agreed between the Site Coordinators) in advance of any planned sampling proposed in the Workplan for which the OEPA Site Coordinator has indicated that (s)he may wish to obtain split or duplicate samples. Respondent shall notify the OEPA Site Coordinator as soon as possible prior to any unplanned sampling events.

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- E. Respondents shall preserve for the duration of this Consent Order and for a minimum of ten (10) years after its termination, copies of all records and documents within their possession or that of their divisions, employees, agents, representatives, accountants, or contractors which relate to work performed under this Consent Order. After the ten (10) year period, Respondents shall notify OEPA within thirty (30) days prior to the destruction of any such documents required to be kept pursuant to this Section. Upon request by OEPA, Respondents shall make available to OEPA such records or copies of any such records.

#### **XIII. CONFIDENTIAL INFORMATION**

- A. Respondents reserve any rights they may have pursuant to law to claim that they may withhold from disclosure those documents protected by attorney-client communication or attorney work product privilege. Respondents shall not withhold as privileged any analytical data or technical documents that are created, generated, or collected pursuant to the requirements of this Consent Order, regardless of whether the document has been generated in the form of attorney-client communication or other generally privileged manner.
- B. Respondents may assert a claim of business confidentiality covering the information requested by this Consent Order, except for analytical data, pursuant to Ohio Administrative Code (OAC) Rule 3745-50-30(A) and ORC 6111.05(A). If no such claim accompanies the information when it is submitted to OEPA, it may be made available to the public by the OEPA without further notice to Respondents.

#### **XIV. REVIEW OF SUBMITTALS**

- A. Respondents shall provide all documents required by the Consent Order in accordance with the schedule contained in the RI/FS Workplan.
- B. OEPA agrees to review and approve or disapprove each document specified in the Consent Order requiring OEPA approval. Documents which are submitted in sections or which form the basis for a more extensive final required submittal shall be reviewed when the final completed document is submitted to OEPA unless otherwise agreed to by OEPA. In

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the event Respondents are notified that a document is disapproved in whole or in part, OEPA shall include a statement in the notification as to the changes, deletions, or additions which shall be made to the document prior to approval, and an explanation as to why such changes, deletions, or additions are necessary. Respondents shall confirm their willingness to comply within ten (10) days of receipt of OEPA notification requiring changes, deletions, or additions. Respondents shall amend and submit to OEPA a revised document, correcting the deficiencies and incorporating all of the required changes, deletions, or additions within thirty (30) days of receipt of the OEPA notification requiring changes. Should the thirty (30) days specified above be insufficient time for completing revisions, Respondents may request additional time from OEPA.

- C. In the event such changes, deletions, or additions delay the time schedules set forth in the Workplan, schedules may be adjusted accordingly upon agreement of the parties. Such agreement will not be unreasonably withheld by OEPA, and such delay shall not be considered a violation of this Consent Order. The period for performance of only those activities contingent on completion of OEPA document review shall be extended, if needed, upon agreement of the parties.
- D. In the event of a written subsequent disapproval of any revised document, failure to submit a document, or submittal of a document found to be wholly inadequate, OEPA retains the right to terminate this Consent Order, to perform additional studies or remediation, to conduct a complete or partial RI/FS, and enforce the terms of this Consent Order, or any combination of all of the above. OEPA shall provide written notification directly to each Respondent of OEPA's intent to consider initiation of any or all remedies available to it.
- E. The provisions of Section XV, Dispute Resolution, shall apply to this Section.

#### **XV. DISPUTE RESOLUTION**

- A. The Site Coordinators shall, whenever possible, operate by consensus. In the event that there is a disagreement about the adequacy of any report or about the conduct of the work performed under this Consent

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Order or Workplan, or modified or additional work or schedules required under this Consent Order, the Site Coordinators shall have seven (7) days to negotiate in good faith in an attempt to resolve the differences.

