

## SENATE JUDICIARY II COMMITTEE

Tuesday, July 6, 2010

9:00 am and Evening Meeting

Room 643, Legislative Office Building

### MINUTES

The Senate Judiciary II Committee met at 9:00 AM on July 6, 2010, in Room 643 of the Legislative Office Building with thirteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell recognized pages Izzy-Vaughan-Jones, Courtney Jennings, David Torres, Nick Hall, Tayte Kean, Jenny Summer, Dixon Holland and Katie McDonnell and thanked them for their service.

Senator Hartsell noted that Senate Bill 836 would not be heard at this meeting.

**HB 1377 - Taxpayer Optimization Act.** - Senator Jacumin moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Folwell explained the bill. Ms. Kory Goldsmith, Staff Attorney, gave additional explanation. Questions from Senators Jones, Dannelly, and Queen were answered by Ms. Goldsmith, and Ms. Margaret Foreman, North Carolina Association of Educators. Senator Swindell moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

The meeting was recessed for ten minutes.

Senator Hartsell noted that UNC-TV had been subpoenaed for information related to the Yadkin River in and near Stanly County. Due to technical problems the meeting was then recessed until fifteen minutes after Session.

#### **Evening Meeting:**

Senator Hartsell called the meeting to order at 6:07 pm and gave an explanation for the meeting.

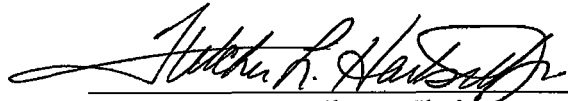

In recapping the agenda he noted that on the previous Thursday the Committee had unanimously voted to authorize the issuance of subpoenas to UNC-TV and to Eszter Vajda. The Committee sought copies of all footage in their possession regarding the Alcoa Corporation's activities in Stanly County, North Carolina near the Yadkin River. UNC-TV voluntarily delivered the requested materials on Monday, June 5, 2010. He noted that although he had not reviewed all the materials, he understood that they consisted of thirteen DVDs, and a rough inventory of the raw footage. He also noted that Ms. Vajda, who was in attendance, had been served with a subpoena on July 1, 2010. Each member had a copy of GS120-19.2 and a copy of an affidavit executed by Ms. Vajda which he then read. - **(Exhibit I.)** Senator Jones moved to accept the sworn statement in lieu of sworn testimony. All voted and the motion carried. Senator Hartsell

then explained that there were technical problems with the operating systems that caused a delay in the morning's proceedings. Senator Hartsell noted that he had received a request from Mr. Chuck Neely, Attorney representing Alcoa, asking that representatives from Alcoa be given the opportunity to speak. He agreed to hear them at the conclusion of the viewing of the DVD.

The Committee then viewed the DVD that was delivered by Ms. Vadja. (**Exhibit II.**) An electronic copy of this may be accessed from the North Carolina Legislative Librarian.

Mr. Chuck Neely was recognized and he deferred to Mr. William J. O'Rourke, Vice-President of Environmental Health and Safety, for Alcoa Corporation. Mr. O'Rourke made a statement on behalf of Alcoa and then along with Mr. Gene Ellis, Consultant for Alcoa, answered questions from Senators Vaughan, Berger, Jones, Atwater, Apodaca, Queen, Allran, Snow and Hartsell.

Senator Hartsell adjourned the meeting at 8:07 pm.

