

1 BRUCE S. GELBER
2 Deputy Assistant Attorney General
3 Environment & Natural Resources Division
4 United States Department of Justice

5 DAVID L. McILWAIN
6 Environmental Enforcement Section
7 Environment & Natural Resources Division
8 United States Department of Justice
9 601 D Street, N.W., PHB Building
10 Telephone: (202) 514-1544
11 Facsimile: (202) 514-0097
12 E-mail: David.McIlwain@usdoj.gov

13 DANIEL G. BOGDEN

14 United States Attorney

15 District of Nevada

16 GREG ADDINGTON

17 Assistant United States Attorney

18 100 West Liberty

19 Suite 600

20 Reno, NV 89501

21 Telephone: (775) 784-5438

22 Facsimile: (775) 784-5181

23 *Attorneys for Plaintiff United States of America*

24 **UNITED STATES DISTRICT COURT**
25 **DISTRICT OF NEVADA**

26 UNITED STATES OF AMERICA,) Civil Action No. 3:17-cv-00302-MMD-WGC
27 Plaintiff,)
28 v.) **CONSENT DECREE**
NEVADA CEMENT COMPANY)
Defendant.)
_____)

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1 WHEREAS, Plaintiff, the United States of America, on behalf of the United States
2 Environmental Protection Agency (herein "U.S. EPA" or "EPA") has, simultaneously with the
3 lodging of this Consent Decree, filed a Complaint against Defendant Nevada Cement Company
4 ("Defendant" or "Nevada Cement Company"), pursuant to Sections 113(b) and 167 of the Clean
5 Air Act ("Clean Air Act or Act"), 42 U.S.C. §§ 7413(b) and 7477, for injunctive relief and the
6 assessment of civil penalties for violations of the following statutory and regulatory requirements
7 of the Act at the Defendant's Portland cement plant located in Fernley, Nevada: the Prevention
8 of Significant Deterioration ("PSD") provisions of the Act, Sections 160-169, 42 U.S.C. §§
9 7470-7492; the New Source Performance Standards ("NSPS") provisions of the Act, Section
10 111, 42 U.S.C. § 7411; and the federally-approved and enforceable state implementation plan
11 ("SIP"), which incorporate and/or implement the above-listed federal PSD requirements;
12

13
14 WHEREAS, this Consent Decree sets forth injunctive relief in which Defendant has
15 agreed to substantially reduce its emissions of nitrogen oxide and limit its emissions of sulfur
16 dioxide in such a manner that would resolve Defendant's alleged violations of the PSD and
17 NSPS requirements of the Act;
18

19 WHEREAS, U.S. EPA has provided notice of the violations alleged herein to the
20 Defendant and to the State of Nevada where Defendant's Facility is located, pursuant to
21 Section 113(a) of the Act, 42 U.S.C. § 7413(a), and Defendant stipulates that it has received
22 actual notice of the violations alleged in the Complaint and that it does not contest the adequacy
23 of the notice provided;
24

25 WHEREAS, Defendant denies the allegations of the Complaint and does not admit that it
26 has any liability to the United States for civil penalties or injunctive relief arising out of the
27 transactions and occurrences alleged in the Complaint;
28

1 WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds,
2 that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation
3 between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.
4

5 NOW, THEREFORE, before the taking of any testimony, without the adjudication or
6 admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue),
7 below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND
8 DECREED as follows:
9

10 **SECTION I: JURISDICTION AND VENUE**

11 1. This Court has jurisdiction of the subject matter herein and over the Parties
12 consenting hereto pursuant to Sections 113(b), 167, and 304(a) of the Act, 42 U.S.C.
13 §§ 7413(b), 7477, and 7604(a), and pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and
14 1367(a). Venue is proper under Sections 113(b) and 304(c) of the Act, 42 U.S.C. §§
15 7413(b) and 7604(c), and under 28 U.S.C. §§ 1391(b) and (c) and 1395(a). For
16 purposes of this Consent Decree and the underlying Complaint, Defendant waives all
17 objections and defenses it may have to the Court's jurisdiction over this action, to the
18 Court's jurisdiction over the Defendant, and to venue in this District. For the
19 purposes of the allegations in the Complaint in this matter that are being resolved by
20 the Consent Decree, Defendant waives any defense or objection based on standing.
21

22 2. For purposes of this Consent Decree, Defendant agrees that the Complaint
23 states claims upon which relief may be granted pursuant to Sections 113, 165 and 167
24 of the Act, 42 U.S.C. §§ 7413, 7475 and 7477.
25
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SECTION II: APPLICABILITY

3. 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.

4. At least 30 Days prior to any transfer of ownership or operation of the Facility, Defendant shall provide a copy of this Consent Decree to the proposed transferee and, by the same deadline, shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement to transfer ownership of the Facility, to U.S. EPA and the United States in accordance with Section XIX (Notices) of this Consent Decree. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented, unless:

- a. the transferee agrees, in writing, to undertake the obligations required by Sections V (NO_x Control Technology, Emission Limits, and Monitoring Requirements), VI (SO₂ Emission Limits and Monitoring Requirements), VII (Other Injunctive Relief), VIII (Temporary Cessation of Kiln Operations), IX (Prohibition on Netting Credits or Offsets from Required Controls), X (Permits), XI (Review and Approval of Submittals), XII (Reporting Requirements), XIII (Stipulated Penalties), XIV (Force Majeure), XV (Dispute Resolution), XVI (Information Collection and Retention) and the requirements of Appendices A and B of this Consent Decree applicable to the Facility or Kilns and further agrees in writing to be substituted for the

1 Defendant as a Party under the Decree with respect to Facility or Kilns and
2 thus become bound by the terms thereof;

- 3 b. the United States determines that the transferee has the financial and technical
4 ability to assume the Consent Decree's obligations applicable to such Facility
5 or Kilns;
6
7 c. the United States consents, in writing, to relieve Defendant of its Consent
8 Decree obligations applicable to the Facility or Kilns; and
9
10 d. the Court approves the transferee becoming a party to this Consent Decree
11 with respect to the transferred Facility or Kilns, pursuant to Section XXII
12 (Modification).

13 5. Any transfer of ownership or operation of the Facility or Kilns, or any
14 portion thereof, without complying with Paragraph 4, constitutes a violation of this
15 Consent Decree.
16

17 6. The Defendant shall provide a copy of this Consent Decree to all officers,
18 employees, and agents whose duties might reasonably include compliance with any
19 provision of this Consent Decree, as well as to any Contractor retained to perform
20 work required under this Consent Decree. Defendant shall condition any such
21 contract upon performance of the work in conformity with the terms of this Consent
22 Decree.
23

24 7. In any action to enforce this Consent Decree, Defendant shall not raise as
25 a defense the failure by any of its officers, directors, employees, agents, or contractors
26 to take any actions necessary to comply with the provisions of this Consent Decree.
27
28

SECTION III: DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated by U.S. EPA pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Consent Decree. Definitions stated in this Consent Decree are exclusively for the purpose of interpreting and applying the Consent Decree terms and are not intended to establish any type of determination under circumstances not covered by the Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "30-Day Rolling Average Emission Limit" shall mean, with respect to the Kilns, the maximum allowable rate of emission of a specified air pollutant from such Kiln and shall be expressed as pounds (lbs.) of such air pollutant emitted per Ton of clinker produced. Compliance with the 30-Day Rolling Average Emission Limit shall be determined in accordance with the definition of 30-Day Rolling Average Emission Rate. A new compliance determination of the 30-Day Rolling Average Emission Limit shall be calculated for each new Operating Day in accordance with the provisions of this Consent Decree. In calculating each compliance determination of the 30-Day Rolling Average Emission Limit in accordance with this Paragraph 8.a, for NO_x or SO₂ at the Kilns, the total pounds of such air pollutant emitted from the Kiln during a specified period (Operating Day or 30-Day Period) shall include all emissions of that pollutant from the subject Kiln that occur during the specified period;

- 1 b. "30-Day Rolling Average Emission Rate" shall mean, with respect to the Kilns, the
2 rate of emission of a specified air pollutant from such Kiln and shall be expressed as
3 pounds (lbs.) of such air pollutant emitted per Ton of clinker produced. Compliance
4 with the 30-Day Rolling Average Emission Limit shall be determined by calculation
5 of a 30-Day Rolling Average Emission Rate in accordance with the following
6 procedure: first, sum the total pounds of the air pollutant in question emitted from the
7 Kiln during that Operating Day and the previous twenty-nine (29) Operating Days as
8 measured pursuant to Section V.B. (NO_x and Ammonia Continuous Emission
9 Monitoring Systems), or Section VI.B. (SO₂ Continuous Emission Monitoring
10 Systems), as applicable; second, sum the total Tons of clinker produced by the Kiln
11 during the same Operating Day and previous 29 Operating Days; and third, divide the
12 total number of pounds of the air pollutant emitted from the Kiln during the thirty
13 (30) Operating Days by the total Tons of clinker produced by such Kiln during the
14 same 30 Operating Days. A new compliance determination of the 30-Day Rolling
15 Average Emission Rate shall be calculated for each new Operating Day in accordance
16 with the provisions of this Consent Decree. In calculating each 30-Day Rolling
17 Average Emission Rate in accordance with this Paragraph 8.b, for NO_x or SO₂ at the
18 Kilns, the total pounds of such air pollutant emitted from the Kiln during a specified
19 period (Operating Day or 30-Day Period) shall include all emissions of that pollutant
20 from the subject Kiln that occur during the specified period;
21
22 c. "Ammonia CEMS" shall mean, for obligations involving ammonia under this Consent
23 Decree, the total equipment and software required to sample, analyze, and to provide a
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1 record of ammonia concentration and the raw data necessary to support the reported
2 emissions;

3 d. "Ammonia Slip" shall mean the amount of unreacted ammonia contained in emissions
4 from Defendant's Kilns. Ammonia Slip shall be calculated by subtracting Baseline
5 Ammonia from Stack Ammonia;
6

7 e. "Baseline NO_x Emissions" shall mean the average (arithmetic mean) of all daily
8 emissions of NO_x from each Kiln during the Baseline Collection Period consistent with
9 Appendix A and shall be based upon an analysis of CEMS data and clinker
10 production data from each Kiln;
11

12 f. "Baseline Ammonia" shall mean the average (arithmetic mean) of all daily average
13 ammonia concentrations from each Kiln during the Baseline Collection Period consistent
14 with Appendix A and shall be based upon an analysis of CEMS data from each Kiln.
15 Baseline Ammonia shall reflect Ammonia measured by the Ammonia CEMS only during
16 periods of time when the SNCR is not injecting any reagent into the Kilns;
17

18 g. "Business Day" means any Day, except for Saturday, Sunday, and federal holidays.
19 In computing any period of time used as a deadline for submission under this Consent
20 Decree, where the last Day would fall on a Saturday, Sunday, or federal holiday, the
21 period shall run until the close of business of the next Business Day;

22 h. "CEMS" or "Continuous Emission Monitoring System" shall mean, for obligations
23 involving NO_x and SO₂ under this Consent Decree, the total equipment and software
24 required to sample and condition (if applicable), to analyze, and to provide a record of
25 NO_x and SO₂ emission rates, and the raw data necessary to support the reported
26
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1 emission rates, and that have been installed, calibrated and certified in accordance
2 with 40 C.F.R. § 60.13 and 40 C.F.R. Part 60 Appendix B and Appendix F;

3 i. "Commence" or "Commencement" of operation of a Control Technology shall mean
4 to begin the introduction of the reagent employed by the Control Technology, as
5 applicable to that technology, or where the technology is otherwise activated;

6 j. "Complaint" shall mean the complaint filed by the United States in this action;

7 k. "Consent Decree" or "Decree" shall mean this Consent Decree and each Appendix
8 attached hereto (listed in Section XXVIII (Appendices)), but in the event of any
9 conflict between the text of this Consent Decree and any Appendix, the text of this
10 Consent Decree shall control;

