

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

THE UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

HOLCIM (US) INC. ET AL.,)

Defendants.)

Civil Action No. 1:11-cv-01119-CCB

CONSENT DECREE

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action, Dkt. No. 1, pursuant to Sections 113(b) and 167 of the Clean Air Act (“Act”), 42 U.S.C. §§ 7413(b) and 7477, against Defendants Holcim (US) Inc. (“Holcim”), and St. Lawrence Cement Company, LLC (collectively “Defendants”);

WHEREAS, The Complaint seeks injunctive relief and civil penalties, alleging that the Defendants violated and continue to violate (a) the Prevention of Significant Deterioration (“PSD”) provisions of the Act, 42 U.S.C. §§ 7470-92, and Maryland’s PSD program in the federally enforceable Maryland State Implementation Plan (“Maryland SIP”), Code of Maryland Regulations (“COMAR”), Title 26, Subtitle 11, Chapter 06.14, entitled “Control of PSD Sources,” and (b) Title V of the Act, 42 U.S.C. §§ 7661-7661f, and Title V’s implementing federal regulations, 40 C.F.R. Part 70, and Maryland’s federally enforceable Title V program, COMAR 26.11.03, entitled “Permits, Approvals, and Registration - Title V Permits”, at Holcim’s Portland cement plant in Hagerstown, Maryland (“Facility”);

WHEREAS, The Complaint alleges that the Defendants failed to obtain the necessary PSD permit and install controls under the Act to control emissions of sulfur dioxide (“SO₂”), which increased significantly as a result of the Defendants’ implementation of a tire-derived fuel project (“TDF Project”) at the Facility;

WHEREAS, Pursuant to Section 113(a)(1) and (a)(3) of the Act, 42 U.S.C. § 7413(a)(1) and (a)(3), on June 4, 2008 and June 23, 2009, the EPA issued Notices of Violation (“NOVs”) to the Defendants, setting forth, among other things, the allegations included in the Complaint, and provided copies of the NOVs to the State of Maryland (“Maryland” or “State”);

WHEREAS, Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), the United States provided notice to Maryland of the commencement of this action;

WHEREAS, The Defendants deny the allegations of the Complaint and do not admit that they have any liability for civil penalties or injunctive relief arising out of the transactions or occurrences alleged in the Complaint;

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

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and over the Parties. Venue lies in this District pursuant to Sections 113(b) and 304(c) of the Act, 42 U.S.C. §§ 7413(b) and 7604(c), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and the Defendants conduct or conducted business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, the Defendants consent to the Court's jurisdiction over this Decree and any such action and over the Defendants and consent to venue in this judicial district.

2. For purposes of this Consent Decree, the Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477.

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

II. APPLICABILITY

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

5. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the Defendants of their obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, the Defendants shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the EPA Air Enforcement Division, the United States Attorney for the District of Maryland, and the United States Department of Justice, in accordance with Section XIV of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

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

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

III. DEFINITIONS

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

a. “30-Day Rolling Average Emission Rate” shall mean the rate of emission of a specified air pollutant from a Kiln expressed as pounds per Ton of clinker produced and calculated in accordance with the following procedure: first, sum the total pounds of the pollutant emitted from the Kiln during an Operating Day and previous twenty-nine (29) Operating Days, as measured by a Continuous Emission Monitoring System; second, sum the total Tons of clinker produced by the kiln during the same Operating Day and the previous 29 Operating Days; and third, divide the total number of pounds of the specified pollutant by the total Tons of clinker produced. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Operating Day. In calculating each 30-Day Rolling Average Emission Rate, the total pounds of any pollutant emitted from a Kiln during a specified period shall include all emissions of that pollutant from the subject Kiln that occur during a specified period, including emissions during Startup and Shutdown, and during any Malfunction, except to the extent a Malfunction qualifies as a Force Majeure event under Section IX and the Defendants have complied with the requirements of that Section;

b. “30-Day Rolling Average Emission Rate Limit” shall mean the maximum allowable 30-Day Rolling Average Emission Rate;

c. “12-Month Rolling Total Emission Tonnage” shall mean Tons of emission of SO₂ from a Kiln during any consecutive period of 12 months, expressed as Tons of SO₂. The 12-Month Rolling Total Emission Tonnage shall be calculated by summing the total Tons of SO₂ emitted from the Kiln during the most recent complete Month and the previous 11 Months, as measured by a Continuous Emission Monitoring System. A new 12-Month Rolling Total Emission Tonnage shall be calculated for each new Operating Month. In calculating each 12-Month Rolling Total Emission Tonnage, the total Tons of SO₂ emitted from a Kiln during a specified period shall include all emissions of SO₂ from the subject Kiln that occur during a specified period, including emissions during Startup and Shutdown, and during any Malfunction, except to the extent a Malfunction qualifies as a Force Majeure event under Section IX and the Defendants have complied with the requirements of that Section;

d. “12-Month Rolling Total Emission Tonnage Limit” shall mean the maximum allowable 12-Month Rolling Total Emission Tonnage;

e. “CEMS” or “Continuous Emission Monitoring System” shall mean, for obligations involving NO_x and SO₂, under this Consent Decree, the total equipment and software required to sample and condition (if applicable), to analyze, and to provide a record of NO_x and SO₂ emission rates, and the raw data necessary to support the reported emission rates, that have been installed and calibrated, and are operated, in accordance with 40 C.F.R. § 60.13 and 40 C.F.R. Part 60 Appendix B and Appendix F;

f. “Complaint” shall mean the complaint filed by the United States in this action;

g. “Compliance Option A” shall mean the performance of all of the following:

