



**SOUTHERN
COALITION**
for **SOCIAL JUSTICE**

Duke | ENVIRONMENTAL
UNIVERSITY | LAW *and* POLICY CLINIC

September 10, 2024

Dear Jeff Hart, Dr. Guidry & Dr. Johnson:

We are excited that the Governor’s Environmental Justice Advisory Council (“the Council”) decided to host its final public meeting in Stanly County. For over a decade, the Concerned Citizens of West Badin have organized and fought for the cleanup of hazardous waste buried in the west Badin community. The Council’s presence in the community, particularly in visiting the west Badin community, will send a message of support to a community that has historically been overburdened by pollution and ignored. The Council can inform more people about this important context and its deliberations by conducting in-depth public outreach to notify the general public of its upcoming meeting.

For nearly a century, the Aluminum Company of America (“Alcoa”) operated a primary aluminum smelting factory in west Badin. Badin was founded as a segregated company town by Alcoa in the early 19th century. African Americans were encouraged to move to Badin for work in Alcoa’s factory, where they were given the more dangerous jobs. In 2010, Alcoa closed its Badin factory and shipped those operations, and jobs, overseas. But in the shadow of its shuttered operation, Alcoa left behind thousands of tons of hazardous waste in an unlined landfill and other dumping sites around the community.

For the past 3 years, the cries for clean-up from the Concerned Citizens of West Badin have largely gone unanswered. Responsible government agencies have repeatedly failed to respond to emails and comment letters requesting meetings or status updates.¹ The Council’s willingness to meet the Concerned Citizens and see Alcoa’s legacy of pollution in their community is a welcomed effort that we hope leads to meaningful action.

¹ See, e.g., Letter from Duke Env’t L. & Pol’cy Clinic to Renee Kramer, NCDEQ Title VI & Env’t Just. Coordinator (Nov. 30, 2022) (“RE: Comments on Draft Environmental Justice Report for Badin Business Park”) [Attachment 1]; Letter from Duke Env’t L. & Pol’cy Clinic to Renee Kramer, NCDEQ Title VI & Env’t Just. Coordinator (Oct. 7, 2022) (“RE: Insuring Fair Treatment and Meaningful Involvement in DEQ Decisions Through Improved Public Participation in the Clean Up and Remediation of Alcoa’s Badin Works Site (RCRA ID: NCD003162542) and related NPDES permit permits (NPDES Permit Number NC000438”) [Attachment 2].

We commend the Council's initiative to host its meetings in different communities around the state. These geographically diverse locations, ideally, provide opportunities for local community members, officials, and institutions to engage with the Council in-person. But such opportunities are only realized when sufficient notice is given to the public.

As evidenced by the low turnout in previous meetings and community forums, the Council must do more to reach local community members. While the agency listservs are a good avenue to notify engaged advocates, they cannot be the primary means of reaching the general public. Newspaper ads and articles are a great way to notify the general public, but the Council cannot expect to reach a broad audience with just one post. Local institutions and well-known organizers are an excellent avenue to reach community members, but the Council must research communities in advance to connect with these groups. While community organizations have spread the word about the September meeting, they may not have the resources to reach the greater general public or the influence to attract local officials.

It is not too late for the Council to circulate adequate public notice for its September meeting. To do so, we suggest the Council send written notice to the following institutions and individuals:

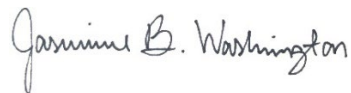
- Stanly County Public Library and its affiliated branches
- Stanly County Commissioners
- Albemarle City Council
- Badin City Council
- Stanly County Board of Education

We also recommend that the Council post notice of the meeting in the Stanly County News & Record 2 weeks and 1 week prior to the meeting.

We recognize that thorough community engagement takes time and energy. But if the Council intends to reach the community, this time and energy is necessary.

Thank you for your consideration.

Sincerely,



Jasmine B. Washington
Associate Attorney
Southern Environmental Law Center



Ryke Longest
Co-Director
Duke University Environmental Law & Policy Center



Anne Harvey
Chief Counsel for Environmental Justice
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ATTACHMENT 1

November 30, 2022

Renee Kramer
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By email to: renee.kramer@ncdenr.gov

RE: Comments on Draft Environmental Justice Report for Badin Business Park

Dear Ms. Kramer:

On August 6th, 2022, the undersigned sent a letter to Secretary Elizabeth Biser, as well as the Director of Division of Water Resources (Richard Rogers) and Director of the Division of Waste Management (Michael Scott) requesting a public hearing on the pending NPDES permit application and for DEQ to require Alcoa to clean up the hazardous waste at the Badin Business Park site (formerly Alcoa Badin Works). On October 7th, 2022, we submitted a letter detailing the history of environmental injustice in Badin, North Carolina related to the operation, remediation, and community involvement at Alcoa Badin Works and Badin Business Park. More recently, the Yadkin Riverkeeper shared with the undersigned a copy of a draft report dated October 12th, 2022, titled “Badin Business Park Draft Environmental Justice Report.” Our comments on behalf of the Yadkin Riverkeeper are presented below.

In summary, our fundamental concerns with this Draft Environmental Justice Report’s analysis are:

1. The report solely uses census tracts, instead of a smaller geographic unit, to analyze demographic data including race and income. Analyzing demographic data at this large geographic scale obscures who is most affected by Alcoa’s Badin Business Park.
2. The report omits the history of Badin as a racially segregated company town, owned and operated by Alcoa. It also omits details on the dumping of hazardous waste in unlined pits in the community. Since these dump sites are the source material for the water pollution covered by the Badin Business Park NPDES permit, this context is vitally important for making any environmental justice evaluation.
3. The report fails to meaningfully involve the impacted West Badin community and fails to assess mitigation opportunities for the impacts to the community.

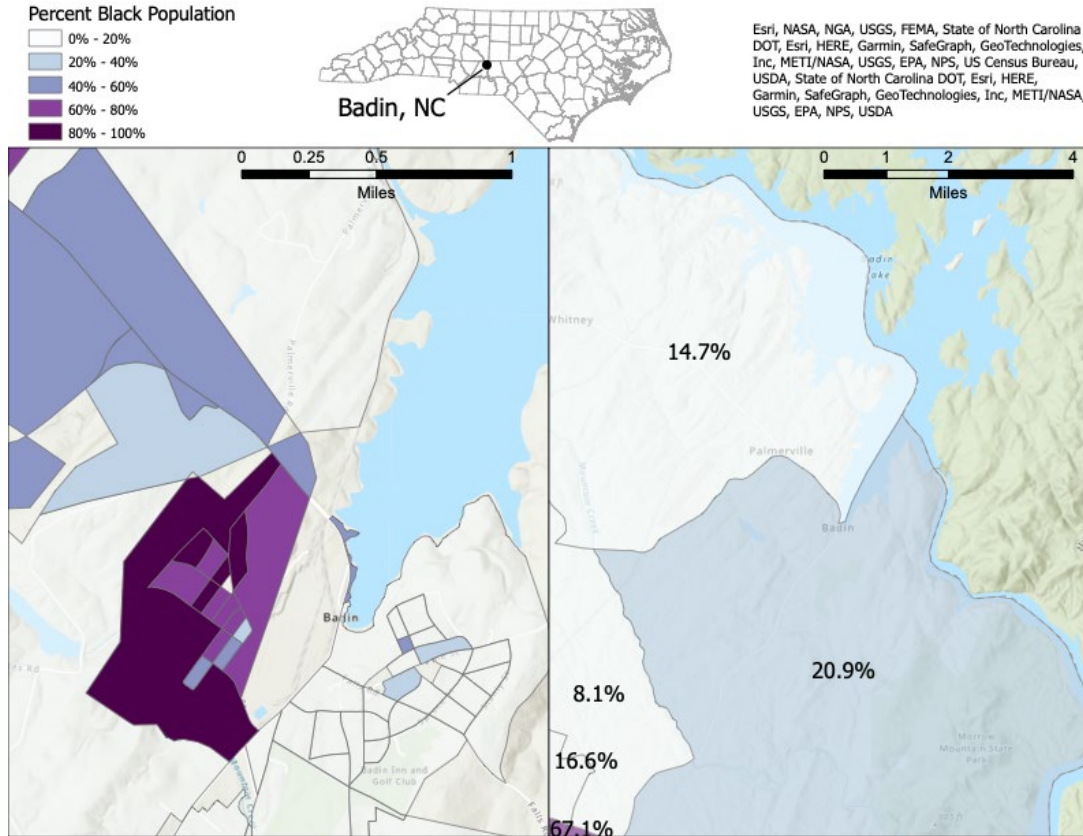


Figure 1. Map showing Percent Black Population at the census block level in Badin, North Carolina (*Left*). Map showing Percent Black Population in the two census tracts analyzed in DEQ’s Environmental Justice Report for Badin Business Park (*Right*). Data for Figure 1 obtained from the U.S. Census Bureau (<https://data.census.gov/cedsci/table>).

