UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No.

v.

CONSENT DECREE

HOLCIM (US) INC.,

Defendant.
_____/

CONSENT DECREE

WHEREAS, Plaintiff United States of America ("United States" or "Complainant"), on behalf of the United States Environmental Protection Agency ("EPA"), concurrently with lodging this Consent Decree (or "Decree"), has filed a complaint (the "Complaint") in this action against Holcim (US) Inc. ("Holcim" or "Defendant") pursuant to Section 113(b) of the Clean Air Act (the "Act" or "CAA"), 42 U.S.C. § 7413(b).

WHEREAS, the Defendant manufacturers Portland cement at its facility located at 15215 Day Road, Dundee, Michigan (the "Facility" or the "Dundee facility").

WHEREAS, the Defendant operates two wet-process rotary kilns ("Kiln #1" and "Kiln #2") and each kiln is equipped with a fabric filter (i.e., baghouse) for particulate emission control. On each kiln, the baghouse is either used in conjunction with an activated carbon injection system ("Carbon Injection System") or with a limestone slurry scrubber-packed tower and regenerative thermal oxidizer system ("S/RTO System"). The effluent streams from the two kilns are combined in a common exhaust duct and are discharged through the main stack, which is approximately 350 feet in height.

WHEREAS, the Defendant is subject to a Title V Renewable Operating Permit No. MI-ROP-B1743-2004, issued by the Michigan Department of Environmental Quality ("MDEQ") and effective April 27, 2004 until April 27, 2009.

WHEREAS, the Defendant is subject to the Permit to Install No. 60-71H, issued by the MDEQ, which was supplemented on April 29, 1994 and incorporates the standard for the density of emissions (i.e., particulate matter) contained in R336.1301 of the Michigan State Implementation Plan ("SIP"). The standard is included in Holcim's Title V permit.

WHEREAS, the Defendant is subject to dioxin/furan ("D/F") emission limits, as found in the National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry ("Portland Cement NESHAP"), for which compliance is based on inlet

temperatures to the baghouse control system. The standard is included in Holcim's Title V permit.

WHEREAS, the Defendant on November 11, 2008 announced that it must reduce production capacity in its cement operations in response to the extensive downturn in the demand for cement products and stated it will permanently close the Dundee facility.

WHEREAS, on December 16, 2008, the Defendant informed the MDEQ that Kiln #2 was permanently shut down on November 30, 2008 and that Kiln #1 will be permanently shutdown by March 31, 2009.

WHEREAS, on March 14, 2009, the Defendant informed the Department of Justice ("DOJ") that Kiln #1 has been permanently shut down.

WHEREAS, the Complaint alleges that the Defendant is a person as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and Federal, State and local regulations promulgated pursuant to the Act. The Complaint further alleges that the Facility, owned by the Defendant, is a major source as defined in Sections 112(a)(1) and 501(2) of the Act, 42 U.S.C. §§ 7412(a)(1) & 7611(2), and Federal and State regulations promulgated pursuant to the Act; and is a Portland cement plant as defined in 40 C.F.R. § 63.1341 and subject to the Portland Cement NESHAP (40 C.F.R. Part 63, Subpart LLL).

WHEREAS, the Complaint alleges that the Defendant violated Section 112 of the Act, 42 U.S.C. § 7412, and the implementing regulations at 40 C.F.R. Part 63, Subparts A and LLL, by exceeding the applicable kiln baghouse inlet temperature ("BHIT") limits in 40 C.F.R. §§ 63.1344(a) and 63.1349(b)(3)(iv), and by failing to operate and maintain, at all times, all affected sources (e.g., kilns) at the Facility in a manner consistent with good air pollution practices for minimizing emissions.

WHEREAS, the Complaint alleges that the Defendant violated the Michigan SIP requirements, R336.1201 and R336.1301, by discharging into the outer air from a process or process equipment a visible emission of density greater than the limit specified in the

Defendant's Permit to Install No. 60-71H (incorporating the standards for density of emission in R336.1301(1)(c)).

WHEREAS, the Complaint alleges that the Defendant violated requirements of the Title V permit by failing to meet the conditions in Table F-1.8 FG008 for Kiln #1 and Kiln #2 which specify limits for visible emissions (i.e., particulate matter) at the main stack and set the temperature of the gas at the inlet to the particulate matter control device ("PMCD") for each kiln.

WHEREAS, the Defendant does not admit any of the allegations of the Complaint and does not admit any liability to the United States arising out of the violations alleged in the Complaint.

WHEREAS, this Consent Decree does not constitute an admission of either any facts or liability by the Defendant.

WHEREAS, the Defendant consents to the simultaneous filing of the Complaint and the lodging of the Decree and agrees to undertake the injunctive relief and reporting requirements as set forth in this Decree at its Dundee facility.

WHEREAS, the United States and the Defendant, collectively the "Parties," recognize, and the Court by entering this Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication of any issue of fact or law, and with the consent of the Parties, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331 and 1345. Venue lies in this District pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 7413(b),

because the violations averred in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, the Defendant consents to the Court's jurisdiction over this Decree and any such action and over the Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, the Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), for violations of Section 112 of the Act, 42 U.S.C. § 7412, and its implementing regulations at 40 C.F.R. Part 63, Subparts A and LLL; the Michigan Air Pollution Control Rules R336.1201 and R336.1301, as incorporated in the Michigan SIP; the Permit to Install 60-71H; and requirements in the Title V permit.

