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Modification
5/22/90

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

26666

REGION IV

IN THE MATTER OF:)
 GREEN RIVER DISPOSAL SITE)
 DAVIESS COUNTY, KENTUCKY)
 General Electric Company)
 W.R. Grace & Co. - Conn.)
 Athlone Industries, Inc.)
 Commonwealth Aluminum Corporation)
 (formerly known as)
 Martin Marietta Aluminum, Inc.)
 RESPONDENTS.)

U.S. EPA DOCKET NO.: 90-55-C

Proceeding under Sections 104 and 122(d)(2) of the Comprehensive, Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sections 9604 and 9622), as amended by the Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499, October 17, 1986

MODIFICATION OF ADMINISTRATIVE ORDER BY CONSENT

I. INTRODUCTION

Pursuant to Section XXII of the Administrative Order on Consent, EPA Docket No. 90-55-C, dated May 22, 1990 (hereinafter "Consent Order"), EPA, General Electric Company, W.R. Grace & Co. - Conn., Green River Steel Corporation, and Commonwealth Aluminum Corporation (formerly known as Martin Marietta Aluminum, Inc.) hereby agree to modify the Consent Order as set forth herein. Respondents agree to conduct the Remedial Design of the remedy selected for the Green River Disposal Site (hereinafter "Site") as set forth in EPA's Record of Decision dated December 14, 1994 by adding the Remedial Design Work set forth in Section II below, to the Respondents' work obligations under Section VI of the Consent Order. Respondents shall conduct the Remedial Design activities in accordance with the terms of the Consent Order, this Modification, and the Statement of Work (attached hereto as Attachment A).

All terms and conditions of the Consent Order shall continue in full force and effect during the performance of the Remedial Design, including but not limited to Section XIV ("Stipulated Penalties"), and shall apply to all work performed under this Modification. For purposes of determining the actions which may give rise to stipulated penalties and the amount of such penalties, it is agreed that the penalties associated with Section XIV.A of the Consent Order shall apply if Respondents fail to timely submit (and if necessary, modify and resubmit) the Remedial Design Work

Plan, the Sampling and Analysis Plan, and the Preliminary Plans and Specifications. Other plans and documents required by the Statement of Work shall be subject to stipulated penalties associated with Section XIV.B of the Consent Order.

II. REMEDIAL DESIGN WORK TO BE PERFORMED BY RESPONDENT

All work performed under this Modification shall be under the direction and supervision of a qualified professional engineer or geologist with expertise in hazardous waste site cleanup. Within thirty (30) calendar days after the effective date of this Modification, Respondents shall notify EPA in writing regarding the name, title, and qualifications of such engineer and of any contractors and subcontractors to be used in carrying out the terms of this Modification. In the event EPA disapproves of the contractor selected by Respondents, Respondents shall notify EPA within fifteen (15) calendar days of an alternate selection.

The parties agree that the following work will be performed by Respondent.

1. Within ten (10) calendar days of contractor approval by EPA, Respondent shall submit the following to EPA and the Commonwealth of Kentucky: (1) a work plan for the design of the selected remedy published in the Record of Decision dated December 14, 1994 ("Remedial Design Work Plan" or "RD" Work Plan); (2) a Remedial Design Sampling and Analysis Plan and a Quality Assurance Project Plan for field activities during the Remedial Design; (3) and a Remedial Design Health and Safety Plan ("HSP"). The Remedial Design Work Plan shall be consistent with the Record of Decision and EPA Superfund Remedial Design and Remedial Action Guidance documents identified by EPA. In the event EPA disapproves the initial Work Plan submittal, EPA will provide written comments to Respondents describing the reasons for disapproval. Respondents shall have thirty (30) calendar days from the date of receipt of EPA's comments to revise and resubmit the Work Plan to EPA. Upon EPA approval, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Modification. Failure to timely submit the Remedial Work Plan and other plans required herein, and revisions thereto based on EPA's comments consistent with this modification and SOW, if any, will authorize EPA to assess stipulated penalties as provided in the Consent Order and herein. In the event of disapproval of a revised report, EPA retains the right to amend such report and to seek Cost Recovery against Respondents and other potentially responsible parties.

2. Submittals also shall include, but shall not be limited to, (1) a schedule for submittal of each deliverable required by this Modification and the attached SOW; and (2) a description of the community relations support activities to be conducted during the Remedial Design. The Remedial Design Work Plan shall also include schedules for implementation of the Remedial Design tasks identified in the SOW, submittal of Remedial Design reports, and monthly status reports.

III. EFFECTIVE DATE OF THIS MODIFICATION

The effective date of this Modification shall be the date on which it is signed by EPA. This Modification and its attachments may be amended by mutual agreement of EPA and Respondents. Such amendment(s) shall be in writing and will become effective on the date when such amendment(s) are signed by EPA.

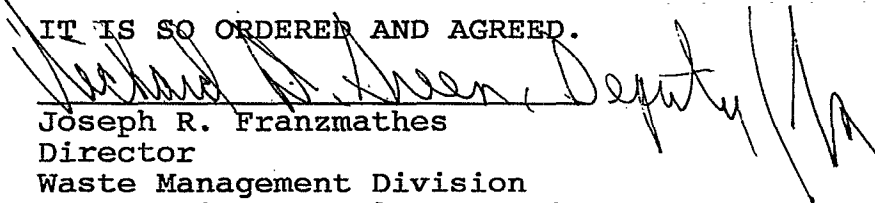
IV. TERMINATION

The provisions regarding termination in Section XXIV of the Consent Order remain in effect and shall apply to this modification. Therefore, this modification shall be deemed satisfied and shall terminate upon written notice from EPA that Respondents have demonstrated to EPA's satisfaction that all terms of this Modification have been completed.