(1) conversion of the Kiln from the current kiln configuration to a low-NOx preheater/precalciner kiln configuration;

(2) installation and Continuous Operation of a Lime Injection System for the control of SO₂ emissions; and

(3) installation and Continuous Operation of Selective Non-Catalytic Reduction (“SNCR”) technology for the control of NOx emissions;

h. “Compliance Option B” shall mean the installation and Continuous Operation of Scrubber Technology for the control of SO₂ emissions;

i. “Compliance Option C” shall mean Retirement of the Kiln;

j. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto listed in Section XXIII;

k. “Continuously Operate” or “Continuous Operation” shall mean that a control technology used at the Kiln, except during a Malfunction of the control technology, shall be operated at all times of Kiln Operation, consistent with technical limitations, manufacturer’s specifications and good engineering practices for such control technologies and the Kiln;

l. “Date of Lodging” shall mean the date the Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of Maryland;

- m. “Day” shall mean a calendar day unless expressly stated to be a business day;
- n. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- o. “Effective Date” shall have the definition provided in Section XV.
- p. “Emission Limit” shall mean any 30-Day Rolling Average Emission Rate Limit or 12-Month Rolling Total Emission Tonnage Limit established by this Consent Decree;
- q. “Facility” shall mean Holcim’s portland cement plant located at 1260 Security Road in Hagerstown, Maryland;
- r. “Kiln” as used in this Consent Decree shall have the same meaning as defined at 40 C.F.R. § 63.1341. The Facility operates one Kiln;
- s. “Kiln Operating Day” and “Operating Day” shall mean any Day on which Kiln Operation has occurred;
- t. “Kiln Operating Month” and “Operating Month” shall mean any calendar month in which Kiln Operation has occurred;
- u. “Kiln Operation” shall mean any period when any raw materials are fed into the Kiln or any period when any combustion is occurring or fuel is being fired in the Kiln;
- v. “Lime Injection System” means a pollution control system that injects or otherwise combines an alkaline reagent such as lime with the gases exiting the Kiln to achieve the reduction of sulfur dioxide emissions;
- w. “Malfunction” as used in this Consent Decree shall have the same meaning as defined at 40 C.F.R. § 60.2;

- x. “Month” shall mean a calendar month;
- y. “NOx” shall mean oxides of nitrogen;
- z. “Paragraph” shall mean a portion of this Decree identified by an arabic numeral;
- aa. “Parties” shall mean the United States and the Defendants;
- bb. “Permanent Shutdown” and “Permanently Shutdown” shall mean the permanent cessation of Kiln Operation and the surrender of all Kiln permits;
- cc. “Project Dollars” shall mean the Defendants’ expenditures and payments incurred or made in carrying out the project identified in Section VI of this Consent Decree (Environmental Mitigation Project) to the extent that such expenditures or payments both (a) comply with the Project Dollar and other requirements set by Paragraph 25 for such expenditures and payments; and (b) constitute the Defendants’ documented external costs for contractors, vendors, and equipment;
- dd. “Retire” or “Retirement” shall mean (1) to permanently Shutdown the Kiln; and (2) to file an application in accordance with Maryland’s State Implementation Plan to permanently remove any legal authorization for future operation of the Kiln.
- ee. “Scrubber Technology” means a pollution control system designed to reduce sulfur dioxide emissions to the atmosphere, using an alkaline reagent such as lime, consisting of a wet or a semi-dry injection system, and including a vessel outside of the existing kiln duct system;
- ff. “Section” shall mean a portion of this Decree identified by a roman numeral;

gg. “Shutdown” shall mean the cessation of Kiln Operation;

hh. “SNCR” shall mean Selective Non-Catalytic Reduction pollution control technology that injects an ammonia or urea-based reagent into the kiln exhaust stream without the use of a catalyst for the purpose of reducing NO_x emissions;

ii. “SO₂” shall mean sulfur dioxide;

jj. “Startup” shall mean the beginning of Kiln Operation;

kk. “Ton” or “Tons” shall mean short ton or short tons, respectively; and

ll. “United States” shall mean the United States of America, acting on behalf of the EPA.

IV. CIVIL PENALTY

9. Within 30 Days after the Effective Date of this Consent Decree, the Defendants shall pay to the United States the sum of \$700,000.00 as a civil penalty.

10. The Defendants shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to the Defendants, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of Maryland, 36 S. Charles Street 4th Fl., Baltimore, MD 21201. At the time of payment, the Defendants shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States, et al. v. Holcim (US) Inc., et al., and shall reference the civil action number, 1:11-cv-01119-CCB and DOJ case number 90-5-2-1-09594, to the United States in accordance with

Section XIV of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by

First Class mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268.