  
Fletcher L. Hartsell, Jr., Chairman  
Gerry Johnson, Committee Assistant

**INDEX OF ADDENDA TO MINUTES OF THE SENATE  
JUDICIARY II COMMITTEE MEETING ON JULY 6, 2010**

- I. 13 DVD's hand-delivered by Shannon Vickery, Director of Production for the University of North Carolina Center for Public Television (UNC-TV) to Senator Fletcher L. Hartsell, Jr., Chairman of the Senate Judiciary II Committee, on July 5, 2010, pursuant to a request made by Senator Hartsell under G.S. 120-19, containing all video in UNC-TV's possession regarding the work of Eszter Vajda in the production of a series of feature stories for North Carolina Now on the Alcoa Corporation's activities in Stanly County, North Carolina in and near the Yadkin River.
- II. 1 DVD entitled "The Alcoa Story – Rough Cut" hand-delivered by Eszter Vajda, Senior Legislative Correspondent for UNC-TV, to the Senate Judiciary II Committee on July 6, 2010, pursuant to a subpoena issued under authority of G.S. 120-19.2 and a request made by Senator Fletcher L. Hartsell, Jr., pursuant to G.S. 120-19.
- III. Excerpt of proceedings of the North Carolina Senate Judiciary II Committee meeting of July 6, 2010, transcription made available and hand-delivered to Senator Fletcher L. Hartsell, Jr., Chairman of the Senate Judiciary II Committee, on July 8, 2010, by Michael Taylor, lobbyist for Stanly County, North Carolina.
- IV. Letter with attachments from William J. O'Rourke, Vice President for Sustainability, Environment, Health & Safety for Alcoa, hand-delivered by Charles B. Neely, Jr., lobbyist for Alcoa, to Senator Fletcher L. Hartsell, Jr., Chairman of the Senate Judiciary II Committee, on September 21, 2010.

## VISITOR REGISTRATION SHEET

SENATE JUDICIARY II

Name of Committee

July 6, 2010

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE  
CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dennis Patterson	OSA
David Kelly	EDF
Conne Wilson	NC Water Right Comm.
Larry Jones	
MARK COEN	USA
Henry Boone	
Nancy McFarlane	
LARRY DRYE	
JIM HARRISON	TOWN OF BADIN
Vanessa Mullins	
Joyce Fitzpatrick	Fitzpatrick Communications

**VISITOR REGISTRATION SHEET**

**SENATE JUDICIARY II**

Name of Committee

**July 6, 2010**

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME	FIRM OR AGENCY AND ADDRESS
ROBERT BROWN	FUZ Comm
Bill Bunker	ALCOA
David Orskov	Intern
Dan Crawford	CCNC
Grady Meade	nen
Dana Fester	City of Charlotte
Earl H. Robbins, Jr.	ALCOA
Kim Bouch	NC Bar Assn
Elizabeth Bisv	DENR
Robin Smith	DENR
Tommy DeVita	Rep. Glazier office

## VISITOR REGISTRATION SHEET

SENATE JUDICIARY II

Name of Committee

July 6, 2010

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE  
CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Shannon Vickery

UNC-TV 10 TW Alexander Drive  
RTP, NC 27109

Brooks Skinner

UNC-TV "

Galen K Black

UNC-TV " " "

Judy Chriscoe

Sen. Bingham's LA

Doug Hobel

NCEM - CCPS

Mia Bailey

Electricities

Jane Pryor

EDF

Kimberlee Rankin

Sierra Club

Brian Demsey

MWC

Las Rausser

Cyrc

Kathryn Winstead

NC SOS

**VISITOR REGISTRATION SHEET**

**SENATE JUDICIARY II**

Name of Committee

**July 6, 2010**

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME	FIRM OR AGENCY AND ADDRESS
Gabriel K	NSS
John Kest	NSS
Katherine Joyce	NCASA
DAVID BARNES	Poyner Smith
Jackson Barnes	
Julia Adams	The Arc of NC
Tham Ma	Exeter, NH
Mike Taylor	Stanly County
I. FAISON HICKS	Dept of Justice
Mona Lisa Wallace	Wallace & Graham
SS Hughes	Wallace & Graham

**VISITOR REGISTRATION SHEET**

**SENATE JUDICIARY II**

Name of Committee

**July 6, 2010**

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE  
CLERK**

NAME	FIRM OR AGENCY AND ADDRESS
Joy Peters	JPA Assoc
Amy Fuller	Hutton's Wms -
George Everett	Duke Energy
Kathy Hawkins	"
Scott Gardner	"
Preston Howard	MCIC
Elizabeth Ireland	Covenant W/NC's Children
John Monaghan	Piedmont Natural Gas
Erica Nelson	NCCCP
Paul Pully	NIAJ