11 l. "Continuously Operate" or "Continuous Operation" shall mean that when a Control
12 Technology required by this Consent Decree is used at a Kiln, it shall be operated at
13 all times of Kiln Operation, consistent with the technological limitations,
14 manufacturers' specifications, and good engineering and maintenance practices for
15 such Control Technology and the Kiln. A SNCR that is injecting no reagent is not
16 Continuously Operating; however, the requirement to continuously operate SNCR
17 does not require that the SNCR be operated under conditions where the Kiln has not
18 reached or is no longer maintaining the minimum temperature for reagent injection.
19 This Paragraph is not intended to require any minimum level of reagent injection after
20 the 30-Day Rolling Average Emission Limit has been established in accordance with
21 Paragraph 8.a;

22 m. "Contractor" shall mean any person or entity hired by Defendant to perform services
23 on its behalf necessary to comply with the provisions of this Consent Decree;

- 1 n. "Control Technology" or "NO_x Control Technology" shall mean Selective Non-
2 Catalytic Reduction or Low-NO_x Burner technology;
- 3 o. "Date of Lodging of the Consent Decree" or "Date of Lodging" shall mean the date
4 the Consent Decree is filed for lodging with the Clerk of the Court for the United
5 States District Court for the District of Nevada;
- 6 p. "Day" shall mean a calendar day unless expressly stated to be a Business Day;
- 7 q. "Defendant" or "Nevada Cement" shall mean Nevada Cement Company;
- 8 r. "Effective Date" shall have the meaning given in Paragraph 98;
- 9 s. "Facility" shall mean the Defendant's Portland cement manufacturing plant located
10 just north of Interstate Highway 80 near Fernley, Nevada;
- 11 t. "Kiln" as used in this Consent Decree shall mean each device located at the Facility,
12 including any associated preheater devices, that produces clinker by heating
13 limestone and other materials for subsequent production of Portland cement. The two
14 Kilns at the Facility are designated Kiln #1, which is a long dry rotary kiln, and Kiln
15 #2, which is a long dry rotary kiln with a single-stage preheater;
- 16 u. "Kiln Operation" shall mean any period when any raw materials are fed into the Kiln
17 or any combustion is occurring in the Kiln;
- 18 v. "Low-NO_x Burner" or "LNB" shall mean commercially available combustion
19 modification NO_x controls that minimize NO_x formation by introducing fuel and its
20 associated combustion air into a kiln such that initial combustion occurs in a fuel-rich
21 (i.e., oxygen deficient) environment and introduces additional air to achieve a final
22 fuel-lean (i.e., oxygen rich) environment to complete the combustion process;
- 23
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- 1 w. "Malfunction" shall mean any sudden, infrequent, and not reasonably preventable
2 failure of air pollution control equipment, process equipment, or a process to operate
3 in a normal or usual manner. Failures that are caused in part by poor maintenance or
4 careless operation are not malfunctions;
5
- 6 x. "National Ambient Air Quality Standards" or "NAAQS" shall mean national ambient
7 air quality standards that are promulgated pursuant to Section 109 of the Act, 42
8 U.S.C. § 7409;
9
- 10 y. "New Source Performance Standards" or "NSPS" shall mean those standards and
11 emission limitations applicable to the emissions of NO_x, and SO₂, from existing,
12 modified or reconstructed Portland cement manufacturing facilities, codified at 40
13 C.F.R. Part 60, Subpart F;
14
- 15 z. "NO_x" shall mean oxides of nitrogen, measured in accordance with the provisions of
16 this Consent Decree;
17
- 18 aa. "Operating Day" shall mean any day in which Kiln Operation has occurred;
19
- 20 bb. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic
21 numeral;
22
- 23 cc. "Parties" shall mean the United States and Nevada Cement Company;
24
- 25 dd. "PSD" shall mean the Prevention of Significant Deterioration program within the
26 meaning of Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492, 40 C.F.R. Part
27 52, and Nevada's State Implementation Plan implementing the PSD requirements;
28
- ee. "Retire" or "Retirement" shall mean, with respect to any Kiln, (1) to permanently
Shutdown the Kiln; and (2) to comply with applicable State and federal requirements
for permanent cessation of Kiln operations, including submitting an application in

- 1 accordance with the Nevada SIP to remove permanently any legal authorization under
2 applicable regulations or permits for further operation of the Kiln;
- 3 ff. "Section" shall mean a portion of this Consent Decree identified by a Roman
4 numeral;
- 5
6 gg. "Selective Non-Catalytic Reduction" or "SNCR" shall mean a pollution control
7 system that injects an ammonia-based reagent into the gas stream without the use of a
8 catalyst for the purpose of reducing NO_x emissions;
- 9
10 hh. "Shutdown" shall mean the cessation of Kiln Operation. Shutdown begins when feed
11 to the Kiln is halted and ends when continuous Kiln rotation ceases;
- 12 ii. "SNCR Demonstration Period" shall mean that period of time identified in Appendix
13 A, following optimization, and at the conclusion of which, Defendant will propose a
14 30-Day Rolling Average Emission Limit for NO_x for each Kiln that is achievable
15 through the implementation of SNCR, and that will be applied in accordance with
16 Section V (NO_x Control Technology, Emission Limits, and Monitoring
17 Requirements) of this Consent Decree;
- 18
19 jj. "SO₂" shall mean the pollutant sulfur dioxide, measured in accordance with the
20 provisions of this Consent Decree;
- 21
22 kk. "Stack Ammonia" shall mean the concentration of ammonia in emissions from the
23 Defendant's Kilns as measured by the Ammonia CEMS during the period when an
24 SNCR is operational for that Kiln. Stack Ammonia is not, without subtraction of
25 Baseline Ammonia, considered Ammonia Slip;
- 26
27 ll. "Startup" shall mean the time from when a Shutdown Kiln turns on the induced draft
28 fan and begins firing fuel in the main burner. Startup ends when feed is being

1 continuously introduced into the Kiln for at least 120 minutes or when the feed rate
2 exceeds 60 percent of the Kiln design limitation rate, whichever occurs first;
3
4 mm. "State" shall mean the State of Nevada, and any agencies or subdivisions having
5 jurisdiction over the Facility, including the Nevada Division of Environmental
6 Protection ("NDEP");
7
8 nn. "Temporary Cessation," "Temporary Cessation of Kiln Operation" or "Temporarily
9 Cease Kiln Operation" shall mean the period when a Kiln is not in a state of Kiln
10 Operation and Defendant has provided the required notice pursuant to Paragraph 35
11 of Section VIII (Temporary Cessation of Kiln Operation) of this Consent Decree;
12
13 oo. "Ton" or "Tons" shall mean short ton or short tons;
14
15 pp. "United States" shall mean the United States of America, acting on behalf of U.S.
16 EPA; and
17
18 qq. "U.S. EPA" shall mean the United States Environmental Protection Agency and any
19 of its successor departments or agencies.

18 **SECTION IV: CIVIL PENALTY**

19 9. Within thirty (30) Days after the Effective Date of this Consent Decree,
20 Defendant shall pay to the United States as a civil penalty the sum of \$550,000,
21 together with interest accruing from the date that the Consent Decree is lodged with
22 the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.
23 Defendant shall pay the civil penalty due under this Paragraph 9 by FedWire
24 Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance
25 with written instructions to be provided to Defendant following lodging of the
26 Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the
27
28

1 District of Nevada, 333 Las Vegas Blvd, Suite 5000, Las Vegas, Nevada, 89101. At
2 the time of payment, Defendant shall send a copy of the EFT authorization form and
3 the EFT transaction record, together with a transmittal letter, which shall state that the
4 payment is for the civil penalty owed pursuant to the Consent Decree in United States
5 v. Nevada Cement Company, and shall reference the civil action number and DOJ
6 case number 90-5-2-1-10458, to the United States in accordance with Section XIX of
7 this Consent Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and to:

8
9 U.S. EPA Cincinnati Finance Office
10 26 Martin Luther King Drive
11 Cincinnati, Ohio 45268.

12 10. Defendant shall not deduct any penalties paid under this Section or
13 Section XIII (Stipulated Penalties) in calculating its federal or state or local income
14 tax.
15

16 **SECTION V: NO_x CONTROL TECHNOLOGY, EMISSION LIMITS AND**
17 **MONITORING REQUIREMENTS**

18 **A. NO_x Control Technology and Emission Limits**

19 11. Defendant shall install and Continuously Operate SNCR Control
20 Technology on each Kiln to reduce NO_x emissions in accordance with the timeframes
21 and requirements set forth in Section III of Appendix A.
22

23 12. Defendant shall comply with all terms and conditions, including drafting
24 submittals and complying with protocols set forth in Appendix A, to establish 30-Day
25 Rolling Average Emission Limits for NO_x applicable to each Kiln.

26 13. Within 30 Days after approval, conditional approval, or partial approval
27 by U.S. EPA pursuant to Section XI (Review and Approval of Submittals) of any
28

1 final 30-Day Rolling Average Emission Limit for NO_x established pursuant to
2 Appendix A, Defendant shall achieve and maintain continuous compliance with such
3 30-Day Rolling Average Emission Limit for NO_x. If the 30-day Rolling Average
4 Emission Limit for NO_x is challenged pursuant to the Dispute Resolution provisions
5 of Section XV (Dispute Resolution), the final NO_x Limit shall be the 30-Day Rolling
6 Average agreed to by the Parties at the conclusion of Informal Dispute Resolution. If
7 Informal Dispute Resolution does not resolve the dispute, Defendant shall comply
8 with its Proposed final NO_x Emissions Limit until a final NO_x Emissions Limit is
9 determined by the Court.
10
11

12 14. If the final 30-Day Rolling Average Emission Limit for NO_x as
13 determined in Appendix A.IV.7.d is less than a 40% reduction in Baseline NO_x
14 Emissions of the applicable Kiln, the United States may demand that Defendant
15 install a Low NO_x Burner on such Kiln. The United States will make this demand
16 within 180 days of receipt of the Demonstration Report.
17

18 15. If the United States demands that Defendant install a Low NO_x Burner on
19 either Kiln pursuant to Paragraph 14, Defendant shall install a Low NO_x Burner
20 within 24 months of such demand and comply with Appendix A, Section V of this
21 Consent Decree. Following the installation of a Low NO_x Burner on a Kiln, the
22 Defendant shall commence complying with the terms of Appendix A, Section V to
23 establish a new 30-Day Rolling Average Emissions Limit applicable to such Kiln
24 while operating Low NO_x Burner and SNCR.
25

26 16. Upon submittal to EPA as part of a SNCR Demonstration Report of a
27 proposed 30 Day Rolling Average Emission Limit for NO_x for a particular Kiln
28

1 pursuant to Appendix A, Defendant shall meet the proposed Limit for that Kiln until
2 such time as final 30-Day Rolling Average Limit is established pursuant to Paragraph
3 13.
4

5 **B. NO_x and Ammonia Continuous Emission Monitoring Systems**

6 17. By no later than December 31, 2017, Defendant shall install and make
7 operational a NO_x CEMS and an Ammonia CEMS at the stack of Kiln #2 in
8 accordance with the requirements of Appendix A.
9

10 a. On or before the date that a NO_x CEMS and an Ammonia CEMS is required
11 pursuant to Paragraph 17, Defendant shall begin to record on a continuous basis
12 the daily clinker production rates by continuously meeting the requirements of 40
13 C.F.R. § 63.1350(d) to determine hourly clinker production rates.