- B. In the event that the Site Coordinators are unable to reach consensus on the disapproval or disagreement in seven (7) days, then each Site Coordinator shall reduce his/her position to writing within seven (7) days of the end of the good faith negotiations referenced above. Those written positions shall be immediately exchanged by the Site Coordinators. Following the exchange of written positions, the parties shall have an additional seven (7) days to resolve their differences. If OEPA concurs with the position of Respondents, OEPA will approve amendments to the Workplan or the Consent Order will be modified to include necessary extensions of time or variances of required work.
- C. If OEPA does not concur with the position of Respondents, OEPA will resolve the dispute based upon and consistent with the Consent Order, the Workplan, and ORC Chapters 6111., 3734. and the regulations promulgated thereunder and any other appropriate state or federal law. Elements of work directly affected by the dispute will be completed in accordance with adjusted schedules, as appropriate under the circumstances and as mutually agreed upon by the parties. Such agreement will not be unreasonably withheld by OEPA. Elements of work not affected by the dispute will be completed in accordance with the schedules contained in the Workplan.

#### **XVI. RESERVATION OF RIGHTS**

- A. OEPA reserves the right to take any action pursuant to any available legal authority, including, but not limited to the right to seek injunctive relief, monetary penalties, recovery of response and oversight costs, natural resources damages, and punitive damages for any violation of this Consent Order or federal or state laws or regulations or the common law with respect to past, present, or future events or conditions arising from or related to the Site.
- B. Except as provided in Section V and Section XXV, Respondents and OEPA expressly reserve all rights and defenses that each may have, including OEPA's right both to disapprove any work performed by Respondents and

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to request that Respondents perform tasks in addition to those detailed in the Workplan, including RI work and/or engineering evaluation necessary to conform with the purposes and objectives of this Consent Order. In the event that Respondents decline to perform the work or decline to perform any additional and/or modified tasks, upon written notice to the Respondents, OEPA will have the right to undertake any remedial investigation, feasibility study work, and/or remedial action. In addition, OEPA reserves the right to undertake removal actions and/or remedial actions in accordance with ORC Sections 3734.20 through 3734.26, or Section 9607 of CERCLA, or any applicable law. In any event, OEPA reserves the right to seek reimbursement from Respondents for any response costs incurred by the State of Ohio.

- C. Nothing herein shall waive the right of OEPA to enforce this Consent Order under ORC Chapters 6111. and 3734. or any applicable legal authority.
- D. Upon issuance of the certification of termination pursuant to Section XXIV of this Consent Order, Respondents shall have resolved their liability to OEPA only for the work performed by Respondents pursuant to this Consent Order. Respondents are not released from any and all other liability, if any, for past, present, or future events or conditions arising from or related to the Site.
- E. Informal advice, guidance, suggestions, or comments by OEPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents shall not be construed as relieving Respondents of their obligation to obtain such formal approval as may be required by this Consent Order.

#### XVII. OTHER CLAIMS

Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity against any person, firm, partnership, corporation, or other entity not a signatory to this Consent Order from any liability (s)he or it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous wastes, hazardous

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substances, industrial wastes, other wastes, or pollutants at, to or from the Site. The parties to this Consent Order expressly reserve all rights (including any right to contribution or indemnity possessed by Respondents against any other parties who may be responsible for actual or threatened releases at the Site), claims, demands, and causes of action they have or may have against any and all other persons and entities. Nothing herein is intended to release or discharge any contractual rights or liabilities that may exist among the Respondents.

**XVIII. DEED NOTICE, LAND USE AND CONVEYANCE OF TITLE**

Respondents shall ensure that no portion of the Site will be used in any manner which would hamper or restrict the remedial investigation and feasibility study. Respondents shall ensure that no portion of the Site will be used in any manner which would adversely affect the integrity of any containment systems which may remain at the Site or monitoring systems installed pursuant to this Consent Order. Respondents shall notify OEPA by registered mail at least ninety (90) days prior to any conveyance or an intent to convey any interest in land which is known to comprise the Site and of the provision made for continued maintenance of the system(s). Respondents shall assure that an appropriate notice shall be put in the deed as to the condition of the property. The notice shall first be approved by the OEPA.