11. The Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating their federal income tax.

V. INJUNCTIVE RELIEF

12. Interim SO₂ Limit: Upon the Effective Date of this Consent Decree and continuing until September 9, 2016, if the Defendants select Compliance Option A or B, or until September 9, 2015, if the Defendants select Compliance Option C, the Defendants shall comply with a 12-Month Rolling Total Emission Tonnage Limit of 795 Tons of SO₂. Compliance with the Interim SO₂ Limit will be determined at the end of each Operating Month; the first compliance determination for this 12-Month Rolling Total Emission Tonnage Limit will be on the final Day of the 12th Operating Month after the Effective Date of this Consent Decree.

13. Selection of Compliance Option: By July 31, 2014, the Defendants shall submit a report (“Compliance Option Selection Report”) which selects Compliance Option A, Compliance Option B, or Compliance Option C, in compliance with Section XIV (Notices).

a. The Compliance Option Selection Report shall include the following:

- i. A statement of which Compliance Option has been selected;
- ii. A written description of the Defendants’ plan for carrying out the selected Compliance Option, including a list of new equipment that will be installed at the Kiln,

existing equipment that will be replaced at the Kiln, and existing equipment that will remain at the Kiln; and

iii. An estimated schedule for anticipated delivery and installation of equipment necessary for carrying out the selected Compliance Option.

14. Requirement to Comply with Selected Compliance Option:

a. If the Defendants select Compliance Option A, they shall, by no later than September 9, 2016:

(1) convert the Kiln from the current Kiln configuration to a low-NOx preheater/precalciner kiln configuration;

(2) install and Continuously Operate a Lime Injection System for the control of SO₂ emissions;

(3) install and Continuously Operate SNCR technology for the control of NOx emissions;

(4) comply with an SO₂ 30-Day Rolling Average Emission Rate Limit of 1.6 lbs/Ton; the first compliance determination for this 30-Day Rolling Average Emission Rate Limit will be on the 30th Operating Day after September 9, 2016;

(5) comply with an SO₂ 12-Month Rolling Total Emission Tonnage Limit of 655 Tons; the first compliance determination for this 12-Month Rolling Total Emission Tonnage Limit will be on the final Day of the 12th Operating Month after September 9, 2016;

and

(6) comply with a NO_x 30-Day Rolling Average Emission Rate Limit of 1.8 lbs/Ton; the first compliance determination for this 30-Day Rolling Average Emission Rate Limit will be on the 30th Operating Day after September 9, 2016.

b. If the Defendants select Compliance Option B, they shall, by no later than September 9, 2016:

(1) install and Continuously Operate Scrubber Technology for the control of SO₂ emissions at the Kiln; and

(2) comply with an SO₂ 30-Day Rolling Average Emission Rate Limit of 1.5 lbs/Ton; the first compliance determination for this 30-Day Rolling Average Emission Rate Limit will be on the 30th Operating Day after September 9, 2016.

c. If the Defendants select Compliance Option C, they shall, by no later than September 9, 2015, Retire the Kiln.

15. Applicability of New Source Performance Standards (“NSPS”) and National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry. Nothing in this Consent Decree releases the Defendants from compliance with New Source Performance Standards for Portland Cement Plants, National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry, or any other applicable law or regulation.

16. If, subsequent to the Defendants’ submittal of the Compliance Option Selection Report, the State or EPA makes a determination that NSPS requirements are applicable to the Defendants’ selected Compliance Option, the Defendants may, within 30 Days after receiving written notice of the State’s or EPA’s determination, submit a revision to the Compliance Option

Selection Report to select one of the other Compliance Options. Nothing in this Paragraph shall alter the compliance deadlines set forth in Paragraph 14.

17. Permitting.

a. Where any compliance obligation under this Section requires the Defendants to obtain a federal, state, or local permit or approval, the Defendants shall submit timely and complete applications and take all other actions necessary to obtain such permits or approvals.

b. The Defendants may seek relief under the provisions of Section IX of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals.

c. In addition to first obtaining any permits or approvals pursuant to Paragraph 17.a., within 145 days of submission of the Compliance Option Selection Report pursuant to Paragraph 13, the Defendants shall submit applications to the relevant permitting authorities to incorporate the requirements and Emission Limits in Paragraph 14.a, if the Defendants select Compliance Option A, or in Paragraph 14.b., if the Defendants select Compliance Option B, into federally enforceable construction or other permits (other than Title V permits).

d. Upon issuance of any permit or approval required under this Paragraph, the Defendants shall file any applications necessary to incorporate the requirements of that permit into the Title V operating permit of the Facility. The Defendants shall not challenge the

inclusion in any such permit of the Emission Limits expressly prescribed in this Consent Decree, but nothing in this Consent Decree is intended nor shall it be construed to require the establishment of Emission Limits other than those Emission Limits expressly prescribed in this Consent Decree nor to preclude the Defendants from challenging any more stringent Emission Limits should they be proposed for reasons independent of this Consent Decree.