**VISITOR REGISTRATION SHEET** - Evening meeting

**SENATE JUDICIARY II**

Name of Committee

**July 6, 2010**

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME	FIRM OR AGENCY AND ADDRESS
Joe O'Leary	N M R S
Jim Mann	Stacy County
Preston Howard	MCIC
Gene Upchurch	Byers Energy
Carroll Hickey	ELECTRICITIES
DANIEL BAUM	TROUTMAN SANDERS
Cody Thomas	NLAR
Jessica Hayes	NCHBA

# VISITOR REGISTRATION SHEET

SENATE JUDICIARY II

July 6, 2010

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE  
CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tony M. Dennis	Stanly County Comm.
Andy Lucas	Stanly County 1000 N. First Street, Albemarle NC 28001
Brooks Skinner	UNC-TV 10 T.W. Alexander Dr RTP, NC
W. J. Deason	NC Water Rights Committee
Virginia Dunn	NC Water Rights Comm
DEAN NAUSOKS	YADKIN River Keeper
Judy Chriscoe	NCGA
Carl Mackensen	Sierra Club
Dan Courat	NCCN
Bob Wilkey	PLA
Earl H. Robbins, Jr	ALCOA INC

## VISITOR REGISTRATION SHEET

SENATE JUDICIARY II

Name of Committee

July 6, 2010

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE  
CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LEE CALIFF	ALCOA 1909 IC ST NW WASHINGTON, DC. 20006
Doug Heron	WM
Angie Harris	Williams Kellen
Bill Bunker	ALCOA BADIN NC
Jinda Bunker	NCAE
Vanessa Mullinix	Stanly County Resident
LARRY DRYE	
Jim HARRISON	BADIN TOWN

**§ 120-19. State officers, etc., upon request, to furnish data and information to legislative committees or commissions.**

Except as provided in G.S. 105-259, all officers, agents, agencies and departments of the State are required to give to any committee of either house of the General Assembly, or any committee or commission whose funds are appropriated or transferred to the General Assembly or to the Legislative Services Commission for disbursement, upon request, all information and all data within their possession, or ascertainable from their records. This requirement is mandatory and shall include requests made by any individual member of the General Assembly or one of its standing committees or the chair of a standing committee. (Resolution 19, 1937, p. 927; 1993, c. 485, s. 37; 2001-491, s. 33.1.)

**§ 120-19.2. Invitations to witnesses; when hearings and examinations held; subpoenas.**

(a) Committees of the General Assembly may invite witnesses to appear and testify concerning pending legislation or other matters properly before the committee and may require the attendance of witnesses by subpoena as hereinafter provided. The committee may submit questions in writing to the witness in advance of his appearance. Witnesses may be permitted, in the discretion of the committee, to submit written, sworn statements in addition to or in lieu of sworn oral testimony before the committee.

(b) Hearings and examinations of witnesses concerning pending legislation or other appropriate matter may be conducted during sessions of the General Assembly, during recesses, and in the interim period between sessions, at such times as committees are authorized to convene.

(c) A subpoena for the purpose of obtaining the testimony of a witness may be issued by the chairman of a committee, upon authorization of the Speaker of the House or the Speaker pro tempore of the House for House committees, and the President of the Senate or the President pro tempore of the Senate for Senate committees, and by majority vote of the committee. A subpoena for the purpose of obtaining the testimony of a witness before a joint committee of the House and Senate may be issued by the joint action of the cochairmen of the joint committee, upon authorization of one of the above officers from each house and by majority vote of the joint committee. The subpoena shall be signed by the committee chairman and either the Speaker of the House, the President of the Senate, the President pro tempore of the Senate, or the Speaker pro tempore of the House and shall be directed to the witness, and state the name of the witness, and a description of any papers, documents, or records that he is required to bring with him; and the subpoena shall state the subject matter of the hearing before the committee, the name of the committee, and the name and address of the committee chairman; and the subpoena shall also clearly designate the date, time, and place at which the witness's presence is required.