**XIX. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations including all environmental laws and regulations.

**XX. INDEMNITY**

A. Respondents agree to indemnify, save, and hold harmless OEPA from any and all claims or causes of action arising from, or related to, events or conditions at the Site except for those claims or causes of action arising from the negligent acts or omissions of OEPA. OEPA shall not be considered a party to and shall not be held liable under any

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contract entered into by Respondents in carrying out the activities pursuant to this Consent Order.

- B. OEPA agrees to provide direct notice to each Respondent within thirty (30) days of receipt of any claim which may be the subject of the indemnity in Paragraph A., above, and to cooperate with Respondents in the defense of any such claim or action against OEPA.

#### **XXI. UNAVOIDABLE DELAYS**

- A. Respondents shall cause all work to be performed within the agreed time schedules provided for in this Consent Order and/or any approved Workplan, unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of this Consent Order, an "unavoidable delay" shall mean any event(s) beyond the control of Respondents which prevents or delays performance of any obligation required by this Consent Order. Increased costs of compliance shall not be considered circumstances beyond the control of Respondents.
- B. Respondents shall notify OEPA in writing no later than fourteen (14) days after discovery of the occurrence of any event which Respondents contend is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause(s) of the delay, the measures taken and/or to be taken by Respondents to minimize the delay, and the timetable under which these measures will be implemented. Respondents shall have the burden of demonstrating that the event(s) constitute(s) an unavoidable delay, and OEPA shall make any determination with regard to such a claim.
- C. In the event that OEPA agrees that an unavoidable delay has occurred, this Consent Order, including incorporated documents and any affected schedules thereunder, may be modified if the unavoidable delay affects such schedules.
- D. The provisions of Section XV, Dispute Resolution, shall apply to this Section.

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## XXII. REIMBURSEMENT OF COSTS

- A. Respondents shall reimburse OEPA for all oversight costs and response costs incurred by OEPA in connection with this Consent Order from the effective date hereof. Respondents shall also reimburse OEPA for all costs incurred by OEPA in connection with this Site prior to the effective date of this Consent Order. Within sixty (60) days of the end of each calendar year, OEPA will submit to Respondents an itemized statement of such costs of OEPA which details OEPA oversight and response activities for the previous year.
- Payment shall be due and owing upon receipt of the itemized statement from OEPA. Respondents shall pay within forty-five (45) days such sums as follows: payment to OEPA shall be made by check payable to "Treasurer, State of Ohio" and shall be forwarded to Fiscal Officer, Division of Emergency and Remedial Response, P. O. Box 1049, 1800 Watermark Drive, Columbus, Ohio 43266-0149.
- B. A copy of the transmittal letter and a photocopy of the check shall be sent to the Site Coordinator.
- C. A copy of the transmittal letter and a photocopy of the check shall be sent to Counsel for Director of Environmental Protection, Ohio EPA, at the above address.
- D. In the event that Respondents fail to complete the RI/FS in compliance with the terms of this Consent Order, OEPA reserves its right to bring an action against Respondents to enforce this Order for recovery of past response costs in connection with the Site and any costs incurred in oversight of Respondent's implementation of this Consent Order (which are not paid pursuant to Paragraph A of this Section) and all costs associated with OEPA's performance of the RI/FS or any part thereof. Nothing in this Consent Order shall be construed as a waiver of any right that OEPA may have to seek reimbursement of any response costs from any person not a party hereto.
- E. The provisions of Section XV, Dispute Resolution, shall apply to the itemized statements prepared in accordance with Paragraph A of this Section.

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**XXIII. EFFECTIVE DATE AND SUBSEQUENT  
MODIFICATION OF CONSENT ORDER**

- A. The effective date of this Consent Order shall be the date on which it is entered in the Journal of the Director of OEPA.
- B. This Consent Order may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date the modification is entered in the Journal of the Director of OEPA.
- C. Any reports, plans, specifications, schedules, and attachments and amendments required by this Consent Order are, upon approval by OEPA, incorporated into and made an enforceable part of this Consent Order.