First, DEQ’s analysis of demographic data *at the census tract level* is inappropriate for areas in the state that are not densely populated. Census tracts typically have a population between 1,200 and 8,000 people (average of 4,000 people). In urban settings that are densely populated, a census tract may be as small as, or even smaller than, 0.25 square miles, but in rural areas with sparse populations, census tracts can be more than 30 square miles. Using census tracts to analyze demographic data in rural areas obscures the demographics of the local population most affected by a site’s operation, pollution, and remediation. For instance, in the Environmental Justice Report for Badin Business Park, DEQ summarized the demographic data for two census tracts, 9301.02 (34.39 sq. miles) and 9302.00 (31.99 sq. miles), and found that the populations living in these census tracts were 14.6% and 20.8% Black, respectively. These percentages are similar to the average for the entire state of North Carolina (20.2% Black) and, at face value, suggest that Black communities are not disproportionately affected by Alcoa’s Badin Business Park. However, when we summarize race data at the block level – the smallest geographic unit for which the U.S. Census Bureau collects population data (most are smaller than one tenth of a square mile) – we find that the community situated directly west of the Alcoa’s Badin Business Park (known as “West Badin”) is more than 60% Black, significantly higher than any of the surrounding areas (Figure 1).

Many impacts from this hazardous waste site, such as groundwater pollution, soil pollution, and property devaluation, are localized impacts that most heavily burden the people living in the immediate vicinity of the site. Consequently, census tracts are too large to focus on those adverse environmental impact. Ironically, DEQ's approach to demographic analysis in this report is similar to the antiquated saying: *dilution is the solution to pollution*. Diluting demographic population data does nothing to evaluate environmental justice, as it masks those who are most affected. We encourage DEQ to revise the Environmental Justice Report to include demographic data summaries at the smallest geographic area available. To avoid the dilution of EJ implications for this community, in addition to the EPA Environmental Justice (EJ) Screen and Mapping Tool, CDC's Environmental Justice Index¹ (EJI), the first national, place-based tool designed to measure the cumulative impacts of environmental burden through the lens of human health and health equity, are the most appropriate tools for an EJ analysis here.

Our second concern is that the Environmental Justice Report for Badin Business Park neglects to acknowledge the complicated history of the Town of Badin and Alcoa's role in promoting and enforcing racial injustices. In our October 7th letter to DEQ, we detailed the history of racial segregation of the company town called Badin, owned and controlled by Alcoa's subsidiaries for seven decades before it was incorporated. In 1920, the Tallassee Power Company, an Alcoa subsidiary which owned the company town of Badin, published *The Badin Bulletin*, which served as the local newspaper, providing news of the plant and advertising the benefits of the company town.² In March of 1920, Tallassee Power Company published a special issue to tout all aspects of its Badin operations and the company town itself, including the area referred to in *The Badin Bulletin* as the "Negro Village," "Colored Village," or "North Badin."³ This area housed the Black workforce, who were often given the most dangerous and labor-intensive jobs in the pot rooms. Studies of workers in the plant showed disparate health impacts to Black workers from hazardous working conditions in the pot rooms.⁴

Only in 1989 did the North Carolina General Assembly (NCGA) convert Badin from a company town to an incorporated municipality. Before doing so, the NCGA created a study committee composed of two Alcoa representatives, two representatives of a nonprofit corporation called Better Badin, Inc., and three representatives to be appointed by the other four.⁵ This arrangement gave Alcoa inordinate power in creating the Town. Later that summer, the NCGA set conditions for the incorporation of Badin in a subsequent law.⁶ Per those conditions, the town was divided into two electoral districts: West Badin and East Badin. One city council member would be elected from each of these districts, with three more members elected at large. West Badin, as defined in this statutory incorporation provision, included the area referred to variously as the "Negro Village," "Colored Village," or "North Badin" in the 1920 Badin Bulletin, as well as two of

¹ Available at <https://experience.arcgis.com/experience/10788c3e860d489e9e8a63a2238bb63d>, last accessed November 18, 2022.

² See Badin Bulletin issues from 1918 to 1820 archived online here: <https://www.digitalnc.org/newspapers/the-badin-bulletin-albemarle-n-c/> (last accessed June 16, 2022).

³ See Badin Bulletin issue archived online beginning at this page and the following pages: <https://lib.digitalnc.org/record/105294#?c=0&m=0&s=0&cv=20&r=0&xywh=-273%2C-1%2C7630%2C4637> (last accessed November 15, 2022).

⁴ See generally Elizabeth S. McClure, *Cancer and Non-Cancer Mortality Among Aluminum Smelting Workers in Badin, North Carolina* 63 Am J Ind Med. 755 (July 10, 2020) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7890681/pdf/nihms-1650570.pdf>.

⁵ See 1989 N.C. Sess. Law 419.

⁶ See 1989 N.C. Sess. Law 894.

Alcoa's three large, unlined dumps. West Badin, as defined, remains the electoral district where most of the Black workers and their heirs live (as indicated in the census block map in Figure 1) and where most of the hazardous waste dumps are located. In the language of gerrymandering, placing a voting district line to concentrate power in one district is referred to as "packing." In this way, voting power representing the Black residents was packed into the West Badin district by the NCGA in 1989. This packing left the residents of West Badin with just one seat on the town council effectively stripping them of political power and thereby limiting their ability to make decisions impacting their community.

In addition to packing the Black residents and the dump sites into West Badin, the charter removed powers typically awarded to all municipalities under North Carolina law, including the power to pass ordinances to regulate industrial uses and activities.⁷ The town charter was enacted with a caveat: the town was not empowered to regulate industrial facilities and operations.⁸ In converting Badin from a company town to an incorporated municipality, Alcoa and the State of North Carolina left the residents without the power to control or restrict Alcoa's or their successors' industrial activities in their community. In the early 2000s, Alcoa began "migrating" its smelting operations from the United States to lower cost options overseas.⁹ In 2007, Alcoa shuttered the Badin Works smelter, leaving thousands of tons of hazardous waste buried in and around the site. Now, a different Alcoa subsidiary has been given the keys to Badin Business Park.

We were disappointed that the Environmental Justice Report omitted this critical historical context, which is necessary to understand how Black residents in Badin have been disproportionately impacted by Alcoa's operations, pollution, town planning, and politics for decades. We encourage DEQ to revise the Environmental Justice Report to include Badin's history as a segregated company town and the implications this has on Black residents living near the plant today.