3. Notice of the commencement of this action has been given to the State, as required by Section 113(b) of the Act, 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 Defendant 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 Defendant of its obligation to ensure that the terms of the Decree are implemented. Any transfer of ownership or operation of the Facility to any other person must be conditioned upon the transferee's agreement to undertake the obligations required by this Decree, as provided in a written agreement between the Defendant and the proposed transferee, enforceable by the United States. At least 30 days prior to any such transfer, the Defendant 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 transfer agreement, to the EPA, Region 5, and the United States Department of Justice ("DOJ"), in accordance with Section XIII of this Consent

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

7. In any action to enforce this Consent Decree, the Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this 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 same meanings unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

A. "Activated carbon" shall mean the media used to remove pollutants from a gas stream via adsorption.

B. "Air pollution control system" shall mean the equipment used to reduce the release of particulate matter and other pollutants to the atmosphere.

C. "Baghouse" shall mean an air pollution control device used to trap particulates by filtering gas streams through large fabric bags usually made of cloth or glass fibers.

D. "BHIT" or "baghouse inlet temperature" is that which is specified by the Portland Cement NESHAP and demonstrates compliance with a dioxin/furan emission limit. BHIT is determined via a performance test

conducted in accordance with Method 23 of 40 C.F.R. Part 60, Appendix A.

E. "Carbon Injection System" shall mean the method employed prior to the baghouse to remove pollutants from the gas stream via adsorption utilizing activated carbon. In various documents related to this system, this is also termed "activated carbon," "activated carbon injection system," "dry venturi system," "dry venturi carbon injection," "dry scrubber (with activated carbon)," "carbon injection," etc. All such related terms for the purpose of this Decree shall fall under the term "carbon injection system."

F. "Complaint" shall mean the complaint filed by the United States concurrently with the lodging of this Consent Decree.

G. "COMS" or "Continuous Opacity Monitoring System" shall mean equipment that continuously measures and records visible emissions, in units of percent opacity.

H. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto. In the event of any conflict between the Decree and any appendix, this Decree shall control.

I. "Date of Lodging of the Consent Decree" or "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 Eastern District of Michigan.

J. "Day" or "day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next business day.

K. "Defendant" shall mean Holcim (US) Inc. and its successors and assigns.

L. "D/F" or "dioxin/furan" shall mean the group of toxic chemical compounds which are inadvertently generated and released into the environment as by-products of various combustion and chemical processes. For purposes of this Consent Decree, compliance with the D/F emission limit is demonstrated by meeting the BHIT limit.

M. "Effective Date" shall mean the date upon which this Decree is entered by the Court.

N. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

O. "Facility" or "Dundee facility" shall mean the Portland cement plant located at 15215 Day Road, Dundee, Michigan 48131 and owned by the Defendant.

P. "Kiln" as used in this Consent Decree shall have the same meaning as defined at 40 C.F.R. § 63.1341. The following are identified as the individual kilns at the Facility: Kiln #1 and Kiln #2.

Q. "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitation in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

R. "NESHAP" or "National Emission Standards for Hazardous Air Pollutants" are those standards set by the EPA for toxic air pollutants in source categories.

S. "Opacity" shall mean a percentage measure of the amount of light that is blocked by a medium, such as smoke.

T. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.

U. "PMCD" or "particulate matter control device" shall mean equipment used to reduce the release of particulate matter to the atmosphere.

V. "Parties" shall mean the United States and the Defendant.

W. "Permanent Shutdown" as used in this Consent Decree shall mean that the production unit (e.g., kiln) has ceased operation and will not return to service.

X. "Regenerative Thermal Oxidizer" or "RTO" shall mean a unit that removes total hydrocarbons ("THC") from gases by combustion and thereby improving THC emissions from a Kiln.

Y. "Root cause" shall mean the underlying cause of noncompliance with opacity or BHIT limits.

Z. "Root cause analysis" shall mean the primary cause or causes of an opacity or BHIT exceedance as determined through a process of investigation.

AA. "S/RTO System" or "scrubber/ regenerative thermal oxidizer system" as used in this Consent Decree shall mean an air pollution control system that treats kiln gas in a scrubber via a counter-current slurry spray and demisters and through three regenerative thermal oxidizers via high temperature to destroy volatile organic compounds.

BB. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

CC. "Shutdown" shall mean halting of production.

DD. "Startup" shall mean the period of time when only natural gas, fuel oil, or used oil is put to the burner pipe for the purposes of heating up the kiln

and no other raw materials or alternative fuel/materials are being introduced.

EE. "State" shall mean the State of Michigan and all of its departments and agencies.

FF. "Title V permit" shall mean a permit required by or issued pursuant to the requirements of 42 U.S.C. § 7661 - 7661f. For purposes of this Consent Decree, Title V permit refers to Permit No. MI-ROP-B1743-4004 issued to Holcim, effective April 27, 2004 until April 29, 2009.

GG. "United States" shall mean the United States of America and all of its departments and agencies.

IV. CIVIL PENALTY

9. Within 15 days after the Defendant receives notice that this Consent Decree has been lodged, the Defendant shall deposit the amount of $159,607.00 into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank ("Escrow Account"). Such monies shall remain in escrow until entry of the Consent Decree. If the Consent Decree is not entered by the District Court, the time for any appeal of that decision has run, or if the District Court's denial of entry is upheld on appeal, the monies placed in escrow, together with the accrued interest thereon, shall be returned to the Defendant. If the Consent Decree is entered by the District Court, the Defendant shall, within 15 days thereof, cause the monies (including the accrued interest) in the Escrow Account to be released and disbursed to the United States in payment of the civil penalty under this Consent Decree.

