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Attorneys for Plaintiff United States of America

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,) Civil Action No. 3:17-cv-00302-MMD-WGC
)
Plaintiff,)
) FIRST AMENDMENT TO THE
22 v.) CONSENT DECREE
)
23 NEVADA CEMENT COMPANY)
)
24 Defendant.)
25 _____)

1 WHEREAS, the United States of America, on behalf of the United States Environmental
2 Protection Agency (herein “U.S. EPA” or “EPA”) and Nevada Cement Company (“Nevada
3 Cement Company”) are parties to a Consent Decree filed with this Court on October 4, 2017
4 (“Consent Decree”);
5

6 WHEREAS, the Consent Decree presently in effect requires Nevada Cement Company to
7 install “selective non-catalytic reduction controls” (“SNCR Control Technology” or “SNCR”) to
8 achieve an unspecified degree of NO_x emissions reductions within a specified timeframe;
9

10 WHEREAS, the Parties now wish to amend the Consent Decree to address newly
11 available technology that can achieve more certain, faster, and likely \greater NO_x emission
12 reductions than SNCR Control Technology, which the Parties have agreed to address through
13 revisions to certain paragraphs in the Consent Decree dealing with permissible NO_x emission
14 control technology, and other related provisions;
15

16 WHEREAS, the Parties desire to amend the Consent Decree to make clear that Nevada
17 Cement Company has the option to install and utilize either Catalytic Filter Bags or SNCR
18 Control Technology;
19

20 WHEREAS, the Consent Decree specifies that the Court retains continuing jurisdiction
21 for the purpose of enforcing and modifying the Consent Decree;
22

23 WHEREAS, Paragraph 100 (Section XXII) of the Consent Decree provides that any
24 material modifications to the Consent Decree shall be agreed to in writing by the EPA and
25 Nevada Cement Company, and shall be effective only upon approval by the Court;
26

27 WHEREAS, the EPA and Nevada Cement Company have each reviewed and hereby
28 consent to this First Amendment to the Consent Decree;

1 WHEREAS, the Parties recognize that this First Amendment to the Consent Decree has
2 been negotiated by the Parties in good faith and that this First Amendment to the Consent Decree
3 is fair, reasonable, and in the public interest.

4 NOW, THEREFORE, the EPA and Nevada Cement Company hereby agree that the
5 Consent Decree shall remain in full force and effect in accordance with its terms, except as set
6 forth in this First Amendment, which shall become effective upon entry by this Court.
7

8
9 **AMENDED CONSENT DECREE PROVISIONS**

10 This First Amendment to the Consent Decree amends paragraph 8(n) of Section III
11 (Definitions) and adds a new definition. It also amends paragraphs 11 and 12 in Section V (NOx
12 Control Technology, Emission Limits and Monitoring Requirements). Finally, it makes
13 amendments to Appendix A (Test-And-Set Protocol For NOx Emission Limit) in paragraph 1 of
14 Section I (Scope and Applicability), paragraph 2 of Section II (CEMS Installation and
15 Operation), and paragraph 2 of Section III (Baseline Collection Period).
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19 **AMENDMENTS TO SECTION III: DEFINITIONS**

- 20 1. The following definition of “Catalytic Filter Bags with Ammonia Injection” or
21 “Catalytic Filter Bags” is to be added to paragraph 8 in alphabetical order:

22 “Catalytic Filter Bags with Ammonia Injection” or “Catalytic Filter Bags”
23 shall mean a filter with a unique embedded catalyst structure, enabling a
24 single bag to remove NOx and dust in a single step process when ammonia is
25 injected into the baghouse.
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1 2. The definition of “Control Technology” or “NO_x Control Technology” in Paragraph
2 8(n) is amended and superseded to read as follows:

3 “Control Technology” or “NO_x Control Technology” shall mean Catalytic
4 Filter Bags with Ammonia Injection, Selective Non-Catalytic Reduction or
5 Low-NO_x Burner technology;
6

7
8 **AMENDMENTS TO SECTION V: NO_x CONTROL TECHNOLOGY, EMISSION**
9 **LIMITS AND MONITORING REQUIREMENTS**

10 3. NO_x Control Technology and Emissions Limits. Paragraph 11 of Section V is
11 amended and superseded to read as follows:

