

1 JOHN C. CRUDEN  
2 Assistant Attorney General  
3 Environment & Natural Resources Division  
4 United States Department of Justice

5 SHEILA McANANEY  
6 Illinois Bar No. 6306395  
7 Environmental Enforcement Section  
8 Environment & Natural Resources Division  
9 United States Department of Justice  
10 P.O. Box 7611  
11 Washington, D.C. 20044  
12 Telephone: (202) 616-6535  
13 Facsimile: (202) 616-2427 (Fax)  
14 Email: sheila.mcananey@usdoj.gov

15 Attorneys for the United States

16 UNITED STATES DISTRICT COURT FOR THE  
17 EASTERN DISTRICT OF CALIFORNIA  
18 FRESNO DIVISION

19 \_\_\_\_\_  
20 UNITED STATES OF AMERICA, )  
21 )  
22 Plaintiff, )  
23 )  
24 v. )  
25 )  
26 CALPORTLAND COMPANY, )  
27 Defendant. )  
28 \_\_\_\_\_

No. 1:11-cv-02064-AWI-JLT  
**MODIFICATION TO  
CONSENT DECREE**  
Hon. Judge Anthony W. Ishii  
No Hearing Required – Unopposed

1 The United States and CalPortland Company ("CalPortland") agree, and this  
2 Court hereby ORDERS the following amendments to the Consent Decree entered  
3 by the Court in this action on February 8, 2012:

4 A. Paragraph 6 shall be amended to include the following definition:

5 (oo) "90-Day Rolling Average Emission Rate" shall mean the rate of  
6 emission of SO<sub>2</sub> expressed as pounds (lb) per Ton of clinker produced ("lb  
7 SO<sub>2</sub>/Ton of clinker") at the Kiln and calculated in accordance with the following  
8 procedure: first, sum the total pounds of SO<sub>2</sub> emitted from the Kiln during an  
9 Operating Day and the previous 89 Operating Days, as measured pursuant to  
10 Section V.C. (Continuous Emission Monitoring Systems); second, sum the total  
11 Tons of clinker produced by the Kiln during the same Operating Day and the  
12 previous 89 Operating Days; and third, divide the total number of pounds of SO<sub>2</sub>  
13 emitted from the Kiln during the 90 Operating Days referred to above by the total  
14 Tons of clinker produced at the Kiln during the same 90 Operating Days. A new  
15 90-Day Rolling Average Emission Rate shall be calculated for each new Operating  
16 Day. Each 90-Day Rolling Average Emission Rate shall include all emissions of  
17 SO<sub>2</sub> from the Kiln during all periods of Kiln Operation on any Operating Day,  
18 including emissions during each Startup, Shutdown, or Malfunction. If  
19 CalPortland asserts that a Malfunction and any resulting Kiln Shutdown and  
20 Startup is a Force Majeure event within the meaning of Section XI (Force  
21 Majeure), CalPortland shall include all such emissions in the calculation of the 90-  
22 Day Rolling Average Emission Rate, but shall not be subject to stipulated penalties  
23 for a violation of an applicable emission limitation pursuant to Section X  
24 (Stipulated Penalties) to the extent that emissions associated with the particular  
25 Malfunction and any resulting Kiln Shutdown and Startup cause an emission  
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1 violation and the Malfunction and any resulting Kiln Shutdown and Startup is  
2 determined to be a Force Majeure event under Section XI (Force Majeure) and  
3 CalPortland has complied with the requirements of that Section.

4 B. Paragraph 19 shall be amended to read:

5 19. The final Emission Limits for NO<sub>x</sub> and SO<sub>2</sub> submitted by CalPortland to  
6 EPA as part of the Final Demonstration Report(s) pursuant to Section V (Control  
7 Technology Demonstration Period) of Exhibit A shall not be greater than 2.5 lb of  
8 NO<sub>x</sub>/Ton of clinker on a 30-Day Rolling Average and **1.7 lb of SO<sub>2</sub>/Ton of**  
9 **clinker on a 90-Day Rolling Average.** For CO, the final Emission Limit is a 30-  
10 Day Rolling Average Emission Limit of 1.0 lb CO/Ton of clinker effective upon  
11 the date of submission of the Demonstration Report required by Exhibit A subject  
12 to Subparagraph 15(c)(i)-(iii) of this Consent Decree.