14 18. Except during CEMS breakdowns, repairs, calibration checks, and zero
15 span adjustments, the CEMS required pursuant to Paragraphs 17 and 19 shall be
16 operated at all times during Kiln Operation. Such CEMS shall be used to
17 demonstrate compliance with the 30-Day Rolling Average Emission Limit for NO_x
18 established in Section V.A (NO_x Control Technology and Emission Limits) and
19 Appendix A of this Consent Decree.
20

21 19. By February 1, 2018, Defendant shall complete installation of a single
22 stack for Kiln #1, install and make operational a NO_x CEMS and an Ammonia CEMS
23 at the stack and start collecting the same production data as Paragraph 17.a.
24

25 20. Each NO_x CEMS required by this Consent Decree along with associated
26 flow monitors and weight meters shall monitor and record the applicable NO_x
27 emission rate from each Kiln stack in units of lbs. of NO_x per Ton of clinker produced
28

1 at the Kiln and shall be installed, certified, calibrated, maintained, and operated in
2 accordance with the requirements of 40 C.F.R. Part 60, Appendices B and F. The
3 Ammonia CEMS shall be installed and operated in a manner that meets the
4 requirements of 40 C.F.R. Part 60, Appendices B and F, and CTM 027.
5

6 21. For purposes of this Consent Decree, all emissions of NO_x from the Kilns
7 shall be measured by the NO_x CEMS. During any time when CEMS are inoperable
8 and otherwise not measuring emission of NO_x from either Kiln, Defendant shall apply
9 the missing data substitution procedures in 40 C.F.R. Part 75, Subpart D.
10

11 **SECTION VI: SO₂ EMISSION LIMITS AND MONITORING REQUIREMENTS**

12 **A. SO₂ Emission Limits**

13 22. By the dates set forth below in Paragraphs 23 and 24, Defendant shall
14 achieve and maintain continuous compliance with the 30-Day Rolling Average
15 Emission Limit for SO₂ set forth in Table 1:
16

17 **TABLE 1**

18

Kiln	30-Day Rolling Average Emission Limit for SO ₂ (lbs. SO ₂ /Ton of clinker)
Kiln #1	1.1 lbs SO ₂ / Ton of clinker
Kiln #2	1.1 lbs SO ₂ / Ton of clinker

23

24 **B. SO₂ Continuous Emission Monitoring Systems**

25 23. By no later than December 31, 2017, Defendant shall install and make
26 operational an SO₂ CEMS at the stack of Kiln #2.
27
28

1 24. No later than February 1, 2018, Defendant shall install and make
2 operational an SO₂ CEMS at the stack of Kiln #1.

3 25. Except during CEMS breakdowns, repairs, calibration checks, and zero
4 span adjustments, the SO₂ CEMS required pursuant to Paragraphs 23 and 24 shall be
5 operated at all times during Kiln Operation. Each such SO₂ CEMS shall be used at
6 each Kiln to demonstrate compliance with the 30-Day Rolling Average Emission
7 Limit for SO₂ established in Section VI.A (SO₂ Emission Limits) of this Consent
8 Decree.
9

10 26. Each SO₂ CEMS required for this Consent Decree, along with associated
11 flow monitor and weight meters, shall monitor and record the applicable SO₂
12 emission rate from each Kiln stack in units of lb of SO₂ per Ton of clinker produced
13 at each Kiln and shall be installed, certified, calibrated, maintained, and operated in
14 accordance with the applicable requirements of 40 C.F.R. Part 60.
15

16 27. For purposes of this Consent Decree, all emissions of SO₂ from the Kilns
17 shall be measured by SO₂ CEMS. During any time when the CEMS are inoperable
18 and otherwise not measuring emissions of SO₂ from any Kiln, Defendant shall apply
19 the missing data substitution procedures in 40 C.F.R. Part 75, Subpart D.
20

21 **SECTION VII: OTHER INJUNCTIVE RELIEF**

22 **Good Pollution Control Practices**

23 28. At all times, Defendant shall maintain and operate the Kilns, including all
24 associated air pollution control equipment, in a manner consistent with good air
25 pollution control practice.
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Mitigation

29. Within two years of the Date of Entry of this Consent Decree, Defendant shall replace an existing heavy-duty diesel truck and an existing rail car mover that are identified in Appendix B of this Consent Decree with a new diesel truck and a new rail car mover with required emissions controls, as described more fully in Appendix B (the "Projects"). Defendant shall spend no less than \$420,000 for the Projects ("Project Dollars").

30. Defendant, shall maintain, and, within 30 Days upon U.S. EPA's request, provide to U.S. EPA all documents that substantiate work completed on the Projects in accordance with Section XIX (Notices).

31. Defendant certifies that Defendant is not otherwise required by law to perform the Projects, that Defendant is unaware of any other person who is required by law to perform the Projects, and that Defendant will not use the Projects, or portion thereof, to satisfy any obligations that it may have under other applicable requirements of law. Defendant certifies that it has not, and will not, deduct any costs in implementing Section VII (Other Injunctive Relief), in calculating its federal or state income taxes.

32. Beginning six (6) months after the Effective Date of this Consent Decree, and continuing until completion of the Projects, Defendant shall provide U.S. EPA with semi-annual or annual updates concerning the progress of the Projects in the semi-annual or annual reports required (as applicable) in Section XII (Reporting Requirements) of this Consent Decree.

1 33. Defendant shall use good faith efforts to secure as much environmental
2 benefit as possible for the Project Dollars expended, consistent with the applicable
3 requirements and limits of this Consent Decree. Within sixty (60) Days following the
4 completion of the Projects required under this Consent Decree, Defendant shall
5 submit to U.S. EPA a report that documents the date that the Projects were
6 completed, Defendant's results from implementing the Projects, including the
7 emission reductions or other environmental benefits achieved (including any emission
8 reductions achieved for NO_x, or SO₂), and the Project Dollars expended by Defendant
9 in implementing the Projects.
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12 34. In connection with any communication to the public or to shareholders
13 regarding Defendant's actions or expenditures relating in any way to the Projects,
14 Defendant shall include prominently in the communication the information that the
15 actions and expenditures were required as part of a negotiated consent decree to
16 resolve allegations that Defendant violated the Clean Air Act.
17

18 **SECTION VIII: TEMPORARY CESSATION OF KILN OPERATION**

19 35. If Defendant has Temporarily Ceased Kiln Operation of any Kiln on the
20 date by which Defendant is required to install and/or Continuously Operate any
21 Control Technology at that Kiln under Section V (NO_x Control Technology, Emission
22 Limits, and Monitoring Requirements), or Section VI (SO₂ Emission Limits and
23 Monitoring Requirements), Defendant shall provide written notice to U.S. EPA
24 within ten (10) Days after such Temporary Cessation began, specifying the date on
25 which such period of Temporary Cessation began. Defendant shall provide such
26 written notice pursuant to Section XIX (Notices).
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1 36. If Defendant has provided the written notice as required in Paragraph 35,
2 above, Defendant shall not be required to install and Continuously Operate the
3 Control Technology at that Kiln by the dates required in Section V (NO_x Control
4 Technology, Emission Limits, and Monitoring Requirements) and Section VI (SO₂
5 Emission Limits and Monitoring Requirements) of this Consent Decree with respect
6 to that Kiln. However, Defendant shall not recommence Kiln Operation after the
7 dates required in Section V (NO_x Control Technology, Emission Limits, and
8 Monitoring Requirements) of this Consent Decree with respect to that Kiln unless the
9 Defendant has: 1) installed and Commenced Continuous Operation of the Control
10 Technologies required by this Consent Decree for that Kiln; 2) commenced
11 compliance with all requirements for that Kiln contained in Section V (NO_x Control
12 Technology, Emission Limits, and Monitoring Requirements) and Section VI (SO₂
13 Emission Limits and Monitoring Requirements); and 3) provided written notice to
14 U.S. EPA within 30 Days after recommencing Kiln Operation. If Defendant
15 recommences Kiln Operation without installing and Commencing Continuous
16 Operation of the Control Technology required under this Consent Decree and does
17 not demonstrate compliance with all requirements for that Kiln contained in Section
18 V (NO_x Control Technology, Emission Limits, and Monitoring Requirements) and
19 Section VI (SO₂ Emission Limits and Monitoring Requirements), Defendant shall be
20 liable for stipulated penalties pursuant to Section XIII (Stipulated Penalties).
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1 or for demonstrating reasonable progress under the regional haze program of the
2 Clean Air Act pursuant to 42 U.S.C. §§ 7491-92.

3 **SECTION X: PERMITS**

4
5 40. Where any compliance obligation under this Consent Decree requires
6 Defendant to obtain a federal, State, or local permit or approval, Defendant shall
7 submit a timely and complete application for such permit or approval and take all
8 other actions necessary to obtain all such permits or approvals, allowing for all legally
9 required processing and review including requests for additional information by the
10 permitting or approval authority. The inability of Defendant to obtain a permit in
11 adequate time to allow compliance with the deadlines stated in this Consent Decree
12 may be considered a Force Majeure event if Defendant demonstrates that it exercised
13 best efforts to timely fulfill its permitting obligations and has otherwise satisfied the
14 requirements of Section XIV (Force Majeure) of this Consent Decree. If, after
15 demonstrating compliance with the requirements of this Paragraph, Defendant
16 determines that it is unable to timely obtain a permit or approval necessary to install
17 and Continuously Operate Control Technology under this Consent Decree, then
18 Defendant shall within 10 days notify EPA in writing pursuant to Section XIV (Force
19 Majeure) of this Consent Decree and shall request an extension of time necessary to
20 obtain such permit or approval and install and shake down the required
21 improvements. If EPA determines that Defendant's inability to timely obtain any
22 such required permit or approval is a Force Majeure event, then the provisions of
23 Paragraph 67 shall apply to extend the deadline for installation and commencement of
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1 Continuous Operation of the Control Technology and for achieving and maintaining
2 compliance with the applicable 30-Day Rolling Average Emission Limits.

3 41. In addition to having first obtained any required preconstruction permits or
4 other approvals pursuant to Paragraph 40, within 3 months after the establishment of
5 the final 30-Day Rolling Average Emission Limit for NO_x established pursuant to
6 Section V (NO_x Control Technology, Emissions Limits and Monitoring
7 Requirements), including Final Dispute Resolution if applicable, Defendant shall
8 apply to NDEP to include the applicable requirements of Sections V.A (NO_x Control
9 Technology and Emission Limits) and VI.A (SO₂ Emission Limits), and any
10 monitoring requirements, including those in Sections V.B (NO_x Continuous Emission
11 Monitoring System) and VI.B (SO₂ Continuous Emission Monitoring Systems) of
12 this Consent Decree in a federally enforceable operating permit or other permit or
13 approval issued under the SIP of Nevada and under authority independent of the
14 NDEP's authority to issue Title V permits. For the purpose of this Paragraph, the
15 ammonia monitoring requirements identified in Section V do not constitute NO_x
16 monitoring requirements. Following submission of the application for the permit or
17 approval, Defendant shall cooperate with NDEP by promptly submitting all
18 information that such permitting authority seeks following its receipt of the
19 application for the permit. The methods specified in this Consent Decree for
20 demonstrating compliance with the limits in this Consent Decree are not intended to
21 change the means by which Defendant demonstrates compliance with standards not
22 addressed by this Consent Decree. The requirements of this Paragraph are satisfied if
23 a preconstruction permit was obtained, that permit serves as a state operating permit
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1 under the Nevada SIP and that permit contains the elements identified in this
2 Paragraph.