12 11. Defendant shall install and Continuously Operate either SNCR Control
13 Technology or Catalytic Filter Bags with Ammonia Injection on each Kiln to
14 reduce NO_x emissions. If Defendant elects to install Catalytic Filter Bags;
15

16 a. Defendant shall collect baseline NO_x emissions data for the first 90
17 days of the baseline collection period as required under Section III of
18 Appendix A and, within 30 days of the end of such 90-day period,
19 shall propose to EPA a 30-Day Rolling Average Emission Limit for
20 NO_x equal to a 50% reduction in the mean of the 30-Day Rolling
21 Average Emission Rates calculated from the 90 days of baseline
22 emissions data.
23

24 i. The 30-Day Rolling Average Emission Limit for NO_x for each
25 Kiln shall be based upon an analysis of CEMS data and clinker
26 production data collected during the 90-day period.
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- ii. Hours or days when there is no Kiln Operation may be excluded from the calculation. However, Defendant shall provide an explanation in its proposal to EPA for any data excluded.

- b. If Defendant elects to utilize Catalytic Filter Bags, Defendant shall install Catalytic Filter Bags on each Kiln, and comply with the 30-Day Rolling Average Emission Limit for NO_x by April 1, 2019. If EPA disapproves the Proposed 30-Day Rolling Average Emission Limit for NO_x, Defendant shall comply with Defendant's proposed 30-Day Rolling Average Emission Limit for NO_x pending the resolution of any dispute resolution process that ensues.

- c. If Defendant elects to install Catalytic Filter Bags, the remaining paragraphs of this Section V and Appendix A (except for Sections II and III) shall not apply.

- d. Defendant may, after installation of the Catalytic Filter Bags, elect to forego use of Catalytic Filter Bags and to install SNCR Control Technology instead. Defendant must provide written notice of such election by April 1, 2019.

- e. If Defendant elects to forego use of Catalytic Filter Bags per paragraph 11.d., Defendant shall comply with the terms and conditions of Paragraphs 12 - 21 of Section V and the requirements of Appendix A to establish 30-Day Rolling Average Emission Limits for NO_x applicable to each Kiln in lieu of the 30-Day Rolling Average

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Emission Limit for NO_x submitted by Defendant in paragraph 11.a. In such case, Defendant shall not be obligated to meet the 30-Day Rolling Average Emission Limit for NO_x submitted by Defendant in paragraph 11.a.

4. SNCR Control Technology. Paragraph 12 of Section V is amended and superseded to read as follows:

12. If Defendant elects to install SNCR Control Technology, Defendant shall comply with all terms and conditions of Paragraphs 12 - 21 of Section V and the requirements of Appendix A, including the timeframes, drafting submittals and complying with protocols set forth in Appendix A, to establish 30-Day Rolling Average Emission Limits for NO_x applicable to each Kiln.

AMENDMENTS TO SECTION XIX: NOTICES

5. Notification to EPA by USPS Mail. Paragraph 95 of Section XIX is amended by striking the address for EPA headquarters and inserting:

“When submitting documents by carrier such as Federal Express or UPS use the following address (preferred):

Phillip Brooks
Director, Air Enforcement Division
U.S. Environmental Protection Agency
Attn: Shaun Burke, Room 2119B
William Jefferson Clinton Building South
1200 Pennsylvania Ave. NW
Washington, D.C. 20004

When submitting documents through the U.S. Mail (do not send electronic media – the x-ray machine will destroy it):

1 Phillip Brooks
2 Director, Air Enforcement Division
3 U.S. Environmental Protection Agency
4 Attn: Shaun Burke, Room 2119B
5 William Jefferson Clinton Building South
6 1200 Pennsylvania Ave. NW
7 Washington, D.C. 20460”

8 **AMENDMENTS TO APPENDIX A TO CONSENT DECREE:**
9 **TEST-AND-SET PROTOCOL FOR NOX EMISSION LIMIT**

10
11 **AMENDMENT TO SECTION I: SCOPE AND APPLICABILITY**

12 6. Paragraph 1 of Section I of Appendix A is amended and superseded to read as
13 follows:

