

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY**

UNITED STATES OF AMERICA)
and the COMMONWEALTH)
OF KENTUCKY,)

Plaintiffs,)

v.)

LOGAN ALUMINUM, INC.,)

Defendant.)

Civil Action No.

CONSENT DECREE

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE	3
II.	APPLICABILITY	4
III.	DEFENDANT	5
IV.	DEFINITIONS	6
V.	COMPLIANCE SCHEDULE	8
VI.	INFORMATION COLLECTION AND RETENTION	11
VII.	CIVIL PENALTY	13
VIII.	INTEREST AND STIPULATED PENALTIES	14
IX.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS	17
X.	NOTICES AND SUBMISSIONS	19
XI.	FORCE MAJEURE	20
XII.	MODIFICATION	22
XIII.	DISPUTE RESOLUTION	23
XIV.	EFFECTIVE DATE	26
XV.	TERMINATION	26
XVI.	RETENTION OF JURISDICTION	27
XVII.	COSTS	27
XVIII.	PUBLIC PARTICIPATION	27
XIX.	SIGNATORIES/SERVICE	28

XX.	INTEGRATION	28
XXI.	FINAL JUDGMENT	28

WHEREAS Plaintiffs, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), and the Commonwealth of Kentucky ("Commonwealth"), on behalf of the Kentucky Energy and Environment Cabinet, Division for Air Quality ("KDAQ"), filed a Complaint in this matter concurrently with the lodging of this Consent Decree;

WHEREAS the Complaint alleges Defendant Logan Aluminum, Inc. ("Logan") violated Section 112 of the Clean Air Act ("Act"), 42 U.S.C. § 7412, the regulations promulgated thereunder at 40 C.F.R. Part 63, Subparts A and RRR, and related provisions of laws and regulations of the Commonwealth at its secondary aluminum production facility located on U.S. Highway 431 North, in Russellville, Kentucky ("Facility");

WHEREAS on December 1, 2005, EPA issued a Notice of Violation ("NOV") to Logan, alleging violations of the National Emission Standards for Hazardous Air Pollutants pertaining to secondary aluminum production, pursuant to 40 C.F.R. Part 63, Subparts A and RRR, as adopted by the Commonwealth in its regulations;

WHEREAS Logan submitted a Notice of Compliance Status Report ("NOCSR") to the Commonwealth on February 7, 2006, addressing alleged violations set forth in the EPA NOV;

WHEREAS on March 9, 2006, the Commonwealth issued a NOV to Logan, alleging Logan violated its KDAQ Title V Permit No. V-03-017 (Revision 1), which alleged violations were observed on September 25, 2005;

WHEREAS Logan submitted Permit No. V-03-017 (Revision 3), effective November 21, 2006, correcting total reactive chlorine flux injection rates as well as calculations for each operating cycle of its holding furnaces, swarf furnace, and in-line fluxers, and providing that

labels would be stored electronically and available at computer stations near affected sources;

WHEREAS Logan submitted a Semiannual Report to the Commonwealth on January 30, 2007, certifying use of clean charge in its holding furnaces;

WHEREAS Logan submitted a revised Operating Monitoring and Maintenance (“OM&M”) plan, including all required information, on December 13, 2007;

WHEREAS in response to the EPA NOV, Logan demonstrated it calibrates and certifies calibration for each monitoring device pursuant to manufacturer recommendations, and these calibrations were specified in its December 13, 2007 OM& M Plan and subsequent revisions to that Plan;

WHEREAS in response to the EPA NOV, Logan demonstrated it desensitized its free flow lime monitor so that reduced flow triggers an alarm and therefore maintains free-flowing lime to the feed device at all times;

WHEREAS Logan demonstrated compliance with particulate matter and hydrogen chloride emission standards for its in-line fluxers by limiting the rate at which reactive chlorine flux is added to its in-line fluxers, as set forth in its May 23, 2007 site specific test plan and such limit was included in its December 13, 2007 OM&M Plan and revisions to that Plan;