(d) Any witness shall have five days' notice of hearing, unless waived by the witness, and subpoenas may be served by a member of the State Bureau of Investigation, the State Highway Patrol, or within their respective jurisdiction by any sheriff or deputy, or any municipal police officer or other law-enforcement officer. In addition, a subpoena

may be served in the manner provided for service of subpoenas under the North Carolina Rules of Civil Procedure.

(e) The form of subpoena shall generally follow the practice in the General Court of Justice in North Carolina with such additional information or modification as shall be approved by the Legislative Services Commission.

(f) Return of the subpoena shall be to the Legislative Services Officer, where a permanent record shall be maintained for five years, and one copy of the subpoena shall be immediately filed with the committee chairman and one copy transmitted to the Speaker of the House, the President of the Senate, the President pro tempore of the Senate, or the Speaker pro tempore of the House, as the case may be. (1973, c. 543.)

STATE OF NORTH CAROLINA  
WAKE COUNTY

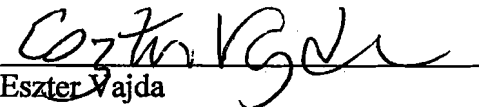
AFFIDAVIT

The undersigned affiant, ESZTER VAJDA, being first duly sworn, hereby deposes and says:

1. I am over the age of eighteen, suffer no legal disabilities, have personal knowledge of the facts set forth below, and am competent to testify.
2. I am employed as a Senior Legislative Correspondent for UNC-TV. While on assignment for UNC-TV on a matter of public interest, I conducted a journalistic investigation of Alcoa Corporation's activities in Stanly County, North Carolina, in and near the Yadkin River. That investigation resulted in more than 200 hours of raw interview footage of more than two dozen individuals. It was my hope that as part of my job I would one day be able to tell the story of my investigation by way of a documentary.
3. On July 1, 2010, I was served with a subpoena issued by the Senate Judiciary II Committee (the "Committee") directing me to appear before the Committee in Raleigh, North Carolina, on the 6th day of July, 2010, at 9:00 a.m., in Room 643 of the Legislative Office Building, 300 N. Salisbury Street, Raleigh, North Carolina. A separate letter from Senator Fletcher L. Hartsell, Jr. ("Senator Hartsell") issued pursuant to G.S. 120-19, directed me to deliver to him on July 5, 2010, a copy of all footage in my possession regarding Alcoa Corporation's activities in Stanly County, North Carolina, in and near the Yadkin River.
4. On July 2, 2010, at the request of my employer, I delivered to UNC-TV the more than 200 hours of raw interview footage referenced in paragraph 2 of this Affidavit. Upon information and belief, it is my understanding that on July 5, 2010, in response to a separate letter and at his request, UNC-TV delivered a copy of these same materials to Senator Hartsell.
5. I understood from my managers at UNC-TV that the station lacked the resources to produce and air a documentary of the story that I had researched and that is referenced in Paragraph 2. Because I believe in the story and because I continued to hope that one day the station might have the resources to produce it as a documentary, I have worked over the past four months with the raw footage, on my own equipment, to develop a program ("the Program") that might become that documentary. Mindful of the station's limited resources, I produced the Program on my own time. The Program is approximately one hour in length and as of today is still not final.

6. I believe that because I am a journalist, the law of North Carolina provides me with a qualified privilege against the forced disclosure of confidential or nonconfidential information that I obtained or prepared in formulating my work. I believe, after consulting with independent counsel, that this law applies to the proceedings of the Committee for which I have received subpoenas.
7. I believe very strongly in the fundamental constitutional right of freedom of the press, and therefore have approached this matter with caution and considerable thought.
8. I understand that my journalist's privilege can be overcome if this committee meets three requirements set out in the statute, N.C.G.S. 8-53.11. In this situation I believe that the Committee, as a representative body of the people of North Carolina, has met the test set forth in the statute.
9. Without waiving the right to exercise my journalist's privilege should I ever again be subpoenaed by the Committee or any other judicial or quasi-judicial body, I have delivered the Program pursuant to the subpoena and pursuant to the letter by copying the Program file from my hard drive to a hard drive under the use and control of the General Assembly.
10. Pursuant to G.S. 120-19.2(a), I request that the Committee permit me to submit this sworn statement in lieu of sworn oral testimony.