3 42. Upon issuance of any permit or approval required under Paragraphs 40
4 and 41, Defendant shall file any applications necessary to incorporate the
5 requirements of that permit into the Title V operating permit of the Facility.
6 Defendant shall not challenge the inclusion in any such permit of the Emission Limits
7 expressly prescribed in this Consent Decree (including, where applicable, 30-Day
8 Rolling Average Emission Limits for NO_x determined in accordance with Appendix
9 A) or of any other requirement of this Consent Decree.
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12 43. For each Kiln, Defendant shall provide U.S. EPA with a copy of each
13 application for a permit to address or comply with any provision of this Consent
14 Decree, as well as a copy of any permit proposed as a result of such application, to
15 allow for timely U.S. EPA participation in any public comment opportunity.
16

17 44. In lieu of incorporating the terms of the Consent Decree directly into a
18 permit issued under a SIP pursuant to Paragraph 41, Defendant may request that
19 NDEP submit the portions of the Consent Decree applicable to the Facility in Nevada
20 to the U.S. EPA for approval under the State's SIP in accordance with 42 U.S.C. §
21 7410(k). Upon approval by the U.S. EPA, those portions of this Consent Decree will
22 be incorporated into the Nevada SIP, and subsequently incorporated into Title V
23 permits for the Facility consistent with applicable requirements in 40 C.F.R. Part 70
24 or Nevada-specific rules adopted and approved consistent with Part 70. Defendant
25 agrees not to contest the submittal of any such proposed SIP revision that
26 incorporates the terms of this Consent Decree to U.S. EPA, or U.S. EPA's approval
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1 of such submittal, or the incorporation of the applicable portions of this Consent
2 Decree through these SIP requirements into the Title V permits.

3 **SECTION XI: REVIEW AND APPROVAL OF SUBMITTALS**

4
5 45. After review of any plan, report, or other document that is required to be
6 submitted pursuant to this Consent Decree, U.S. EPA, shall in writing: (a) approve
7 the submission; (b) approve the submission upon specified conditions; (c) approve
8 part of the submission and disapprove the remainder; or (d) disapprove the
9 submission.
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11 46. If the submission is approved pursuant to Paragraph 45, Defendant shall
12 take all actions required by the plan, report, or other document, in accordance with
13 the schedules and requirements of the plan, report, or other document, as approved. If
14 the submission is conditionally approved or approved only in part, pursuant to
15 Paragraph 45.b or c, Defendant shall, upon written direction of U.S. EPA, take all
16 actions required by the approved plan, report, or other item that U.S. EPA determines
17 are technically severable from any disapproved portions, subject to Defendant's right
18 to dispute the specified conditions or the disapproved portions, under Section XV
19 (Dispute Resolution) of this Consent Decree and the severability of such portions.
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21
22 47. If the submission is disapproved in whole or in part pursuant to Paragraph
23 45.c or d, Defendant shall, within 45 Days or such other time as the Parties agree to in
24 writing, correct all deficiencies and resubmit the plan, report, or other item, or
25 disapproved portion thereof, for approval, in accordance with the preceding
26 Paragraphs. If the resubmission is approved in whole or in part, Defendant shall
27 proceed in accordance with the preceding Paragraph.
28

1 48. Any stipulated penalties applicable to an original submission that is
2 disapproved in whole or in part pursuant to Paragraph 45.c or d, as provided in
3 Section XIII (Stipulated Penalties) of this decree, shall continue to accrue during the
4 period specified in Paragraph 47, but any stipulated penalties that accrue following
5 the receipt of the submission shall not be payable unless the resubmission is untimely
6 or is disapproved in whole or in part; provided that, if the original submission was so
7 deficient as to constitute a material breach of Defendant's obligations under this
8 Decree, the stipulated penalties applicable to the original submission shall be due and
9 payable notwithstanding any subsequent resubmission.
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12 49. If a resubmitted plan, report, or other item, or portion thereof, is
13 disapproved in whole or in part, U.S. EPA may again require Defendant to correct
14 any deficiencies in accordance with the preceding Paragraphs, or may itself correct
15 any deficiencies and seek stipulated penalties, subject to Defendant's right to invoke
16 Dispute Resolution under Section XV (Dispute Resolution) of this Consent Decree.
17

18 **SECTION XII: REPORTING REQUIREMENTS**

19 50. Within 30 Days after the end of each half calendar year (*i.e.*, June 30,
20 December 31) after the Effective Date, until termination of this Consent Decree
21 pursuant to Section XXIII (Termination), Defendant shall submit a semi-annual
22 report to U.S. EPA for the immediately preceding half calendar year period that shall:
23

- 24 a. Identify any and all dates on which Defendant has installed, or describe the
25 progress of installation of, each Control Technology required for each Kiln under
26 Section V (NO_x Control Technology, Emission Limits and Monitoring
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- 1 Requirements) and describe any problems encountered or anticipated during such
2 installation, together with implemented or proposed solutions;
- 3
4 b. Identify any and all dates on which Defendant has completed installation of, or
5 describe the progress of installation of, each continuous monitoring system
6 required under Section V.B (NO_x and Ammonia Continuous Emission Monitoring
7 Systems) and Section VI.B (SO₂ Continuous Emission Monitoring Systems) and
8 describe any problems encountered or anticipated during such installation,
9 together with implemented or proposed solutions;
- 10
11 c. Provide, in electronic format able to be manipulated with Microsoft Excel, all
12 CEMS data collected for each Kiln, reduced to 1 hour averages, in accordance
13 with 40 C.F.R. § 60.13(h)(2), including an explanation of any periods of CEMS
14 downtime together with any missing data for which Defendant applied missing
15 data substitution procedures, under Section V.B (NO_x and Ammonia Continuous
16 Emission Monitoring Systems) or Section VI.B (SO₂ Continuous Emission
17 Monitoring Systems);
- 18
19 d. Demonstrate compliance with all applicable 30-Day Rolling Average Emission
20 Limits of this Consent Decree;
- 21
22 e. Provide a complete description and status of all actions Defendant has undertaken
23 to comply with each of the Appendices of this Consent Decree;
- 24
25 f. Describe the status of permit applications and any proposed SIP revisions made to
26 implement the requirements of this Consent Decree; and
- 27
28 g. Describe the status of any operation and maintenance work relating to activities
required under this Consent Decree.

1 The semi-annual report shall also include a description of any non-compliance with the
2 requirements of this Consent Decree and an explanation of the likely cause of non-compliance
3 and of the remedial steps taken, or to be taken, to prevent or minimize such non-compliance.
4

5 51. If Defendant violates, or has reason to believe that it may violate, any
6 requirement of this Consent Decree, Defendant shall notify the United States of such
7 violation and its likely duration, in writing (including by email), within ten (10)
8 Business Days of the Day Defendant first becomes aware of the violation, with an
9 explanation of the violation's likely cause and of the remedial steps taken, or to be
10 taken, to prevent or minimize such violation and to mitigate any adverse effects of
11 such violation. Defendant shall investigate the cause of the violation and shall then
12 submit an amendment to the report required under Paragraph 50, including a full
13 explanation of the cause of the violation, within 30 Days of the Day Defendant
14 becomes aware of the cause of the violation. Nothing in this Paragraph or the
15 following Paragraph relieves Defendant of its obligation to provide the notice
16 required by Section XIV (Force Majeure) of this Consent Decree or to avail itself of
17 Section XIV (Force Majeure) if Defendant contends a Force Majeure event occurred.
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21 52. Whenever any violation of this Consent Decree, or of any applicable
22 permits required under this Consent Decree, or any other event affecting Defendant's
23 performance under this Consent Decree, or the performance of the Kilns, may pose an
24 immediate threat to the public health or welfare or the environment, Defendant shall
25 notify U.S. EPA, orally or by electronic or facsimile transmission as soon as possible,
26 but no later than 24 hours after Defendant first knew, or should have known, of the
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1 violation or event. This procedure is in addition to the requirements set forth in the
2 preceding Paragraph.

3 53. All reports shall be submitted to the persons designated in Section XIX
4 (Notices) of this Consent Decree.
5

6 54. Each report submitted by Defendant under this Section or Appendix A or
7 Appendix B shall be signed by an official of the submitting party and include the
8 following certification:
9

10 I certify under penalty of law that this document and all attachments
11 were prepared under my direction or supervision in accordance with
12 a system designed to assure that qualified personnel properly gather
13 and evaluate the information submitted. Based on my inquiry of the
14 person or persons who manage the system, or those persons directly
15 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.

16 This certification requirement does not apply to emergency or similar notifications where
17 compliance would be impractical. Failure to certify as immediately above is a violation of the
18 Consent Decree and is subject to stipulated penalties.
19

20 55. The reporting requirements of this Consent Decree do not relieve
21 Defendant of any reporting obligations required by the Clean Air Act or
22 implementing regulations, or by any other federal, State, or local law, regulation,
23 permit, or other requirement.
24

25 56. Any information provided pursuant to this Consent Decree may be used
26 by the United States in any proceeding to enforce the provisions of this Consent
27 Decree and as otherwise permitted by law.
28

TABLE 2

Consent Decree Violation	Stipulated Penalty
a. Failure to pay the civil penalty in the manner specified in Section IV (Civil Penalty) of this Consent Decree	\$7,500 for each Day
b. Failure to comply with a 30-Day Rolling Average Emission Limit for NO _x or SO ₂ where the emissions are less than 5% in excess of the limits set forth in this Consent Decree	\$1,000 for each Operating Day during any 30-Day rolling period where the violation is less than 5% in excess of the Limit
c. Failure to comply with a 30-Day Rolling Average Emission Limit for NO _x or SO ₂ 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	\$2,000 for each Operating Day during any 30-Day rolling period where the violation is equal to or greater than 5% but less than 10% in excess of the Limit
d. Failure to comply with a 30-Day Rolling Average Emission Limit for NO _x or SO ₂ where the emissions are equal to or greater than 10% in excess of the limits set forth in this Consent Decree	\$4,000 for each Operating Day during any 30-Day rolling period where the violation is equal to or greater than 10% in excess of the Limit
e. Failure to install or Commence Continuous Operation or Continuously Operate Control Technology at a Kiln required by the deadlines established in Section V (NO _x Control Technology, Emission Limits and Monitoring Requirements) and/or Appendix A of this Consent Decree	\$5,000 for each consecutive Operating Day during the first 20 Days, \$ 10,000 for each consecutive Operating Day for the next 40 Days, and \$32,500 for each consecutive Operating Day thereafter
f. Failure to install or operate a CEMS or other monitoring device in conformance with the requirements of Section V.B. (NO _x and Ammonia Continuous Emission Monitoring Systems), Section VI.B (SO ₂ Continuous Emission Monitoring Systems), or Appendix A, as applicable. CEMS down time and missing data periods are not subject to stipulated penalties	\$1,000 for each Operating Day for each such failure per Kiln

1 stipulated penalties are subject to challenge by Defendant pursuant to Section XIV
2 (Force Majeure).