13 C. Paragraph 24 shall be amended to read:

14 24. At any time prior to termination of this Consent Decree, CalPortland  
15 may request EPA's approval to implement an alternative pollution control  
16 technology for NO<sub>x</sub> or SO<sub>2</sub> other than what is required by this Consent Decree. In  
17 seeking such approval, CalPortland must demonstrate to EPA that such alternative  
18 pollution control technology will: (a) achieve and maintain the applicable  
19 Emission Limit established pursuant to Exhibit A or, (b) meet the applicable limits  
20 established by the New Source Performance Standard, 40 C.F.R. Part 60 Subpart F  
21 (NSPS Emission Limits) for NO<sub>x</sub> and/or SO<sub>2</sub>, if such limits are in effect and more  
22 stringent than 2.5 lb of NO<sub>x</sub>/Ton of clinker on a 30-Day Rolling Average and **1.7**  
23 **lb of SO<sub>2</sub>/Ton of clinker on a 90-Day Rolling Average.** EPA's decision on a  
24 request is subject to the Section XII (Dispute Resolution) provisions of this  
25 Consent Decree. CalPortland's request shall address when the alternative pollution  
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control(s) will be installed and operational, and for the NSPS Emission Limit(s) in effect at the time, indicate when it will apply to the Kiln. After any approval by EPA under this Paragraph of an alternative NSPS Emission Limit, CalPortland shall continue to comply with all requirements of this Consent Decree, including Exhibit A, until such time as CalPortland notifies the EPA in writing that it is meeting the current NSPS Emission Limit(s) for NO<sub>x</sub> or SO<sub>2</sub>. As of that date, the NSPS Emission Limit(s) for NO<sub>x</sub> and/or SO<sub>2</sub> in effect at that time shall become the Emission Limit(s) for all purposes under this Consent Decree, and CalPortland would no longer be obligated to complete the test-and-set process set forth in Exhibit A for the relevant pollutant.

D. Paragraph 45, Table 2 shall be amended to read as follows:

**TABLE 2**

CONSENT DECREE VIOLATIONS	STIPULATED PENALTY
Failure to pay the civil penalty as specified in Section IV (Civil Penalty) of this Consent Decree	\$5,000 for each Day
Failure to comply with <b>the</b> 30-Day Rolling Average Emission Rate limitation for NO <sub>x</sub> , where the emissions are less than 5% in excess of the limits set forth in this Consent Decree	\$1,500 for each Operating Day during any 30-Day Rolling Period
<b>Failure to comply with the 90-Day Rolling Average Emission Rate limitation for SO<sub>2</sub>, where the emissions are less than 5% in excess of the limits set forth in this Consent Decree</b>	<b>\$750 for each Operating Day during any 90-Day Rolling Period</b>
Failure to comply with the 30-Day Rolling Average Emission Rate limitation for NO <sub>x</sub> , 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	\$3,000 for each Operating Day during any 30-Day Rolling Period
<b>Failure to comply with the 90-Day Rolling Average Emission Rate limitation for SO<sub>2</sub> 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</b>	<b>\$1,500 for each Operating Day during any 90-Day Rolling Period</b>

CONSENT DECREE VIOLATIONS	STIPULATED PENALTY
Failure to comply with the 30-Day Rolling Average Emission Rate limitation for NO <sub>x</sub> , where the emissions are equal to or greater than 10% in excess of the limits set forth in this Consent Decree	\$5,000 for each Operating Day during any 30-Day Rolling Period
<b>Failure to comply with any 90-Day Rolling Average Emission Rate limitation for SO<sub>2</sub>, where the emissions are equal to or greater than 10% in excess of the limits set forth in this Consent Decree</b>	<b>\$2,500 for each Operating Day during any 90-Day Rolling Period</b>
Failure to timely install or commence Continuous Operation or Continuously Operate SNCR or LIS, as required in Paragraphs 10 and 11 at the Kiln	\$5,000 for each Day during the first 20 Days, \$10,000 for each Day for the next 40 Days, and \$30,000 for each Day thereafter
Failure to timely apply for any permit or permit amendment required by Section VII (Permits)	\$1,000 for each Day for each such failure
Failure to install or operate a CEMS in conformance with the requirements of Section V.C. (Continuous Emission Monitoring Systems), as applicable	\$1,000 for each Day for each such failure
Failure to install or operate a Kiln System Ammonia Injection Monitoring System in conformance with the requirements of Section V.D. (Kiln Reagent Injection Monitoring System)	\$1,000 for each Day for each such failure
Failure to timely complete the Demonstration Period as required by Section V of Exhibit A	\$1,000 for each Day during the first 20 Days, \$2,500 for each Day for the next 40 Days, and \$5,000 for each Day thereafter
Failure to timely submit, modify, or implement, as approved, any of the following reports required by Exhibit A: (1) The Design Report; (2) the Optimization Protocol; (3) the Optimization Report; or (4) the Demonstration Period Final Report	\$1,000 for each Day during the first 20 Days, \$2,500 for each Day for the next 40 Days, and \$5,000 for each Day thereafter
Failure to timely submit, modify, or implement, as approved, any report, plan, study, analysis, protocol, or other submittal required by this Consent Decree other than those identified elsewhere in this table	\$750 for each Day during the first 10 Days, \$1,000 for each Day thereafter
Any other violation of this Consent Decree, including failure to optimize process parameters or Control Technology parameters by the deadlines set forth in the Consent Decree.	\$1,000 for each Day for each violation

