

Alcoa Settles Superfund Suit Over Virgin Islands Plant

By **Steven Melendez**

Law360, New York (February 13, 2012, 10:14 PM ET) -- An Alcoa Inc. affiliate and others agreed to fund the multimillion-dollar partial cleanup of a St. Croix industrial site in a settlement with the U.S. Virgin Islands government approved Monday, though litigation will continue with other parties in a long-running dispute over the 1,400-acre site. The consent decree will resolve all claims the territorial government brought under the federal Comprehensive Environmental Response, Compensation and Liability Act and other laws against Alcoa World Alumina LLC over pollution from a now-defunct alumina refinery at St. Croix's South Coast Industrial Area, U.S. District Judge Harvey Bartle said in approving the deal.

But litigation in the suit, first filed in 2005, will continue against Lockheed Martin Corp. and the Virgin Islands Alumina Corp. over their liability for the alumina plant, after both companies opposed the partial settlement. Litigation will also continue against Hess Oil Virgin Islands Corp. and Hovensa LLC, which also opposed the settlement, for alleged environmental damage from a nearby Hovensa oil refinery.

Alcoa or its subsidiary, St. Croix Alumina, will pay \$3 million in costs and legal fees to the U.S. Virgin Islands government, and St. Croix Alumina will fund work to remediate damage from a highly alkaline refinery by-product called red mud. The U.S. Virgin Islands government alleges that the red mud pollutes groundwater, damages nearby marine life and forms dust that contaminates rainwater cisterns on nearby properties.

Alcoa will guarantee St. Croix Alumina's performance in the cleanup, Judge Bartle said, though a firm estimate of the costs involved hasn't yet been produced.

“However, the contractor who will oversee the corrective measures has estimated that the cost to close and vegetate [a 62-acre red mud deposit site called] Area A alone will range between \$26.5 and \$29.5 million,” he said. “[St. Croix Alumina] has agreed to fund the repairs, whatever their cost, and Alcoa has agreed to guarantee [St. Croix Alumina's] performance.”

The refinery was first built in 1965 by a subsidiary of Harvey Aluminum Inc., the judge said. In 1972, Martin Marietta Corp., which has since merged into Lockheed

Martin, acquired a controlling share in Harvey Aluminum. Vialco bought the refinery in 1989 and sold it to St. Croix Alumina, the Alcoa subsidiary, which in 2002 sold it to St. Croix Resource Group LLLP, which owns it today, the judge said.

Lockheed and Vialco had argued against the consent decree, arguing they had been excluded from the negotiations.

“This is not the case,” Judge Bartle said, finding that Vialco was involved in several mediation sessions, until it “declined to participate in any settlement,” and that Lockheed had initially expressed interest in settlement but later “failed to respond to inquiries regarding its participation.”

The nonsettling defendants also said it's not possible to determine whether the settling defendants are paying their fair share of the costs, since the consent decree doesn't fully address the extent of the environmental damage and how much of it the proposed work will fix.

But the judge found the settlement to be fair, pointing out that each expert who provided an opinion in the case said Vialco and the Lockheed predecessor deposited most of the red mud in the area at issue.

“Although [St. Croix Alumina] contributed less than 15 percent of the red mud to Area A, it is financing nearly 100 percent of the repairs to that portion of the facility,” the judge said.

Hess and Hovensa also opposed the settlement, expressing concern that it didn't address the government's allegations that both the alumina plant and the oil refinery contributed to a petroleum plume in an underground aquifer.

Judge Bartle ruled that was “immaterial” to his consideration of the settlement, saying the government's CERCLA claim against Hovensa and Hess no longer includes allegations concerning the aquifer.

The settlement doesn't address the alleged pollution from the oil refinery or another area of red mud deposits, called Area B, which allegedly was only used by the Lockheed predecessor, he said in the ruling.

The agreement also doesn't address future claims that might be brought by the U.S. Environmental Protection Agency, which is studying the site as well, he said.

The Hovensa oil refinery, a joint venture of Hess Corp. and the Venezuelan state oil company, is one of the world's largest and is the biggest private employer in the U.S. Virgin Islands, but it's set to close by the end of this month, Hess has said.

Counsel for the nonsettling defendants were not immediately available Monday.

The plaintiffs are represented by the Law Offices of John K. Dema PC and by USVI Attorney General Vincent F. Frazer.

Alcoa and St. Croix Alumina are represented by Ogletree Deakins Nash Smoak & Stewart PC and Hunton & Williams LLP.

St. Croix Renaissance Group is represented by Carl J. Hartmann III, Kimberly L. Japinga, the Law Offices of Joel Holt and the Law Office of Jeffery Sepesi.

Vialco is represented by Cevallos & Wong LLP and Eckert Seamans Cherin & Mellott LLC.

Hess and Hovensa are represented by Dudley Topper & Feuerzeig LLP and K&L Gates LLP.

Lockheed Martin is represented by Foley & Lardner LLP and by K.A. Rames PC.

The case is Commissioner Department of Planning & Natural Res. v. Century Alumina Co. et al., case number 1:05-cv-00062, in the U.S. District Court for the District of the Virgin Islands.