V. NOTICE TO THE STATE

EPA has notified the Commonwealth of Kentucky of this Modification to the Consent Order.

IT IS SO ORDERED AND AGREED.



Joseph R. Franzmathes
Director
Waste Management Division
U.S. Environmental Protection Agency
Region IV

12 MAY 95
Date

Respondent
General Electric Company

Date

(Type in Title)

Respondent
W.R. Grace & Co. - Conn.

Date

(Type in Title)

SENT BY FAX 04 '95 01:03PM MARTIN MARIETTA CENS 14 VALDARVA, SULLIVAN.

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Joseph R. Franzmathes
Director
Waste Management Division
U.S. Environmental Protection Agency
Region IV

Date

[Handwritten Signature]

Respondent
General Electric Company
Manager, Environmental Programs
(Type in Title)

5/9/95

Date

Respondent
W.R. Grace & Co. - Conn.
(Type in Title)

Date

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Joseph R. Frennathes
Director
Waste Management Division
U.S. Environmental Protection Agency
Region IV

DATE

Respondent
General Electric Company

DATE

(Type in Title)

Respondent Alden G. Pierce
W.R. Grace & Co. - Conn.

May 8, 1995

DATE

Vice President

(Type in Title)

MAY-05-95 FRI 12:50
05-04-95 04:43PM

PICADIO MCCALL KANE
FROM ALC LAW DEPT.

FAX NO. 4122882405
TO 92882405

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SENT BY MAY 04 '95

12:46PM MARTIN MARIETTA CO



Respondent
Green River Steel Corporation

President

(Type in Title)

MAY 9, 1995

Date

Respondent
Commonwealth Aluminum Corporation
(formerly known as
Martin Marietta Aluminum, Inc.)

Date

(Type in Title)

Respondent
Green River Steel Corporation

Date

(Type in Title)

William R. Sauer

5/8/95
Date

Respondent
* Commonwealth Aluminum Corporation
(formerly known as
Martin Marietta Aluminum, Inc.)

Vice President Corporate Environmental, Safety and Health
(Type in Title) Lockheed Martin Corporation

* Martin Marietta Technologies, Inc.,
a Lockheed Martin company, on behalf of
Commonwealth Aluminum Corporation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

IN THE MATTER OF:

GREEN RIVER DISPOSAL SITE
DAVISS COUNTY, KENTUCKY

General Electric Company
W.R. Grace & Co. - Conn.
Athlone Industries, Inc.
Commonwealth Aluminum Company
(formerly known as
Martin Marietta Aluminum, Inc.

RESPONDENTS.

) U.S. EPA DOCKET NO.: 90-55-C

) Proceeding under Sections
) 104 and 122(d)(2) of the
) Comprehensive, Environmental
) Response, Compensation and
) Liability Act of 1980 (42
) U.S.C. Sections 9604 and
) 9622), as amended by the
) Superfund Amendments and
) Reauthorization Act of 1986,
) P. L. 99-499, October 17, 1986.

ADMINISTRATIVE ORDER BY CONSENT

I. JURISDICTION

This Administrative Order by Consent (hereafter called "Consent Order") is entered into by the United States Environmental Protection Agency (hereafter called "EPA") with the Respondents, Athlone Industries, Inc., General Electric Company, W.R. Grace & Co. - Conn., and Commonwealth Aluminum Company, (formerly known as Martin Marietta Aluminum, Inc., who have executed this Consent Order pursuant to the authority vested in the President of the United States by Sections 104 and 122(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereafter called "CERCLA"), 42 U.S.C. Sections 9604 and 9622(d)(3), as amended by the Superfund Amendments and Reauthorization Act of 1986 (hereafter called "SARA"). The President delegated this authority to the Administrator of EPA by Executive Order 12580 dated January 23, 1987, 52 Federal Register 2923 (January 29, 1987). This authority has been further delegated to the Regional Administrator of EPA Region IV and redelegated to the Director, Waste Management Division.

The Respondents agree to undertake all actions required of them by the terms and conditions of this Consent Order for the conduct and implementation of a Remedial Investigation and Feasibility Study (RI/FS) at the Green River Disposal Site and any additional work agreed to pursuant to Section VI.L. below.

Solely for the purposes of this Consent Order, the Respondents consent to and agree not to contest EPA jurisdiction to issue or enforce this Consent Order. The Respondents neither admit nor deny the determinations, allegations, findings of fact, and conclusions of law made by EPA in this Consent Order and specifically reserve the right to contest any such determinations, allegations, findings of fact, and conclusions in any proceeding regarding the Green River Disposal Site, except in a proceeding by EPA to enforce this Consent Order. Respondents do not by signing this Consent Order waive any rights they may have against any person, other than the United States or EPA.

II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and the Respondents are: (1) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances from the Site (Remedial Investigation), and (2) to determine and evaluate alternatives for the appropriate extent of remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances from the Site (Feasibility Study).

The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the National Contingency Plan, 40 C.F.R. Part 300, et seq.

III. EPA FINDINGS OF FACT

The following constitutes an outline of the facts upon which this Consent Order is based:

- A. The Site was operated as a sanitary landfill under the name of Green River Disposal, Inc. from approximately 1970 to 1983. During this period, various generators, including Respondents, were given permission by the State of Kentucky to dispose of waste at the facility.
- B. Respondent Martin Marietta Aluminum, Inc. (Commonwealth Aluminum Company) is a generator of aluminum dross salt cake and ferrocyanides. These wastes which contained hazardous substances

were transported from Respondent's Lewisport, Kentucky plant and disposed of at the Site from 1973 through 1983.