Since the 2018 Settlement Agreement arising from the Title VI Complaint filed against DEQ for the permitting of Concentrated Animal Feeding Operations (or "CAFOs"), DEQ has publicly committed to improving its public outreach to better meet its environmental justice obligations.¹⁰ DEQ's stated commitment to meaningfully involve environmental justice communities is a step in the right direction, but implementation has systematically fallen short. The draft Environmental Justice Report for Badin Business Park exemplifies some of the problems. Despite this long-standing commitment to address environmental justice in permitting decisions, DEQ has failed to detail how the findings in this report will influence the permitting action or how the comments received will influence the permitting decisions. Instead, DEQ issued a draft EJ report which merely provides an overview of demographic and socioeconomic data for a portion of the area affected by Alcoa's pollution. The report fails to (1) state the cumulative burdens that the West Badin community will have to bear, (2) ensure adequate outreach to local sensitive receptors and impacted communities, or (3) require any measures that will mitigate the cumulative harms to the minority communities that

⁷ See generally N.C. Gen. Stat. § 160A-174. See also N.C. Gen. Stat. § 160A-193.

⁸ See 1989 N.C. Sess. Law 894, Section 6.1 "In recognition of existing regulatory authority of other governmental entities and notwithstanding common law or any general law to the contrary now or hereinafter enacted, the Town shall not adopt any regulatory ordinance or resolution relating to or affecting industrial facilities and operations."

⁹ See generally Myra Pinkham, *Alcoa ups Overseas Development* 16 *Al. Int'l Today* 5 at page 78 (Sep/Oct 2004).

¹⁰ Letter from External Civil Rights Compliance Office, U.S. EPA., to Michael Regan, Secretary, N.C. Dep't Envtl. Qual., re: Closure of Administrative Complaint (May 7, 2018) (available at https://www.epa.gov/sites/default/files/2018-05/documents/2018-5-7_ncdeq_reach_closure_letter_per_adr_agreement_11r-14-r4_recipien.pdf).

the report should have identified.

As written, the Draft Environmental Justice Report is insufficient and inaccurate, which does more harm than good. We ask that DEQ revise the report by performing demographic analyses using the smallest geographic unit possible (ideally census blocks) and incorporating a more robust discussion of the history of the Town of Badin as a segregated, company town. We hope that after conducting a more comprehensive environmental justice evaluation of this site as outlined here, DEQ will have a better understanding of how to achieve environmental and procedural justice for the residents of Badin most affected by Alcoa's legacy and neglect.

Sincerely,

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ATTACHMENT 2

October 7, 2022

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RE: Insuring Fair Treatment and Meaningful Involvement in DEQ Decisions Through Improved Public Participation in the Clean Up and Remediation of Alcoa's Badin Works Site (RCRA ID: NCD003162542) and related NPDES permit permits (NPDES Permit Number NC000438)

Dear Ms. Kramer:

On March 23, 2022, representatives from the North Carolina (NC) Department of Environmental Quality (DEQ) participated in a stakeholder meeting convened by our client, Yadkin Riverkeeper (YRK), and Alcoa, Inc. to discuss the renewal of a National Pollutant Discharge Elimination System (NPDES) permit at the former Alcoa aluminum smelter in Badin, NC. At that meeting, representatives from DEQ's communications team and the public information officers of DEQ's Divisions of Water Resources (DWR) and Waste Management (DWM) expressed interest in improving public involvement around water quality and hazardous waste clean-up at the site.

However, on May 27, 2022, Alcoa sent DEQ a letter, which the undersigned discovered by routine monitoring of the Laserfiche system on June 13, 2022. A copy of this letter is attached in the Appendix. The contents of this letter called into question the commitment of DEQ to meaningfully involve this community and to a transparent stakeholder process. The letter showed that DEQ and Alcoa had held a series of meetings on the same subject of the stakeholder process but excluded the public. DEQ is not just another party – it is the decision maker. Residents of Badin, residents of the developments surrounding Badin Lake, and users of the Yadkin River are all affected by DEQ's decisions. Its decision to hold a series of secret meetings with one stakeholder while a public stakeholder process on the NPDES permit renewal and hazardous waste concerns was being undertaken shows DEQ has not meaningfully involved the community. These meetings were never mentioned during the stakeholder process.

On August 6, 2022, the undersigned sent an email to Secretary Elizabeth Biser with a letter attached addressed to Division of Water Resources director Richard Rogers and Director of the Division of Waste Management director Michael Scott, copying DEQ Leadership and federal officials to request a public hearing on the pending NPDES permit application and for DEQ to require Alcoa to clean up the source of water pollution. A copy of this email and attached letter are

included in the Appendix. As of the date of this writing, the undersigned has received no formal response from DEQ. We are concerned that this pattern of lack of meaningful public engagement around these issue calls into question DEQ's commitment to transparency and environmental justice in this case.

Since the 2018 Settlement Agreement arising from the Title VI Complaint filed against DEQ for the permitting of CAFOs, DEQ has publicly committed to improving its public outreach to better meet its environmental justice obligations.¹ The Public Participation Plan and Limited English Proficiency Plan are excellent guidelines for ensuring transparency and effective public outreach. These plans reflect DEQ's commitment to meaningfully involve environmental justice communities.

However, public participation plans mean nothing if key decisions are negotiated behind closed doors before proposals are made public. The May 27, 2022, letter detailed multiple discussions between Alcoa and DEQ officials on matters not disclosed to the public, even as all entities were engaged in a public stakeholder process. DEQ has left residents of Badin and West Badin in the dark repeatedly. Now is a particularly important time for DEQ leadership and the United States Environmental Protection Agency (EPA) to require meaningful community engagement in Badin. This year, DEQ will decide whether to renew Alcoa's NPDES permit. By the end of the year, Alcoa is expected to release a final corrective measures study and proposed remedy to clean up the unlined hazardous waste dumps at the site, as required by the Resource Conservation and Recovery Act (RCRA) Corrective Action program.² After decades of disengagement with the citizens of Badin, it is imperative that DEQ fully and meaningfully involve the community in the final remedy and future of Alcoa-Badin Works. To date, neither Alcoa nor DEQ have met the standard required by the 2018 Settlement Agreement to achieve environmental justice at this site.

I. Environmental Injustice in Badin, North Carolina

A. Badin's History as a Company Town Owned and Controlled by Alcoa

Badin was established as a racially segregated, planned worker settlement in 1913, and subsidiaries of the Aluminum Company of America ("Alcoa") purchased the town in 1915. In 1920, the Tallassee Power Company, an Alcoa subsidiary, published the *Badin Bulletin*, which served as the local newspaper, providing news of the plant and advertising the benefits of the company and its town.³ In March of 1920, Tallassee Power Company published a special issue to tout all aspects of its Badin operations and the company town itself, including the area it referred to as the "Negro Village or North Badin."⁴ Startup involved construction of the smelter and a carbon plant which

¹ Letter from External Civil Rights Compliance Office, U.S. EPA., to Michael Regan, Secretary, N.C. Dep't Env'tl. Qual., re: Closure of Administrative Complaint (May 7, 2018) (available at https://www.epa.gov/sites/default/files/2018-05/documents/2018-5-7_ncdeq_reach_closure_letter_per_adr_agreement_11r-14-r4_recipien.pdf).

² Badin Business Park, "Environmental Progress," <https://badinbusinesspark.com/environmental-progress/> (last accessed Apr. 18, 2022).

³ See Badin Bulletin issues from 1918 to 1920 archived online here: <https://www.digitalnc.org/newspapers/the-badin-bulletin-albemarle-n-c/> (last accessed June 16, 2022).