WHEREAS Logan demonstrated compliance with particulate matter and hydrogen chloride emission standards for its Group 1 holding furnaces (without add-on pollution control), as set forth in its May 23, 2007 site specific test plan and October 5, 2007 test report, and developed specific monitoring plan devices, which monitoring plan requirements were incorporated in its December 13, 2007 OM&M Plan and revisions to that Plan;

WHEREAS Logan demonstrated it was operating with corrected calculations for

secondary aluminum processing units (“SAPU”) emission limits and total reactive chlorine flux injection rates for operating cycles of those units on January 1, 2008;

WHEREAS Logan submitted a revised OM&M Plan and updated NOCSR on August 13, 2008;

WHEREAS Logan believes its Facility is currently in compliance with its KDAQ August 28, 2008 Title V Operating Permit No. V-08-011R1, which was revised on January 29, 2009 (Revision 1) and on March 1, 2010 (Revision 2);

WHEREAS Logan does not admit liability to Plaintiffs arising out of the violations, transactions, or occurrences alleged in the underlying Complaint, EPA NOV, or KDAQ NOV;

WHEREAS the parties agree that this Consent Decree resolves violations alleged in accompanying Complaint, EPA’s December 1, 2005 NOV, and KDAQ’s March 9, 2006 NOV against Logan;

WHEREAS the Parties recognize, and the Court by entering this Consent Decree finds, that the Consent Decree has been negotiated in good faith, will avoid litigation, and is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the United States, the Commonwealth, and Defendant, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and Section 113 of the Act, 42 U.S.C. § 7413, and over

the Parties. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because violations alleged in Complaint are alleged to have occurred in, and Defendant is located in, this judicial district. For purposes of this Consent Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree or such action and over Defendant and consents to venue in this judicial district.

2. For the purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the Act, 42 U.S.C. §§ 7413(b), for violations of Section 112 of the Act, 42 U.S.C. § 7412, and its implementing regulations at 40 C.F.R. Part 63, Subparts A and RRR.

3. Notice of the commencement of this action has been given to the Commonwealth as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States and the Commonwealth, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States, EPA and the Commonwealth, in accordance with Section X

(Notices and Submissions) of this Consent Decree. Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

6. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFENDANT

8. Defendant, a Delaware corporation with headquarters in Logan County, Kentucky, is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e) and the regulations set forth at 40 C.F.R. § 63 Subparts A and RRR, promulgated pursuant to the Act.

9. Defendant is the owner and operator of the Russellville, Kentucky facility. The facility is a "secondary aluminum production facility" as defined in 40 C.F.R. § 63.1503. The requirements of 40 C.F.R. Part 63, Subparts A and RRR apply to the owner and operator of each secondary aluminum production facility and therefore apply to Logan at its Russellville, Kentucky facility.

10. The facility is a "major source" as defined in Section 112(a)(1) of the Act, 42 U.S.C. § 7412(a)(1), and the federal [and state] regulations promulgated pursuant to the Act.

11. The Russellville, Kentucky facility processes aluminum coil and scrap to produce secondary aluminum products. The secondary aluminum production process results in emissions of regulated air pollutants, including dioxins and furans (“D/F”), hydrogen chloride (“HCl”), particulate matter (“PM”), and hydrocarbons. D/F and HCl are hazardous air pollutants (“HAPs”) regulated pursuant to 40 C.F.R. Part 63, Subparts A and RRR. PM from the secondary aluminum plant is measured as a surrogate for individual HAP metals, and total hydrocarbon emissions serve as a surrogate for emissions of organic HAP compounds.

IV. DEFINITIONS

12. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Act” shall mean the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*
- b. “Commonwealth” shall mean the Commonwealth of Kentucky.
- c. “Complaint” shall mean the complaint filed by the United States of America and the Commonwealth of Kentucky against Defendant in this action.
- d. “Consent Decree” shall mean this Consent Decree and any appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.
- e. “Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day falls on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