e. The Parties agree that the incorporation of any Emission Limits and any other requirements and limitations into the Title V permits for the Facility shall be in accordance with the applicable federal, state, or local rules or laws.

f. The Defendants shall provide to the EPA Air Enforcement Division, in accordance with Section XIV of this Decree (Notices), a copy of each application for a permit to address or comply with any provision of this Consent Decree, as well as a copy of any permit proposed as a result of such application, to allow for timely EPA participation in any public comment opportunity.

g. Notwithstanding the reference to Title V permits in this Consent Decree, the enforcement of such permits shall be in accordance with their own terms and the Act. The Title V permits shall not be enforceable under this Consent Decree, although any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree, regardless of whether such term has or will become part of a Title V permit, subject to the terms of Section XVIII (Termination) of this Consent Decree.

18. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, other than the Compliance Option

Selection Report submitted pursuant to Paragraph 13 and the semi-annual reports submitted pursuant to Paragraph 32, the EPA shall in writing:

- a. approve the submission;
- b. approve the submission upon specified conditions;
- c. approve part of the submission and disapprove the remainder; or
- d. disapprove the submission.

19. If the submission is approved, the Defendants shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is approved more than 45 Days after EPA's receipt of the submission, any deadlines set forth in the submission shall be extended by the same number of Days that EPA's action exceeded the 45-Day period. If the submission is conditionally approved or approved only in part, the Defendants shall, upon written direction from the EPA, take all actions required by the approved plan, report, or other item that the EPA determines are technically severable from any disapproved portions, subject to the Defendants' right to dispute only the specified conditions or the disapproved portions, under Section X of this Decree (Dispute Resolution).

20. If the submission is disapproved in whole or in part, the Defendants shall, within 30 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, the Defendants shall proceed in accordance with the preceding Paragraph.

21. Any stipulated penalties applicable to the original submission, as provided in Section VIII of this Decree, shall accrue during the 30-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the Defendants' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

22. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, the EPA may again require the Defendants to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to the Defendants' right to invoke Dispute Resolution and the right of the EPA to seek stipulated penalties as provided in the preceding Paragraphs.

23. Prohibition of Netting Credits or Offsets from Required Controls. Except as otherwise provided below, emission reductions resulting from compliance with the requirements of this Consent Decree shall not be considered as a creditable contemporaneous emission decrease for the purpose of obtaining a netting or offset credit under the Clean Air Act's Nonattainment NSR and PSD programs.

24. The limitations on the generation and use of netting credits or offsets, set forth in Paragraph 23 above, do not apply to emission reductions achieved by the Defendants that are surplus to those required under this Consent Decree ("surplus emission reductions"). For purposes of this Paragraph, surplus emission reductions are the reductions over and above those required under this Consent Decree that result from the Defendants' compliance with federally enforceable emissions limits that are more stringent than limits imposed under this Consent

Decree or from the Defendants' compliance with emissions limits otherwise required under applicable provisions of the Clean Air Act or with an applicable SIP that contains more stringent limits than those imposed under this Consent Decree. Nothing in this Consent Decree is intended to preclude the emission reductions generated under this Consent Decree from being considered by the EPA or a State as creditable contemporaneous emission decreases for the purpose of attainment demonstrations submitted pursuant to § 110 of the Act, 42 U.S.C. § 7410, or in determining impacts on NAAQS, PSD increments, or air quality-related values, including visibility in a Class I area.

VI. ENVIRONMENTAL MITIGATION PROJECT

25. The Defendants shall implement the Environmental Mitigation Project ("Project") described in Appendix A to this Decree, in compliance with other terms of this Consent Decree. In implementing the Project, the Defendants shall spend no less than \$150,000. The Defendants shall not include their own personnel costs in overseeing the implementation of the Project as Project Dollars.

26. The Defendants shall maintain, and present to the Plaintiff upon request, all documents to substantiate the Project Dollars expended and shall provide these documents to the Plaintiff within thirty (30) days of a request by the Plaintiff for the documents.

27. All reports prepared by the Defendants pursuant to the requirements of this Section of the Consent Decree and required to be submitted to EPA shall be publicly available from the Defendants without charge. However, the Defendants may assert that any part of these plans and reports are protected as Confidential Business Information ("CBI") under 40 C.F.R.

Part 2. As to any information that the Defendants seek to protect as CBI, the Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

28. The Defendants shall certify to EPA, at least 30 Days before commencing the Project, that the Defendants are not otherwise required by law to perform the Project described in the plan, that the Defendants are unaware of any other person who is required by law to perform the Project, and that the Defendants will not use the Project, or portion thereof, to satisfy any obligations that they may have under other applicable requirements of law.

29. The Defendants shall use good faith efforts to secure as much benefit as possible for the Project Dollars expended, consistent with the applicable requirements and limits of this Consent Decree.