10. Payment of the civil penalty shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to the Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Michigan, 211 W. Fort Street, Suite 2001, Detroit, Michigan 48226. At the time of payment, the Defendant shall provide

written notice of payment and a copy of any transmittal documentation, which shall reference DOJ case number 90-5-2-1-09594 and the civil action number of this case, to the United States in accordance with Section XIII of this Consent Decree (Notices), and to the EPA by email to acctsreceivable.CINWD@epa.gov and by mail to:

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

11. The Defendant shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

V. INJUNCTIVE RELIEF REQUIREMENTS

A. Compliance Requirements

12. The Defendant, of its own accord and for reasons stated in its November 11, 2008 press release, has permanently shut down Kiln #2. The Defendant shall not return to service and operate Kiln #2 unless: (A) the Defendant provides the EPA in writing a request to return to service Kiln #2; and (B) the Defendant receives the EPA's written approval, with any associated conditions, for operating Kiln #2. Such written approval by the EPA may require modification under Section XVI of this Consent Decree (Modifications) and written approval from the MDEQ.

13. The Defendant, of its own accord and for reasons stated in its November 11, 2008 press release, has permanently shut down Kiln #1. The Defendant shall not return to service and operate Kiln #1 unless: (A) the Defendant provides the EPA in writing a request to return to service Kiln #1; and (B) the Defendant receives the EPA's written approval, with any associated conditions, for operating Kiln #1. Such written approval by the EPA may require modification under Section XVI of this Consent Decree (Modifications) and written approval from the MDEQ.

14. The Defendant shall not operate Kiln #1 and Kiln #2 unless its fabric filter collector (i.e., baghouse) and Carbon Injection System are operating in compliance with

Table F-1.8 FG008 of the Title V permit, the Permit to Install No. 60-71H at paragraph 16, and the Michigan SIP at R336.1301(1)(c).

15. The Defendant, if seeking to operate Kiln #1 pursuant to Paragraph 13, above, or Kiln #2 pursuant to Paragraph 12, above, shall submit to the EPA its written request with the operating parameters for a kiln's S/RTO system. The Defendant shall not operate Kiln #1 or Kiln #2 until EPA has approved the operating parameters for a kiln's respective S/RTO system. Such approval by the EPA does not relieve the Defendant of any obligation it may have to seek the approval of the MDEQ.

16. The Defendant shall submit all appropriate permit modifications to MDEQ to address the permanent shutdown of Kiln #1 and Kiln #2 and termination of permit conditions allowing for the operation of either kiln. Such modification(s) will be filed with the MDEQ within 30 days after the permanent shutdown of Kiln #1, but no later than April 30, 2009. The Defendant shall also provide a copy of the modifications filed with the MDEQ simultaneously to the EPA; such notice shall be in conformance with Section XIII of this Consent Decree (Notices).

17. The Defendant shall at all times operate Kiln #1 such that the temperature of the gas at the inlet to the kiln's PMCD, the BHIT, does not exceed the run average calculated for each run as determined during the performance tests as specified in Table F-1.8 FG008 of the Title V permit, Section V (Operational Parameters), Article 8 (referencing 40 C.F.R. §§ 63.1344(a)-(b) & 63.1349(b)(3)(iv)). The run average is a three hour rolling average temperature that shall be calculated as the average of 180 minute successive one-minute average temperatures as specified in Table F-1.8 FG008 of the Title V permit, Section III (Compliance Evaluation), Section 2, Article 3 (referencing 40 C.F.R. § 63.1350(f)(3)) and in accordance with the 'Alternative Monitoring Plan Request for Baghouse Inlet Temperature' determination the EPA issued to Holcim on October 15, 2008 (see Attachment A).

18. The Defendant shall at all times ensure that the visible emissions from Kiln #1 comply with the opacity limit(s) set at the stack as specified by Table F-1.8 FG008 of the Title V permit, Section II.B (Material Usage/Emission Limits: Pollutants), Article 20, the Permit to Install No. 60-71H at paragraph 16, and the Michigan SIP at R336.1301(1)(c).

19. The Defendant shall comply with the plans, maintenance programs and monitoring systems referenced in Table F-1.8 FG008 of the Title V permit, Section VI (Other Requirements).

20. The Defendant shall, if an exceedance of the opacity limitation occurs for more than one hour, take the following steps specified in 20.A through 20.D, below.

A. Notify the EPA and MDEQ within 48 hours of the occurrence.

B. Take corrective actions determined necessary to prevent such an occurrence from recurring.

C. Make a contemporaneous record of the cause, when determined, in the appropriate exceedance log.

D. Revise the Facility's Operation and Maintenance Plan under the Title V permit and the appropriate Malfunction Abatement Plans/Preventative Maintenance Programs to reflect any changes deemed necessary to ensure that the opacity exceedance does not recur.

The opacity limitation is specified in Table F-1.8 FG008 of the Title V permit, Section II.B (Material Usage/Emission Limits: Pollutants), Article 2, the Permit to Install No. 60-71H at paragraph 16, and the Michigan SIP at R336.1301(1)(c).

21. The Defendant shall, if requested by the EPA, conduct a root cause analysis for any of the opacity limitation exceedances identified by the Defendant under Paragraph 20. The root cause analysis will be due within 14 days after the Defendant receives the request from the EPA and will be submitted in conformance with the conditions specified in Paragraph 29.

22. The Defendant shall take all steps necessary to avoid breakdowns and minimize pollution control equipment downtime. This shall include, but is not limited to, operating and maintaining the air pollution control equipment associated with Kiln #1 and Kiln #2 in accordance with best practices and maintaining an on-site inventory of spare parts and other supplies necessary to make rapid repairs to equipment.