3 59. Defendant shall pay any stipulated penalty within thirty (30) Days of
4 receiving the United States' written demand.
5

6 60. The United States may, in the unreviewable exercise of its discretion,
7 reduce or waive stipulated penalties otherwise due the United States under this
8 Consent Decree.
9

10 61. Stipulated penalties shall accrue as provided in this Section, during any
11 Dispute Resolution, but need not be paid until the following:

- 12 a. If the dispute is resolved by agreement between the Parties or by a decision of the
13 United States that is not appealed to the Court, Defendant shall pay accrued
14 penalties determined to be owing, together with interest accruing from the 31st
15 Day after the written demand in Paragraph 59, within 30 Days of the effective
16 date of the agreement or the receipt of U.S. EPA's decision or order.
17
- 18 b. If the dispute is appealed to the Court and the United States is the prevailing
19 party, in whole or in part, as may be determined by the Court, Defendant shall pay
20 all accrued penalties determined by the Court to be owing, together with interest
21 accruing from the 31st Day after the written demand in Paragraph 59, within 60
22 Days of receiving the Court's decision or order, except as provided in
23 Subparagraph c below.
24
- 25 c. If any Party appeals the District Court's decision, Defendant shall pay all accrued
26 penalties determined to be owing, together with interest accruing from the 31st
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1 or sanctions available to the United States for Defendant's violation of this Consent
2 Decree or applicable law. Where a violation of this Consent Decree is also a violation
3 of the Clean Air Act, Defendant shall be allowed a dollar-for-dollar credit, for any
4 stipulated penalties paid, against any statutory penalties imposed for such violations.
5

6 **SECTION XIV: FORCE MAJEURE**

7 67. "Force Majeure" (for purposes of this Consent Decree) is defined as any
8 event arising from causes beyond the control of Defendant, of any entity controlled
9 by Defendant or Defendant's Contractors, that causes a delay or impediment to
10 performance in complying with any obligation under this Consent Decree despite the
11 Defendant's best efforts to fulfill the obligation. The requirement that the Defendant
12 exercise best efforts to fulfill the obligation includes using best efforts to anticipate
13 any potential Force Majeure event and best efforts to address the effects of any such
14 event (a) as it is occurring and (b) after it has occurred to prevent or minimize any
15 resulting delay and the effects of such event to the greatest extent possible. Force
16 Majeure does not include the Defendant's financial inability to perform any
17 obligation under this Consent Decree. Force Majeure may include Defendant's
18 inability after demonstrating compliance with the requirements of Paragraphs 40 and
19 41 to obtain a permit or approval such that there is adequate time to install and
20 Continuously Operate Control Technology required under this Consent Decree.
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23 68. If any event occurs or has occurred that may delay the performance of any
24 obligation under this Consent Decree, whether or not caused by a Force Majeure
25 event, Defendant shall provide written notice or notice by electronic mail (email) to
26 the representatives of U.S. EPA designated to receive notice pursuant to Section XIX
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1 (Notices) within seven (7) Business Days of when Defendant first knew that the event
2 might cause a delay. Within 21 Days thereafter, Defendant shall provide in writing to
3 U.S. EPA an explanation and description of the reasons for the delay; the anticipated
4 duration of the delay; all actions taken or to be taken to prevent or minimize the
5 delay; a schedule for implementation of any measures to be taken to prevent or
6 mitigate the delay or the effect of the delay; Defendant's rationale for attributing such
7 delay to a Force Majeure event if it intends to assert such a claim; and a statement as
8 to whether, in the opinion of Defendant, such event may cause or contribute to an
9 endangerment to public health, welfare or the environment. Defendant shall include
10 with any notice all available documentation supporting the claim that the delay was
11 attributable to a Force Majeure. Failure to comply with the above requirements shall
12 preclude Defendant from asserting any claim of Force Majeure for that event for the
13 period of time of such failure to comply, and for any additional delay caused by such
14 failure. Defendant shall be deemed to know of any circumstance of which Defendant,
15 any entity controlled by Defendant, or Defendant's Contractors knew or should have
16 known.
17

20 69. If U.S. EPA agrees that the delay or anticipated delay is attributable to a
21 Force Majeure event, the time for performance of the obligations under this Consent
22 Decree that are affected by the Force Majeure event will be extended by U.S. EPA for
23 such time as is necessary to complete those obligations. An extension of the time for
24 performance of the obligations affected by the Force Majeure event shall not, of
25 itself, extend the time for performance of any other obligation. U.S. EPA will notify
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1 Defendant in writing of the length of the extension, if any, for performance of the
2 obligations affected by the Force Majeure event.

3 70. If U.S. EPA does not agree that the delay or anticipated delay has been or
4 will be caused by a Force Majeure event, U.S. EPA will notify Defendant in writing
5 of its decision.
6

7 71. If Defendant elects to invoke the dispute resolution procedures set forth in
8 Section XV (Dispute Resolution), it shall do so no later than 15 Days after receipt of
9 U.S. EPA's notice. In any such proceeding, Defendant shall have the burden of
10 demonstrating by a preponderance of the evidence that the delay or anticipated delay
11 has been or will be caused by a Force Majeure event, that the duration of the delay or
12 the extension sought was or will be warranted under the circumstances, that best
13 efforts were exercised to avoid and mitigate the effects of the delay, and that
14 Defendant complied with the requirements of Paragraphs 67 and 68, above. If
15 Defendant carries this burden, the delay at issue shall be deemed not to be a violation
16 by Defendant of the affected obligation of this Consent Decree identified to U.S. EPA
17 and the Court.
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20 **SECTION XV: DISPUTE RESOLUTION**

21 72. Unless otherwise expressly provided for in this Consent Decree, the
22 dispute resolution procedures of this Section shall be the exclusive mechanism to
23 resolve disputes arising under or with respect to this Consent Decree. Defendant's
24 failure to seek resolution of a dispute under this Section shall preclude Defendant
25 from raising any such issue as a defense to an action by the United States or Affected
26 State to enforce any obligation of Defendant arising under this Consent Decree.
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1 73. Informal Dispute Resolution for Emission Limit Setting Process under
2 Appendix A. If Defendant invokes Dispute Resolution regarding an EPA-established
3 alternative final 30-Day Rolling Average Emission Limit for NO_x, Defendant shall
4 promptly (within 15 days) initiate the process set forth in this Paragraph to hire an
5 independent Contractor who will be tasked to analyze the 30-Day Rolling Average
6 Emission Limits for NO_x established by EPA and proposed by Defendant and to
7 provide, for the benefit of both U.S. EPA and Defendant, the reports, analysis, and
8 services identified in this Paragraph, below, by the specified deadlines. Defendant
9 shall bear all costs associated with the Contractor's work up to \$100,000, and shall
10 provide the Contractor access to records, employees, contracts, and facilities which
11 are reasonably necessary to complete the report required by this Paragraph. If costs
12 to perform the work set forth in the Scope of Work (SOW) requirements described in
13 this Paragraph are expected to be higher than \$100,000, Defendant and U.S. EPA
14 will, upon written mutual agreement, limit or modify the nature and/or scope of the
15 work to be performed under this Paragraph to meet the expenditure limitation. For
16 purposes of this Paragraph, "independent" shall mean a qualified professional with at
17 least 5 years of experience relating to the operations of and/or emissions from cement
18 kilns or similar sources and who has not previously been employed or retained by
19 Defendant in any capacity (unless otherwise approved by U.S. EPA).

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24 a. Defendant shall submit to U.S. EPA for approval, the name and qualifications of a
25 proposed Contractor for this engagement at the time it submits its Written Notice
26 of Dispute in accordance with Section XIX (Notices). If U.S. EPA disapproves of
27 the Contractor, Defendant is required to propose to U.S. EPA within 15 Days of
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1 the disapproval a different Contractor, also subject to U.S. EPA's approval. If
2 U.S. EPA disapproves the second Contractor, U.S. EPA may choose and identify
3 to Defendant the Contractor to be employed. Defendant shall enter into a contract
4 with the Contractor, containing the SOW requirements in Paragraph 73.b, below
5 (as modified to meet the expenditure limitations), within 14 Days of U.S. EPA's
6 approval or final identification of the Contractor.
7

8 b. As part of the contract, Defendant shall provide to the Contractor a SOW which
9 will include a requirement or direction to:
10

11 i. Analyze all the data collected under Appendix A, as well as the
12 Demonstration Report, and proposed 30-Day Rolling Average Emission
13 Limits for NO_x;

14 ii. Submit to U.S. EPA and Defendant, a report on the appropriate 30-day
15 rolling average emission limit, consistent with the methodology set forth
16 in and information collected through Appendix A, as applicable, based
17 upon the injection rates and the operational parameters approved as part of
18 the SNCR Design Reports and the SNCR Optimization Reports required
19 by Appendix A, as applicable. The conclusions of this report shall be
20 based on all of the information and data collected during the SNCR
21 Optimization and Demonstration Periods, as applicable, as well as any
22 additional site-specific information available to the Contractor. The report
23 shall include a section on whether the data collected during the
24 Demonstration Period is representative of normal operations of the unit, as
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1 well as a recommended final 30-Day Rolling Average Emission Limit for
2 NO_x using the protocol and procedures in Appendix A, as applicable;
3
4 iii. Make available to U.S. EPA any and all data evaluated, and reveal all
5 communications with Defendant in the course of work pursuant to the
6 SOW. The Contractor shall also be tasked in the SOW to attend up to 15
7 hours of meetings specifically requested by U.S. EPA, to answer questions
8 concerning any analysis or work undertaken pursuant to the SOW.
9 Defendant may attend any such meeting between U.S. EPA and the
10 Contractor. The SOW shall make clear that the Contractor is free to
11 discuss its analysis, findings and the content of their report with U.S. EPA
12 prior to the completion of the report; and
13
14 iv. Complete the Contractor report within 45 Days from the time of the
15 effective date of the contract.
16

17 c. The results of the Contractor report will inform the parties in the process of
18 engaging in informal dispute resolution on the proposed and final permit limit.
19

20 74. If the United States and Defendant are unable to reach agreement on a
21 final 30-Day Rolling Average Emission Limit for NO_x within 20 Days after receipt of
22 the Contractor report by EPA referenced in the prior paragraph, Defendant may
23 request formal dispute resolution under Paragraph 76 of this Consent Decree. The
24 Contractor report shall be part of the Dispute Resolution record in any formal dispute
25 proceedings under this Consent Decree.
26

27 75. Informal Dispute Resolution with Respect to All Other Disputes. Any
28 dispute subject to Dispute Resolution under this Consent Decree shall first be the

1 subject of informal negotiations. The dispute shall be considered to have arisen when
2 Defendant sends the United States a written Notice of Dispute. Such Notice of
3 Dispute shall state clearly the matter in dispute. The period of informal negotiations
4 shall not exceed 30 Days from the date the dispute arises, unless that period is
5 modified by written agreement. If the Parties cannot resolve a dispute by informal
6 negotiations, then the position advanced by the United States shall be considered
7 binding unless, within 30 Days after the conclusion of the informal negotiation
8 period, Defendant invokes formal dispute resolution procedures as set forth below.
9

10
11 76. Formal Dispute Resolution. Defendant shall invoke formal dispute
12 resolution procedures, within the time period provided in the preceding Paragraph, by
13 serving on the United States a written Statement of Position regarding the matter in
14 dispute. The Statement of Position shall include, but need not be limited to, any
15 factual data, analysis, or opinion supporting Defendant's position and any supporting
16 documentation relied upon by Defendant.
17

18 77. The United States shall serve its Statement of Position within 45 Days of
19 receipt of Defendant's Statement of Position. The United States' Statement of
20 Position shall include, but need not be limited to, any factual data, analysis, or
21 opinion supporting that position and any supporting documentation relied upon by the
22 United States. The United States' Statement of Position shall be binding on
23 Defendant, unless Defendant files a motion for judicial review of the dispute in
24 accordance with the following Paragraph.
25

26 78. Defendant may seek judicial review of the dispute by filing with the Court
27 and serving on the United States, in accordance with Section XIX (Notices) of this
28

1 Consent Decree, a motion requesting judicial resolution of the dispute. The motion
2 must be filed within 20 Days of receipt of the United States Statement of Position
3 pursuant to the preceding Paragraph. The motion shall contain a written statement of
4 Defendant's position on the matter in dispute, including any supporting factual data,
5 analysis, opinion, or documentation, and shall set forth the relief requested and any
6 schedule within which the dispute must be resolved for orderly implementation of the
7 Consent Decree.
8

9
10 79. The United States shall respond to Defendant's motion within the time
11 period allowed by the Local Rules of this Court. Defendant may file a reply
12 memorandum, to the extent permitted by the Local Rules.

13 80. Standard of Review.

- 14
15 a. Disputes Concerning Matters Accorded Record Review. Except as otherwise
16 provided in this Consent Decree, in any dispute brought under Paragraph 76
17 pertaining to the adequacy or appropriateness of plans, procedures to implement
18 plans, schedules or any other items requiring approval by EPA under this Consent
19 Decree; the adequacy of the performance of work undertaken pursuant to this
20 Consent Decree; and all other disputes that are accorded review on the
21 administrative record under applicable principles of administrative law,
22 Defendant shall have the burden of demonstrating, based on the administrative
23 record, that the position of the United States is arbitrary and capricious or
24 otherwise not in accordance with law or the Consent Decree.
25
26 b. Other Disputes. Except as otherwise provided in this Consent Decree, in any
27 other dispute brought under Section XV (Dispute Resolution), Defendant shall
28

1 bear the burden of demonstrating that its position complies with this Consent
2 Decree.