- f. "Defendant" shall mean Logan Alumium, Inc., and its successors and assigns.
- g. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities.
- h. "Effective Date" shall mean the date as defined in Section XIV of this Consent Decree.
- i. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities.
- j. "Facility" shall mean the secondary aluminum production facility owned and operated by Logan Aluminum, Inc. and located on U.S. Highway 431 North, in Russellville, Kentucky.
- k. "Interest" shall mean interest at the rate specified for debts owed to departments or agencies of the United States pursuant to 28 U.S.C. § 1961.
- l. "KDAQ" shall mean the Kentucky Division for Air Quality.
- m. "Logan" shall mean Logan Aluminum, Inc., the Defendant in this action, including its successors and assigns.
- n. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral.
- o. "Parties" shall mean Plaintiffs and Logan Aluminum, Inc.
- p. "Plaintiffs" shall mean the United States of America and the Commonwealth of Kentucky.
- q. "Section" shall mean a portion of this Consent Decree identified by a

roman numeral.

r. "United States" shall mean the United States of America and its successor departments, agencies, or instrumentalities.

V. COMPLIANCE SCHEDULE

13. Logan shall comply with the following requirements within the time periods set forth below at its Russellville, Kentucky facility:

a. Within 30 months of the date this Consent Decree is executed by Logan, Settling Defendant shall:

1. install and have fully operational a new baghouse for the swarf furnace hearth door capture/collection system to be used during the company's dressing operations;
2. dedicate its existing lime-injected baghouse to the swarf furnace sidewall capture/collection system;
3. confirm the existing baghouse for the swarf furnace sidewall capture/collection system is in full compliance with 40 C.F.R. § 63.1506(c), by meeting the requirements set forth at Table 10.99.2 of the ACGIH Manual ("Industrial Ventilation: A Manual of Recommended Practice," American Conference of Governmental Industrial Hygienists (23rd Edition 1998); and
4. conduct flow rate verification tests on the swarf furnace sidewall capture/collection system to ensure that system meets minimum exhaust rates (volumetric flow rate) in keeping with 40 C.F.R. § 63.1506 (c) and as described in a.3. above.

b. Logan shall submit a permit application to the Commonwealth outlining the

construction and operation of the new baghouse for the swarf furnace hearth door capture/collection system within 9 months from the date this Consent Decree is executed by Settling Defendant.

c. Until installation of the new baghouse for the swarf furnace hearth door capture/collection system is completed and fully functional, Logan shall meet the following requirements:

1. When conducting dressing operations, at least twenty (20) minutes prior to closing the swarf furnace sidewall capture/collection system hood damper and/or opening the swarf furnace hearth door capture/collection system hood damper, Logan shall suspend reactive flux injection into the swarf furnace sidewall (including both the pump well and the charge well) and/or the swarf furnace hearth capture/collection system, and shall charge only "clean charge" as defined pursuant to 40 C.F.R. § 63.1503.

2. Logan shall suspend charging of material into the swarf furnace sidewall and/or the swarf furnace hearth when the swarf furnace sidewall capture/collection system hood damper is closed and/or the swarf furnace hearth door capture/collection system hood damper is open. Charging of material into the swarf furnace sidewall and/or the swarf furnace hearth may be resumed by Settling Defendant only once the swarf furnace sidewall capture/collection system hood damper is opened and the hearth door is closed.

During the period of time after the hearth door is closed and the hearth door capture/collection system hood damper is open, Logan shall suspend reactive flux injection into the swarf furnace sidewall (including both the pump well and the charge well), and shall charge only "clean charge" as defined pursuant to 40 C.F.R. § 63.1503. Once the hearth door

capture/collection system hood damper is closed, Logan may resume reactive flux injection and charging other than “clean charge” into the swarf furnace sidewell.

3. Logan shall keep records of all procedures required under c. 1. and c. 2., as set forth above. Within 30 days from the date this Consent Decree is executed by Logan, Logan shall advise the Commonwealth and EPA of the method by which it shall keep such records. The records to be maintained shall document the date and times during which the following occurred: suspension of charging of material into the swarf furnace sidewell and/or the swarf furnace hearth; opening and closing of the swarf furnace sidewell capture/collection system hood damper; opening and closing of the swarf furnace hearth door capture/collection system hood damper; resumption of charging of material in the swarf furnace sidewell and/or the swarf furnace hearth.