23. The Defendant shall at all times, including periods of startup, shutdown, and malfunction, operate and maintain any affected source, including air pollution control equipment, in a manner consistent with safety and good air pollution practices for minimizing emissions. 40 C.F.R. § 63.6(e)(1)(i). The Defendant shall correct malfunctions as soon as practicable after the occurrence, but no later than 48 hours after the occurrence. If the Defendant is unable to correct the malfunction within the 48 hours, the Defendant shall notify the EPA within 48 hours of the occurrence that it was unable to correct the malfunction and provide the EPA with: (A) an explanation as to why the correction could not be completed within the 48 hours; (B) the steps already taken to correct the malfunction; and (C) a detailed timeline for completing the correction of the malfunction. The EPA's receipt of the information does not relieve the Defendant of its obligation to correct the malfunction as soon as practicable after the occurrence. To the extent that an unexpected event arises during startup, shutdown, or malfunction, the Defendant must comply by minimizing emissions during such a startup, shutdown, and malfunction event consistent with safety and good air pollution control practices. 40 C.F.R. § 63.6(e)(1)(ii).

B. <u>Inspection Requirements</u>

24. The Defendant shall comply with the operating and monitoring parameters specified in the Title V permit, the Permit to Install No. 60-71H, and the Michigan SIP.

25. The Defendant shall correct as soon as practicable, but no later than 48 hours after the identification of the deficiency, all deficiencies identified in the operation and maintenance of the air pollution control equipments associated with Kiln #1 and Kiln #2 during an inspection. If

the Defendant is unable to correct the deficiency within the 48 hours, the Defendant shall notify the EPA within 48 hours of the identifying the deficiency that it was unable to correct the deficiency and provide the EPA with: (A) an explanation as to why the correction could not be completed within the 48 hours; (B) the steps already taken to correct the deficiency; and (C) a detailed timeline for correcting the deficiency. The EPA's receipt of the information does not relieve the Defendant of its obligation to correct the deficiency as soon as practicable after its identification. Such deficiencies in operation and maintenance specifically include but are not limited to any deficiency that requires the Defendant to repair or replace the air pollution control equipment.

C. Compliance Reporting and Notification Requirements

26. The Defendant shall notify EPA, within 48 hours after receiving notice from the State of Michigan or otherwise has knowledge, that the Dundee facility has been removed from the State of Michigan's emission inventory.

27. The Defendant shall notify the EPA, within five (5) business days after receiving notice from the State of Michigan or otherwise has knowledge, that the MDEQ has made a final determination regarding a permit modification filed pursuant to Paragraph 16 of this Consent Decree. The Defendant shall also notify the EPA, within five (5) business days after receiving notice from the State of Michigan or otherwise has knowledge, that:

A. The Title V permit no longer contains permit conditions allowing for the operation of Kiln #1 or prohibits the operation of Kiln #1.

B. The Title V Permit no longer contains permit conditions allowing for the operation of Kiln #2 or prohibits the operation of Kiln #2.

28. The Defendant shall, when a root cause analysis is required under Paragraph 21 of this Consent Decree, submit a written root causes analysis report within 14 days of the EPA's request. The root cause analysis report shall include the following:

A. The dates, start time, and end time that the opacity exceedance occurred.

B. The name and title of the person(s) who identified the opacity exceedance.

C. The method in which the opacity exceedance was found, i.e. either via review of COMS data or by performing Method 9 visible emission readings in accordance with Method 9 of 40 C.F.R. Part 60, Appendix A.

D. The exact location(s) from which the emission originated.

E. The step(s) taken, if any, to limit the duration and/or quantity of the emission.

F. A detailed analysis of the "root cause" or "root causes" of the occurrence, to the extent determinable; if the "root cause(s)" cannot be determined, an explanation shall be provided of what steps the Defendant took to identify the "root cause(s)."

G. An analysis of the measures, if any, that is available to reduce the likelihood of a recurrence of another opacity exceedance from the same or a similar "root cause" or "root causes." This analysis shall discuss the alternatives, if any, the probable effectiveness and cost of the alternatives, and whether an outside consultant should be retained to assist in the analysis. This analysis shall include an evaluation of possible design, operational, and maintenance changes.

H. The Defendant's recommendation on what corrective action(s) should be taken, and a schedule for completion of such corrective action(s).

29. All plans, reports or any other items required under this section of the Consent Decree shall include a certification as specified under Paragraph 36 of this Consent Decree.

D. Permit or Approval Requirements

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

The Defendant may seek relief under the provisions of Section VIII 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 Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

31. Where the Defendant receives approvals, or issuance of permit or permit modifications, from the EPA or the MDEQ, the Defendant must ensure that both implementing agencies have received copies of the approvals, permits or permit modifications. The Defendant shall also provide notification and associated documentation to the Department of Justice. Such notification shall be in conformance with Section XIII of this Consent Decree (Notices).

VI. REPORTING REQUIREMENTS

32. The Defendants shall submit the following reports:

A. On or before March 15th of each year after entry of this Consent Decree by the Court, until termination of this Decree pursuant to Section XVII, the Defendant shall submit to the EPA an annual report for the preceding year that shall include a discussion of the status, including the Defendant's progress in satisfying its obligations, regarding the compliance, notification and reporting activities required under Section V of this Decree (Injunctive Relief Requirements). The narrative shall also include as part of the description the identification of activities undertaken since the previous report and an update on future progress.

B. If the Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, the Defendant shall notify the United States of such violation and its likely duration in writing within ten (10) working days of the day the Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the

remedial steps taken, and/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 Defendant shall include a statement to that effect in the report. The Defendant shall investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day the Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves the Defendant of its obligation to provide the requisite notice for purposes of Section VIII of the Consent Decree (Force Majeure).

33. In the case of any violation of this Consent Decree or other event that may pose an immediate threat to the public health or welfare or the environment, the Defendant shall notify the EPA orally followed by written notification, or by electronic or facsimile transmission as soon as possible, but not later than 24 hours after the Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

34. All reports and notifications shall be submitted to the persons designated in Section XIII of this Consent Decree (Notices).