30. If the Defendants elect (where such an election is allowed) to undertake a Project by contributing funds to another person or entity that will carry out the Project in lieu of the Defendants, but not including the Defendants' agents or contractors, that person or instrumentality must, in writing: (a) identify its legal authority for accepting such funding; and (b) identify its legal authority to conduct the Project for which the Defendants contribute the funds. Regardless of whether the Defendants elected (where such election is allowed) to undertake the Project by themselves or to do so by contributing funds to another person or instrumentality that will carry out the Project, the Defendants acknowledge that they will receive credit for the expenditure of such funds only if the Defendants demonstrate that the funds have been actually spent by either the Defendants or by the person or instrumentality receiving them in carrying out the Project, and that such expenditures met all requirements of this Consent Decree.

31. Within 60 days after completion of the Project, the Defendants shall submit to the Plaintiff a report that documents the date that the Project was completed, the Defendants' results of implementing the Project, including the estimated emission reductions or other environmental benefits achieved, and the Project Dollars expended by the Defendants in implementing the Project.

VII. REPORTING REQUIREMENTS

32. The Defendants shall submit the following reports:

a. Within 30 Days after the end of each semi-annual calendar period (i.e., by July 31, and January 31) after the Effective Date, until termination of this Decree pursuant to Section XVIII, the Defendants shall submit a semi-annual report for the preceding semi-annual period that shall include: the status of any construction or compliance measures; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications; operation and maintenance; a discussion of Defendants' progress in satisfying their obligations in connection with the Environmental Mitigation Project under Section VI including, at a minimum, a narrative description of activities undertaken; status of any construction or compliance measures, including the completion of any milestones, and a summary of costs incurred since the previous report. The report shall also include:

(1) a table, which shall be provided in an Excel spreadsheet or a format compatible and able to be manipulated by Excel, which includes the 30-Day Rolling Average Emission Rates and 12-Month Rolling Total Emission Tonnages for the preceding semi-annual period for any pollutant subject to a 30-Day Rolling Average Emission Rate Limit or 12-Month Rolling Total Emission Tonnage Limit under this Consent Decree;

(2) all CEMS data necessary to determine compliance with an Emission Limit established pursuant to Section V. of this Consent Decree; and

(3) a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation.

33. If the Defendants violate, or have reason to believe that they may violate, any requirement of this Consent Decree, the Defendants shall notify the United States of such violation and its likely duration, in writing, within 10 working Days of the Day the Defendants first become aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, the Defendants shall so state in the report. The Defendants shall investigate the cause of the violation and shall then submit an amendment to the report required under Paragraph 32, including a full explanation of the cause of the violation, within 30 Days of the Day the Defendants become aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves the Defendants of their obligation to provide the notice required by Section IX (Force Majeure).

34. Whenever any violation of this Consent Decree or of any other event affecting the Defendants' performance under this Decree, or the performance of the Facility, may pose an immediate threat to the public health or welfare or the environment, the Defendants shall notify the EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after the Defendants first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

35. All reports shall be submitted to the persons designated in Section XIV (Notices); whenever possible, reports shall be submitted in electronic format to those persons designated in Section XIV (Notices) whose contact information includes an e-mail address.

36. Each report submitted by the Defendants under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

37. The reporting requirements of this Consent Decree do not relieve the Defendants of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

38. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

39. The Defendants shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in Table 1 below, unless excused under Section IX

(Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

a. Violation of a 30-Day Rolling Average Emission Rate Limit is a violation on every Day on which the average is based. Each subsequent Day of violation after a violation of a 30-Day Rolling Average Emission Rate Limit is subject to the corresponding penalty per Day as specified in Table 1, below. Where a violation of a 30-Day Rolling Average Emission Rate Limit (for the same pollutant) recurs within periods of less than 30 Days, the Defendants shall not pay a daily stipulated penalty for any Day of recurrence for which a stipulated penalty is already payable.

b. Violation of a 12-Month Total Emission Tonnage Limit is a violation for each Month on which the 12-Month Total Emission Tonnage is based. Each subsequent Month of violation after a violation of a 12-Month Rolling Total Emission Tonnage Limit is subject to the corresponding penalty per Month as specified in Table 1, below. Where a violation of a 12-Month Rolling Total Emission Tonnage Limit recurs within periods of less than 12 Months, the Defendants shall not pay a monthly stipulated penalty for any Month of recurrence for which a stipulated penalty is already payable.

Table 1. Stipulated Penalties

| Consent Decree Violation | Stipulated Penalty |
|---|---------------------------|
| Failure to pay the civil penalty as specified in Section IV (Civil Penalty) of this Consent Decree. | \$7,500 for each Day. |