- C. Respondent W.R. Grace & Co. - Conn. is a generator of phenolic resin, plasticizers and waste oils. These wastes which contained hazardous substances were transported from Respondent's Owensboro, Kentucky plant and disposed of at the Site from as early as 1970 until 1984.
- D. Respondent Athlone Industries, Inc. is the parent company to Green River Steel Corporation, Inc. Green River Steel Corporation, Inc., generated wastes which contained hazardous substances including, steel dust at its Owensboro, Kentucky plant and arranged for their disposal at the Site from 1978 to 1984.
- E. Respondent General Electric Company is a generator of cured epoxy resin, waste paint sludge, zinc phosphate tank bottom sludge and dried paint filter waste. These wastes which contained hazardous substances were transported from Respondent's Owensboro, Kentucky plant and disposed of at the Site from 1977 to 1984.
- F. Beginning in 1984, and continuing through the present time, the Site has been the subject of investigation by the Kentucky Division of Waste Management and EPA Region IV Superfund personnel, for purposes of documenting the effects of releases of hazardous substances into the environment from the Site. A summary of the results of various sampling activities is presented below:

<u>Hazardous Substances</u>	<u>Concentration</u>	<u>Sample Point</u>
arsenic	10.5 ppb	leachate
	7.0 ppb	drinking water
barium	1080 ppm	sediment
	4.14 ppm	groundwater
chromium	591.5 ppm	sediment
	52.7 ppm	leachate
2,4-dimethylphenol	127 ppb	leachate
ethylbenzene	28 ppb	leachate
lead	1570 ppm	sediment
	8.55 ppm	leachate
4-methyl-2-pentanone	57 ppb	sediment
	22 ppb	leachate
methylene chloride	19 ppb	sediment
naphthalene	20 ppb	leachate
toluene	18 ppb	leachate
xylene, total	17 ppb	leachate

(Note: ppm=parts per million; ppb=parts per billion)

Many of the above levels do not exceed applicable drinking water standards.

G. The Site is currently inactive and the landfill has been closed since 1983. In September 1989, the EPA On-Scene Coordinator (OSC) inspected the Site, and observed the following conditions:

1. Outbreaks of leachate material, originating from beneath the surface of the landfill, and outcropping along a fill slope at the northern perimeter of the Site. This type of release has been reported to be characteristic of this area of the landfill due to the combination of a lack of infiltration control through the landfill cover material, and the continued erosion of surface soils along the fill slope.
2. Analyses of leachate samples collected in this area indicate that hazardous substances are being released into the environment from the Site in an uncontrolled manner. In particular, evidence of volatile organic compounds and heavy metals at elevated levels in both leachate and sediment indicate the offsite migration of contaminants into Little Blackford Creek.
3. Analyses of groundwater samples taken from a nearby well over a four year study period indicate the presence of arsenic. This well is not currently used for drinking water. Arsenic has also been detected in leachate leaving the site. Because of the adverse health effects associated with ingestion of drinking water containing levels of arsenic above the Maximum Contaminant Level, further study of the potential for on-site releases causing contamination of groundwater is warranted.
4. Although the Site is in a rural area (2,600 persons reside within a 3-mile radius of the Site), the threat of individuals coming into direct contact with onsite contaminations is significant, primarily since the Site is largely unsecured, as evidenced by deterioration or lack of fencing along the landfill perimeter.

H. The Site was proposed for inclusion on the National Priorities List (NPL) on June 1988.

IV. EPA CONCLUSIONS OF LAW

For purposes of this Consent Order, EPA concludes that:

- A. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
- B. The Respondents are persons as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
- C. The substances found at the Site as described in Section III above are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

- D. The hazardous substances described above were disposed of at the facility in such a manner that they have been released into the environment and their potential migration pathways constitute both an actual release and threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

V. EPA DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

- A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health welfare or the environment.
- B. The actions required by this Consent Order are necessary to protect the public health and/or welfare and/or the environment.
- C. In accordance with Section 104(a)(1) of CERCLA, 42 U.S.C. Section 9604(a)(1), as amended by SARA, EPA has determined that if performed according to the terms of this Order, the Respondents will properly and promptly conduct the RI/FS and are qualified to do so.

VI. WORK TO BE PERFORMED

All work performed pursuant to this Consent Order shall be conducted under the direction and supervision of a qualified professional engineer or a certified geologist with expertise in hazardous waste site clean up and investigation. Prior to the initiation of the site work, the Respondents shall notify EPA in writing regarding the identity of such engineer or geologist and of any contractors and/or subcontractors to be used in carrying out the terms of this Consent Order. EPA reserves the right to disapprove any engineer, geologist, contractor and/or subcontractor selected for the RI/FS and shall specify the reason(s) for such disapproval. In the event of such disapproval, Respondent shall notify EPA within ten (10) calendar days of an alternate selection.

It is hereby AGREED TO AND ORDERED that the following work shall be performed:

- A. Within forty-five (45) calendar days of the effective date of this Consent Order, the Respondents shall submit to EPA a plan for a complete Remedial Investigation and Feasibility Study ("RI/FS Work Plan"). This RI/FS Work Plan shall be developed in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents which have been provided to the Respondents by EPA (i.e., "Guidance For Conducting Remedial Investigations and Feasibility Studies under CERCLA", dated October 1988) and with Section 121 of the Superfund Amendments and Reauthorization Act of 1986.
- B. Within forty-five (45) calendar days after receipt of the RI/FS Work Plan by EPA, EPA shall notify the Respondents in writing of

EPA's approval or disapproval of the RI/FS Work Plan or any part thereof. Any differences of opinion between EPA and Respondents concerning any EPA disapproval of the RI/FS Work Plan will be resolved in accordance with the Dispute Resolution procedure set forth in Section XI below.