35. Each report submitted by the Defendant 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 I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility

of fines and imprisonment for knowing and willful submission of a materially false statement.

36. The reporting requirements of this Consent Decree do not relieve the Defendant 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.

37. 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.

VII. STIPULATED PENALTIES

38. The Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII of this Decree (Force Majeure). A violation includes failing to perform specified obligations required by the terms of this Decree according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

39. If the Defendant fails to pay the civil penalty to the United States required to be paid under Section IV of this Consent Decree (Civil Penalty) when due, the Defendant shall pay a stipulated penalty of $10,000 per day for each day that the penalty is late. Late payment of the civil penalty shall be made in accordance with Section IV, Paragraph 10, of this Consent Decree (Civil Penalty). Stipulated penalties shall be paid in accordance with Paragraph 46. All transmittal correspondence shall state that basis for such payment, late payment of the civil penalty due under the Decree or for stipulated penalties for late payment of the civil penalty, as applicable.

40. The Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure).

A. For failure to meet the compliance requirements specified in Section V.A of this Consent Decree, the following stipulated penalties accrue as designated below.

(i) For failure to comply with requirements of Paragraphs 12 and 13.

Penalty Per Violation Per Day	Period of Violation
$ 10,000.00	1st through 14th Day
$ 20,000.00	15th through 30th Day
$ 30,000.00	31st Day and beyond

(ii) For failure to comply with requirements of Paragraph 17.

Penalty per 180-Minute Average Temperature Violation	Period of Violation
$ 500.00	1 – 5 occurrences
$ 1,000.00	6 -10 occurrences
$ 1,500.00	11 – 15 occurrences
$ 2,000.00	15 + occurrences

(iii) For failure to comply with requirements of Paragraph 18.

Penalty per 6-Minute Average Opacity Violation	Period of Violation
$ 350.00	1 – 5 occurrences
$ 1,000.00	6 -10 occurrences
$ 1,500.00	11 – 15 occurrences
$ 2,000.00	15 + occurrences

If opacity values exceed 60% for fifteen (15) one (1) minute nonoverlapping integrated averages as recorded by the COMS in a six (6) hour period, a penalty of $2,000 shall automatically be incurred for that period of time.

(iv) For failure to comply with requirements of Paragraphs 14-16, 19-23.

Penalty Per Violation Per Day	Period of Violation
$ 750.00	1st through 14th Day
$ 1,500.00	15th through 30th Day
$ 3,000.00	31st Day and beyond

B. For failure to meet the inspection requirements specified in Section V.B, Paragraphs 24 and 25, of this Consent Decree, the following stipulated penalties accrue as designated below.

Penalty Per Violation Per Day	Period of Violation
$ 500.00	1st through 14th Day
$ 1,000.00	15th through 30th Day
$ 2,000.00	31st Day and beyond

C. For failure to meet the compliance reporting requirements specified in Section V.C, Paragraphs 26-29, of this Consent Decree, the following stipulated penalties accrue as designated below.

Penalty Per Violation Per Day	Period of Violation
$ 750.00	1st through 14th Day
$ 1,000.00	15th through 30th Day
$ 3,000.00	31st Day and beyond

D. For failure to meet the permit or approval requirements specified in Section V.D, Paragraphs 30 and 31, of this Consent Decree, the following stipulated penalties accrue as designated below.

Penalty Per Violation Per Day	Period of Violation
$ 750.00	1st through 14th Day
$ 1,500.00	15th through 30th Day
$ 3,000.00	31st Day and beyond

E. For failure to meet the reporting requirements in Section VI, Paragraphs 32 and 33, of this Consent Decree, the following stipulated penalties accrue as designated below.

Penalty Per Violation Per Day	Period of Violation
$ 250.00	1st through 14th Day
$ 500.00	15th through 30th Day
$ 1,000.00	31st Day and beyond

41. 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. Nothing herein shall prevent the simultaneous accrual of separate Stipulated Penalties for separate violations of this Consent Decree.

42. The Defendant shall pay any stipulated penalty within 30 days of receiving the United States' written demand for such penalty.

43. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Decree. Stipulated penalties shall continue to accrue, as provided in Paragraph 41, during any disputes subject to Section IX of the Consent Decree (Dispute Resolution), but need not be paid until the following:

A. If the dispute is resolved by agreement in accordance with Paragraph 55, or by a decision of the EPA that is not appealed to the Court (see Paragraph 57), the Defendant 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.

B. If the dispute is appealed to the Court in accordance with Paragraph 58, and the United States prevails in whole or in part, the Defendant 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 Court's decision, the Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 days of receiving the final appellate court decision.

44. Upon the Effective Date of this Consent Decree, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations of obligations under Section V of this Consent Decree (Injunctive Relief Requirements) that occurred prior to the Effective Date of the Decree, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Decree is entered by the Court. The Defendant waives any argument that the United States should not be permitted to seek stipulated penalties for violations of Consent Decree requirements that occurred between the Date of Signature by the Defendant and the Effective Date of this Decree.

45. The Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, Section IV of this Consent Decree (Civil Penalty), 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.

46. The Defendant shall not deduct stipulated penalties paid under this Section in calculating its federal income tax.

47. If the Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, the Defendant 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 the Defendant's failure to pay any stipulated penalties.

48. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for the Defendant's violation of this Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Act or its implementing rules and regulations, the Defendant shall be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

49. For purposes of this Consent Decree, "Force Majeure" is defined as any event arising from causes beyond the control of the Defendant, of any entity controlled by the Defendant, or of the Defendant's contractors that delays or prevents the performance of any obligation under this Decree despite the Defendant's best efforts to fulfill the obligation. The requirement that the Defendant 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 Defendant's financial inability to perform any obligation under this Consent Decree.