⁴ See Badin Bulletin issue archived online beginning at this page and the following pages: <https://lib.digitalnc.org/record/105294#?c=0&m=0&s=0&cv=20&r=0&xywh=-273%2C-1%2C7630%2C4637> (last accessed June 16, 2022).

manufactured carbon blocks and parts from tar and calcined coke for use in the smelting process.⁵ From 1917 - 2007, Alcoa's various subsidiaries operated the aluminum smelting plant and associated industrial operations in the town.⁶ Studies of workers in the plant showed disparate health impacts to Black workers from hazardous working conditions in the pot rooms.⁷

Only in 1989 did the North Carolina General Assembly (NCGA) convert Badin from a company town to an incorporated municipality. Before doing so, the NCGA created a study committee composed of two Alcoa representatives, two representatives of a nonprofit corporation called Better Badin, Inc., and three representatives to be appointed by the other four.⁸ This arrangement gave Alcoa inordinate power in creating the Town. Later that summer, the NCGA set conditions for the incorporation of Badin in a subsequent law.⁹ Per those conditions, the town was divided into two electoral districts: West Badin and East Badin. One city council member would be elected from each of these districts, with three more members elected at large. West Badin, as defined in this statutory incorporation provision, included the area referred to as the "Negro Village or North Badin" in the 1920 Badin Bulletin, as well as two of Alcoa's three large, unlined dumps. West Badin, as defined, remains the electoral district where most of the Black workers and their heirs live and where most of the hazardous waste dumps are located. In the language of gerrymandering, placing a voting district line to concentrate power in one district is referred to as "packing." In this way, voting power representing the Black residents was packed into the West Badin district by the NCGA in 1989. This packing left the residents of West Badin with just one seat on the town council.

In addition to packing the Black residents and the dump sites into West Badin, the charter removed powers typically awarded to all municipalities under North Carolina law, including the power to pass ordinances to regulate industrial uses and activities.¹⁰ The town charter was enacted with a caveat: the town was not empowered to regulate industrial facilities and operations.¹¹ In converting Badin from a company town to an incorporated municipality, Alcoa and the State of North Carolina left the residents without the power to control or restrict Alcoa's or their successors' industrial activities in their community.

In the early 2000s, Alcoa began "migrating" its smelting operations from the United States to lower cost options overseas.¹² In 2007, Alcoa opened its smelter in Fjarðal, Iceland under the terms of a forty-year, guaranteed price contract on power given by Landsvirkjun, the Icelandic nationally-owned power company.¹³ In 2007, Alcoa shuttered the Badin Works smelter, leaving

⁵ See Badin Bulletin issue from September of 1920 archived online beginning at this page and the following pages: <https://newspapers.digitalnc.org/lccn/2014236802/1920-09-01/ed-1/seq-3/> (last accessed June 16, 2022)

⁶ Town of Badin, *A Brief History of Badin* (Sept. 25, 2014), http://www.badin.org/about_badin.html.

⁷ See generally Elizabeth S. McClure, *Cancer and Non-Cancer Mortality Among Aluminum Smelting Workers in Badin, North Carolina* 63 *Am J Ind Med.* 755 (July 10, 2020) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7890681/pdf/nihms-1650570.pdf>.

⁸ See 1989 N.C. Sess. Law 419.

⁹ See 1989 N.C. Sess. Law 894.

¹⁰ See generally N.C. Gen. Stat. § 160A-174. See also N.C. Gen. Stat. § 160A-193.

¹¹ See 1989 N.C. Sess. Law 894, Section 6.1 "In recognition of existing regulatory authority of other governmental entities and notwithstanding common law or any general law to the contrary now or hereinafter enacted, the Town shall not adopt any regulatory ordinance or resolution relating to or affecting industrial facilities and operations."

¹² See generally Myra Pinkham, *Alcoa ups Overseas Development* 16 *Al. Int'l Today* 5 at page 78 (Sep/Oct 2004).

¹³ See *Aluminium Industry in Iceland Today*, 34 *Al. Int'l Today* 3 at page 9 (May/June 2021).

thousands of tons of hazardous waste buried in and around the site. Aluminum smelting produced large amounts of hazardous waste, including spent potliner (K088), the primary waste of concern at the Alcoa-Badin Works site.¹⁴

Alcoa handled waste from aluminum production onsite for many decades. In the early 1990s, remediation was deferred from Superfund to RCRA, since there was ongoing handling of hazardous waste at the Alcoa Badin Works site. Thirty years later, Alcoa's company structure has changed and its smelting activities have been shipped overseas, but the three solid waste management units (SWMUs) containing spent potliner and other hazardous waste have yet to be remediated in Badin (Figure 1). No effort has been made to excavate these dumps and remove the ongoing sources of groundwater contamination. Delays in permitted assessment and remediation have turned the dumps and the outfalls into de facto hazardous waste discharge sites for untreated groundwater contaminated with hazardous wastes, including the pollutants which led to spent potliner being listed as K088 RCRA waste in the first place and triggered the ban on land disposal. These dumps leach hazardous chemicals, including cyanide, fluoride, and others, into surface water and groundwater.

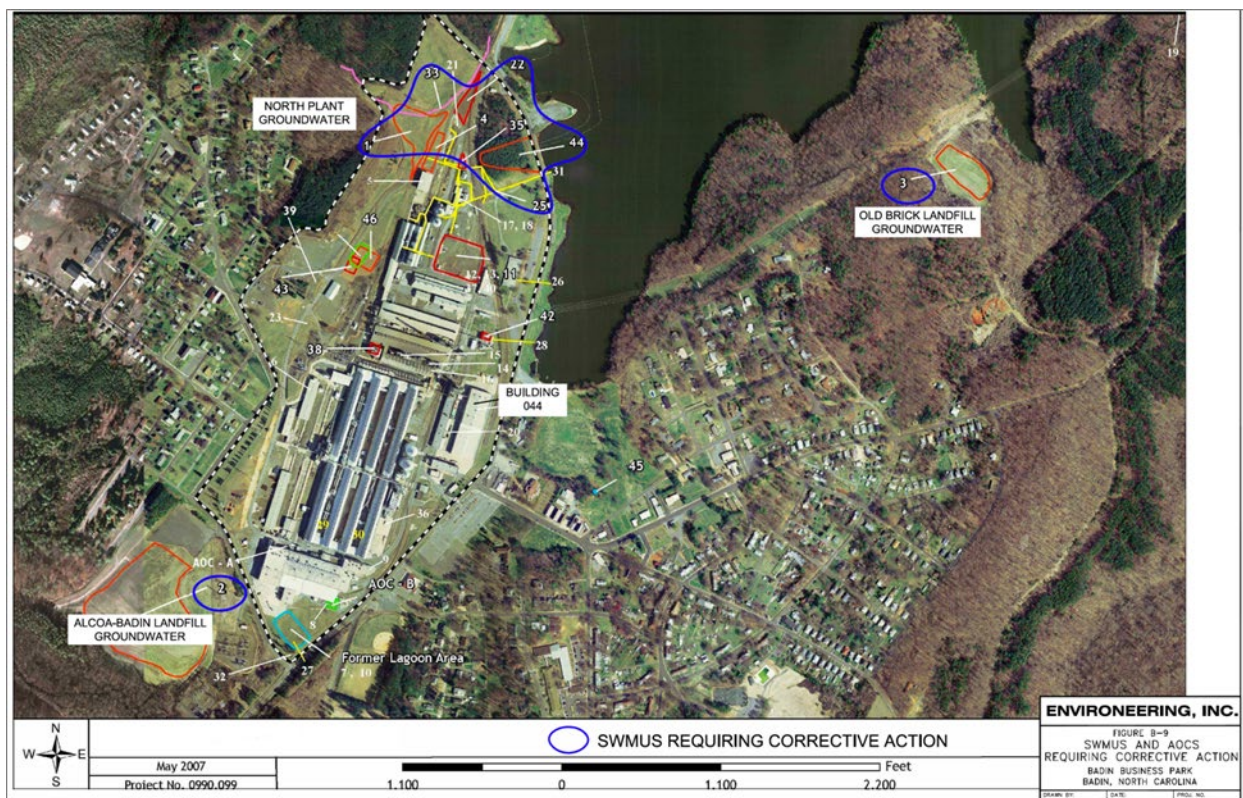


Figure 1. SWMUs at the Alcoa Badin Works facility. The three largest dump sites (the North End of the Plant, the Alcoa-Badin Landfill, and the Old Brick Landfill) are circled in blue.¹⁵

The unlined dumps are concentrated in West Badin, where residential lots abut the landfill

¹⁴ 40 CFR § 261.32(a) (listing spent potliner as a listed hazardous waste (k088) under RCRA).