- C. Within forty-five (45) calendar days of the receipt of EPA notification of RI/FS Work Plan disapproval, the Respondents shall submit to EPA a revised RI/FS Work Plan. Any disputes among EPA and Respondents concerning any EPA disapproval of the revised RI/FS Work Plan will be resolved in accordance with the Dispute Resolution Procedures set forth in Section XI below.
- D. The Respondents shall implement the tasks detailed in the RI/FS Work Plan. Upon approval by EPA, the RI/FS Work Plan will be attached to and incorporated in this Consent Order (Attachment 1). The EPA approved RI/FS Work Plan and any approved amendments thereto will be attached to and incorporated in this Consent Order (Attachment 2). This work shall be conducted in accordance with the standards, specifications, and schedule contained in the RI/FS Work Plan.
- E. Within seven (7) calendar days of receipt of EPA's approval of the RI/FS Work Plan, Respondents shall commence Task 1 of the RI/FS Work Plan. A Project Operations Plan ("POP") shall be submitted within thirty (30) calendar days after receipt of EPA approval of the RI/FS Work Plan. The POP must include: (1) a detailed sampling plan, (2) a health and safety plan, (3) a plan for satisfaction of permitting requirements, (4) a description of chain-of-custody procedures, and (5) a description of quality control and quality assurance procedures.

The POP, RI/FS Work Plan and all other reports and Plans shall be subject to review, modification, and approval by EPA. The POP must be consistent with and incorporate all of the requirements which are set forth in the EPA Region IV Support Branch Standard Operating Procedures and Quality Assurance Manual ("SOP Manual") which is dated April 1986. The POP must be consistent with any amendment to this manual, provided that any such amendment is transmitted to Respondents sufficiently in advance of the submission of any deliverable to allow it to be incorporated into the deliverable. Should EPA disapprove any part of the POP, Respondents will have twenty-one (21) calendar days after receipt of notice of disapproval to submit a revised POP.

- F. The Respondents shall provide monthly written progress reports to EPA according to the schedule contained in the RI/FS Work Plan. These progress reports shall: (1) describe the actions which have been taken toward achieving compliance with this Consent Order, (2) include all results of sampling and tests and all other data received by the Respondents as part of the work required by the Consent Order, and (3) include all activities completed subsequent

to EPA approval of the RI/FS Work Plan during the past month, as well as such actions, and tasks which are scheduled for the next month. These reports are to be submitted to EPA by the tenth (10th) day of each month following the date of receipt of EPA approval of the RI/FS Work Plan.

- G. The Respondents shall provide preliminary and final RI/FS reports to EPA according to the schedule contained in the RI/FS Work Plan.
- H. EPA shall review the preliminary and final RI/FS reports as well as all other submittals requiring EPA approval, and within forty-five (45) calendar days after its receipt of such reports, EPA shall notify the Respondents in writing of EPA's approval or disapproval of these reports or any part thereof. In the event of any disapproval, EPA shall specify in writing both the deficiencies and the reasons for such disapproval.
- I. Within thirty (30) calendar days after receipt of EPA notification of preliminary or final report disapproval, the Respondents shall amend and submit to EPA the revised reports pursuant to EPA review, if, in addressing the revision, additional field or laboratory work is not required. If EPA determines that additional field or laboratory work within the scope of this Consent Order is required to complete the revisions, then EPA and the Respondents shall agree on an appropriate amount of time for preparation of the revised report. In the event of disapproval of a revised report, EPA retains the right to amend such report, to perform additional studies, to perform such work as is necessary to complete the RI/FS or portions thereof pursuant to its authority under CERCLA/SARA, to seek Cost Recovery against Respondents and other potentially responsible parties and to assess stipulated penalties pursuant to Section XIV of this Consent Order.
- J. The Respondent shall not proceed with the activities outlined in the RI/FS Work Plan without receipt of EPA approval. Failure of EPA to expressly approve or disapprove of the Respondent's deliverables within the specified time period(s) shall not be construed as approval by EPA. Respondents are responsible for preparing and submitting deliverables acceptable to EPA.
- K. Documents, including reports, approvals, and other correspondence, to be submitted pursuant to this Consent Order, shall be sent by certified mail to the following addresses or to such other addresses as the Respondents or EPA hereafter may designate in writing:

- 1) Documents (5 complete copies) to be submitted to EPA should be sent to:

Ms. Beth Brown
KY/TN Site Management Unit
Superfund Branch
Waste Management Division
U.S. Environmental Protection Agency
345 Courtland Street, N.E.
Atlanta, Georgia 30365

If a document is large enough to require binding, twelve complete copies should be submitted to EPA. One copy should be left unbound, secured with rubber bands or the like.

- 2) Documents (5 Copies) to be submitted to the Respondents should be sent to:

Mr. Samuel Gutter, Esq.
Sidley and Austin
Attorneys at Law
1722 Eye Street, NW
Washington, DC 20006

At the request of EPA, the Respondent shall assist in all reasonable respects in preparing presentations for community relations meetings and availability sessions during the the initiation, conduct and completion of the RI/FS. In addition to discussions of the technical aspects of the RI/FS, topics will include anticipated problems or new issues related to the RI/FS.