50. 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

Defendant shall provide notice orally followed by written notification, or by electronic or facsimile transmission to the United States and EPA as directed in Section XIII of this Consent Decree (Notices), within 72 hours of when the Defendant first knew that the event might cause a delay. Within seven days thereafter, the Defendant 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 Defendant's 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 Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude the Defendant 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 Defendant shall be deemed to know of any circumstance of which the Defendant, any entity controlled by the Defendant, or the Defendant's contractors knew or should have known.

51. 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 Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

52. 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 Defendant in writing of its decision.

53. If the Defendant elects to invoke the dispute resolution procedures set forth in Section IX of this Consent Decree (Dispute Resolution), it shall do so no later than 15 days after receipt of the EPA's notice. In any such proceeding, the Defendant 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 Defendant complied with the requirements of Paragraphs 49 and 50, above. If the Defendant carries this burden, the delay at issue shall be deemed not to be a violation by the Defendant of the affected obligation of this Consent Decree identified to the EPA and the Court.

IX. DISPUTE RESOLUTION

54. 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 Defendant's failure to seek resolution of a dispute under this Section shall preclude the Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of the Defendant arising under this Decree.

55. 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 Defendant sends 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 20 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 15 days after the conclusion of the informal negotiation period, the Defendant invokes formal dispute resolution procedures as set forth below.

56. Formal Dispute Resolution. The Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any supporting factual data, analysis, or opinion supporting the Defendant's position and any supporting documentation relied upon by the Defendant.

57. The United States shall serve its Statement of Position within 45 days of receipt of the Defendant's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting its position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on the Defendant, unless the Defendant files a motion for judicial review of the dispute in accordance with Paragraph 58.

58. The Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of the Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain the Defendant's written statement of the Defendant's position on the matter(s) 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 Decree.

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

60. Except as otherwise provided in this Consent Decree, the following standard of review applies to disputes raised under this Section of the Consent Decree:

A. Disputes Accorded Record Review: In any dispute brought under Paragraph 56 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 Defendant 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: In any other dispute brought under Paragraph 56, the Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and the Act, and that the Defendant is entitled to relief under applicable law.

61. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the Defendant under this Decree. 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 Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII of the Consent Decree (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

62. 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 or the State of Michigan in accordance with the terms of this Consent Decree.

C. Obtain samples and, upon request, splits of any samples taken by the Defendant or its representatives, contractors, or consultants.

D. Obtain documentary evidence, including photographs and similar data.

E. Assess the Defendant's compliance with this Consent Decree.

63. Upon request, the Defendant shall provide the EPA or its authorized representatives, splits of any samples taken by the Defendant. Upon request, the EPA shall provide the Defendant splits of any samples taken by the EPA.

64. Until five (5) years after the termination of this Consent Decree, the Defendant shall retain, and shall instruct its 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 its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to the Defendant's performance of its 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 Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

65. At the conclusion of the information-retention period provided in Paragraph 64, the Defendant 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 Defendant shall deliver any such documents, records, or other information to the EPA. The Defendant 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 Defendant asserts such a privilege, it shall provide the following: (A) the title of the document, record, or information; (B) the date of the document,

record, or information; (C) the name and title of each author of the document, record, or information; (D) the name and title of each addressee and recipient; (E) a description of the subject of the document, record, or information; and (F) the privilege asserted by the Defendant. 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.

66. Defendant 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 Defendant seeks to protect as CBI, the Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

67. 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 laws, regulations, or permits, nor does it limit or affect any duty or obligation of the Defendant to maintain documents, records, or other information imposed by applicable Federal or State laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

68. This Decree resolves the civil claims of the United States for the violations alleged in the Complaint through the Date of Lodging of this Decree.

69. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 68. 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, except as expressly specified in Paragraph 68. 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 Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

70. In any subsequent administrative or judicial proceedings initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, the Defendant 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 any other defenses based upon the 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 69 of this Section.

71. This Consent Decree is not a permit, or a modification of any permit, under any Federal, State or local laws or regulations. The Defendant is responsible for achieving and maintaining complete compliance with all applicable Federal, State, and local laws, regulations, and permits. The Defendant's compliance with this Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein.

72. The United States does not, by its consent to the entry of this Decree, warrant or aver in any manner that the Defendant's compliance with any aspect of this 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.

73. This Consent Decree does not limit or affect the rights of the Defendant 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 Defendant, except as otherwise provided by law.

74. 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.

XII. COSTS

75. The Parties shall bear their own costs of this action, including attorney fees, except that the United States shall be entitled to collect the costs (including attorney fees)

incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by the Defendant.

XIII. NOTICES

76. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States:

U.S. DOJ

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

U.S. EPA

Cathleen Martwick
Associate Regional Counsel
U.S. EPA - Region 5
77 W. Jackson Blvd. (C-14J)
Chicago, Illinois 60604-3590

Monica Onyszko
Environmental Engineer
U.S. EPA – Region 5
77 W. Jackson Blvd. (AE-17J)
Chicago, Illinois 60604-3590

As to Settling Defendant:

John Pirich, Esq.
Honigman, Miller, Schwartz and Cohn LLP
222 N. Washington Square, Suite 400
Lansing, Michigan 48933

Dennis Hoffman
Regional Counsel
Holcim (US) Inc.
6211 Ann Arbor Road
P.O. Box 122
Dundee, Michigan 48131

Vice President
Environmental Affairs
Holcim (US) Inc.
201 Jones Road
Waltham, Massachusetts 02451
Phone: (781) 647-2501
Fax: (781) 647-2548

77. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

78. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

79. The Effective Date of this Consent Decree shall be the date upon which this 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.