This the 6th day of July, 2010.

  
Eszter Vajda

Wake County, North Carolina

Sworn to and subscribed before me this day by ESZTER VAJDA.

The 6th day of July, 2010.

  
Notary Public

My Commission expires: 9/14/14





# NORTH CAROLINA GENERAL ASSEMBLY

## Legislative Services Office

George R. Hall, Legislative Services Officer

### Research Division

300 N. Salisbury Street, Suite 545  
Raleigh, NC 27603-5925  
Tel. 919-733-2578 Fax 919-715-5460

O. Walker Reagan  
Director

### MEMORANDUM

**TO:** Senator Fletcher L. Hartsell, Jr.

**FROM:** Kory Goldsmith, Counsel to Senate Judiciary II Committee *KG*

**DATE:** July 2, 2010

**RE:** Waiver of Notice and Acknowledgment of Receipt by Eszter Vajda

Pursuant to G.S. 120-19.2(d), a witness may waive his or her five day's notice of hearing. As you know, on June 30, 2010, the Senate Judiciary II Committee authorized the issuance of a subpoena to Eszter Vajda. Ms Vajda was served on July 1, 2010. At that time, she waived the five day notice and also acknowledged receipt of your request pursuant to G.S. 120-19. The original waiver is enclosed and should be kept with the Committee's records.

Please let me know if you have any questions.

Enclosure

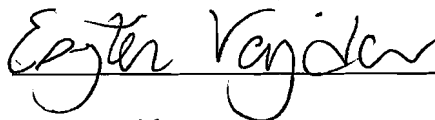


WAIVER OF NOTICE AND ACKNOWLEDGEMENT OF RECEIPT

Pursuant to G.S. 120-19.2(d), I hereby waive my right to five days' notice of my required attendance at the meeting of the Senate Judiciary II Committee scheduled for 9 a.m., July 6, 2010, in Room 643 of the Legislative Office Building.

I also acknowledge that I have received a letter dated June 30, 2010, from Senator Fletcher L. Hartsell, Jr. and pursuant to G.S. 120-19, directing me to provide a copy of all footage, (including all interviews, B-roll and camera masters) in my possession regarding the Alcoa Corporation's activities in Stanly County, North Carolina in and near the Yadkin River ("The Alcoa Story").

This the 1<sup>st</sup> day of July, 2010.



Eszter Vajda

Witness:



**Subject: CHINESE CONTROL OF THE YADKIN?**

**If Alcoa receives a 50-year license to control the Yadkin River, it can sell that license to any other company, even one controlled by a foreign government. Based on the press release below, it is not farfetched to think that if Alcoa sells the license to its business partner, the Governor of North Carolina would have to ask the Chinese Government for permission to use our own water. We need your help to make sure this doesn't happen. Please vote "YES" on SB 967.**

**SmallCap  
Watch**

## **Alcoa Inc. and Aluminum Corporation of China ("Chinalco") to Explore Strategic Ventures**

Chinalco and Alcoa jointly announced today that the two companies intend to explore opportunities to expand their commercial relationship by identifying strategic ventures that will benefit from the companies' complementary strengths in bauxite, alumina, aluminum and fabricated products.

"Alcoa is a respected leader in our industry and a valuable friend. We intend to grow our friendship and find ways to complement each other's business on a global basis," said Mr. Xiao Yaqing, President of Chinalco. "Alcoa is the founder of the modern aluminum industry, and Chinalco is one of the fastest-growing companies in the industry. As partners we will have many opportunities to prosper and revitalize the market."

Klaus Kleinfeld, CEO and President of Alcoa, highlighted some of those opportunities for a strategic relationship: "As governments stimulate their economies during the downturn, particularly infrastructure stimulus programs in China and the United States, the demand for high quality, high performing aluminum technologies will grow dramatically. And when the global economy recovers, the pent-up consumer and industrial demand will create a broad array of opportunities in both developed and developing regions for Chinalco and Alcoa."