- L. Furthermore, EPA retains the right to request Respondents to perform additional tasks which may include additional sampling, if such are deemed necessary by EPA to adequately investigate the Site. Should EPA determine that such additional tasks are necessary, EPA shall notify Respondents in writing of its decision and shall set forth the factual basis thereof. Within fourteen (14) calendar days after receipt of EPA's notice, Respondents shall notify EPA in writing as to whether or not Respondents will agree to conduct the additional tasks. Upon written agreement of EPA and Respondents, this Consent Order may be modified as necessary to address such further investigation and study. Should Respondents not agree to perform these additional tasks and to amend this Consent Order as may be necessary, EPA retains the right to perform any additional work as authorized by CERCLA/SARA, to perform such work as is necessary to complete the RI/FS, and to seek cost recovery from Respondents and any other potentially responsible parties. Failure of the Respondents to agree to perform additional work under this Section shall not be a violation of this Consent Order. Any disagreement between the

Parties concerning additional work under this Section will not be subject to the Dispute Resolution process (Section XI. of this Consent Order).

VII. DESIGNATED PROJECT COORDINATORS

- A. On or before the effective date of this Consent Order, EPA and the Respondents shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondents and EPA and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.
- B. During the course of implementation of the work, the Project Coordinators shall, whenever possible, operate by consensus. The Project Coordinators shall attempt to resolve disputes informally through good faith discussion of the issues.
- . EPA and the Respondents each have the right to change their respective Project Coordinator. Except in exigent circumstances, such a change shall be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change.
- D. The EPA-designated Project Coordinator shall have the authority provided by the National Contingency Plan; 40 C.F.R. Part 300, et seq. This includes the authority to halt, conduct, or direct any tasks required by this Consent Order and/or any response actions or portions thereof when conditions present an immediate risk to public health and/or welfare and/or the environment.
- E. Neither the absence of the EPA Project Coordinator from the Site nor the lack of availability of an EPA representative by phone shall be cause for the stoppage of work except where the approval or concurrence of such a coordinator of EPA is necessary for a particular item of work to continue or be completed or where the cessation of work is necessary to abate an immediate risk of harm to public health, welfare or the environment. Respondents shall notify the EPA project coordinator or other designated EPA representatives as soon as practicable by phone, that work has been discontinued.
- F. Further, within seventy-two (72) hours after work is discontinued, Respondents shall submit to EPA a written explanation of why work was discontinued. Should a disagreement arise between EPA and Respondents concerning Respondents' decision to discontinue work, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" Section (Section XI) of this Consent Order.

VIII. QUALITY ASSURANCE

The Respondents shall use quality assurance, quality control, and chain-of custody procedures in accordance with the EPA, Region IV, Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual, (U.S. EPA Region IV, Environmental Services Division, April 1, 1986), throughout all sample collection and analyses activities. This manual will be provided to Respondents within fourteen (14) calendar days of the effective date of the Consent Order. The Respondents shall consult with EPA in planning for, and prior to, all sampling and analyses as detailed in the RI/FS Work Plan. In order to provide quality assurance, and maintain quality control regarding all samples collected pursuant to this Consent Order, the Respondents shall:

- A. Ensure that EPA personnel and/or EPA-authorized representatives are allowed access to the laboratory(s) and personnel utilized by the Respondents for analyses;
- B. Ensure that the laboratory(s) utilized by the Respondents for analyses perform such analyses according to EPA methods or methods deemed satisfactory to EPA and submit all protocols to be used for analyses to EPA at least twenty-four (24) calendar days prior to the commencement of analyses;
- C. Ensure that laboratory(s) utilized by the Respondents for analyses participate in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. As part of such a program, and upon request by EPA, such laboratory(s) shall perform such analyses of samples provided by EPA to demonstrate the quality of the laboratory's analytical data.

IX. SITE ACCESS

To the extent that areas to which access is necessary to carry out the RI/FS Work Plan are presently owned by parties other than those bound by this Consent Order, the Respondents have obtained or will use their best efforts to obtain Site access agreements from the present owners within thirty-five (35) calendar days of the effective date of this Consent Order. Such agreements shall provide reasonable access by EPA and/or its authorized representatives. In the event that Site access agreements are not obtained within the time referenced above, the Respondents shall notify EPA regarding both the lack of, and efforts to obtain, such agreements within thirty-five (35) calendar days of the effective date of this Consent Order. In such event, EPA will use all appropriate available authority to assist the Respondents in obtaining such access. Respondents shall reimburse EPA for any costs it may incur in securing access to the Site through judicial means. Failure by Respondents to obtain Site access agreements, after use of their best efforts, does not constitute a violation of this Consent Order. Work in that area of the Site for which access has not been

obtained will be delayed until access is obtained and all schedules established in this Consent Order or Work Plan shall be modified accordingly.

X. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

- A. The Respondents shall make the results of all sampling and/or tests or other data with respect to the implementation of this Consent Order by the Respondents or on the Respondents' behalf, available to EPA and shall submit these results in monthly progress reports as described in Section VI of this Consent Order. EPA will make available to the Respondents the results of sampling and/or tests or other data similarly generated by EPA.
- B. At the request of EPA, the Respondents shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by the Respondents pursuant to the implementation of this Consent Order. The Respondents shall notify EPA not less than seven (7) calendar days in advance of any sample collection activity unless Respondents obtain approval for a shorter notification period from EPA's Project Coordinator. These notifications may be given verbally in the field by the Respondents to EPA's authorized representative.
- C. EPA shall allow split or duplicate samples to be taken by the Respondents of any samples collected by EPA or its contractors during the performance of work associated with this Consent Order and shall notify the Respondents not less than seven (7) calendar days in advance of any sample collection activity.
- D. Respondents will not in any way prevent or impede EPA and/or its authorized representatives from freely moving about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting such tests as EPA or the Project Coordinator deem necessary as required by this Consent Order; and verifying the data submitted to EPA by the Respondents. The Respondents shall permit such persons to inspect and copy all records, files, photographs, sampling and monitoring data, documents, and other writings, in any way pertaining to work undertaken pursuant to this Consent Order. All parties with access to the Site pursuant to this paragraph shall comply with all approved health and safety plans. Nothing herein shall waive Respondents' right to assert any work product or attorney-client privilege.
- E. No sampling data, sampling data and analytical data reports, books and logs or any other documents, reports, records and information, which Respondents are required to generate pursuant to this Consent Order or the RI/FS Work Plan, may be withheld from EPA on the basis that they are subject to the attorney work-product privilege, the attorney-client privilege or any other privilege.