XV. RETENTION OF JURISDICTION

80. 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 IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

81. Except as specifically provided herein, there shall be no modifications or Amendments to the Consent Decree without written agreement by the Parties to this Consent Decree and approval by the Court.

82. Modification to a schedule and/or deadline provision set forth in Paragraphs 16, 20-21, 26-28 and 32-33 the Consent Decree may be made without approval by the Court upon written agreement between the Defendant and the EPA. If the Defendant requests such a modification, the request will be in writing with a detailed explanation as to why the modification is requested and sent to the appropriate EPA representatives identified in Section XIII of this Consent Decree (Notices).

83. Any disputes concerning modification of this Decree, except as specified in Paragraphs 82, shall be resolved pursuant to Section IX of this Consent Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 60, 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).

XVII. TERMINATION

84. After the Defendant has completed the requirements of Section V of this Consent Decree (Injunctive Relief Requirements), has thereafter maintained continuous satisfactory compliance with this Consent Decree for a period of six (6) months, has complied with all other requirements of this Consent Decree and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, the Defendant may serve upon the United States a Request for Termination ("Request"), stating that the Defendant has satisfied those requirements, together with all necessary supporting documentation. If such a Request is made by the Defendant before March 15, 2010, the Defendant shall also provide, as required in Paragraph 32 of this Consent Decree, a report that includes a discussion of the Defendant's progress in satisfying its obligations, including the compliance, notification and reporting activities required under Section V of this Consent Decree (Injunctive Relief Requirements).

85. Following receipt by the United States of the Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the Defendant has 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.

86. If the United States does not agree that the Decree may be terminated, the Defendant may invoke dispute resolution under Section IX of this Consent Decree (Dispute Resolution). However, the Defendant shall not seek dispute resolution of any dispute regarding

termination, under Paragraph 56 of this Consent Decree, until 60 days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

87. 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.

88. Defendant consents to entry of this Consent Decree without further notice and agrees 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 Defendant in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

89. The undersigned signatories each represent that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind the Party he or she represents to this document.

90. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

91. Defendant agrees 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.

XX. INTEGRATION

92. 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 Consent Decree.

XXI. FINAL JUDGMENT

93. 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 Defendant.

SO ORDERED AND ENTERED.

This the __ day of _____, 2009.

_____

United States District Judge

Consent Decree
U.S. v. Holcim (US) Inc.
Eastern District of Michigan

FOR THE UNITED STATES OF AMERICA

Dated: 6/5/09

W. BENJAMIN FISHEROW, Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division

Dated: 6/8/09

CHRISTINE J. McCULLOCH
Special Appointment Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 305-2020

FOR THE UNITED STATES OF AMERICA (continued)

TERRENCE G. BERG
United States Attorney
Eastern District of Michigan

Designated to receive all notices and papers:*

ELLEN CHRISTENSEN, Chief
Financial Litigation Unit
United States Attorney's Office
211 W. Fort Street
Suite 2001
Detroit, Michigan 48226
(313) 226-9100
(313) 226-2311 (FAX)

*Pursuant to LR 83.20(g), Ellen Christensen from the United States Attorney's Office for the Eastern District of Michigan has been designated to receive service of all notices and papers. Service of notice on the United States Attorney or designated assistant will constitute service on the nonresident government attorney.

Consent Decree
U.S. v. Holcim (US) Inc.
Eastern District of Michigan

FOR THE UNITED STATES OF AMERICA (continued)

Dated: 6/11/09

BHARAT MATHUR
Acting Regional Administrator
U.S. Environmental Protection Agency

Dated: 5/18/09

ROBERT A. KAPLAN
Regional Counsel
U.S. Environmental Protection Agency

Dated: 5/12/09

CATHLEEN MARTWICK
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Blvd.
Chicago, Illinois 60604
(312) 886-6610

Consent Decree
U.S. v. Holcim (US) Inc.
Eastern District of Michigan

FOR HOLCIM (US) INC.

Holcim (US) Inc.
201 Jones Road
Waltham, Massachusetts 02451
(781) 647-2501

Dated: 4/30/09

BERNARD GERARD TERVER
President & Chief Executive Officer
Holcim (US) Inc.

The following is the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Attorney: John Pirich
Honigman, Miller, Schwartz & Cohn LLP
222 N. Washington Square
Suite 400
Lansing, Michigan 48933-1800
(517) 377-0712

ATTACHMENT A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 15 2008

REPLY TO THE ATTENTION OF:
(AE-17J)

Katie Cunningham, P.E.
Environmental Manager
Holcim (US) Inc.
15215 Day Road
Dundee, Michigan 48131

Re: Alternative Monitoring Plan Request for Baghouse Inlet Temperature

Dear Ms. Cunningham:

Thank you for your July 2, 2008 letter to the U.S. Environmental Protection Agency, requesting an alternative method for calculating the average baghouse inlet temperature ("BHIT") for long wet Kiln #1 located at the Holcim (US) Inc. facility in Dundee, Michigan ("Holcim").[1]

Holcim operates a long wet kiln, Kiln #1, controlled by a baghouse for particulate matter ("PM") control, and then for volatile organic compound ("VOC") control, either by a dry venturi scrubber carbon injection ("carbon injection") system or by a wet scrubber/regenerative thermal oxidizer ("S/RTO") system. According to the July 2, 2008 letter, when operating the S/RTO system, the BHIT operational set point is 395.6 degrees Fahrenheit ("° F") and when operating the carbon injection system, the operational set point is 339.8 ° F. Holcim's July 2, 2008 letter states that the BHIT must be lowered for the carbon injection system to operate properly. Specifically, Holcim's "Test and Set Protocol for the 2008 Ozone Season" ("Test and Set Protocol") states that the carbon injection system reduces sulfur trioxide and hydrocarbons from the kiln by cooling the kiln exhaust gases and promoting condensation/adsorption of hydrocarbons in the baghouse.