3 81. The invocation of dispute resolution procedures under this Section shall
4 not, by itself, extend, postpone, or affect in any way any obligation of Defendant
5 under this Consent Decree, unless and until final resolution of the dispute so provides.
6 Stipulated penalties with respect to the disputed matter shall continue to accrue from
7 the first Day of noncompliance, but payment shall be stayed pending resolution of the
8 dispute as provided in Paragraph 61. If Defendant does not prevail on the disputed
9 issue, stipulated penalties shall be assessed and paid as provided in Section XIII
10 (Stipulated Penalties).
11

12
13 **SECTION XVI: INFORMATION COLLECTION AND RETENTION**

14 82. The United States and their representatives, including attorneys,
15 contractors, and consultants, shall have the right of entry into the facility covered by
16 this Consent Decree, at all reasonable times, upon presentation of credentials, to:
17

- 18 a. monitor the progress of activities required under this Consent Decree;
19 b. verify any data or information submitted to the United States in accordance with
20 the terms of this Consent Decree;
21 c. conduct performance testing;
22 d. obtain documentary evidence, including photographs and similar data; and
23 e. assess Defendant's compliance with this Consent Decree.
24

25 83. Upon request, Defendant shall provide U.S. EPA and its authorized
26 representatives copies of analytical data from Kiln performance testing performed by
27
28

1 Defendant. Upon request, U.S. EPA shall provide Defendant copies of analytical data
2 from Kiln performance testing performed by U.S. EPA.

3
4 84. Until five years after the termination of this Consent Decree, Defendant
5 shall retain, and shall instruct its Contractors and agents to preserve, all non-identical
6 copies of all documents, records, or other information (including documents, records,
7 or other information in electronic form) in its or its Contractors' or agents' possession
8 or control, or that come into its or its Contractors' or agents' possession or control,
9 and that relate in any manner to Defendant's performance of its obligations under this
10 Consent Decree. This information-retention requirement shall apply regardless of
11 any contrary corporate or institutional policies or procedures. At any time during this
12 information-retention period, upon request by the United States Defendant shall
13 provide copies of any documents, records, or other information required to be
14 maintained under this Paragraph.
15
16

17 85. Defendant may also assert that information required to be provided under
18 this Section is protected as Confidential Business Information ("CBI") under 40
19 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI,
20 Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.
21

22 86. This Consent Decree in no way limits or affects any right of entry and
23 inspection, or any right to obtain information, held by the United States pursuant to
24 applicable federal or state laws, regulations, or permits, nor does it limit or affect any
25 duty or obligation of Defendant to maintain documents, records, or other information
26 imposed by applicable federal or state laws, regulations, or permits.
27
28

1 **SECTION XVII: EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

2 87. Resolution of Liability. Entry of this Consent Decree shall resolve the
3 civil claims of the United States for the violations alleged in the Complaint filed in
4 this action and in the two Notices of Violation (NOVs) issued by the U.S. EPA dated
5 October 5, 2010 and March 12, 2014, through the date the Consent Decree is lodged
6 with the Court.
7

8 88. Notwithstanding the resolution of liability in Paragraph 87, nothing in this
9 Consent Decree precludes the United States from seeking from Defendant injunctive
10 relief, penalties, or other appropriate relief for violations by Defendant of the
11 regulatory requirements identified in Paragraph 87 resulting from (1) construction or
12 modification that commenced prior to the Date of Lodging of the Consent Decree, if
13 the resulting violations do not arise from the conduct specifically resolved by
14 Paragraph 87 or do not relate to NO_x, or SO₂ or (2) any construction, reconstruction
15 or modification that commences after the Date of Lodging of the Consent Decree.
16
17

18 89. The United States reserves all legal and equitable remedies available to
19 enforce the provisions of this Consent Decree. This Consent Decree shall not be
20 construed to limit the rights of the United States to obtain penalties or injunctive relief
21 under the Act or implementing regulations, or under other federal or State laws,
22 regulations, or permit conditions, except as expressly specified in Paragraphs 87 and
23 63. The United States further reserves all legal and equitable remedies to address any
24 imminent and substantial endangerment to the public health or welfare or the
25 environment arising at, or posed by, the Defendant's Facility, whether related to the
26 violations addressed in this Consent Decree or otherwise.
27
28

1 90. In any subsequent administrative or judicial proceeding initiated by the
2 United States for injunctive relief, civil penalties, other appropriate relief relating to
3 the Facility or Defendant's violations, Defendant shall not assert, and may not
4 maintain, any defense or claim based upon the principles of waiver, res judicata,
5 collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other
6 defenses based upon any contention that the claims raised by the United States in the
7 subsequent proceeding were or should have been brought in the instant case, except
8 with respect to claims that have been specifically resolved pursuant to Paragraph 87
9 of this Consent Decree.
10

11
12 91. This Consent Decree is not a permit, or a modification of any permit,
13 under any federal, State, or local laws or regulations. Defendant is responsible for
14 achieving and maintaining complete compliance with all applicable federal, State, and
15 local laws, regulations, and permits; and the Defendant's compliance with this
16 Consent Decree shall be no defense to any action commenced pursuant to any such
17 laws, regulations, or permits, except as set forth herein. The United States does not,
18 by its consent to the entry of this Consent Decree, warrant or aver in any manner that
19 Defendant's compliance with any aspect of this Consent Decree will result in
20 compliance with provisions of the Act, 42 U.S.C. §§ 7401 *et seq.*, or with any other
21 provisions of federal, State, or local laws, regulations, or permits.
22

23
24 92. This Consent Decree does not limit or affect the rights of Defendant or of
25 the United States against any third parties, not party to this Consent Decree, nor does
26 it limit the rights of third parties, not party to this Consent Decree, against Defendant,
27 except as otherwise provided by law.
28

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

3 **SECTION XVIII: COSTS**

4
5 94. The Parties shall bear their own costs of this action, including attorneys'
6 fees, except that the United States shall be entitled to collect the costs (including
7 attorneys' fees) incurred in any action necessary to collect any portion of the civil
8 penalty or any stipulated penalties due but not paid by Defendant.

9 **SECTION XIX: NOTICES**

10
11 95. Unless otherwise specified herein, whenever notifications, submissions, or
12 communications are required by this Consent Decree, they shall be made in writing
13 and addressed as follows:

14 To U.S. EPA by USPS mail:

15 Phillip A. Brooks
16 Director, Air Enforcement Division
17 U.S. Environmental Protection Agency
18 MC 2242A
19 ATTN: Shaun Burke
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

20 And

21 Chief, Air and TRI Section
22 Enforcement Division
23 ATTN: Charles Aldred
24 U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

25 Email notices should be sent to Aldred.Charles@epa.gov .

26 To the United States (in addition to the U.S. EPA addresses above):

27 EES Case Management Unit

1 Environment and Natural Resources Division
2 U.S. Department of Justice
3 Box 7611 Ben Franklin Station
4 Washington, D.C. 20044-7611
5 Re: DOJ No. 90-5-2-1-10458

6 To the United States by email:

7 eescopy.enrd@usdoj.gov

8 Include in the Subject line: Re: DJ# 90-5-2-1-10458 U.S. v. Nevada Cement Co., Inc.

9 To Nevada Cement Company:

10 Joe Sells,
11 President,
12 Nevada Cement Company
13 I-80 at Exit 46
14 P.O. Box 840
15 Fernley, NV 89408-0840

16 Chuck Kellett
17 Senior Corporate Engineer
18 Eagle Materials
19 3811 Turtle Creek Blvd., Suite 1100
20 Dallas, TX 75219

21 James Graass
22 Executive Vice President, General Counsel, Eagle Materials
23 3811 Turtle Creek Blvd., Suite 1100
24 Dallas, TX 75219

25 96. Any Party may, by written notice to the other Party, change its designated
26 notice recipient or notice address provided above. In addition, any Party may submit
27 any written notification, submission, or communication under this Consent Decree by
28 electronic means.

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

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1 Party seeking the modification bears the burden of demonstrating that it is entitled to
2 the requested modification in accordance with Federal Rule of Civil Procedure 60(b).
3

4 **SECTION XXIII: TERMINATION**

5 102. Complete Termination. After Defendant has complied with the
6 requirements of Section V (NO_x Control Technology, Emission Limits, and
7 Monitoring Requirements), Section VI (SO₂ Emission Limits, and Monitoring
8 Requirements), and Section X (Permits) of this Consent Decree, including
9 Continuously Operating any Control Technology as required by this Consent Decree
10 for both Kilns, for a period of five years after establishment of the NO_x Final
11 Emissions Limits pursuant to Section V (NO_x Control Technology, Emission Limits,
12 and Monitoring Requirements), has complied with all other requirements of this
13 Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as
14 required by this Consent Decree, Defendant may serve upon the United States a
15 Request for Termination of the Consent Decree, stating that Defendant has satisfied
16 those requirements, together with all necessary supporting documentation. If the
17 United States agrees that the Decree as it relates to both Kilns may be terminated, the
18 Parties shall submit, for the Court's approval, a joint stipulation terminating those
19 provisions of the Decree.
20
21
22

23 103. If the United States does not agree that the Decree as a whole, or as
24 it relates to an individual Kiln, may be terminated, Defendant may invoke Dispute
25 Resolution under Section XV (Dispute Resolution) of this Consent Decree. However,
26 Defendant shall not seek Dispute Resolution of any dispute regarding termination
27 under this Section until sixty (60) Days after service of its Request for Termination.
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SECTION XXV: SIGNATORIES/SERVICE/ANSWER

105. The Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and each undersigned representative of Defendant 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.

105. The Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and each undersigned representative of the Party he or she represents hereby 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.

106. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. 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 including, but not limited to, service of a summons. Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is

1 authorized to accept service of process by mail on behalf of Defendant with respect to
2 all matters arising under or relating to this Consent Decree. All Parties agree that
3 Defendant need not file an answer or otherwise respond to the Complaint in this
4 action unless or until the Court expressly declines to enter this Consent Decree.
5

6 **SECTION XXVI: INTEGRATION**

7 107. This Consent Decree constitutes the final, complete, and exclusive
8 agreement and understanding among the Parties with respect to the settlement
9 embodied in the Decree and supersedes all prior agreements and understandings,
10 whether oral or written, concerning the settlement embodied herein. No other
11 document, nor any representation, inducement, agreement, understanding or promise
12 constitutes any part of this Consent Decree or the settlement it represents, nor shall it
13 be used in construing the terms of this Consent Decree.
14
15

16 **SECTION XXVII: FINAL JUDGMENT**

17 108. Upon approval and entry of this Consent Decree by the Court, this
18 Consent Decree shall constitute a final judgment of the Court as to the United States
19 and the Defendant.
20

21 **SECTION XXVIII: APPENDICES**

22 109. The following Appendices are attached to and incorporated as part
23 of this Consent Decree:

24 “Appendix A” contains the Test-and-Set Protocol for NO_x Emission Limit requirements
25 that apply to each Kiln under this Consent Decree subject to those requirements.
26

27 “Appendix B” contains the Environmental Mitigation Projects Requirements.
28

1 All terms in the Appendices shall be construed in a manner consistent with this Consent
2 Decree.

3 **SECTION XXIX: HEADINGS**

4
5 110. Headings to the section and subsections of this Consent Decree are
6 provided for convenience and do not affect the meaning or interpretation of the
7 provisions of this Consent Decree.