- F. The Respondents may assert a confidentiality claim, if appropriate, covering part or all of the information provided under this Consent Order pursuant to 40 C.F.R. Section 2.203(b). Such an assertion shall be adequately substantiated when the assertion is made. Analytical data shall not be claimed as confidential by the Respondents. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to the Respondents.

XI. DISPUTE RESOLUTION

- A. The Project Coordinators shall first attempt to resolve informally, through good faith discussions, all matters concerning the Work Plan activities and the interpretation of this Order. If the Project Coordinators cannot resolve a difference of opinion with respect to such matters within twenty-four (24) hours or if Respondents object to any EPA notice of deficiency or any other decision made pursuant to this Order, Respondents shall notify EPA in writing of their objection within fourteen (14) days of receipt of the notice or decision. EPA and Respondents then have an additional fourteen (14) days from the receipt by EPA of the notification of objection to negotiate in good faith to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA shall provide a written statement to the Respondents setting forth EPA's basis for its decision. EPA may then proceed to complete the RI/FS or any part thereof and seek cost recovery.
- B. Payment of stipulated penalties with respect to any disputed issues shall be stayed pending resolution of the dispute. In the event Respondents do not prevail in the dispute, stipulated penalties shall be assessed and paid as provided in Section XIV herein. Further, EPA's decision concerning the need for additional tasks, sampling and/or resampling, as set forth in Section VI.L. of this Consent Order, shall not be subject to the Dispute Resolution process.
- C. Nothing in this Dispute Resolution Section shall affect any rights which EPA and the Respondents have reserved in any other Section of this Consent Order.

XII. RECORD PRESERVATION

Respondents shall preserve, during the pendency of this Consent Order and for a minimum of seven (7) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate to the implementation of this Order, despite any document retention policy to the contrary. Upon notification to

EPA, the Respondents may select one Respondent and/or location for storage of such records. After this seven (7) year period, the Respondents shall notify EPA at least twenty-one (21) calendar days prior to the destruction of any such records or completed copies of such records.

Additionally, if EPA requests that some or all documents be preserved for a longer period, the Respondents shall comply with such request.

XIII. DELAY IN PERFORMANCE/FORCE MAJEURE

Respondent's activities under this Consent Order shall be performed within the time limits set forth in the RI/FS Work Plan referenced in VI above, unless performance is delayed by events which constitute a force majeure. For purposes of this Consent Order, a force majeure is defined as any event arising from causes beyond the reasonable control of Respondents which could not have been prevented by the exercise of due diligence. Increased cost in performing the terms of this Consent Order, changed economic circumstances and/or failure to apply for permits and approvals shall not be considered as constituting a force majeure.

Respondents shall notify EPA's Project Coordinator orally within forty-eight (48) hours, and in writing no later than ten (10) calendar days from the inception or date of discovery of any event which Respondents contend constitutes a force majeure as defined above. The written notice shall describe fully the nature of the delay, why the delay is beyond the reasonable control of the Respondents, the actions taken and/or that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable by which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondents shall adopt all reasonable measures to avoid or minimize any such delay.

A delay that results from a force majeure event shall not be deemed to be a violation of this Consent Order. To the extent a delay is caused by circumstances which constitute a force majeure, the schedule affected by the delay shall be extended for a period equal to the delay resulting from such circumstances, unless EPA determines circumstances warrant a greater extension of time. The Respondents shall have the burden of proving that a delay in performance was caused by a force majeure event and that they are entitled to additional time beyond the length of the delay.

Failure of the Respondents to comply with the written notice requirements of this Section shall constitute a waiver of the Respondents' right to invoke the benefits of this Section with respect to that event.

If the parties do not agree as to whether or not the circumstances constitute a force majeure, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" Section (Section XI) of this Consent Order.

XIV. STIPULATED PENALTIES

Unless excused under provisions of Sections XI or XIII, or unless excused by extensions agreed to in writing by the parties, the Respondents shall be subject to the imposition of stipulated penalties as set forth below:

Stipulated penalties shall accrue as follows:

For each day during which Respondents fail to complete the tasks within the schedules contained in this Consent Order and in the various plans and reports required under this Order or incorporated by reference herein, the Respondents shall be liable to EPA for stipulated penalties in the following manner:

A. For the major deliverables:

<u>Period of Failure to Comply:</u>	<u>Penalty:</u>
1st through 14th day	\$1,000.00 per violation per day
15th through 44th day	\$2,000.00 per violation per day
45th day and beyond	\$5,000.00 per violation per day

Major deliverables under this Consent Order are:

1. Submittal of an original and any revised work plan;
2. Submittal of an original and any revised sampling and analysis plan;
3. Submittal of an original and any revised baseline risk assessment chapter of the remedial investigation report;
4. Submittal of an original and any revised remedial investigation report;
5. Submittal of an original and any revised treatability testing work plan;
6. Submittal of an original and any revised treatability study sampling and analysis plan;
7. Submittal of an original and any revised feasibility study report.