**XXIV. TERMINATION AND SATISFACTION**

The provisions of this Consent Order shall be terminated when Respondents demonstrate in writing and certify to OEPA's satisfaction that all activities required under this Consent Order (including any additional tasks which OEPA determined to be necessary in accordance with the provisions of this Consent Order and payment of oversight costs) have been completed and OEPA approves such certification in writing. This notice shall not, however, terminate the obligation of Respondents to comply with Sections XII, and XVI (record preservation and reservation of rights).

IT IS SO ORDERED.

By: Gerry Boannig MAY 06 1993  
Donald R. Schregardus, Director Date  
Ohio Environmental Protection Agency

Donald R. Schregardus

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**XXV. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, Respondents agree that this Consent Order is lawful and reasonable, and agree to perform all actions required by this Consent Order. Respondents hereby waive the right to appeal the issuance, terms and service of this Consent Order and hereby waive any and all rights they may have to seek judicial review of such Consent Order either in law or equity. Notwithstanding the preceding, OEPA and Respondents agree that in the event that this Consent Order is appealed by any other party to the Environmental Board of Review, or any court, Respondents retain the right to intervene and participate in such appeal. In such event, Respondents shall continue to comply with this Consent Order notwithstanding such appeal and intervention unless such Consent Order is stayed, vacated or modified.

IT IS SO AGREED:

By: *D. L. Matschullat*  
Newell Co.

March 29, 1993  
Date

Dale L. Matschullat  
Typed or printed name  
Vice President General Counsel  
Title

OHIO ENVIRONMENTAL PROTECTION AGENCY:

*Donald R. Schregardus*  
Donald R. Schregardus  
Director

MAY 06 1993  
Date

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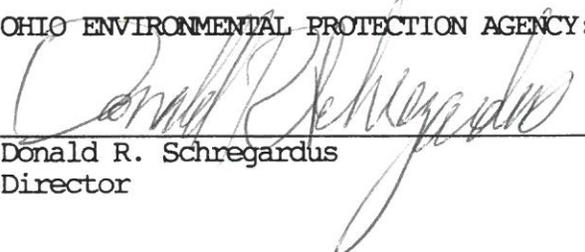
IT IS SO AGREED:

By:   
Aluminum Company of America.

MARCH 31, 1993  
Date

K. L. MCKNIGHT  
Typed or printed name  
MANAGER, ENVIRONMENTAL  
NRDA & CERCLA REMEDIATION PROJECTS  
Title

OHIO ENVIRONMENTAL PROTECTION AGENCY:

  
Donald R. Schregardus  
Director

MAY 06 1993  
Date

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IT IS SO AGREED:

By: Christopher Zachwieja  
Hamilton Beach-Proctor Silex, Inc.  
Christopher Zachwieja  
Typed or printed name  
Manager, Environmental Engineering  
Title

3-26-93  
Date

OHIO ENVIRONMENTAL PROTECTION AGENCY:  
Donald R. Schregardus  
Donald R. Schregardus  
Director

MAY 06 1993  
Date

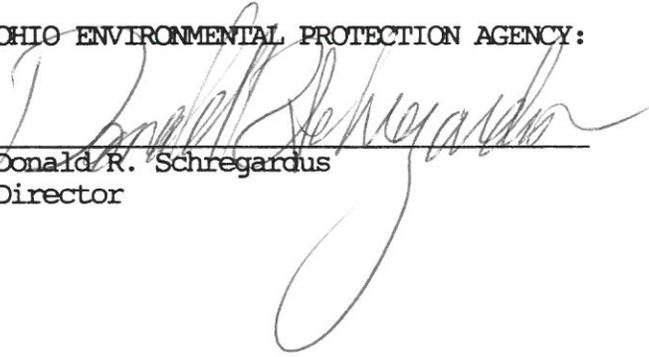
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IT IS SO AGREED:

By:  3/30/93  
WearEver Realty Associates Date  
Donald R. Smith  
Typed or printed name  
Vice President, GLM Realty, Inc.  
General Partner  
Title

OHIO ENVIRONMENTAL PROTECTION AGENCY:  
 MAY 06 1993  
Donald R. Schregardus Date  
Director

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