8 Dated and entered this 4th Day of October 2017

9
10 


11 UNITED STATES DISTRICT COURT JUDGE
12 District of Nevada
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1 **Signature Page to the Consent Decree in *United States v. Nevada Cement Company***

2 FOR PLAINTIFF UNITED STATES OF AMERICA:

3
4 
5 BRUCE S. GELBER
6 Deputy Assistant Attorney General
7 Environment and Natural Resources
8 Division
9 United States Department of Justice

Date: 3/20/17

9
10 
11 DAVID L. McILWAIN
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) 514-1544 (Tel.)
19 (202) 514-0097 (Fax)
20 David.McIlwain@usdoj.gov

Date: _____

1 **Signature Page to the Consent Decree in *United States v. Nevada Cement Company***

2 FOR PLAINTIFF UNITED STATES OF AMERICA:

3 STEVEN W. MYHRE

4 Acting United States Attorney
5 District of Nevada

6 GREG ADDINGTON

Assistant United States Attorney

7 U.S. Attorney's Office

8 District of Nevada

100 West Liberty

Suite 600

9 Reno, Nevada 89501

10 (775) 784-5438

11 Greg.Addington@usdoj.gov

1 **Signature Page to the Consent Decree in *United States v. Nevada Cement Company***

2 FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY
3 REGION 9:

4
5 

Date: 30 Jan. 2017

6 ALEXIS STRAUSS

7 Acting Regional Administrator U.S. Environmental Protection Agency, Region 9
8 75 Hawthorne Street
9 San Francisco, California 94105

10 

Date: 1/30/17

11 IVAN LIEBEN

12 Attorney
13 Office of Regional Counsel

14 

Date: 1/30/2017

15 DAVID KIM

16 Attorney
17 Office of Regional Counsel
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1 **Signature Page to the Consent Decree in *United States v. Nevada Cement Company***

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3

FOR DEFENDANT NEVADA
CEMENT COMPANY:

4

5

Joseph P. Sells

Date: 01/23/2017

6

Joseph P. Sells
President

7

Nevada Cement Company
I-80 at Exit 46. P.O. Box 840
Fernley, NV 89408-0840

8

9

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11

The following is the name and address of Defendant Nevada Cement Company's agent for service pursuant to Paragraph 106.

12

13

Joseph P. Sells
President
Nevada Cement Company
I-80 at Exit 46. P.O. Box 840
Fernley, NV 89408-0840

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Appendix A to Consent Decree
Test-and-Set Protocol For NO_x Emission Limit

I. Scope and Applicability

1. Defendant shall comply with the requirements contained in this Appendix A regarding installation and optimization of selective non-catalytic reduction technology ("SNCR") and, if necessary, Low NO_x Burners ("LNB") in establishing 30-Day Rolling Average Emission Limits for NO_x for Kiln 1 and Kiln 2 at the Facility.
2. If Kiln operation is disrupted by unplanned outages, or excessive startups and Shutdowns during the CEMS Installation and Operation Period, Baseline Collection Period, SNCR Optimization Period, or SNCR Demonstration Period, or if the Kiln temporarily ceases operation for business or technical reasons, Defendant may request that EPA extend the CEMS Installation and Operation Period, Baseline Collection Period, SNCR Optimization Period or SNCR Demonstration Period pursuant to Section XI (Review and Approval of Submittals). EPA shall grant or deny the request and shall state the amount of time (if any) that the CEMS Installation and Operation Period, Baseline Collection Period, SNCR Optimization Period, or SNCR Demonstration Period, may be extended, which decision is subject to the Section XV (Dispute Resolution) provisions of the Consent Decree. Defendant may not suspend the CEMS Installation and Operation Period, Baseline Collection Period, SNCR Optimization Period, or SNCR Demonstration Period until and unless EPA has granted the request. Data gathered during periods of disruption may not be used to determine any emission calculations or limitations unless both Defendant and EPA agree to use the subject data. All collected data shall be included in each applicable report.

II. CEMS Installation and Operation

1. No later than December 31, 2017, Defendant shall complete installation on Kiln 2, a NO_x continuous emissions monitoring system ("CEMS") certified and compliant with 40 C.F.R. Part 60. By February 1, 2018, Defendant shall complete installation of a NO_x CEMS on Kiln 1 that is certified and compliant with 40 C.F.R. Part 60.
2. Defendant shall install an Ammonia CEMS on Kilns 1 and 2 in conjunction with the installation of the NO_x CEMS pursuant to Paragraph II.1 of this Appendix. The Ammonia CEMS shall be operated whenever the NO_x CEMS is used during baseline testing and the test-and-set processes.

III. Baseline Collection Period

1. Defendant shall use CEMS to collect emissions data for NO_x and Ammonia from the Kilns. Defendant shall monitor and collect operational data as discussed in Paragraph III.2.a of this Appendix.
2. The Baseline Collection Period shall begin within 30 days after installation of Ammonia CEMS and certified NO_x CEMS on each Kiln. The duration of the Baseline Collection Period shall last for 120 Operating Days and be undertaken during periods of Kiln Operation.
 - a. The data collected during the Baseline Collection Period and through to the end of the SNCR Demonstration Period or the LNB Demonstration Period shall include the following data derived from available direct monitoring or estimated from monitored or measured data:
 - i. Kiln flue gas temperature at the inlet to the fabric filter or at the Kiln stack (daily average);
 - ii. Kiln production in Tons of clinker (daily total) and the method used to calculate Kiln production;
 - iii. Raw material feed in Tons (daily total);
 - iv. Type and percentage of each raw material used (daily);
 - v. NO_x, SO₂, and Ammonia concentrations (dry basis) and mass rates of NO_x and SO₂ for Kilns 1 and 2;
 - vi. Flue gas volumetric flow rate (daily average in dry acfm);
 - vii. Feed burnability (C3S) (at least daily);
 - viii. Temperatures in or near the burning zone (by infrared or optical pyrometer);
 - ix. Kiln system fuel feed rate and type of fuel by weight or heat input rate (calculated to a daily average);
 - x. Kiln amps (daily average);
 - xi. Kiln back end O₂ concentration (daily average);

- xii. Kiln system draft fan settings;
- xiii. Documentation of any Startup, Shutdown, or Malfunction events;
and
- xiv. An explanation of any gaps in the data or missing data.

- b. The Defendant shall submit a Baseline Collection Report for each Kiln within 30 days after the deadline for the end of the Baseline Collection Period on each Kiln. The Baseline Collection Report shall include the data collected during the Baseline Collection Period and a calculation of the Baseline NO_x Emissions as defined in Paragraph 8.e of Section III (Definitions).
- c. Hours or days when there is no Kiln Operation shall be excluded from the calculation in Paragraph III.2.b of Appendix A. However, Defendant shall provide an explanation in the Baseline Collection Report for any data excluded and provide the excluded data in the Baseline Collection Report.
- d. When submitted, Defendant shall provide the data to EPA in the Baseline Collection Report in an electronic format, consistent with and able to be manipulated by Microsoft Excel, and shall explain the reasons for any data not collected for each of the parameters.

IV. SNCR Design, Installation, Optimization, and Demonstration Requirements

1. SNCR Design Report:

- a. Defendant shall submit to EPA for approval pursuant to Section XI (Review and Approval of Submittals) of the Consent Decree within 180 days from the Date of Entry, a design report for SNCR for Kiln 1 and Kiln 2 ("SNCR Design Report").
- b. Defendant shall design each SNCR system to be capable of delivering the proposed reagent at a maximum rate of at least 1.4 mols of reagent to 1.0 mols of NO_x (1.4:1 molar ratio) at all times based on Baseline NO_x Emissions collected pursuant to this Appendix A, and shall design each system consistent with vendor recommendations for reducing NO_x emissions from each Kiln. The system shall be designed to inject Ammonia into the Kiln gas stream based upon the Ammonia Slip measured by the Ammonia CEMS.

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2 c. Defendant shall specify in the Design Report the reagent(s) selected, the
3 location selected for reagent injection, and other design parameters. The
4 design of the SNCR shall be based on maximum emission reduction
5 effectiveness, good engineering judgment, vendor standards, available
6 data, Kiln operability, and regulatory restrictions on reagent storage and
7 use. Subsequent to EPA's approval of the 30-Day Rolling Average
8 Emission Limits for NO_x, Defendant shall have the right to use any type or
9 quantity of reagent, provided it continues to meet the final emission limit
10 set using Ammonia.

11 d. Any permit application that may be required under state or federal law for
12 the SNCR shall be consistent with the approved Design Report.

13 2. SNCR Optimization Protocol:

14 a. Defendant shall submit to EPA for approval pursuant to Section XI
15 (Review and Approval of Submittals) of the Consent Decree within 60
16 days of submittal of the SNCR Design Report a protocol (the "SNCR
17 Optimization Protocol") for optimizing each SNCR, including
18 optimization of the operational parameters resulting in the minimization of
19 emissions of NO_x to the greatest extent practicable without violating any
20 limits for other pollutants. If EPA's action taken pursuant to the Section
21 XI (Review and Approval of Submittals) provisions of this Consent
22 Decree is more than 90 Days after EPA's receipt of the SNCR
23 Optimization Protocol specified above, the applicable deadline to
24 commence optimization of the SNCR units, specified in Paragraph IV.3 of
25 this Appendix A, below, shall be extended by the same number of Days
26 that EPA's action exceeds the 90 days from the date Defendant submits
27 the SNCR Optimization Protocol.

28 b. The SNCR Optimization Protocol shall describe procedures to be used
during the optimization period ("SNCR Optimization Period") for each
SNCR to optimize the different Facility processes to minimize emissions
and adjust the Kiln and SNCR operating parameters, and shall include the
following:

i. Measures to optimize the Facility's processes to reduce NO_x
emissions in conjunction with SNCR (the "SNCR Optimization
Measures"), which shall include at a minimum, fuel fineness,
primary, secondary air rates injected into the Kiln, and adjustments
to the raw mix such as fineness and composition;

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- ii. The method Defendant will use to calculate Ammonia Slip according to Paragraph 8.d of this Consent Decree;
 - iii. Measures to optimize the SNCR using the Ammonia Slip measurement at each Kiln. These measures shall include attempting to maintain an Ammonia Slip concentration of 2 to 6 ppm on a daily average basis or alternative equivalent measures of using Ammonia Slip to control the SNCR operation rate; and
 - iv. Measures to be taken if optimization of the SNCR causes operational problems or excess emissions of a pollutant other than NO_x.

10 3. SNCR Installation and Commencement of Operation:

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- a. For Kilns 1 and 2, Defendant shall complete installation of SNCR no later than 365 days following submission of the Baseline Collection Report for each Kiln and commence the approved SNCR Optimization Protocol as of the date of such installation.
 - b. Defendant shall commence Continuous Operation of each SNCR in accordance with the approved Optimization Protocol by adding reagent to the SNCR system.

17 4. SNCR Optimization Period:

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- a. Defendant shall make its best efforts to establish the optimized steady-state operation of each SNCR as soon as practicable.
 - b. For Kilns 1 and 2, optimization of the SNCR's and the Facility's processes shall be completed within 270 days following the deadline for SNCR installation.
 - c. For each Kiln, Defendant shall collect the data identified in Paragraph III.2.a of Appendix A during the SNCR Optimization Period. When submitted, Defendant shall provide the data to EPA in an electronic format consistent with and able to be manipulated by Microsoft Excel and explain the reasons for any data not collected.
 - d. During each SNCR Optimization Period, Defendant shall operate each Kiln in a manner necessary to produce a quality cement clinker product

1 and shall use good air pollution control practices for minimizing emissions
2 at all times.

- 3 e. For each Kiln, Defendant shall continue to collect the data specified in
4 Paragraph III.2.a of Appendix A after the SNCR Optimization Period.