| | |
|---|--|
| <p>Failure to comply with a 30-Day Rolling Average Emission Rate Limit for NO_x or SO₂ where the emissions are less than 5% in excess of the limits set forth in this Consent Decree.</p> | <p>\$1,500 for each Day during the 30-Day rolling period where the violation is less than 5% in excess of the Limit.</p> |
| <p>Failure to comply with a 30-Day Rolling Average Emission Rate Limit for NO_x or SO₂ where the emissions are equal to or greater than 5% but less than 10% in excess of the limits set forth in this Consent Decree.</p> | <p>\$3,000 for each Day during the 30-Day rolling period where the violation is equal to or greater than 5% but less than 10% in excess of the Limit.</p> |
| <p>Failure to comply with a 30-Day Rolling Average Emission Rate Limit for NO_x or SO₂ where the emissions are equal to or greater than 10% in excess of the limits set forth in this Consent Decree.</p> | <p>\$5,000 for each Day during the 30-Day rolling period where the violation is equal to or greater than 10% in excess of the Limit.</p> |
| <p>Failure to comply with a 12-Month Rolling Total Emission Tonnage Limit for SO₂ where the emissions are less than 5% in excess of the limits set forth in this Consent Decree.</p> | <p>\$7,500 for each Month during the initial 12 Months of violation, and \$10,000 for each consecutive Month of violation thereafter where the violation is less than 5% in excess of the Limit.</p> |
| <p>Failure to comply with a 12-Month Rolling Total Emission Tonnage Limit for SO₂ where the emissions are equal to or greater than 5% but less than 10% in excess of the limits set forth in this Consent Decree.</p> | <p>\$10,000 for each Month during the initial 12 Months of violation, and \$15,000 for each consecutive Month of violation thereafter where the violation is equal to or greater than 5% but less than 10% in excess of the Limit.</p> |
| <p>Failure to comply with a 12-Month Rolling Total Emission Tonnage Limit for SO₂ where the emissions are equal to or greater than 10% in excess of the limits set forth in this Consent Decree.</p> | <p>\$20,000 for each Month during the initial 12 Months of violation, and \$40,000 for each consecutive Month of violation thereafter where the violation is equal to or greater than 10% in excess of the Limit.</p> |

| | |
|--|---|
| <p>Failure to convert the Kiln, or install and Continuously Operate control technology as required by Paragraph 14.a., if the Defendants select Compliance Option A.</p> | <p>For each Day that the Kiln operates beyond the deadline in Paragraph 14.a. without complying with all of the requirements set forth in Paragraph 14.a.1.-14.a.3.: \$2,000 for each Day during the first 30 Days; \$4,000 for each Day during the next 30 Days; and \$7,000 for each Day during each Day thereafter.</p> |
| <p>Failure to install and Continuously Operate control technology as required by Paragraph 14.b., if the Defendants select Compliance Option B.</p> | <p>For each Day that the Kiln operates beyond the deadline in Paragraph 14.b. without complying with the requirements set forth in Paragraph 14.b.1.: \$2,000 for each Day during the first 30 Days; \$4,000 for each Day during the next 30 Days; and \$7,000 for each Day during each Day thereafter.</p> |
| <p>Failure to Retire the Kiln as required by Paragraph 14.c, if the Defendants select Compliance Option C.</p> | <p>For each Day that the Kiln operates beyond the deadline in Paragraph 14.c: \$3,000 for Each Day during the first 30 Days; \$5,000 for each Day during the next 30 Days; and \$10,000 for each Day during each Day thereafter.</p> |
| <p>Failure to apply for any approval or permit or permit amendment required by Paragraph 17.</p> | <p>\$1,000 for each Day for each such failure.</p> |
| <p>Failure to timely submit or modify a report, plan, study, analysis, protocol, or other submittal required by this Consent Decree.</p> | <p>\$750 for each Day during the first 10 Days; \$1,000 per Day thereafter.</p> |
| <p>Failure to complete the Environmental Mitigation Project by the deadline set forth in Appendix A.</p> | <p>\$20,000, if the Environmental Mitigation Project is completed within 90 Days of the deadline set forth in Appendix A; \$50,000 if the Environmental Project is not completed by the 91st Day after the deadline set forth in Appendix A; \$300,000 if the Environmental Project is not completed by the 365th Day after the deadline set forth in Appendix A.</p> |

| | |
|---|--|
| Any other violation of this Consent Decree. | \$1,000 for each Day for each violation. |
|---|--|

40. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

41. The Defendants shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

42. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

43. The Defendants may dispute any demand for stipulated penalties in accordance with the Dispute Resolution procedures of Section X. Stipulated penalties shall continue to accrue as provided in Paragraph 40, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the EPA that is not appealed to the Court, the Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of the EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, the Defendants shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

44. The Defendants shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

45. If the Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, the Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

46. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendants' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Air Act, the Defendants shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

47. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Defendants, of any entity controlled by the Defendants, or of the Defendants' contractors, that delays or prevents the performance of any

obligation under this Consent Decree despite the Defendants' best efforts to fulfill the obligation. The requirement that the Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Defendants' financial inability to perform any obligation under this Consent Decree.

48. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Defendants shall provide notice orally or by electronic or facsimile transmission to the EPA within 48 hours of when the Defendants first knew that the event might cause a delay. Within five (5) days thereafter, the Defendants shall provide in writing to the EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The Defendants shall be deemed to

know of any circumstance of which the Defendants, any entity controlled by the Defendants, or the Defendants' contractors knew or should have known.

49. If the EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The EPA will notify the Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

50. If the EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the EPA will notify the Defendants in writing of its decision.