1 E. Paragraph 47 shall be amended to read as follows:

2 47. Violations of any limit based on a 30-Day **or 90-Day** rolling average  
3 constitutes 30 Days of violation **or 90 Days** of violations **respectively** but where  
4 such a violation (for the same pollutant from the Kiln) recurs within periods less  
5 than 30 Days **for a 30-Day rolling average limit or 90 Days for a 90-Day rolling**  
6 **average limit**, CalPortland shall not be obligated to pay a daily stipulated penalty  
7 for any Day of the recurrence for which a stipulated penalty has already been paid.  
8

9 F. All additional references in the Consent Decree, including Exhibit A, to a  
10 “30-Day Rolling Average Emission Rate” with respect to SO<sub>2</sub> shall be amended to  
11 read “90-Day Rolling Average Emission Rate” with respect to SO<sub>2</sub>.

12 G. All additional references in the Consent Decree, including Exhibit A, to a  
13 “30-Day Rolling Average Emission Limit” with respect to SO<sub>2</sub> shall be amended to  
14 read “90-Day Rolling Average Emission Limit” with respect to SO<sub>2</sub>.

15 H. Paragraph 24 of Exhibit A shall be amended to read as follows:

16 24. Notwithstanding Paragraphs 22 and 23 of this Exhibit A, in no event  
17 shall the Final Emission Limits proposed in the Demonstration Report(s), be  
18 greater than as specified in **Paragraph 19** (final Emission Limits) of the Consent  
19 Decree.  
20

21 I. All other provisions of the Consent Decree shall remain in effect.

22 J. Each of the undersigned representatives of CalPortland and the Assistant  
23 Attorney General for the Environment and Natural Resources Division of the  
24 Department of Justice certifies that he or she is fully authorized to enter into the  
25 terms and conditions of this Modification to the Consent Decree and to execute and  
26 legally bind the Party he or she represents to this document.  
27  
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1 K. This Modification may be signed in counterparts, and its validity shall not be  
2 challenged on that basis.

3 L. This Modification shall be lodged with this Court for a period of not less  
4 than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7.  
5 The United States reserves the right to withdraw or withhold its consent if the  
6 comments regarding the Modification disclose facts or considerations indicating  
7 that the Modification is inappropriate, improper, or inadequate. CalPortland  
8 consents to entry of this Modification without further notice and agrees not to  
9 withdraw from or oppose entry of this Modification by this Court or to challenge  
10 any provision of the Modification, unless the United States has notified  
11 CalPortland that it no longer supports entry of the Modification.  
12

13 M. This Modification to the Consent Decree constitutes the final, complete, and  
14 exclusive agreement and understanding among the Parties with respect to the  
15 Modification of the Consent Decree, and this Modification to the Consent Decree  
16 supersedes all prior agreements and understandings, whether oral or written  
17 concerning the Modification embodied herein. Other than Deliverables that are to  
18 be subsequently submitted pursuant to this Modification to the Consent Decree, no  
19 other document and no other representation, inducement, agreement,  
20 understanding, or promise constitutes any part of this Modification to the Consent  
21 Decree or the settlement it represents, nor shall they be used in construing the  
22 terms of this Modification to the Settlement Agreement.  
23

24  
25 Dated:\_\_\_\_, 2015

26 \_\_\_\_\_  
27 HON. ANTHONY W. ISHII  
28 United States District Judge  
Eastern District of California

1 Signature Page for *United States of America. v. CalPortland Company* Consent  
2 Decree Modification

3 FOR THE UNITED STATES OF AMERICA

4  
5 JOHN C. CRUDEN  
6 Assistant Attorney General  
7 Environment and Natural Resources Division  
8 United States Department of Justice

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11 SHEILA McANANEY

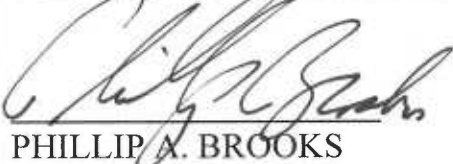
Date: 7/21/15

12 Trial Attorney  
13 Environmental Enforcement Section  
14 Environment and Natural Resources Division  
15 United States Department of Justice  
16 P.O. Box 7611  
17 Washington, D.C. 20044-7611  
18 (202) 616-6535 (Tel.)  
19 (202) 616-2427 (Fax)  
20 Sheila.mcananey@usdoj.gov  
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1 Signature Page for *United States of America. v. CalPortland Company* Consent  
2 Decree Modification

3 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Date: 7/6/15

6 PHILLIP A. BROOKS  
7 Director, Air Enforcement Division  
8 Office of Enforcement and Compliance  
9 Assurance  
10 United States Environmental Protection  
11 Agency

1 Signature Page for *United States of America. v. CalPortland Company* Consent  
2 Decree

3 FOR CALPORTLAND COMPANY

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Date: 6-18-2015

6 BRUCE SHAFER  
7 Senior Vice President  
8 CalPortland Company  
9 2025 E. Financial Way, Ste. 200  
10 Glendora, CA 91741

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