Based on information provided by Holcim, the long wet Kiln #1 is subject to, among other provisions, the following operating limit for kilns in 40 CFR § 63.1344(a): "The owner or operator of a kiln subject to a D/F emission limitation under § 63.1343 must operate the kiln such that the temperature of the gas at the inlet to the kiln particulate matter control device...does not exceed the applicable temperature limit specified in paragraph (b) of this section." 40 CFR § 63.1344(b) and 40 CFR § 63.1349(b)(3)(iv) state that the BHIT limit is determined during the performance test by

[1] Although Holcim's July 2, 2008 letter references two long wet kilns (#1 and #2), you confirmed during telephone discussions with Ms. Linda H. Rosen, of my staff, that this request pertains only to long wet Kiln #1. Thus, EPA's determination only applies to Kiln #1 at the Holcim facility.

calculating the average temperature for each run and then the average of the run temperatures. 40 CFR § 63.1350(f)(3) requires, among other things, the owner or operator of an affected source subject to a limitation on dioxin/furan ("D/F") emissions to install, calibrate, maintain, and continuously operate a continuous monitor to record the temperature of the exhaust gases from the kiln at the inlet to, or upstream of, the kiln PM control device and to calculate the three-hour rolling average temperature as the average of 180 successive one-minute average temperatures.

When transitioning from the S/RTO system to the carbon injection system and vice versa, Holcim is requesting a "re-start" of the 180-minute BHIT averaging time. Holcim claims that the kiln process is adjusted during this transition time. Holcim claims that its request models the raw mill on/off condition allowance of 40 CFR § 63.1350(f)(6) which states, "When the operating status of the raw mill for the in-line kiln/raw mill is changed from off to on or from on to off the calculation of the three hour rolling average temperature must begin anew, without considering previous recordings."

EPA's Determination

EPA has reviewed your July 2, 2008 letter and the following documents submitted by Holcim in response to electronic mail requests by Ms. Linda H. Rosen: (1) June 20, 2007 informational letter from Holcim to EPA; (2) Holcim's Test and Set Protocol; and (3) August 2007 D/F emission test results. Ms. Rosen has also participated in several phone conversations with you regarding this request. EPA will approve your request as explained below.

The facility conducted stack testing for D/F emissions on August 7-10, 2007 and tested at three points during two tests:

During test 1, Holcim tested the baghouse outlet with carbon injection operating and the exhaust gases bypassing the S/RTO system. The 180 minute average BHIT was 351 ° F and the facility tested at 0.004 ng/dscm D/F. The D/F emission limit in 40 CFR § 63.1343(b)(3)(ii) is 0.4 ng/dscm.

During test 2, Holcim simultaneously tested the baghouse outlet and the outlet to the S/RTO system with the carbon injection off. The 180-minute average BHIT was 419 ° F. The D/F concentrations were 0.035 ng/dscm after the baghouse and 0.011 ng/dscm after the S/RTO. The D/F limit in 40 CFR § 63.1343(b)(3)(i) is 0.2 ng/dscm.

Therefore, in the operating scenario with carbon injection running, the BHIT limit is 351 ° F, calculated on a three-hour rolling average basis as the average of 180 successive one-minute average temperatures. When operating the S/RTO system, the BHIT temperature limit is 419 ° F, calculated on a three-hour rolling average basis as the average of 180 successive one-minute average temperatures. Since Holcim would have two temperature limits in two different operating scenarios, the facility would need to re-start the calculation of the 180-minute average temperature when switching between the two control device scenarios. The "re-start" would occur as follows:

(1) When switching from carbon injection to the S/RTO system, Holcim would re-start (being anew at zero minutes) the calculation of the 180-minute average BHIT at the 419 ° F limit as soon as the S/RTO system goes on-line. After the S/RTO system has been on-line for 10 minutes, the tempering damper is closed (to stop cooling the baghouse inlet gases) in 20 percent increments every 10 minutes until fully closed, and when it is completely closed the carbon injection system is shut off. The first 180-minute average temperature used to determine compliance with the 419 ° F limit would be available 180 minutes after the S/RTO is on-line. The three-hour rolling average temperature would continue to be calculated as the average of each successive one-minute average temperatures.

(2) When switching from the S/RTO system to carbon injection, Holcim would re-start (begin anew at zero minutes) the calculation of the 180-minute average BHIT at the 351 ° F limit at the time the inlet damper is closed to the S/RTO system. In a non-emergency S/RTO shutdown case, the carbon injection system is already operating at the proper feed rate when the inlet damper closes. In an emergency S/RTO shutdown case, the blower for the carbon injection automatically starts after the inlet damper closes. The carbon injection system becomes fully operational shortly after that. The kiln is slowed down and a tempering air damper is opened to start cooling the kiln exhaust gases to lower the BHIT. The first 180-minute average temperature used to determine compliance with the 351 ° F limit would be available 180 minutes after the S/RTO inlet damper is closed. Although the kiln exhaust gases are being cooled during this first three hour period, you explained during an October 3, 2008 telephone call with Ms. Rosen that Holcim can meet the 351 ° F temperature limit by the time the first 180-minute average BHIT is calculated (180 minutes after the inlet damper is closed).

This response has been approved by the Office of Enforcement and Compliance Assurance. If you have any questions regarding this letter, feel free to contact Linda H. Rosen, of my staff, at (312) 886-6810.

Sincerely yours,

George T. Czerniak
Chief
Air Enforcement and Compliance Assurance Branch