Stressing the advantages of aluminum to address the current megatrends of population growth, urbanization and climate change, Kleinfeld said: "Because aluminum is a very strong, but lightweight, material that is fully recyclable it is increasingly vital in the construction industry's shift towards "green buildings" in the modern urban environment and it satisfies the quest by the transportation industry for lightweight, fuel efficient

vehicles. We estimate global aluminum demand will increase 6% CAGR over the next decade, with the highest growth in Asia."

Mr. Xiao highlighted his confidence that an expanded commercial relationship between Alcoa and Chinalco will have significant benefits for the two companies. "The cooperation between Chinalco and Alcoa began in 2001 when Chinalco completed the initial public offering of one of its subsidiaries, Chalco, in Hong Kong and New York. We strengthened our relationship in 2008 with the formation of Shining Prospect Pte. Ltd. We have appreciated Alcoa's valuable support and cooperation to date, and we continue to do so. We look forward to exploring opportunities for future cooperation in respect of business ventures where both Alcoa and Chinalco can combine their respective strengths and expertise. Looking to the future we see many such opportunities to build on, and deepen, that strong base of collaboration and cooperation."

In connection with these matters, Alcoa and Chinalco have also entered into an agreement by which Chinalco will redeem the convertible note issued by Shining Prospect Pte. Ltd., a wholly-owned subsidiary of Chinalco, to Alcoa last year for the funding of Shining Prospect's purchase of ordinary shares in the London-listed Rio Tinto plc. The original principal amount of the note would have been payable on February 1, 2011. Under the terms of the agreement entered into today, the note will be redeemed by Chinalco for a total of US\$1.021 billion payable to Alcoa in three installments (over a period ending on July 31, 2009), and Alcoa's lien on and indirect interest in Rio Tinto shares held by Shining Prospect will end. The total redemption amount represents the discounted net present value of the principal amount of the note (and the total redemption amount will be further discounted if any installment payment is made earlier than contemplated by the agreement). The agreement also provides that Alcoa's pro rata portion of the dividends paid by Rio Tinto to date since the issuance of the note as and when recovered by Shining Prospect will be paid to Alcoa.

### **About Alcoa**

Alcoa is the world leader in the production and management of primary aluminum, fabricated aluminum and alumina combined, through its active and growing participation in all major aspects of the industry. Alcoa serves the aerospace, automotive, packaging, building and construction, commercial transportation and industrial markets, bringing design, engineering, production and other capabilities of Alcoa's businesses to customers.

In addition to aluminum products and components including flat-rolled products, hard alloy extrusions, and forgings, Alcoa also markets Alcoa® wheels, fastening systems, precision and investment castings, and building systems. The Company has been named one of the top most sustainable corporations in the world at the World Economic Forum in Davos, Switzerland and has been a member of the Dow Jones Sustainability Index for seven consecutive years. More information can be found at [www.alcoa.com](http://www.alcoa.com)

### **About Chinalco**

Aluminum Corporation of China (CHINALCO), a State-owned enterprise, is one of China's largest diversified metals and mining companies. It conducts the exploration, mining and processing of mineral resources and provides engineering and technical services to the mining industry. Headquartered in Beijing, China, Chinalco and its subsidiaries have operations across 22 provinces in China and 15 overseas offices across 10 countries. Between 2001 and 2007, Chinalco's assets increased by a factor of approximately 4.7, representing a compound annual growth rate of approximately 29%. By the end of 2007, Chinalco was the world's second largest alumina producer and the third largest primary aluminum producer. In 2008, Chinalco became a Fortune Global 500 company.

**Senate JII Committee | Draft Remarks**  
**July 6, 2010**

Mr. Chairman and Committee Members:

Thank you for the opportunity to appear today.

What we just saw is not an accurate picture of Alcoa's long history in North Carolina. It doesn't tell you the truth about our company or our environmental record.