¹⁵ Map from Environeering, Inc., *RCRA Permit Application Renewal for the Badin Business Park (f/k/a Alcoa-Badin Works)* (2016) (prepared for Alcoa, Inc.).

and former plant site.¹⁶ The community to the east is predominantly white and is separated from the plant site by railroad tracks, a ball field, and the downtown commercial district. Alcoa's legacy of enforced racial segregation in housing and work has been maintained with present patterns of settlement.¹⁷ Researchers from University of North Carolina at Chapel Hill documented that residents in West Badin who worked at the Alcoa plant have experienced more adverse health disparities as well as higher rates of cancer mortality.¹⁸

Badin is an environmental justice community. Its history as a racially segregated company town, followed by its incorporation as a racially gerrymandered town with a government that has no power to regulate industrial uses show how historical racism has both shaped the history and constrained the future of this community. EPA's environmental justice standards indicate Badin is suited to a Title VI complaint demographically.¹⁹ With just over 2,000 residents, the town's population is 59% White and 34% Black, and 37% of the residents make \$25,000 or less annually.²⁰ The percentage of Black residents in Badin is three times greater than that of Stanly County as a whole.²¹ The disproportionate impacts of pollution within the town further support the conclusion that a disparate impact from Alcoa's pollution, industrial operations, and lingering contamination in Badin. The scheme by which Badin was founded and later incorporated show a pattern and practice of disenfranchisement of Black residents by the NCGA in processes in which Alcoa exercised delegated legislative power as well.

B. *History of Community Engagement in Badin*

The environmental injustices in Badin point to a heightened need for community engagement when developing a remediation plan.²² Unfortunately, the history of community engagement in Badin does not reflect the community's need for and right to meaningful involvement in decisions about the site.²³ Throughout the history of this site, DENR/DEQ and Alcoa have neither sought nor ensured the meaningful involvement of the directly impacted community of West Badin when making decisions about remediation at Alcoa-Badin Works.

On matters related to water quality and the NPDES permit, DEQ has been willing to engage

¹⁶ See generally Pavithra Vasudevan, An Intimate Inventory of Race and Waste, 0 Antipode 1 (2019) available at <https://onlinelibrary.wiley.com/doi/10.1111/anti.12501>.

¹⁷ Nick Graham, *Badin, North Carolina: The Town that Aluminum Built*, Digital North Carolina Blog (Nov. 22, 2013), <https://www.digitalnc.org/blog/badin-north-carolina-town-aluminum-built/> (image from the Badin Bulletin of "cottages in the colored village," in West Badin, where Black workers lived).

¹⁸ Elizabeth S. McClure, Disparities in Work Exposures, Health, and Mortality at the Alcoa Aluminum Smelting Facility in West Badin, North Carolina (2020) available at <https://cdr.lib.unc.edu/downloads/hd76s525r>.

¹⁹ Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits, 65 Fed. Reg. 39,650, 39,657 (Jun. 27, 2000) [hereinafter EPA Draft Title VI Guidance].

²⁰ US Census Bureau, *Profile for Badin Town, North Carolina*,

<https://data.census.gov/cedsci/profile?g=1600000US3702960> (Data derived from the 2019 American Community Survey 5-year estimates; see table S2001 for "Earnings in the past 12 months" and table DP05 for "Race and Ethnicity").

²¹ Calculated using US Census Bureau data.

²² EPA (2016), "Resource Conservation and Recovery Act Public Participation Manual," at 18, (available at https://www.epa.gov/sites/default/files/2019-09/documents/final_rcra_ppm_updated.pdf).

²³ EPA, *Learn About Environmental Justice* (last updated Sept. 22, 2021) (defining "environmental justice"), (available at <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>).

with Alcoa far more than it has been willing to engage with the affected community. Several settlements of NPDES issues and Special Orders by Consent have been negotiated privately between Alcoa and DWR personnel over the years. DEQ did hold a public hearing in 2015 regarding the NPDES permit, but only *after* YRK requested one.²⁴ Public outcry over the latest proposal for a Special Order by Consent led to the creation of a stakeholder process in March 2022, focused on increasing transparency between DEQ and community members. But while planners were developing the agendas for the stakeholder meetings and ground rules for participation, Alcoa and DWR personnel continued to negotiate on NPDES issues outside the stakeholder process itself. No agendas or notes from these meetings could be found on Laserfiche. Only the May 27, 2022, letter from Alcoa gives any details about the process between Alcoa and DEQ.

On the hazardous waste issues, both DEQ and Alcoa did not provide timely and adequate information to the community regarding hazardous waste clean-up activities and regulatory compliance issues. And, again, DEQ has been reluctant to engage with the community and the YRK on this matter. In 2011, there was a dispute between EPA Region IV and Alcoa over its proposal for community involvement planning (CIP) activities for RCRA work. A CIP was drafted in 2011 for the site, but preliminary EPA comments from Brian Holtzclaw indicated that the plan was insufficient in several regards.²⁵ No details on how information would be exchanged between the community, Alcoa, and DEQ were provided. The plan lacked any details on public comments, public meetings, or newsletters (e.g., how often they will be held and what information will be covered). A short while after Mr. Holtzclaw commented on the deficiencies regarding Alcoa's proposed plan, he was removed from working on reviewing site activities. There is no record on DWM's Laserfiche of any CIP activities on the RCRA site at all. The Alcoa-created webpage reveals no information about any such plan either. If the community cannot find out information about a CIP, is there even one in operation at all?²⁶ The ineffective to nonexistent CIP reflects the historic lack of meaningful engagement of the community.

In 2014, YRK identified K088, PAHs, and PCBs in Badin Lake, Little Mountain Creek, and in the area known as the Former Ballfield. Neither Little Mountain Creek nor the Former Ballfield were being investigated by Alcoa or DWM under RCRA in 2014, so YRK petitioned EPA for a Preliminary Assessment of those areas, conducted under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).²⁷ During 2015, YRK repeatedly contacted DEQ for updates on sampling that would be conducted under the Preliminary Assessment. However, DEQ stopped responding to YRK's emails after September of 2015.²⁸ YRK asked that Rob McDaniel contact it when the assessment work was completed, but Rob McDaniel did not do so.

Following DEQ's lack of response, YRK contacted the EPA Superfund Section in February, March, and April of 2016 to determine the next steps EPA would take with regards to the Petition.

²⁴ See Ryke Longest, Comments and Request for Public Hearing on Proposed NPDES Stormwater Permit for Alcoa Badin Works: Permit NC0004308, Duke Env'tl L. & Pol'y Clinic (March 1, 2015), attached in Appendix.

²⁵ Brian Holtzclaw, Preliminary Comments on Alcoa Community Involvement Plan, EPA (Feb. 16, 2012), attached in Appendix.

²⁶ Searches of the DEQ and Badin Business Park website failed to uncover any CIP documents at all.

²⁷ See Cover Letter and accompanying Site Inspection Report from Stuart Parker to Carolyn Callahan dated June 14, 2016, attached in Appendix.

²⁸ See email chain from Ryke Longest and others to Rob McDaniel and others, attached in Appendix.

Carolyn Callihan responded in April that DEQ had requested that the site be managed under RCRA, not Superfund.²⁹ EPA's Superfund Section stopped working on the site and deferred supervision back to DEQ. The email from Ms. Callihan was the only communication sent to YRK by any government agency informing it that DEQ had made this request. The email referenced a 1995 deferral policy, but there was no community involvement in DEQ's decision on the deferral question whatsoever.³⁰ Oddly, DEQ apparently had decided to call off Superfund in April of 2016 before having been provided the final version of the Site Inspection Report in June of 2016. DEQ did not conduct any community engagement around its RCRA deferral decision.