4. Logan shall submit to EPA and the Commonwealth detailed records documenting the dates and times of engineering and construction activities and milestones pertaining to installation of the new baghouse for the swarf furnace hearth door capture/collection system. Such records shall be submitted on July 30 and January 30 of each calendar year until such time as the new baghouse is fully operational pursuant to section 13. a.1. above. All reporting requirements set forth under section C above shall be certified by a responsible official identified under 40 C.F.R. Part 70, and submitted to EPA and the Commonwealth until the new baghouse is fully operational pursuant to section 13. a.1. above. Submissions shall be made in accordance with Section X (Notices and Submissions) of this Consent Decree.

d. Revised Operation, Maintenance, and Monitoring Plan (“OM&M” Plan)

Pertaining to In-Line Fluxers

1. Within 60 days from the date this Consent Decree is executed by Settling Defendant, Logan shall submit a revised OM&M plan to the Commonwealth and EPA. This OM&M plan shall include a definition of "operating cycle" for all in-line fluxers at the Russellville, Kentucky facility, depicting operations from the time material enters the in-line fluxer to the time material exits the in-line fluxer. Should the Commonwealth and/or EPA notify Settling Defendant of deficiencies in the OM&M plan, within 30 days of such notice, Settling Defendant shall correct such deficiencies and submit a newly revised OM&M plan including all such corrections.

VI. INFORMATION COLLECTION AND RETENTION

14. The United States and the Commonwealth, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility, at all reasonable times, upon presentation of credentials, to:

- a. observe any performance testing conducted pursuant to this Decree;
- b. monitor the progress of activities required under this Consent Decree;
- c. verify any data or information submitted to the United States and the Commonwealth in accordance with the terms of this Consent Decree;
- d. obtain documentary evidence, including photographs and similar data related to the terms and provisions of this Consent Decree; and
- e. assess Defendant's compliance with this Consent Decree.

15. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all

documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relates in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the Commonwealth, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

16. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States and the Commonwealth at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the Commonwealth, Defendant shall deliver any such documents, records, or other information to EPA or the Commonwealth. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

17. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

18. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States, EPA, or the Commonwealth pursuant to applicable federal, state, or local laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal, state, or local laws, regulations, or permits.

VII. CIVIL PENALTY

19. Defendant Logan Aluminum shall pay to the United States and the Commonwealth a civil penalty of two hundred and eighty-five thousand dollars (\$285,000), together with Interest on that amount, in accordance with the payment provisions set forth in this Section. Payments shall be due and owing as follows:

a. within 30 days of the Effective Date of this Consent Decree, Logan shall pay to the United States a civil penalty in the amount of one hundred forty-two thousand five hundred dollars (\$142,500), together with Interest on that amount, with such Interest accruing from the Effective Date of the Consent Decree through the date of payment. Payment shall be made to the United States Department of Justice by FedWire Electronic Funds Transfer ("EFT") in accordance with EFT instructions provided to Logan by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Kentucky following the Effective Date of this Consent Decree. In accordance with Section X (Notices and Submissions), at the time of

payment, Logan shall send a copy to DOJ and EPA of the EFT authorization form and transaction record, together with a transmittal letter, stating the payment is for the civil penalty owed pursuant to this Consent Decree. Such written notice shall reference the Department of Justice Case Number 90-5-2-1-08632, the Civil Action Number assigned to this case by this Court, and a statement of the calculation of the Interest on the payment. Notice of payment to the United States also shall be provided as set forth in Section X (Notices and Submissions).

b. within 30 days of the Effective Date of this Consent Decree, Logan shall pay to the Commonwealth a civil penalty in the amount of one hundred forty-two thousand five hundred dollars (\$142,500). Payment shall be made to the Commonwealth of Kentucky by cashier's check, certified check, or money order. The instrument of payment shall be made payable to the "Kentucky State Treasurer" and mailed to the attention of the Director, Division of Enforcement, Department of Environmental Protection, 300 Fair Oaks Lane, Frankfort, KY 40601. The instrument of payment shall reference Kentucky Case Number DAQ-060108. Notice of payment to the Commonwealth also shall be provided as set forth in Section X (Notices and Submissions).