51. If the Defendants elect to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), they shall do so no later than 15 days after receipt of the EPA's notice. The procedures set forth in Section X shall govern further proceedings. In any such proceeding, the Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Defendants complied with the requirements of Paragraphs 47 and 48, above. If the Defendants carry this burden, the delay at issue shall be deemed not to be a violation by the Defendants of the affected obligation of this Consent Decree identified to the EPA and the Court.

X. DISPUTE RESOLUTION

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

53. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 60 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 45 Days after the conclusion of the informal negotiation period, the Defendants invoke formal dispute resolution procedures as set forth below.

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

55. The United States shall serve its Statement of Position within 45 Days of receipt of the Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on the Defendants, unless the Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

56. The Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 45 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

57. The United States shall respond to the Defendants' motion within the time period allowed by the Local Rules of this Court. The Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

58. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 54 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by the EPA under this Consent Decree; the adequacy of the

performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the Defendants shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 54, the Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree.

59. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 43. If the Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

60. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by the Defendants or their representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess the Defendants' compliance with this Consent Decree.

61. Until five (5) years after the termination of this Consent Decree, the Defendants shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to the Defendants' performance of their obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, the Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

62. At the conclusion of the information-retention period provided in the preceding Paragraph, the Defendants shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, the Defendants shall deliver any such documents, records, or other information to the EPA. The Defendants may assert that certain

documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendants assert such a privilege, they shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

63. The Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that the Defendants seek to protect as CBI, the Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

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

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

65. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging of this Consent Decree.

66. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 65. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

67. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, and/or other appropriate relief relating to the Facility, the Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 65 of this Section.

68. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that the Defendants' compliance with any aspect of this Consent Decree will result

in compliance with provisions of the Act, 42 U.S.C. § 7401 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

69. This Consent Decree does not limit or affect the rights of the Defendants or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against the Defendants, except as otherwise provided by law.

70. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

71. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by the Defendants.

XIV. NOTICES

72. Each report, study, notification or other communication of the Defendants shall be submitted as specified in this Consent Decree. Unless otherwise provided herein, notifications to or communications between the Parties shall be deemed submitted on the date they are postmarked. Notifications and communications shall be sent by U.S. Mail, postage pre-paid, or private courier service, except for notices under Section IX (Force Majeure) and Section X (Dispute Resolution) which shall be sent by overnight mail or by certified or registered mail, return receipt requested. If the date on which a notification or other communication is due falls on a Saturday, Sunday or legal holiday, the deadline for such submission shall be enlarged to the

next business day, except for notices under Section IX (Force Majeure) and notices under Paragraph 34. Where an addressee listed below has provided an e-mail address, the Defendants may submit to that person any reports, notifications, certifications, or other communications required by this Consent Decree electronically (other than submission of a permit application required by this Consent Decree, payment of penalties under Section IV (Civil Penalty) or Section VIII (Stipulated Penalties)) in lieu of submission by U.S. Mail. Electronic submissions will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy as provided in this Paragraph. Where this Consent Decree requires that notices and submissions are to be made to the United States they shall be made to the United States Department of Justice and all of the designated EPA offices set forth below. Where this Consent Decree requires that notices and submissions shall be made to the EPA, they need only be sent to the designated EPA offices set forth below. Except as otherwise provided herein, all reports, notifications, certifications, or other communications required under this Consent Decree to be submitted or sent to the United States, the EPA, and/or the Defendants shall be addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-09594

To the U.S. Environmental Protection Agency Air Enforcement Division:

Director, Air Enforcement Division

U.S. Environmental Protection Agency
Office of Civil Enforcement
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 2242-A
Washington, DC 20460

Shaun Burke
U.S. Environmental Protection Agency
Air Enforcement Division
Office of Civil Enforcement
Ariel Rios South Building
1200 Pennsylvania Avenue, N.W.
Mail Code 2242-A
Washington, DC 20460
burke.shaun@epa.gov

Director, Air Protection Division
U.S. Environmental Protection Agency
Region III
1650 Arch Street (3AP00)
Philadelphia, PA 19103

and

Bruce Augustine
U.S. Environmental Protection Agency
Region III
1650 Arch Street (3AP20)
Philadelphia, PA 19103
augustine.bruce@epa.gov

To Defendant:

Chief Legal Officer
Holcim (US) Inc.
6211 N. Ann Arbor Road
Dundee, MI 48131

73. Any Party may, by written notice to the other Parties, change its designated notice recipient(s) or notice address(es) provided above.

XV. EFFECTIVE DATE

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

XVI. RETENTION OF JURISDICTION

75. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

76. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

77. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 58, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

78. After the Defendants have completed the requirements of Section V (Injunctive Relief), have thereafter maintained continuous satisfactory compliance with this Consent Decree

for a period of one (1) year, have complied with all other requirements of this Consent Decree, including those relating to the Environmental Mitigation Project required by Section VI, and have paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, the Defendants may serve upon the United States a Request for Termination, stating that the Defendants have satisfied those requirements, together with all necessary supporting documentation. Following receipt by the United States of the Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

79. If the United States does not agree that the Decree may be terminated, the Defendants may invoke Dispute Resolution under Section X. However, the Defendants shall not seek Dispute Resolution of any dispute regarding termination until 60 days after service of their Request for Termination.