This deferral decision happened out of public view entirely, again decided by DEQ without any community involvement. No explanation, or even notice of the decision was given by any member of DEQ to YRK. The decision was communicated to EPA before the Superfund Section had even completed the Site Inspection Report. Six weeks after YRK learned from EPA that the site would be deferred back to DWM, Superfund section's hydrogeologist Stuart Parker completed the Site Inspection Report and submitted to EPA's Carolyn Callihan his findings that further investigation under Superfund was warranted, specifically concluding:

“Based on the Site Inspection results and findings, this site warrants further evaluation under CERCLA. Further evaluation could be conducted under RCRA authority and oversight, however, CERCLA authority would apply if no such action was undertaken by Alcoa. Further evaluation would specifically address:

- Groundwater contaminant migration pathways not intercepted by the existing seepage collection system
- The areal and linear extent of wetland contamination between the landfill and Little Mountain Creek.
- The extent of SVOC and cyanide contamination in the excavated eastern drainage ditch (within the creek floodplain) and contribution of groundwater discharge to the contamination.
- Identification of the source of PCB Aroclors in (and adjacent to) the eastern drainage ditch.
- The eastern drainage ditch's contribution to cyanide and fluoride in Little Mountain Creek.
- Variation on creek contaminant levels and the maximum downstream extent to which contamination can be detected.”³¹

Site Inspection results and findings warranted further investigation regarding contamination reported by YRK and members of the Concerned Citizens of West Badin during the investigation. No one from the state bothered to involve these complainants in their unilateral decision to defer this work from Superfund to RCRA.

Deferral was supposed to speed up the clean-up process, but assessment activities have

²⁹ See email from Carolyn Callihan to Ryke Longest dated April 27, 2016, attached in Appendix.

³⁰ The undersigned has diligently searched DEQ's Laserfiche system for any records related to this deferral decision and can find none.

³¹ *Id.* at page 17 of the Site Inspection Report.

dragged on and remediation has not been completed.³² Two years later, Alcoa completed more testing, but DEQ still has not initiated community engagement. In November 2019, the DWM acceded to the request of YRK and the Concerned Citizens of West Badin for a public meeting on the hazardous waste cleanup activities at the site.³³ Following that meeting, at which YRK and community members demanded that DEQ require Alcoa to excavate and remediate the unlined dumps at Alcoa's Badin Works, silence.

In October of 2021, Alcoa removed approximately 2,000 tons of contaminated soil from the Alcoa-Badin Works site to reduce contaminant levels in stormwater outfalls.³⁴ There was no community engagement in advance to ensure wide participation among the whole community. Alcoa informed DEQ on October 14, 2021, when the soil removal was complete.³⁵ Alcoa posted limited and incomplete information about the removal on its website. DEQ did not request any follow up information until December 20, 2021,³⁶ approximately two months after YRK reached out to DEQ and NC Department of Justice officials requesting more information. The information was posted to DEQ's archaic and complex document repository, Laserfiche, in January 2022, nearly four months later. The obfuscation and delay hardly reflect meaningful involvement of the community.

Instead of "seek[ing] out and facilitate[ing] the involvement of those potentially affected," communication from DEQ to residents of Badin about the site has been consistently one-sided. For example, when a renewal of the RCRA permit was required in 2018, DEQ opened a public comment period from August 13, 2018, through November 11, 2018 on the draft permit.³⁷ But no public meeting was held in Badin to address community concerns, rather it was held in Albemarle. Additionally, both DEQ and Badin Business Park (a wholly-owned subsidiary of Alcoa) both have websites for updates on the site.³⁸ While the DEQ website links to many important documents, private communications between Alcoa and the State are not provided to the public. This top-down, one-way communication is not reflective of principles of meaningful involvement.

In sum, a higher proportion of Black residents live within half a mile of hazardous waste dump sites in Badin compared to Stanly County as a whole. These residents have been given minimal opportunity for their concerns to be addressed by the Town of Badin, and the town is powerless when it comes to controlling industrial activities. The residents of the West Badin District had their votes in governing the Town of Badin government diluted by packing when the town was

³² In 1999, the EPA Office of Inspector General criticized the 1995 deferral policy as not meeting its supposed goals. OIG found that most sites deferred were not being cleaned up more quickly at all, just as happened at Badin Works. *See* report Superfund Sites Deferred to RCRA from the EPA OIG 1999, attached in Appendix.

³³ Chris Miller, *Concerned Badin Citizens Meet to Discuss Hazardous Materials from Old Alcoa Site*, The Stanly News and Press (Nov. 20, 2019), <https://www.thesnaponline.com/2019/11/20/concerned-badin-citizens-meet-to-discuss-hazardous-materials-from-old-alcoa-site>.

³⁴ Badin Business Park, "Environmental Progress," <https://badinbusinesspark.com/environmental-progress> (last accessed Apr. 18, 2022).

³⁵ See email from Robyn Gross to Roberto Scheller dated October 14, 2021 re: Badin Business Park Soil Removal Activities, attached in Appendix.

³⁶ *See* memo from Michael Scott and S. Daniel Smith to Robyn Gross dated December 20, 2021 re: Information Request, attached in Appendix.

³⁷ N.C. Dept. Env't. Qual., "Alcoa-Badin Business Park Information," <https://deq.nc.gov/news/key-issues/alcoa-badin-business-park-information> (last accessed Apr. 18, 2022).

³⁸ *Id.*, Badin Business Park, "Environmental Progress," <https://badinbusinesspark.com/environmental-progress/> (last accessed Apr. 18, 2022).

converted from a company town to a municipality. Finally, the residents of the West Badin district have had minimal opportunities to “participate in decisions about activities that may affect their environment and/or health” in the RCRA process; the communities’ concerns were not considered in the decision-making process; and decision makers did not “seek out and facilitate the involvement of those potentially affected.”³⁹ What opportunities they have had they created for themselves, by demanding public meetings and DEQ’s attention on important issues through public comment.

II. Legal and Regulatory Requirements for Community Engagement

The requirements for public participation in an environmental permitting process have two main sources of law: (1) federal environmental laws, such as RCRA, and implementing regulations, the relevant parts of which have been incorporated by reference into the North Carolina Administrative Code and (2) Title VI of the Civil Rights Act, which requires equal treatment in public participation processes. In addition, EPA has developed extensive guidance on community engagement in environmental justice communities and in hazardous waste remediation activities. This law and guidance provide the backdrop for how DEQ can better engage with the Badin community and all those affected by Alcoa’s hazardous waste.

The minimum requirements for the RCRA permitting process vary depending on permitting stage and permitting type.⁴⁰ At this stage in the Corrective Action process, a public comment period will be required for the release of the Corrective Measures Study.⁴¹ The next stage, the remedy selection, should be treated as an agency-initiated permit modification, which has more extensive public participation requirements.⁴² The plan must be made available for public review: published in local newspapers, advertised on local radio, and sent to the facility mailing list.⁴³ The agency must prepare a fact sheet and provide opportunity for public comment.⁴⁴ The public may request a public meeting that the agency must then hold; additionally, the agency director has the discretion to hold a meeting. Lastly, when the permit is modified to include the corrective measures implementation plan, public comment is required.

In addition to these requirements, Title VI of the Civil Rights Act bars entities receiving federal funding from discriminating in the administration of their programs based on race or ethnicity.⁴⁵ EPA has interpreted this mandate to include the equal treatment of all persons in public participation for environmental regulations and permitting.⁴⁶ To achieve equal treatment, Title VI may require the recipient agency to go beyond the letter of minimum requirements to ensure access to public participation.⁴⁷ Furthermore, EPA requires that recipient agencies have non-discrimination

³⁹ EPA, *Learn About Environmental Justice* (last updated Sept. 22, 2021), <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice#eo12898>.