Let me share with you a few important points you need to know:

Alcoa is a company that has a history of doing the right thing. We have been named one of the most sustainable and environmentally responsible companies in the world – and we are proud of that reputation. Environmental responsibility and the health and safety of our employees are core values at Alcoa – and we do not take those responsibilities lightly.

**My job \_\_**

When we started our operations in North Carolina – nearly 100 years ago – it was long before there were any environmental regulations and long before anyone understood all of the environmental impacts that we know about today.

1) When Alcoa started to learn about the environmental impacts of our operations, we stepped up and started working together with state and federal officials to identify and address these issues in a responsible manner. Since then, we have spent more than \$10 million on remediation efforts at the Badin site. We are fully compliant with North Carolina and federal environmental laws and are proud of our collaboration with state regulatory authorities.

2) As part of our commitment to protect the environment, we studied the sediments in Badin Lake near our plant. And when we found low levels of PCBs in the sediments during a 1997 study, we immediately notified the State and the local community. The State determined that the sediments – which were already similar to post-cleanup levels recommended by the EPA – did not pose a risk.

Since then, we have continued to monitor the sediments to make sure they do not spread. And they have not. That is one reason why state health officials suggested looking upstream for sources of PCB contamination following the Badin Lake fish study.

Our opponents have claimed that the PCBs in Badin Lake can be directly tied back to Alcoa's operations. But Dr. John Rodgers, the Clemson professor who supposedly made that connection, backed off his claims when under oath.

In a deposition, Dr. Rodgers admitted that the work in his July 27, 2009 study was not a "definitive fingerprint" that could link the PCBs in the fish to Alcoa's operation. Dr. Rodgers went on to say that there was data inconsistent with a relationship between PCBs from Alcoa's plant and the fish in Badin Lake ... and said there could be other sources of PCBs responsible for the PCBs in the fish.

The NC Division of Waste Management went even further in a February 25, 2009 memo about the Badin Lake fish study. That memo said the source of the PCBs could not be determined with any certainty and noted that:

- The small pocket of PCBs in sediments near Alcoa's plant were analyzed and "did not pose a significant health risk."
- The Southwest region of Badin Lake, where the Alcoa facility is located, found only one fish tissue sample that was above the standard for PCBs."
- Numerous congeners not used at the Alcoa facility were detected in the fish tissue samples collected in Badin Lake

It is important to recognize that there are more than 4,500 square miles that drain into the Yadkin Project – and the State has already found similar concentrations of PCBs in fish upstream of Badin Lake, near Mocksville.

The bottom line: Alcoa complies with North Carolina's environmental laws and we've gone above and beyond many regulatory requirements.

3) Throughout the relicensing process, we worked with state agencies, environmental groups and others to craft an agreement that will improve water quality in the Yadkin River, provide for long-term conservation of land and protect the environment. We conducted more than 20 technical studies and spent considerable time addressing these issues. We spent over \$20 million dollars on these environmental tests on the Yadkin Project and on the relicensing process.

We committed to spend \$240 million to upgrade the Project, \$80 million of which is solely to increase dissolved oxygen in the Yadkin. We have already expended over \$40 million on this upgrade effort.

4) Environmental points from video.

5) Thanks. Happy to take questions.

Senator Marc Basnight  
President Pro Tempore of the North Carolina Senate  
16 W. Jones St., Room 2007  
Raleigh, NC 27601

Senator Fletcher L. Hartsell, Jr.  
Chairman of the Senate Judiciary II Committee  
300 N. Salisbury St., Room 518  
Raleigh, NC 27603

July 5<sup>th</sup>, 2010

Senator Basnight and Senator Hartsell:

This letter is on behalf of Capitolbeat, the national association of statehouse reporters and editors. We are profoundly concerned about the orders and subpoenas you recently issued to UNC-TV and Senior Legislative Correspondent Eszter Vajda, a member of our Board, in reference to her investigative report on Alcoa's Yadkin River Dam.

We understand that this specific circumstance is complex and involves issues beyond those surrounding press freedoms. We also take note that UNC-TV is a state agency, and could therefore be construed to be subject to the same legislative reporting laws that apply to other agencies. However, we strongly disagree with that interpretation. Even though the station is part of state government, its journalists and its work products are still entitled to not only First Amendment protections, but the protection of the state's shield law as well.