XIX. PUBLIC PARTICIPATION

80. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. The Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to

challenge any provision of the Decree, unless the United States has notified the Defendants in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

81. Each undersigned representative of the Defendants and the Deputy Section Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

82. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. The Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

83. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

84. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and the Defendants.

XXIII. APPENDICES

85. The following appendices are attached to and part of this Consent Decree:
“Appendix A” is the Environmental Mitigation Project Description.

Dated and entered this _____ day of _____, _____.

UNITED STATES DISTRICT JUDGE
District of Maryland

United States of America v. Holcim (US) Inc. et al. Consent Decree Signature Page

FOR THE UNITED STATES OF AMERICA:

7/8/13
Date



NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

7/9/13
Date



ERICA H. PENCAK
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-1543
erica.pencak@usdoj.gov

ROD J. ROSENSTEIN
United States Attorney for the
District of Maryland

Date

LARRY D. ADAMS
Assistant United States Attorney
United States Attorney's Office
District of Maryland
36 S. Charles Street, 4th Floor
Baltimore, MD 21201
(410) 209-4800
Larry.Adams@usdoj.gov

United States of America v. Holcim (US) Inc. et al. Consent Decree Signature Page

FOR THE UNITED STATES OF AMERICA:

Date

NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date

ERICA H. PENCAK
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-1543
erica.pencak@usdoj.gov

ROD J. ROSENSTEIN
United States Attorney for the
District of Maryland

July 8, 2013

Date

LARRY D. ADAMS
Assistant United States Attorney
United States Attorney's Office
District of Maryland
36 S. Charles Street, 4th Floor
Baltimore, MD 21201
(410) 209-4800
Larry.Adams@usdoj.gov

United States of America v. Holcim (US) Inc. et al. Consent Decree Signature Page

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

7/10/13
Date

[Redacted Signature]

SUSAN SHINKMAN
Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

7/8/2013
Date

[Redacted Signature]

PHILLIP A. BROOKS
Director, Air Enforcement Division
Office of Civil Enforcement
United States Environmental Protection Agency

7/8/13
Date


[Redacted Signature]

for ROBERT G. KLEPP
Attorney, Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

United States of America v. Holcim (US) Inc. et al. Consent Decree Signature Page


FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

7/10/13
Date




SHAWN M. GARVIN
Regional Administrator
United States Environmental Protection Agency, Region III

7/8/13
Date



MARCIA E. MULKEY
Regional Counsel
United States Environmental Protection Agency, Region III

7/8/13
Date



NATALIE L. KATZ
Senior Assistant Regional Counsel
United States Environmental Protection Agency, Region III

United States America v. Holcim (US) Inc. et al. Consent Decree Signature Page

FOR HOLCIM (US) INC.:

7/9/13
Date

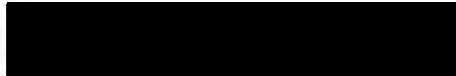


JASON MORIN
Vice President Manufacturing - East
Holcim (US) Inc.

United States America v. Holcim (US) Inc. et al. Consent Decree Signature Page

FOR ST. LAWRENCE CEMENT COMPANY, L.L.C.:

JULY 10, 2013
Date



JENNIFER GOOD
Vice President, General Counsel & Corporate Secretary
Holcim (Canada) Inc.

APPENDIX A

United States of America vs. Holcim (US) Inc. et al. Consent Decree

ENVIRONMENTAL MITIGATION PROJECT

The Defendants shall spend at least \$150,000 Project Dollars and shall comply with the requirements of this Appendix and with Section VI of the Consent Decree (Environmental Mitigation Project) to implement and secure the environmental benefits of the Environmental Mitigation Project (“Project”) described below.

- A. By December 31, 2014, Defendants shall:
 - 1. Discontinue use of Plant Loader, Caterpillar 962-G, Serial Number AXY00218, including its Tier 1 engine, Serial Number 5GG00963;
 - 2. Properly dispose of the Tier 1 engine, Serial Number 5GG00963, which must include destruction of the engine block; and
 - 3. Purchase a new Plant Loader with an engine that meets Tier 4 emission standards, set forth in 40 C.F.R. § 1039.101, Table 1, regardless of the model year of the engine.

- B. Nothing in this Consent Decree shall be interpreted to prohibit the Defendants from completing the Project ahead of schedule.

- C. In accordance with the requirements of Paragraph 31 of the Consent Decree, within 60 Days following the completion of the Project, the Defendants shall submit to EPA for approval of Project closure, a Project completion report that documents:
 - 1. The date the Project was completed;
 - 2. The results and documentation of implementation of the Project, including the estimated emission reductions or other environmental benefits achieved;
 - 3. The Project Dollars incurred by the Defendants in implementing the Project; and
 - 4. Certification by a Responsible Official in accordance with Paragraph 36 of the Consent Decree that the Project has been completed in full satisfaction of the requirements of the Consent Decree and this Appendix.

- D. If EPA concludes based on the Project completion report or subsequent information provided by the Defendants that the Project has been performed and completed in accordance with the Consent Decree, then EPA will approve completion of the Project for purposes of the Consent Decree.