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6 5. SNCR Optimization Report:

- 7 a. Within 60 Days following the end of the SNCR Optimization Period for
8 each Kiln, Defendant shall submit to EPA for approval pursuant to Section
9 XI (Review and Approval of Submittals) of the Consent Decree an
10 optimization report ("SNCR Optimization Report") for that Kiln. The
11 Optimization Report shall:

- 12 i. Demonstrate conformance with the SNCR Optimization Protocol
13 for the Kiln and its associated SNCR system;
14 ii. Include all data collected during the SNCR Optimization Periods;
15 iii. Propose, for approval, consistent with the SNCR Optimization
16 Protocol, the optimized operating parameters for the Kiln and the
17 SNCR system to be maintained during the SNCR Demonstration
18 Period; and
19 iv. Propose steps to be taken to maintain an Ammonia Slip of between
20 2 and 6 ppm on a daily average basis or an alternative method of
21 using Ammonia Slip data to control the SNCR operation during the
22 Demonstration Period.

- 23 b. In identifying the optimized state of each SNCR, including the injection
24 rates of reagents, and the operating parameters for the Facility processes,
25 Defendant may take into account energy, environmental, and economic
26 impacts and other costs.

- 27 c. The SNCR Optimization Report may also include a discussion of any
28 problems encountered during the SNCR Optimization Period, and how
that problem may impact the potential emission reductions (including the
quantity of reagent slip at varying injection rates and/or the possible
observance of a detached plume above the Stack).

1 d. In the event Defendant determines, prior to the expiration of the SNCR
2 Optimization Period, that its ability to optimize the Kiln and/or its SNCR
3 system will be affected by potential impairments to product quality, Kiln
4 system reliability or increased emissions of other pollutants, then
5 Defendant shall promptly advise EPA of this determination, and include
6 these considerations as part of its recommendation in its SNCR
7 Optimization Report.

6 6. SNCR Demonstration Period:

- 7 a. The SNCR Demonstration Period for each Kiln shall commence within 7
8 days after Defendant's receipt of the final approval by EPA of the SNCR
9 Optimization Report for the relevant Kiln.
- 10 b. The SNCR Demonstration Period shall last 270 Operating Days. During
11 the SNCR Demonstration Period, the Kiln shall be operated consistent
12 with the optimized operations of the Facility's processes and the SNCR
13 system as approved by EPA as part of the SNCR Optimization Report.
- 14 c. Subject to Section XV (Dispute Resolution) and through written notice to
15 Defendant, EPA may itself extend or reopen the SNCR Demonstration
16 Period based upon a determination that additional data is needed to be able
17 to adequately establish an emission limitation.
- 18 d. If evidence arises during the SNCR Demonstration Period that product
19 quality, or Kiln system reliability is impaired, then Defendant may, upon
20 notice to, and approval by, EPA, temporarily modify Kiln operation and
21 the SNCR system to mitigate the impairment and request that EPA
22 suspend or extend the SNCR Demonstration Period for further technical
23 evaluation of the effects of process optimization on the Kiln or SNCR
24 system or, alternatively, permanently modify the manner of operation of
25 the Kiln or SNCR system to mitigate the effects.
- 26 e. During the SNCR Demonstration Period for each Kiln, Defendant shall
27 collect the same data as required in Paragraph III.2.a of Appendix A.

24 7. SNCR Demonstration Report:

- 25 a. Within 60 Days following completion of the SNCR Demonstration Period
26 for each Kiln and its associated SNCR, Defendant shall submit a
27 demonstration report to EPA ("SNCR Demonstration Report") for that
28 Kiln. The SNCR Demonstration Report shall include all of the data

collected during the SNCR Demonstration Period and the proposed 30-Day Rolling Average Emission Limit for NO_x for each Kiln.

b. For the purposes of the SNCR Demonstration Report:

- i. The 30-Day Rolling Average Emission Limit for NO_x for each Kiln shall be based upon an analysis of CEMS data and clinker production data collected during the SNCR Demonstration Period while the Facility's processes and SNCR system parameters were optimized consistent with the SNCR Optimization Report, Appendix A.IV.5 of the Consent Decree.
- ii. Total pounds of NO_x emitted during an individual Operating Day will be calculated from collected CEMS data for that Operating Day.
- iii. Hours or days when there is no Kiln Operation may be excluded from the calculation in Paragraph IV.7.c of Appendix A below. However, Defendant shall provide an explanation in the SNCR Demonstration Report for any data excluded and include the excluded data in the Demonstration Report.
- iv. All NO_x data when hourly Ammonia Slip is less than 2 ppm or greater than 6 ppm may be used for daily NO_x average calculation. For any days where the daily Ammonia Slip averages less than 2 ppm or greater than 6 ppm, Defendant shall provide justification for use of that data for use in determination of the 30-Day Rolling Average Emission Limit for NO_x for each Kiln. EPA reserves the right to eliminate any data outside the parameters of the Optimization Report from the final 30-Day Rolling Average Emission Limit.

c. The final 30-Day Rolling Average Emission Limit for NO_x for each Kiln shall be calculated in accordance with the following formula:

$X = \mu + 1.65\sigma$ where:

X = 30-Day Rolling Average Emission Limit (lbs/Ton of clinker)

μ = arithmetic mean of all of the 30-Day rolling averages

σ = standard deviation of all of the 30-Day rolling averages, as calculated in the following manner:

$$\sigma = \sqrt{\frac{1}{N} \sum_{i=1}^N (x_i - \bar{x})^2}$$

- d. EPA shall either approve the proposed 30-Day Rolling Average Emission Limits for NO_x or establish an alternative 30-Day Rolling Average Emission Limits. If EPA establishes an alternative 30-Day Rolling Average Emission Limit for NO_x for one or both of the Kilns, Defendant will begin to meet the alternative 30-Day Rolling Average Emission Limit for NO_x within 30 days of receiving notice of the limits from EPA, unless Defendant invokes dispute resolution according to the Section XV (Dispute Resolution) provisions of the Consent Decree in which case the final NO_x limit shall be the 30-Day Rolling Average agreed to by the Parties at the conclusion of Informal Dispute Resolution. If Informal Dispute Resolution does not resolve the dispute, Defendant shall comply with its Proposed final NO_x emissions limit until a final NO_x Emissions Limit is determined by the Court.
- e. Subsequent to EPA's approval of the final 30-Day Rolling Average Emission Limits for NO_x, Defendant shall have the right to use any type or quantity of reagent, provided that Defendant continues to comply with the 30-Day Rolling Average Emission Limit for NO_x.
- f. Supporting data required to be submitted under this Appendix A may contain information relative to Kiln operation and production that Defendant may consider to be proprietary. In such a situation, Defendant may submit the information to EPA as CBI, subject to the provisions of 40 C.F.R. Part 2.
- g. If the final 30-Day Rolling Average Emission Limit for NO_x is established at 40% or more below Baseline NO_x Emissions, no further action shall be required under this Appendix A.

V. LNB Installation and Optimization Requirements

1. LNB Vendor Selection Report

- 1 a. Within 120 days after EPA's demand that Defendant install an LNB
2 pursuant to Paragraph 14 of this Consent Decree, Defendant shall submit
3 an LNB Design Report that explains the reasons Defendant has selected
4 the recommended vendor(s) and includes information from the
5 recommended vendor(s) on expected LNB design and associated NO_x
6 reductions for both Kilns. Any vendor(s) and design chosen must design
7 the LNB with the aim of achieving the result of at least 15% NO_x
8 reduction from the Kiln(s) post SNCR installation and operation. The
9 LNB Design Report will set forth the design specifications of the selected
10 LNB system and the operating parameters and equipment adjustments to
11 be made to the LNB system and, if necessary, the SNCR systems during
12 the LNB Optimization Period necessary to attain emission reductions.

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14 2. LNB Installation and Commencement of Operations

- 15 a. Within the time frame established pursuant to Paragraph 15, Defendant
16 shall complete installation of LNB on Kilns 1 and/or 2, as specified
17 ("LNB Installation").
18 b. Defendant shall install the LNB system consistent with the selected vendor
19 design and operate each LNB in accordance with the LNB Design Report.

20 3. LNB Optimization Protocol

- 21 a. Consistent with the LNB Design Report, optimization of the LNBs on
22 Kiln 1 and Kiln 2 shall be completed no later than 4 months from LNB
23 Installation (the "LNB Optimization Period"). Defendant shall make its
24 best efforts to establish the optimized steady-state operation of the LNB as
25 soon as practicable.
26 b. During the LNB Optimization Period, Defendant shall operate each Kiln
27 in a manner necessary to produce a quality cement clinker product and
28 shall use good air pollution control practices for minimizing emissions at
all times. The SNCR shall Continuously Operate during the LNB
Optimization Period.

4. LNB Data Collection and Submission

- a. The data collected during the LNB Optimization Period shall include the
data specified in Section III.2.a of this Appendix A.

- 1 b. The data collected during the LNB Optimization Period shall be submitted
2 to EPA within one month after the end of the Period as part of an LNB
3 Optimization Report according to the detail and format specified by this
4 Section. The LNB Optimization Report shall also describe how
5 Defendant met the installation and operating parameters and specifications
6 set forth in the LNB Design Report.
- 7 c. When submitted, Defendant shall provide the data to EPA in an electronic
8 format, consistent with and able to be manipulated by Microsoft Excel,
9 and shall explain the reasons for any data not collected for each of the
10 parameters.

11 5. LNB Demonstration Period

- 12 a. To establish a revised final NO_x 30-Day Rolling Average Limit based
13 upon operation of the LNB and the SNCR, Defendant shall duplicate and
14 comply with all applicable requirements of Section IV.6 of this Appendix
15 A, except the LNB Demonstration Period shall last 180 Operating Days.

16 6. LNB Demonstration Report

- 17 a. Defendant shall submit a demonstration report to EPA for approval for
18 that Kiln within 60 Days following completion of the LNB Demonstration
19 Period and comply with all applicable requirements of Section IV.7 of this
20 Appendix A including proposing for approval under Section XI (Review
21 and Approval of Submittals), a revised final 30-Day Rolling Average
22 Emission Limit. Under no circumstance may this proposed revised final
23 limit be less stringent than the limit proposed and/or approved pursuant to
24 the SNCR Demonstration process. The SNCR shall Continuously Operate
25 during the LNB Demonstration Period.

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**Appendix B to Consent Decree:
Environmental Mitigation Projects**

In compliance with and in addition to the requirements in Section VII (Other Injunctive Relief) of this Consent Decree, Defendant shall comply with the requirements of this Appendix B to ensure that the benefits for the federally directed Environmental Mitigation Projects below are achieved.

Clean Diesel Engine Replacement Projects

1. Defendant shall replace an existing heavy-duty diesel truck with a new heavy-duty diesel truck subject to the emission standards set forth at 40 C.F.R. § 86.007-11, at a cost of not less than \$120,000. Defendant shall also replace an existing rail car mover with a Tier 0 or Tier 1 engine with a new rail car mover with a Tier 4 engine subject to the emission standards set forth at 40 C.F.R. Part 1039, at a cost of not less than \$300,000.
2. The replaced engines will be located at Defendant's Fernley facility and related quarries, and between those locations. Defendant shall complete the requirements within two (2) years after the Effective Date.
3. Defendant shall provide a mechanism by which each replaced engine in Paragraph 1 of this Appendix B above is properly disposed of, which must include destruction of the engine block.
4. Nothing in this Consent Decree shall be interpreted to prohibit Defendant from completing any of the Projects ahead of schedule.
5. In accordance with the requirements of Section XII (Reporting Requirements) of the Consent Decree, within sixty (60) Days following the completion of each Project, Defendant shall submit to U.S. EPA for approval a report that documents:
 - a. The date the replacement was completed;
 - b. The results of implementation of the replacement, including the estimated emission reductions or other environmental benefits achieved; and
 - c. The cost incurred by Defendant in implementing the replacement.