Whatever the larger circumstances of the case may be, we must object to the legislative use of a subpoena to compel a journalist to testify and produce her work. Such action is counter to our nation's tradition of press freedoms, and noxious to the idea of a free press. Furthermore, it sets a dangerous precedent. Journalists should never be compelled to serve as the investigative arm of a government agency.

As your subpoenas indicate, North Carolina G.S. 120-19 gives the General Assembly the right to demand information from state agencies. If you truly believe UNC-TV to be subject to that law, then the subpoenas are superfluous. But we believe that the shield law, G.S. 8-53.11, clearly supersedes both the orders and the subpoenas.

Senator Hartsell, you helped draft the shield law in 1999, and both of you supported the legislation when the General Assembly passed it. We ask that you withdraw your orders and subpoenas immediately.

Respectfully,

  
Laura Leslie,  
President, Capitolbeat



Cc: Eszter Vajda, correspondent, UNC-TV  
Tom Howe, General Manager, UNC-TV  
John Bussian, Counsel, NC Press Association  
Gary Robertson, President, NC Capitol Press Corps

## Quick Facts Alcoa FERC Lease

- 1958 Carolina Aluminum (now Alcoa) **promised 1,000 jobs** for the Badin Aluminum Smelting Works which allowed them to receive a 50-year license from the Federal Energy Regulatory Commission (FERC). **Alcoa now employs around 20 people** to generate power and minimally maintain the property.
- Carolina Aluminum agreed in 1958 to allow FERC to recapture the land in order to receive the license agreeing to a **"net investment price"** that is in **Alcoa's 2006 FERC application at \$24.16 million**
- The Federal Power Act (FPA) provides that upon the expiration of the license the transfer price is not to exceed fair value. **The tax value on Alcoa property at Badin Lake as of January 1, 2010 was \$198, 979,950.**
- If Alcoa's FERC relicensing is denied, **the federal government, NOT THE STATE**, will deal with the Alcoa on the value and require the new licensee to compensate Alcoa.
- **Estimated Net Annual Revenue** from power generation for Alcoa in 2001 was **\$25MM to \$35MM** and many experts believe that is on the very conservative side
- **Please vote to simply establish a trust so that the General Assembly has proper input in the future should Alcoa not receive relicensing from FERC**

# **PARKER POE**

**PARKER POE ADAMS & BERNSTEIN LLP**

## **MEMORANDUM**

May 19, 2009

TO: NORTH CAROLINA HOUSE OF REPRESENTATIVES

FM: AL ADAMS, TRACY KIMBRELL, MIKE TAYLOR,  
BRUCE THOMPSON  
LOBBYISTS FOR STANLY COUNTY

RE: ALCOA AND BADIN LAKE FISH CONSUMPTION ADVISORY

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The North Carolina Department of Health and Human Services ordered a fish consumption advisory on February 11, 2009, after finding elevated levels of PCBs in Badin Lake which is one of the reservoirs that make up the Yadkin Hydroelectric Project controlled by Alcoa. For years, Alcoa manufactured aluminum at the Badin Works which is located on the shores of Badin Lake.

A "fish tissue study" conducted by the state revealed that there are human and ecological health concerns in Badin Lake. The proper response to these concerns is to post notice to the citizens of the dangers associated with the consumption of fish from the lake. Instead, Alcoa chose to challenge and undercut the state's findings by filing an appeal of the advisory and demanding that no signs warning the public be posted at the lake.

Fortunately, the North Carolina Department of Health and Human Services stood up to Alcoa and has prepared the attached advisory which will be printed onto signs and posted at Badin Lake. The advisory clearly states that "elevated levels of . . . PCBs have been found in some catfish and largemouth bass."

It is important for you to keep Alcoa's response to this problem in mind when you consider SB 967 (Creation of Yadkin River Trust). When Alcoa had an opportunity to warn our citizens of a potential health threat, it chose instead to delay the posting of a warning that may save someone's life.