B. For the interim deliverables:

<u>Period of Failure to Comply:</u>	<u>Penalty:</u>
1st through 14th day	\$250 per violation per day
15th through 44th day	\$500 per violation per day
45th day and beyond	\$1,000 per violation per day

Interim tasks under this Consent Order are:

1. Preliminary site characterization summary;
2. Literature survey and treatability testing statement of work;
3. Treatability evaluation report;
4. Memorandum on remedial action objectives;
5. Memorandum on initial screening results of alternatives;
6. Final screening results memorandum.

C. For monthly progress reports:

Period of Failure to Comply:

Penalty:

1st through 14th day
15th day and beyond

\$100 per violation per day
\$200 per violation per day

- D. Should Respondents fail to mobilize or commence field activities prescribed in the RI/FS Work Plan within ten (10) calendar days of any date or time designated within the Work Plan, Respondents shall be liable to EPA for stipulated penalties in the amount of \$500.00 for each day of non-compliance.
- E. In the event the Respondents are not able to submit deliverables within time constraints provided within the Work Plan, despite incurred delays, EPA, in its discretion, may waive the stipulated penalties provided for in Paragraphs A, B, C, D or F. In rendering a determination on the issue of the waiver of penalties under this paragraph, EPA will consider Respondents' good faith efforts to mobilize and/or commence field activities within the required times. *all*
- F. Respondents shall be liable to EPA for stipulated penalties in the amount of \$500 per violation for each day during which Respondents fail to comply with all other requirements of this Consent Order including, but not limited to, any implementation schedule, payment requirement, notification requirement or completion deadline. *pmh*

All stipulated penalties begin to accrue on the day that a violation occurs or on the day following Respondents' failure to comply with any schedule or deadline, or the terms, conditions or requirements contained in this Consent Order and/or Work Plan, and shall continue to accrue until Respondents' violation ends or until Respondents comply with the particular schedule, deadline, term, condition or requirement.

Should EPA require that Respondents pay a stipulated penalty during the course of work undertaken pursuant to this Consent Order, payment of such penalty shall be due and owing within sixty (60) days from the date of receipt of a written notice from EPA notifying Respondents that penalties have been assessed, except to the extent the procedures of Section XI herein, if invoked, delay the required payment date. Payment shall be made by certified or cashiers check, made payable to "EPA Hazardous Substances Superfund". The check must reference the name of the Site and shall be sent to:

U.S. Environmental Protection Agency
Region IV
Superfund Accounting
P.O. Box 100142
Atlanta, GA 30384
Attention: Collection Officer for Superfund

A copy of the transmittal letter should be sent simultaneously with the required payment to the EPA Project Coordinator. Interest shall begin to accrue on the unpaid balance at the end of the fifteenth day upon which payment is due. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.

XV. INCORPORATION OF REPORTS

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a failure to achieve the requirements of this Consent Order and will subject the Respondents to the provisions included in Section XIV above. The provisions of this Consent Order shall govern all proceedings regarding the RI/FS work conducted pursuant to this Consent Order. In the event of any inconsistency between this Consent Order and any required deliverable submitted by Respondent, the inconsistency will be resolved in favor of this Consent Order.

XVI. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, including the completion of an EPA approved Remedial Investigation and Feasibility Study, Respondents are not released from liability, if any, for any actions beyond the terms of this Consent Order taken by EPA with respect to the Site. EPA reserves the right to take any enforcement action pursuant to CERCLA/SARA and/or any available statute or other legal authority, including the right to seek any remedy, sanction, injunctive relief, monetary penalties, in addition to and including those set forth in the "Stipulated Penalties" Section of this Order, and punitive damages for any violation of law or this Consent Order.

EPA and Respondents expressly reserves all rights and defenses that they may have, including EPA's right both to disapprove of work performed by Respondents and to request that Respondents perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that Respondents decline to perform any additional and/or modified tasks, EPA will have the right to undertake any such work. In addition, EPA reserves the right to undertake removal actions and/or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from Respondents thereafter for such costs incurred by the United States.

XVII. REIMBURSEMENT OF COSTS

The Respondents shall fully reimburse EPA for all response and oversight costs, not inconsistent with the NCP, which are incurred by

the U.S. Government with respect to this Consent Order. At the end of each fiscal year, EPA shall submit to the Respondents a demand for payment and an accounting of the oversight costs which are being claimed. Failure to submit an accounting in one fiscal year does not prevent EPA from submitting an accounting for that year in a subsequent fiscal year. The payment shall be due within thirty (30) calendar days of the Respondents' receipt of such a demand and accounting and shall be made by certified or cashiers check, payable to the "Hazardous Substance Superfund".

Checks should specifically reference the identity of the Site and be addressed to:

U. S. Environmental Protection Agency
Region IV
Superfund Accounting
P. O. Box 100142
Atlanta, GA 30384
Attention: Collection Officer for Superfund

Copies of both the transmittal letter and the check itself should be sent to the Project Coordinator.

EPA reserves the right to bring an action against any responsible party pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by the Respondents, as well as any other past and future costs incurred by the United States from the Fund in connection with response activities conducted pursuant to CERCLA/SARA at this site.