⁴⁰ 40 C.F.R. §§ 124.1 et seq, §§ 270.1 et seq.

⁴¹ EPA (2016), “Resource Conservation and Recovery Act Public Participation Manual,” at 53, (available at https://www.epa.gov/sites/default/files/2019-09/documents/final_rcra_ppm_updated.pdf).

⁴² 40 CFR § 270.41, incorporated by reference into the NC Administrative Code at 15A NCAC 13A .0113(g).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ 42 U.S.C. § 2000d.

⁴⁶ EPA Draft Title VI Guidance, *supra* note 8, at 39657.

⁴⁷ For example, in Flint, Michigan, the Michigan Department of Environmental Quality (MDEQ) provided the information required for a public comment period and hosted a public meeting as required by the regulations. The totality of circumstances, however, including the time and location of the public meetings and treatment of African

policies in place, including a notice of the non-discrimination policy, a non-discrimination coordinator, grievance procedures, and meaningful access for persons with disabilities and with limited English proficiency.⁴⁸

EPA has extensive guidance on compliance with both the letter of public participation regulations, the intent of meaningful involvement, and non-discrimination aims of Title VI. Public participation is a key component of environmental justice, as true environmental justice requires the meaningful involvement of impacted citizens.⁴⁹ Meaningful involvement means that people have an opportunity to participate in decisions about their environment, their participation can influence and will be considered in the decision-making process and, importantly, *decision makers* will seek out and facilitate the involvement of the impacted communities.⁵⁰

To achieve meaningful involvement and compliance with Title VI, EPA recommends recipients of funding ensure public participation in permitting is early, inclusive, and meaningful.⁵¹ Early means that affected communities are engaged in the pre-permitting process.⁵² Inclusive means that public meetings occur at times and places when community members can participate, and that information is communicated through a variety of methods. Meaningful means, in part, that information is presented in an understandable format. Importantly, for public participation to be meaningful, officials must genuinely consider input and must communicate how that input will be incorporated. Additionally, the National Environmental Justice Advisory Council (NEJAC) has also developed a set of principles to guide the design of public meetings in environmental justice communities, including tailoring the approach to the specific needs of the community.⁵³

EPA also has extensive guidance on effective community participation in the clean-up of hazardous waste sites under RCRA and Superfund.⁵⁴ Community participation requirements for Superfund are much more comprehensive than under RCRA.⁵⁵ Therefore, EPA guidance “encourages permitting agencies and facilities to make public participation activities under the

American residents, led EPA to find MDEQ violated Title VI by discriminating against residents based on their race. Letter from External Civil Rights Compliance Office, U.S. EPA., to Heidi Grether, Director, Michigan Dept. of Env'tl. Qual. (Jan. 19, 2017) (available at <https://www.epa.gov/sites/default/files/2017-01/documents/final-geneseec-complaint-letter-to-director-grether-1-19-2017.pdf>).

⁴⁸ 40 C.F.R. § 7.

⁴⁹ EPA defines environmental justice as “the fair treatment and *meaningful involvement* of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA, *Learn About Environmental Justice* (last updated Sept. 22, 2021), <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.

⁵⁰ *Id.*

⁵¹ EPA Draft Title VI Guidance, *supra* note 8, at 39658.

⁵² *Id.*

⁵³ NAT'L ENV'T JUST. ADVISORY COUNCIL, MODEL GUIDELINES FOR PUBLIC PARTICIPATION, AN UPDATE TO THE 1996 NEJAC MODEL PLAN FOR PUBLIC PARTICIPATION (Jan. 25, 2013), <https://www.epa.gov/sites/default/files/2015-02/documents/recommendations-model-guide-pp-2013.pdf> [hereinafter NEJAC MODEL GUIDELINES].

⁵⁴ OFFICE OF LAND AND EMERGENCY MGMT., U.S. ENV'T PROT. AGENCY, 530-R-16-013, RESOURCE CONSERVATION AND RECOVERY ACT PUBLIC PARTICIPATION MANUAL (2016) [hereinafter RCRA PUBLIC PARTICIPATION MANUAL]; OFFICE OF SUPERFUND REMEDIATION AND TECH. INNOVATION, U.S. ENV'T PROT. AGENCY, OLEM 9230.0-51, SUPERFUND COMMUNITY INVOLVEMENT HANDBOOK (2020) [hereinafter SUPERFUND COMMUNITY INVOLVEMENT HANDBOOK].

⁵⁵ 42 U.S.C. § 9617, 40 C.F.R. §§ 340.4, et seq.

RCRA system consistent with the activities required under Superfund, whenever appropriate.”⁵⁶ For both programs, EPA recommends heightened public participation when a hazardous waste site is near an environmental justice community or is generating a lot of public interest.⁵⁷

Under Superfund, the lead agency must develop a community relations plan while developing and executing remediation.⁵⁸ This plan must be based on community members’ inputs and needs, and it must ensure that the public has “appropriate opportunities for involvement in a wide variety of site-related decisions.”⁵⁹ Additionally, at Superfund sites where the potentially responsible party is leading remediation, the EPA or state agency *must* retain authority over the community relations plan.⁶⁰

The Superfund Community Engagement Handbook also provides specific, additional activities that the head agency could add on to minimum activities as complexity, environmental justice concerns, and community interest at the site increase. At sites where the complexity, environmental justice concerns, and community interest are all high, EPA recommends, among other things, forming a Community Advisory Group (“CAG”) and ensuring the community is fully informed by providing technical assistance.⁶¹ These recommendations apply both at the site assessment phase and when the proposed remedy is released. Unfortunately, DEQ’s request to manage the site under RCRA has removed the requirements of the Superfund community engagement process. As a result, state regulators default to the minimum requirements outlined in North Carolina’s administrative procedures. The lack of state community engagement guidelines has left communities without opportunities for meaningful involvement.

III. Moving Forward: Improving Public Participation in Badin

What opportunities for public participation have occurred in the past are not *meaningful involvement*, as DEQ has never *sought* community involvement: the community has always had to fight for it. Many times, decisions were made by DEQ without any chance for the community to fight for involvement at all. The public comment period on the last version of the Corrective Measures Study in 2018 met notice and comment requirements under RCRA, but did not meaningfully involve the community. Public hearings after proposals are due for decisions by DEQ is not meaningful participation, it is minimum required notice and comment. DEQ’s engagement falls short of recommended activities, such as distributing fact sheets and holding public meetings.⁶²

DEQ has such a poor record of public participation that it may well have violated the public’s rights under Title VI of the Civil Rights Act of 1964. As described above, there have been few public meetings accessible to West Badin residents and little notice to alert residents to those meetings. The public meetings that have been initiated by Alcoa were held in white neighborhoods in town, including in the historically segregated country club. DEQ has not provided for the meaningful participation and fair treatment of West Badin residents in remediation at the Alcoa-Badin Works site.

⁵⁶ RCRA PUBLIC PARTICIPATION MANUAL, *supra* note 37, at 18.

⁵⁷ *Id.*; SUPERFUND COMMUNITY INVOLVEMENT HANDBOOK, *supra* note 37, at 15.

⁵⁸ 42 U.S.C. § 9617, 40 C.F.R. § 340.430(c).

⁵⁹ 40 C.F.R. § 340.430(c)(2)(ii)(A).

⁶⁰ 40 C.F.R. § 340.430(d).

⁶¹ SUPERFUND COMMUNITY INVOLVEMENT HANDBOOK, *supra* note 37, at 38 and 43.

⁶² RCRA Public Participation Manual, *supra* note 37, at 53.