20. Defendant Logan shall not deduct any civil or stipulated penalties paid pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal and state income tax.

VIII. INTEREST AND STIPULATED PENALTIES

21. Interest on Late Payments: Should Defendant fail to make payments within the time limit set forth under Section VII (Civil Penalty), Paragraph 19, Interest shall continue to accrue on the unpaid balance through the date of payment with regard to the United States and shall begin to accrue as of the first day payment is late on any unpaid balance for payment with

regard to the Commonwealth.

22. Stipulated Penalties: Defendant shall be liable for stipulated penalties for violations of this Consent Decree as specified below, unless excused under Section XI (Force Majeure). Should Defendant fail to make payments when due as required under Section VII (Civil Penalty), Paragraph 19, it shall be in violation of this Consent Decree and subject to stipulated penalties. In addition to Interest assessed on any late payment, as set forth in Paragraph 21 of this Section, Defendant shall be subject to stipulated penalties in the amount of \$5,000 per violation per day to the United States, as well as \$5,000 per violation per day to the Commonwealth, for each day that payment is late. Stipulated penalties shall begin to accrue on the day after payment is due, and shall continue to accrue through the date of payment. Should Defendant fail to perform any work obligation required by the terms of this Consent Decree, including those set forth under Section V (Compliance Schedule) and Section VI (Information Collection and Retention), approved under this Decree, Defendant shall be subject to stipulated penalties in the amount of \$5,000 per violation per day to the United States, as well as \$5,000 per violation per day to the Commonwealth, for each day that it is in violation with any such obligation or requirement under this Decree. Stipulated penalties for failure to perform a work obligation shall begin to accrue on the day after performance is due and shall continue to accrue until performance is satisfactorily completed. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations under this Consent Decree. Stipulated penalties shall accrue regardless of whether Defendant has been notified of a violation or demand for payment by either Plaintiff, but need only be paid upon demand.

23. The United States and/or the Commonwealth may seek stipulated penalties due

that sovereign by sending a written demand to Logan, with a copy of such demand provided to the other sovereign. Logan shall pay stipulated penalties within 30 days of receiving a written demand from either or both Plaintiff(s). If stipulated penalties are not paid in full within 30 days of demand, Defendant shall owe Interest on unpaid stipulated penalties from the 30th day after the demand through the date of payment, as provided in 28 U.S.C. § 1961. The payment of stipulated penalties (including accrued Interest on such stipulated penalties) shall be identified as “stipulated penalties” and reference the name of Defendant, the Department of Justice and/or Kentucky Case Number as applicable, and the Civil Action Number assigned to this case by the Court. Stipulated penalties shall be paid to the United States Department of Justice in accordance with the instructions provided by the Financial Litigation Unit of the U.S. Attorney’s Office for the Western District of Kentucky, and to the Commonwealth at the address provided in Section VII (Civil Penalty), Paragraph 19. In accordance with Section X (Notices and Submissions), Defendant shall provide written notice to the United States or the Commonwealth within 7 days of payment of stipulated penalties and such notice shall include a statement showing the calculation of Interest included in any such payment. Payment of stipulated penalties shall not excuse Defendant from payment as required by Section VII (Civil Penalty) Paragraph 19, or from performance of any other requirements of this Consent Decree.

24. The United States may, in its unreviewable discretion, reduce or waive any portion of stipulated penalties otherwise due to it under this Section. The Commonwealth, may, in its unreviewable discretion, reduce or waive any portion of stipulated penalties otherwise due to it under this Section. Stipulated penalties shall continue to accrue as provided in Paragraph 22 during any Dispute Resolution (Section XIII), but need not be paid until such Dispute Resolution

process is concluded.

25. Subject to the provisions of Section IX (Effect of Settlement/Reservation of Rights), stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to Plaintiffs for Defendant's violation of this Consent Decree or other applicable law. Where a violation of this Consent Decree is also a violation of the Clean Air Act or its implementing regulations, Defendant shall be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for such violation.

26. Upon entry, this Consent Decree shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308, and applicable Commonwealth law. The Plaintiffs shall be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil penalty and stipulated penalties and interest.