XVIII. OTHER CLAIMS

Nothing herein is intended to release any claims, causes of action or demands in law or equity that EPA or the Respondents may have against any person, firm, partnership, or corporation, not a signatory to this Consent Order, for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site. The Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

In entering into this Consent Order, Respondents waive any right to seek reimbursement under Section 106(b)(2) of CERCLA 42 U.S.C. §9606(b)(2), for any past costs associated with this Site, or any costs incurred in complying with the Order.

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 unless an exemption from such requirements is specifically provided herein or by statute.

XX. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondents agree to indemnify and save and hold the United States Government, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of the Respondents, their officers, employees, receivers, trustees, agents or assigns, in carrying out the activities pursuant to this Consent Order. EPA is not a party in any contract involving the Respondents at or relating to the Site.

XXI. PUBLIC COMMENT

Upon submittal to EPA of an approved Feasibility Study Final Report, EPA shall make both the Remedial Investigation Final Report and the Feasibility Study Final Report available to the public for review and comment for, at a minimum, a thirty (30) day period, pursuant to EPA's Community Relations Policy. Following the public review and comment period, EPA shall notify the Respondents which remedial action alternative is approved for the Site.

XXII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between the Respondents and EPA prior to the issuance of this Consent Order concerning its terms, the Respondents agree that there is no need for a settlement conference prior to the effective date of this Consent Order. Therefore, the effective date of this Consent order shall be the date on which it is signed by the Regional Administrator of EPA, Region IV.

This Consent Order may be modified by mutual agreement of EPA and the Respondents. Such modifications shall be in writing and shall have as the effective date, that date on which such modifications are signed by EPA.

No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondents will be construed as relieving the Respondent of their obligation to obtain such formal approval as may be required by this Consent Order.

XXIII. PARTIES BOUND

This Consent Order shall apply to and be binding upon the Respondents and EPA, their agents, successors, and assigns. No change in ownership of the site or corporate or partnership status with respect to the site will in any way alter the status of the Respondents or in any way alter the Respondents' responsibility under this Consent Order. The Respondents will remain the Respondents under this Consent Order and will be responsible for carrying out all activities required of the Respondents under this Consent Order.

The Respondents shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and consultants within fourteen (14) calendar days of the effective date of this Consent Order or date of such retention, whichever is later.

XXIV. NOTICE TO THE STATE

EPA has notified the Commonwealth of Kentucky, pursuant to the requirements of Section 104 (c)(2) of CERCLA, 42 U.S.C. Section 9604 (c)(2).

XXV. TERMINATION AND SATISFACTION

This Consent Order shall terminate when the Respondents demonstrate in writing and certify to the satisfaction of EPA that all activities required under this Consent Order, including payment of response and oversight costs and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice shall not, however, terminate Respondents' obligation to comply with Sections XII, XVI and XVII of this Consent Order.

The certification shall be signed by a responsible official representing each Respondent. Each representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

XXVI. COVENANT NOT TO SUE

For and in consideration of Respondents' satisfactory performance of activities conducted pursuant to this Consent Order, and upon termination of this Consent Order pursuant to Section XXV, except as otherwise reserved herein, EPA covenants not to sue the Respondents, their officers, employees, and agents in their capacities as corporate representatives for the work performed by Respondents under this Consent Order.

This covenant not to sue shall not be construed to limit EPA's right to sue or take any administrative action against persons who do not sign this Consent Order. Nothing herein shall be deemed to grant any rights to persons not parties to this Consent Order, and EPA reserves all rights against such persons.

XXVII. SIGNATURE

This Consent Order may be signed in multiple counterparts all of which together shall constitute a single instrument.

IT IS SO AGREED AND ORDERED:

BY: Patrick M. Tobin
Patrick M. Tobin, Director
Waste Management Division
U. S. Environmental Protection Agency
Region IV

DATE: May 22, 1990

IT IS SO AGREED:

BY: Irwin M. Shur
Respondent: Irwin M. Shur
Counsel, Assigned Components
Title

DATE: May 18, 1990

IT IS SO AGREED AND ORDERED:

BY: Patrick M. Tobin
Patrick M. Tobin, Director
Waste Management Division
U. S. Environmental Protection Agency
Region IV

DATE: May 22, 1990

IT IS SO AGREED:

BY: James A. Poyner
Respondent: Shafiqul Alam State Manager + Elm
Counsel for Athlone Industries Inc.
Title

DATE: May 18, 1990

IT IS SO AGREED AND ORDERED:

By: Patrick M. Tobin
Patrick M. Tobin, Director
Waste Management Division
U. S. Environmental Protection Agency
Region IV

Date: May 22, 1990

IT IS SO AGREED:

Commonwealth Aluminum Corporation by and through Martin Marietta Corporation, its Attorney in Fact, pursuant to that one certain Power of Attorney dated September 9, 1987.

Respondent
By: Charles E. Carnahan
Charles E. Carnahan
Vice President
Martin Marietta Corporation

Date: May 18, 1990

CERTIFICATION

The undersigned, John C. Peterson, hereby states that I am an employee of Martin Marietta Corporation with the title of General Counsel of the Environmental Management Task Force of Martin Marietta Corporation. In such position, I act as counsel for Martin Marietta Corporation in its capacity as Attorney in Fact for Commonwealth Aluminum Corporation ("Commonwealth") under such Power of Attorney. I hereby certify that:

- (i) such Power of Attorney: (a) is in full force and effect; (b) is applicable to the "Green River Disposal Site"; and (c) empowers Martin Marietta Corporation to consent to this agreement in Commonwealth's behalf and bind Commonwealth to the same.
- (ii) Charles E. Carnahan is a Vice President of Martin Marietta Corporation and is empowered to execute this document in such capacity.

Dated this 18th day of May, 1990.

John C. Peterson
John C. Peterson