With the upcoming NPDES permit renewal and release of the proposed remedy, now is a crucial time for DEQ to improve public participation. Considering the significant environmental justice concerns and prolonged community interest in the site, we recommend DEQ conduct community engagement in a way that is similar to what would be required if the site was managed under Superfund. Superfund's community engagement requirements provide key safeguards for the community. We recommend three specific tools from the Superfund community engagement toolkit: (1) a community engagement plan based on community interviews, (2) a CAG and (3) technical assistance. Lastly, we recommend that DEQ host and facilitate a series of community meetings to discuss and receive feedback on the proposed remediation plan.

The first recommendation, developing a community engagement plan, should begin as it would under Superfund: with interviews with community members. This will be an essential first step in improving community engagement in Badin. It is not clear from the record that the residents of Badin have ever been asked about *their* concerns about the site. In response to YRK's Superfund Petition, Superfund Section's Stuart Parker asked members of West Badin community about their knowledge of how the site was managed in the past. But he was taken off the case through deferral. Brian Holtzclaw raised the issue of inadequate community involvement planning under RCRA and was removed from the case by EPA.

DEQ should interview community members from West Badin, East Badin, other Stanly County residents, and Montgomery County residents, whose water quality is directly affected by Little Mountain Creek and Badin Lake. These distinct stakeholder groups all have specific needs, concerns, and perspectives related to the Alcoa facility. Interviewing multiple representatives from each group is necessary to get a full understanding of community needs.

Conducting these interviews will ensure DEQ can design a community engagement plan that reflects the needs of the community.⁶³ Additionally, it will help build confidence that DEQ is committed to ensuring the meaningful involvement of community members going forward. Any action on our further recommendations must be informed by the results of these interviews.

A second tool from the Superfund public engagement toolkit to apply in Badin is a CAG, given the high interest in the site and environmental justice concerns.⁶⁴ In assisting the community in forming a CAG, DEQ should ensure that the group is independent from Alcoa. The CAG would serve as a way for DEQ and Alcoa to communicate regularly with the community as a final remedy is designed and remediation is implemented at the site.

Third, DEQ should provide more technical assistance to community members and present information about the site in accessible language. A key piece of feedback from community members at the March 2022 stakeholder meeting was that information from DWR was presented in highly technical language and that the message would be difficult to relay back to the community. A

⁶³ OFFICE OF SUPERFUND REMEDIATION AND TECH. INNOVATION, U.S. ENV'T PROT. AGENCY, "Community Involvement Tool: Community Interviews," <https://semspub.epa.gov/work/HQ/100001430.pdf>.

⁶⁴ OFFICE OF SUPERFUND REMEDIATION AND TECH. INNOVATION, U.S. ENV'T PROT. AGENCY, "Superfund Community Involvement Tool: Community Advisory Groups," <https://semspub.epa.gov/work/HQ/100002121.pdf>.

full technical assistance needs assessment may be appropriate.⁶⁵ At minimum, however, DEQ should strive to work with the community to ensure that those affected fully understand what is happening at the site. Importantly, simplification is not an excuse for misrepresentation:⁶⁶ a key guiding principle for community engagement is to “maintain honesty and integrity.”⁶⁷

Additionally, EPA strongly recommends that implementing agencies “ensure that they always take the principles of effective risk communication into consideration.”⁶⁸ While proposed plans and the results of risk assessments are publicly available on Laserfiche, meaningful public engagement must also include helping community members “understand the Agency’s risk assessment... processes and decisions.”⁶⁹ This help could come in the form of fact sheets, public announcements, or public meetings.

Finally, DEQ must initiate a public meeting on Alcoa’s proposed remedy once it is ready. “[S]cheduling a public hearing before the public requests one [will] . . . demonstrate a willingness to meet with the community to hear its questions and concerns.”⁷⁰ Additionally, “[t]he agency . . . should consider holding workshops or informal meetings about the proposed remedy during the public comment period. These discussion sessions can be especially useful when information about corrective measures . . . when the level of community concern is high.”⁷¹

In planning a meeting or series of meetings, DEQ should consider NEJAC guidance in planning.⁷² It is important that meetings are held at an accessible location that feels safe to all and at a time of day when all can attend. For example, a meeting in West Badin in the early evening would likely meet these criteria. The meeting should have a flexible agenda to allow community members to voice their concerns. Lastly, the meeting should be conducted in a format that allows for a two-way exchange of information, as opposed to expert presentations defending the status quo at the site.

A series of meetings is important because it could either provide an opportunity to cover topics in greater depth, and to provide multiple opportunities and venues to reach a broad swath of the community. If only one meeting is feasible, DEQ should send representatives to community meetings of groups, such as the Concerned Citizens of West Badin, Protect Badin Lake, and Better Badin, Inc., to solicit feedback on the proposed remedy. “Sending the meeting to the public” would ensure that DEQ is including all community members.⁷³

⁶⁵ OFFICE OF SUPERFUND REMEDIATION AND TECH. INNOVATION, U.S. ENV’T PROT. AGENCY, “Superfund Community Involvement Tool: Technical Assistance,” <https://semspub.epa.gov/work/HQ/197625.pdf>.

⁶⁶ A key example of this can be found on the Badin Business Park website, which provides information about “how small” the amount of cyanide they are allowed to discharge is. Badin Business Park, “Water Quality,” <https://badinbusinesspark.com/water-quality> (last accessed Apr. 19, 2022). This kind of language minimizes community concerns, and it does not inform the public on the hazards associated with cyanide, rationale for the limit, or the numerous instances where that limit has been violated.

⁶⁷ NEJAC MODEL GUIDELINES, *supra* note 36, at Appendix C.

⁶⁸ RCRA Public Participation Manual, *supra* note 37, at 16.

⁶⁹ *Id.*

⁷⁰ *Id.* at 54.

⁷¹ *Id.* at 55.

⁷² NEJAC MODEL GUIDELINES, *supra* note 36, at 7.

⁷³ *Id.* at 8.

The proposed remedy may include the redevelopment of the site for other industrial uses. In December 2021, Badin Business Park announced that a new company, Custom Alloy Corporation, will move into the site.⁷⁴ While Badin Business Park went through the Stanly County Commission and other local entities, residents of West Badin did not feel like they were represented in the process and had little or no input on the issue. As the direct neighbors of the facility who have been impacted by pollution and work exposures from the facility for decades, it is essential that any redevelopment included in a remediation plan has the input and involvement of the West Badin Community. It is particularly important to address the potential for additional, cumulative impacts on the residents of West Badin, especially if the facility will be permitted for a wastewater discharge and/or hazardous waste generation/treatment/disposal, as part of, or separate from Alcoa Badin Business Park's NPDES and RCRA permits.

After the remedy is proposed and finalized, and the implementation of corrective measures begins, DEQ must continue to seek out community input. This can be done through hosting regular meetings and providing updates through a properly constituted and representative CAG. What is most important, however, is that after decades of being ignored, the residents of Badin and West Badin must finally be heard by their government until the site is fully remediated to clean closure. We hope that this background will help DEQ in developing its environmental justice reports for the upcoming permit renewal. We trust that DEQ will live up to its commitments at long last.

IV. Conclusion

With the upcoming NPDES permit renewal and proposed RCRA corrective action remedy from Alcoa, now is the time for DEQ to improve public participation efforts for the Alcoa Badin Works site. Based on environmental justice principles, DEQ must implement a comprehensive community engagement program. Using tools from the Superfund process and environmental justice guidance from EPA, we are confident that DEQ can implement a program that, at long last, will meaningfully involve the residents of Badin in the future of their town.

Thank you for your consideration of this matter. Please do not hesitate to contact us for further information about the site or assistance with reaching affected community groups.

Sincerely,

Ryke Longest, *Co-Director*
DUKE UNIVERSITY ENVIRONMENTAL
LAW AND POLICY CLINIC

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⁷⁴ Badin Business Park, "Custom Alloy," <https://badinbusinesspark.com/custom-alloy> (last accessed Apr. 18, 2022).

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