IX. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

27. Defendant's complete performance of all obligations under this Consent Decree shall resolve its civil liability for the violations alleged in the underlying Complaint, EPA's December 1, 2005 NOV, and KDAQ's March 9, 2006 NOV, through the date of lodging of this Consent Decree.

28. Plaintiffs reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree in the event Defendant does not completely perform all obligations under this Consent Decree. This Consent Decree shall not be construed to limit the rights of Plaintiffs to obtain penalties or injunctive relief under the Act or its implementing regulations, or seek relief under any other federal or state laws, regulations, or permits, except as

expressly specified in Paragraph 27. Plaintiffs further reserve all legal and equitable remedies to address any situation which may present an imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Logan's Facility, whether related to violations addressed in this Consent Decree or otherwise. Logan reserves all rights and defenses it may have to any such action.

29. In any subsequent administrative or judicial proceeding initiated by Plaintiffs for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, Logan shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by Plaintiffs in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 27 of this Section.

30. This Consent Decree does not alter or relieve Defendant of the responsibility to comply with the Act, 42 U.S.C. §§ 7401 *et seq.*, or any other federal or state laws, regulations, or permit conditions. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal or state laws, regulations, and permits. Compliance with this Consent Decree shall not be a defense to any action commenced pursuant to such laws or regulations, except as provided in Paragraph 27.

31. This Consent Decree does not limit or affect the rights of Logan or Plaintiffs against any third parties not parties to this Consent Decree, nor does it limit the rights of third parties not parties to this Consent Decree against Logan, except as otherwise provided by law.

32. This Consent Decree shall not be construed to create rights in or grant any cause

of action to any third party not a party to this Consent Decree.

X. NOTICES AND SUBMISSIONS

33. Unless otherwise specified herein, whenever written notifications, submissions, communications, or payments are required by this Consent Decree, they shall be provided in writing and addressed as follows:

As to the United States:

For the Department of Justice:

Chief, Environmental Enforcement Section
U.S. Department of Justice, Environment and Natural Resources Division
Re: DOJ # 90-5-2-1-08632 (Att: Elizabeth F. Kroop, Esq.)
Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

For the Environmental Protection Agency:

Denis B. Kler
Air and EPCRA Enforcement Branch
North Air Enforcement Section (Re: DOJ# 90-5-2-1-08632)
US EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303

As to the Commonwealth of Kentucky:

Jeffrey A. Cummins
Commonwealth of Kentucky
Energy and Environment Cabinet
Division of Enforcement
Acting Director
300 Fair Oaks Lane
Frankfort, Kentucky 40601

As to Defendant Logan Aluminum, Inc.:

Randy Schumaker
President
Logan Aluminum, Inc.
6920 Lewisburg Road
Russellville, KY 42276

C. Kent Hatfield, Esq.
Stoll Keenon Ogden PLLC
2000 PNC plaza
500 West Jefferson St.
Louisville, KY 40202

34. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address as provided in this Section.

35. Each report, notification, or other communication by Logan shall be submitted as specified in the Consent Decree, with copies to the United States and the Commonwealth as set forth in this Section.

36. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in the Consent Decree or by mutual agreement of the Parties in writing.

XI. FORCE MAJEURE

37. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it

is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

38. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA and the Commonwealth, within 72 hours of when Defendant first knew that the event might cause a delay. Within seven days thereafter, Defendant shall provide in writing to EPA and the Commonwealth an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such a delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

39. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay or anticipated delay is attributable to a force majeure event,

the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA after reasonable opportunity for review and comment by the Commonwealth, for such time as is necessary to complete those obligations. An extension of time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

40. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

41. If Defendant elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 37 and 38, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XII. MODIFICATION

42. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the

modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

43. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XIII (Dispute Resolution) of this Decree, provided, however, that, instead of the burden of proof provided by Paragraph 50, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XIII. DISPUTE RESOLUTION

44. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

45. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States and the Commonwealth a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after a reasonable opportunity for review and comment by the Commonwealth, shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Defendant invokes formal dispute

resolution procedures as set forth below.

46. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the Commonwealth a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

47. The United States, after a reasonable opportunity for review and comment by the Commonwealth, shall serve its Statement of Position within 45 days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

48. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States and the Commonwealth a motion requesting judicial resolution of the dispute. The motion must be filed within 20 business days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

49. The United States, after a reasonable opportunity for review and comment by the

Commonwealth, shall respond to Defendant's motion within the time period allowed by the Local Rules of the Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

50. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 46 pertaining to the adequacy of the performance of work undertaken pursuant to this Consent Decree and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 46, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

51. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII, Paragraph 22 (Stipulated Penalties).

XIV. EFFECTIVE DATE

52. The Effective Date of this Consent Decree shall be the date upon which it is entered by the Court or the date upon which a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court docket.

XV. TERMINATION

53. After Defendant has achieved and maintained continuous satisfactory compliance with the requirements of 40 C.F.R. Part 63, Subparts A and RRR and this Consent Decree for a period of 3 years after the Effective Date of this Consent Decree, has complied with all other requirements of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties and Interest as required by this Decree, Defendant may submit to Plaintiffs, in accordance with Section X of this Consent Decree (Notices and Submissions), a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

54. Following receipt by the Plaintiffs of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

55. If the United States, after a reasonable opportunity for review and comment by the Commonwealth, does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section XIII of this Consent Decree. However, Defendant shall not

seek Dispute Resolution of any dispute regarding termination under Paragraph 48 of this Consent Decree until 90 days after service of its Request for Termination.

XVI. RETENTION OF JURISDICTION

56. The Court shall retain jurisdiction over this case for the purpose of interpreting and enforcing the terms of this Consent Decree, resolving disputes under this Consent Decree, entering orders modifying this Consent Decree, or effectuating or enforcing compliance under this Consent Decree until such time as Logan has met all of its obligations under this Consent Decree.

XVII. COSTS

57. The Parties shall bear their own costs for this action, including attorneys' fees, except that Plaintiffs shall be entitled to collect the costs (including attorneys' fees) incurred in any action to enforce this Consent Decree and/or collect any portion of the civil penalty, Interest, or stipulated penalties due but not paid by Logan.

XVIII. PUBLIC PARTICIPATION

58. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant and the Commonwealth consent to entry of this Consent Decree without further notice, and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

59. Each undersigned representative of Logan and Plaintiffs certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents.

60. Defendant agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

61. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Federal Rules of Civil Procedure 4 and 5 and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

62. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied herein and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XXI. FINAL JUDGMENT

63. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the Commonwealth, and Logan in this matter. The Court finds there is no just reason for delay and therefore enters

this judgment as final judgment under Federal Rules of Civil Procedure 54 and 58.

Dated and entered this _____ day of _____, 2010.

UNITED STATES DISTRICT JUDGE
Western District of Kentucky

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States et al. v. Logan Aluminum, Inc.:

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: 12/8/10

ELLEN M. MAHAN
Deputy Section Chief
United States Department of Justice
Environment and Natural Resources Division

Date: 12/8/10

ELIZABETH F. KROOP ✓
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611
Tel: (202) 514-5244
Fax: (202) 514-3583

Date: 11/10/10

MARY J. WILKES
Regional Counsel and Director
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States et al. v. Logan Aluminum, Inc.:

FOR PLAINTIFF COMMONWEALTH OF KENTUCKY:

Date: 10/20/10

DR. LEONARD K. PETERS, Secretary
Energy and Environment Cabinet
500 Mero Street
12th Floor, Capital Plaza Tower
Frankfort, Kentucky 40601

Henry C.A. List, Deputy Secretary

Date: 10/20/10

C. MICHAEL HAINES, General Counsel
Energy and Environment Cabinet
Office of General Counsel
2 Hudson Hollow Road
Frankfort, Kentucky 40601

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States et al. v. Logan Aluminum, Inc.:

FOR LOGAN ~~ALUMINIUM~~. INC:

Date: Sept 2, 2010

RANDY SCHUMAKER, President
Logan Aluminum, Inc.
6920 Lewisburg Road
Russellville, KY 42276