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October 13, 2014

Franklin E. Hill, Director of Superfund Division
United States Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

RE: Petition Requesting Preliminary Assessment of Alcoa-Badin Works Site

Director Hill,

Under the authority of CERCLA Section 105(d), as amended, the Duke Environmental Law and Policy Clinic, on behalf of the petitioner Yadkin Riverkeeper, Inc.,¹ hereby requests that Region 4 of the United States Environmental Protection Agency (EPA) conduct a Preliminary Assessment for Superfund designation of the suspected presence and release of hazardous substances in two areas in the immediate vicinity of the former Alcoa Badin Works² aluminum smelting facility (Badin Works) in Badin, North Carolina.³ Area 1 abuts the Alcoa-Badin Landfill (SWMU 2) and includes, but is not limited to, portions of Little Mountain Creek. This area also is immediately adjacent to the predominantly African American West Badin community, which has borne the brunt of past smelting-related contamination. Area 2, referred to as the “Ball Field,” is the large field across from Alcoa’s smelting plant and adjacent to Badin Lake, a portion of the Yadkin River.

In December of 1992, Alcoa sued 167 insurers over coverage for cleanup at its 35 plants in the United States. At the Summary Judgment stage, Superior Court Judge Armstrong identified three plants where evidence showed that the environmental clean-

¹ Yadkin Riverkeeper, Inc., 308 Patterson Ave., Winston-Salem, NC 27101, (336)-722-4949, gayle@ggtuchlaw.com.

² Alcoa Badin Works, EPA/Handler ID: NCD003162542, FRS ID: 110017425614.

³ See 42 U.S.C. § 9605(d) (2012) (permitting any person to petition for a Preliminary Assessment and requiring a response within 12 months).

up and damages costs would exceed the \$50 million threshold triggering additional insurance coverage liability. Badin Works was one such plant. Yet, while the waters and land adjacent to the two other plants were eventually designated as Superfund sites, Badin Works was treated differently. North Carolina's Department of Environment and Natural Resources has allowed Alcoa to run its own cleanup operation under RCRA standards at Badin Works, but has never requested EPA to undertake a Preliminary Assessment of surrounding areas under CERCLA. Conversely, the States of New York and Texas initiated CERCLA actions at the other two plants identified by Judge Armstrong in addition to RCRA activities. Alcoa has spent only a fraction cleaning up Badin Works than it has spent in either Texas or New York to date. The RCRA corrective action measures have not been designed to reverse the damage caused by the industrial activity around Badin Works, but rather to address on-site contamination at SWMUs and AOCs on the Badin Works property itself, primarily through installing caps, fences and limited sampling of a few monitoring wells.

The enclosed petition provides a brief introduction into Badin Works' history and provides a summary of lab results for samples taken from identified Areas 1 and 2. With limited funds for testing and access only to publicly-available land, we obtained test results for water, sediments, rocks, and fish in areas near Badin Works. These results lead us to believe that Little Mountain Creek (Area 1) has been contaminated by past industrial activities and that the Ball Field (Area 2) could be impacted as a past waste handling or disposal site.

Sampling results of water, sediment, and fish species from segments of Little Mountain Creek (Area 1) reveal that the stream is degraded downstream of the Alcoa-Badin Landfill (SWMU 2). The downstream segment was found to have higher levels of fluoride and sulfate, a less diverse population of species, a higher rate of disease, decreased levels of oxygen, and increased silt as compared to the upstream segment. Some sort of pollution is degrading the stream adjacent to and downstream of the Alcoa-Badin Landfill. Such pollution likely emanates from activities related to industrial processes related to the operation of Badin Works since there is no other industrial activity upstream, and the only wastewater treatment plant on this stream has been shuttered for many years. This is especially true given that no accounting has been made for the tens of thousands of tons of spent potliner ("SPL") generated by the Badin Works before the listing SPL as RCRA hazardous waste K088.

Rock, water, and soil samples taken from a drainage area at the Ball Field (Area 2) contain compounds associated with solid wastes generated by aluminum smelting and anode production. Subsequent lab tests on some samples also revealed the presence of hazardous chemicals, including known carcinogens, typically associated with anode production and aluminum smelting operations. These results highlight the need for Preliminary Assessment since the Town of Badin has agreed to accept Alcoa's donation

of the Ball Field property to build a waterfront park, including a children's playground.

In addition, PCBs found in fish in water bodies downstream of the former smelter, including Badin Lake, exceed screening levels for fish consumption advisories.⁴ But no ecological risk assessment of this residual contamination has been performed. Alcoa has finally submitted its proposal for corrective measures, but lingering pollution outside the RCRA-identified areas is not being addressed. The proposed RCRA corrective measures are limited to remedial activities on the plant site previously identified by Alcoa as SMWUs and AOCs. It is now time for EPA to conduct a Preliminary Assessment of areas surrounding the plant to see which areas need to be remediated under CERCLA. The burden of this lingering toxicity falls on the people of West Badin, a minority population that has been subject to decades of unjust environmental burdens. Residents do not believe that the RCRA corrective measures will protect them, their community, or their surrounding environment.⁵ Yadkin Riverkeeper shares this view.

Many residents within the West Badin community, as well as former Badin Works employees and Yadkin Riverkeeper members, have information which may assist EPA in its investigation. This information was previously given to Brian Holtzclaw of EPA Region 4, who was previously assigned to engage the community in the RCRA issues. Regrettably, Mr. Holtzclaw's recommended community involvement proposals were vetoed by NC DENR and he was removed from his advisory role by his superiors.

Other areas beyond those identified as Area 1 and Area 2 need investigation as well. No ecological risk assessment has been conducted regarding the fish contaminated with PCBs downstream. No investigation has been done to document where the tens of thousands of tons of spent potliner were disposed of prior to its listing as a RCRA hazardous waste in 1988. These issues remain a concern for Yadkin Riverkeeper, Inc. and the West Badin community.

Thank you for your service to the people of the United States and especially to Region 4. We look forward to working with you to address the concerns of residents and users of the Yadkin River. The Yadkin River is no less precious than the Grasse River⁶

⁴ See Health Consultation for Badin Lake available at: <http://www.atsdr.cdc.gov/HAC/pha/BadinLakeFishTissue/BadinLakeHC09-18-2009.pdf> (last visited Oct. 8, 2014).

⁵ See Comments of North Carolina Environmental Justice Network on Corrective Measures Study, dated Aug. 16, 2013, available at <http://ncejn.files.wordpress.com/2013/08/08-16-13-ncejn-comments-corrective-measures-study.pdf> (last visited Oct. 8, 2014).

⁶ See EPA CERCLA Summary for Grasse River, available at <http://www2.epa.gov/enforcement/case-summary-alcoa-inc-conduct-243-million-cleanup-grasse-river-superfund-site-new-york#summary> (last visited Oct. 8, 2014).

or Lavaca Bay.⁷ Its fish, wildlife, residents, and users deserve the same level of protection as those in Region 2 and Region 6. Please contact us to schedule a meeting to discuss this petition. Until then, I remain

Very Truly Yours,

/s/

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CC: Honorable Pat McCrory, Governor of North Carolina
Honorable Bill Daughtride, Jr. Secretary of NC DOA
Honorable John Skvarla, Secretary of NC DENR
Chandra Taylor, Esquire, Southern Environmental Law Center
Gayle Tuch, Yadkin Riverkeeper, Inc.

⁷ See EPA CERCLA Summary for Lavaca Bay, available at <http://www.epa.gov/region6/6sf/pdf/files/alcoa-lavacabay-tx.pdf> (last visited Oct. 8, 2014).