- 14
- 15 1. If the Defendant does not install Catalytic Filter Bags, or elects to forgo use of
16 the Catalytic Filter Bags pursuant to 11.d. and e., then the Defendant shall
17 comply with the requirements contained in this Appendix A regarding
18 installation and optimization of selective non-catalytic reduction technology
19 (“SNCR”) and, if necessary, Low NO_x Burners (“LNB”) in establishing 30-
20 Day Rolling Average Emission Limits for NO_x for Kiln 1 and Kiln 2 at the
21 Facility. If the Defendant installs Catalytic Filter Bags then only Section II
22 and Section III of this Appendix applies.
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1 **AMENDMENT TO SECTION II: CEMS INSTALLATION AND OPERATION**

2 7. Paragraph 2 of Section II of Appendix A is amended and superseded to read as
3 follows:


4 2. Defendant shall install an Ammonia CEMS on Kilns 1 and 2 in conjunction
5 with the installation of the NO_x CEMS pursuant to Paragraph II.1 of this
6 Appendix. The Ammonia CEMS shall be operated whenever the NO_x CEMS
7 is used during baseline testing and the test-and-set processes, as applicable.
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9

10 **AMENDMENT TO SECTION III: BASELINE COLLETION PERIOD**

11 8. Paragraph 2 of Section III of Appendix A is amended and superseded to read as
12 follows:

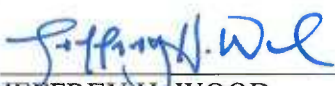
13 2. The Baseline Collection Period shall begin within 30 days after installation of
14 Ammonia CEMS and certified NO_x CEMS on each Kiln. The duration of the
15 Baseline Collection Period shall last for either 90 Days, if Defendant elects to
16 install Catalytic Filter Bags with ammonia injection, or 120 Operating Days if
17 Defendant elects to install SNCR, and be undertaken during periods of Kiln
18 Operation.
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24 Dated and entered this 30th Day of October, 2018.


25 
26 _____
27 UNITED STATES DISTRICT COURT JUDGE
28 District of Nevada

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

3 FOR PLAINTIFF UNITED STATES OF AMERICA:

4
5 
6 JEFFREY H. WOOD
7 Acting Assistant Attorney General
8 Environment and Natural Resources
9 Division
10 United States Department of Justice

Date: 8/10/18

11 
12 DAVID L. McILWAIN
13 Trial Attorney
14 Environmental Enforcement Section
15 Environment and Natural Resources Division
16 United States Department of Justice
17 P.O. Box 7611
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20 (202) 514-0097 (Fax)
21 David.McIlwain@usdoj.gov

Date: 8/15/18

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

3 FOR PLAINTIFF UNITED STATES OF AMERICA:

4 DAYLE ELIESON
5 United States Attorney, District of Nevada

6
7 s/ Greg Addington

Date: 14 August 2018

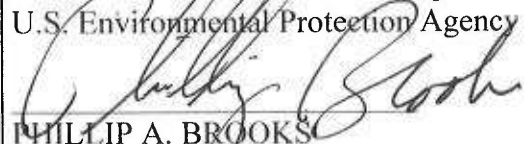
8 GREG ADDINGTON
9 Assistant United States Attorney
10 U.S. Attorney's Office
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12 Suite 900
13 Reno, Nevada 89501
14 (775) 784-5438
15 Greg.Addington@usdoj.gov

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


3 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

4 
5 ROSEMARIE A. KELLEY
6 Director, Office of Civil Enforcement
7 Office of Enforcement and Compliance Assurance
8 U.S. Environmental Protection Agency

Date: 7/26/18

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

Date: 7/18/18

14 
15 ROBERT G. KLEPP
16 Attorney, Air Enforcement Division
17 Office of Enforcement and Compliance Assurance
18 United States Environmental Protection Agency

Date: 7/11/18

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

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


MICHAEL STOKER *Deborah Jordan*
~~Regional Administrator~~ *Acting Regional Administrator*
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Date: 7/16/18


DAVID KIM
Attorney
Office of Regional Counsel

Date: 7/11/18

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

FOR DEFENDANT NEVADA
CEMENT COMPANY:



Date: 7-9-18

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

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

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