

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARTIN MARIETTA
MAGNESIA SPECIALTIES, LLC

Defendant.

Case No. 3:18-cv-633

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action concurrently with this Consent Decree, alleging that Defendant Martin Marietta Magnesia Specialties, LLC (“Defendant”), violated Sections 112(b) and 165 of the Clean Air Act (“the Act”), 42 U.S.C. §§ 7412(b) and 7475.

The Complaint against Defendant alleges that Defendant performed major modifications at, and thereafter operated, five rotary lime kilns at Defendant’s Woodville, Ohio facility (the “Facility”) without first obtaining required permits authorizing the modifications and without installing and employing best available control technology to control emissions of sulfur dioxide (“SO₂”) and nitrogen oxides (“NO_x”), as the Act requires. The Complaint also alleges that the Defendant has operated and continues to operate the Woodville, Ohio facility while exceeding opacity limitations established pursuant to the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) provisions of the Act, 42 U.S.C. § 7412, and the Ohio State Implementation Plan.

Defendant denies the allegations of the Complaint and does not admit that it has any liability to the United States for civil penalties or injunctive relief arising out of the transactions or occurrences alleged in the Complaint.

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

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

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

II. APPLICABILITY

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

4. 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. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5, the United States Attorney for the Northern District of Ohio, and

the United States Department of Justice, in accordance with Section XVI (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

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

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors (excluding the preheater manufacturer contractor) to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

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

a. “12-Month Rolling Tonnage Limit” shall mean the maximum allowable tons of emission of NO_x from a Kiln during any consecutive period of 12 months, expressed as Tons of NO_x. Compliance with the 12-Month Rolling Tonnage Limit for NO_x shall be determined on a monthly basis by summing the total Tons of NO_x emitted from the Kiln during the most recent complete month and the previous 11 months, as measured pursuant to

Section V.B (Installation and Operation of NO_x and SO₂ CEMS) of this Consent Decree. A new compliance determination of the 12-Month Rolling Tonnage Limit shall be calculated for each new complete month in accordance with the provisions of this Consent Decree;

b. “30-Day Rolling Average Emission Limit” shall mean the maximum allowable rate of emission of SO₂ from a Kiln, expressed as pounds of SO₂ emitted per Ton of lime produced. Compliance with the 30-Day Rolling Average Emission Limit shall be determined by following this procedure: first, sum the total pounds of the air pollutant in question emitted from the Kiln during that Operating Day and the previous 29 Operating Days as measured pursuant to Section V.B (Installation and Operation of NO_x and SO₂ CEMS) of this Consent Decree; second, sum the total Tons of lime produced by the Kiln during the same Operating Day and previous 29 Operating Days; and third, divide the total number of pounds of SO₂ emitted from the Kiln during the 30 Operating Days by the total Tons of lime produced by such Kiln during the same 30 Operating Days. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Operating Day to demonstrate compliance with the 30-Day Rolling Average Emission Limit;

c. “Alternate Limit” or “Alternate Limit for NO_x Emissions” shall mean the 12-Month Rolling Tonnage Limit for NO_x as specified in Paragraph 16;

d. “Baghouse” shall mean a pollution control system that utilizes fabric filter bags for the removal and collection of particulate matter from Kiln flue gases;

e. “CEMS” or “Continuous Emission Monitoring System” shall mean, for obligations involving NO_x and SO₂ under this Consent Decree, the total equipment and software required to sample and condition (if applicable), to analyze, and to provide a record of NO_x and SO₂ emission rates, and the raw data necessary to support the reported emission rates, and that

have been installed and calibrated in accordance with 40 C.F.R. § 60.13 and 40 C.F.R. Part 60 Appendix B and Appendix F;

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

g. “Consent Decree” or “Decree” shall mean this Decree;

h. “Day” shall mean a calendar day. In computing any period of time used as a deadline for submission under this Consent Decree, where the last Day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next Day;

i. “Defendant” shall mean Martin Marietta Magnesia Specialties, LLC;

j. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

k. “Effective Date” shall have the definition provided in Section XVII (Effective Date);

l. “Emission Limits” shall mean the maximum allowable 12-Month Rolling Tonnage Limit and 30-Day Rolling Average Emission Limit;

m. “Emission Rate” for a specified air pollutant from any Kiln or Kilns shall mean the concentration of that pollutant in the exit gas from the Kiln or Kilns, as measured in accordance with this Consent Decree;

n. “Facility” shall mean Defendant’s lime production facility located in Woodville, Ohio;

o. “Kiln” shall mean a device, including any associated preheater devices, inline raw mills, or inline coal mills that produces lime by heating limestone. For purposes of

this Consent Decree, the affected Kilns at Defendant's Facility are identified as "Kiln 1" and "Kiln 2";

p. "Lime MACT" shall mean 40 C.F.R. Part 63, Subparts A and AAAAA;

q. "NO_x" shall mean oxides of nitrogen, measured in accordance with the provisions of this Consent Decree;

r. "Operating Day" shall mean any Day when any fuel combustion is occurring in the Kiln;

s. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral;

t. "Petition For Relief," or "Petition," shall mean the detailed report and supporting analysis of relevant data submitted under Paragraph 16 of the Consent Decree, where Defendant identifies conditions that make it unable to achieve the applicable NO_x 12-Month Rolling Tonnage Limit using then existing equipment and proposes an Alternate Limit for NO_x emissions;

u. "Product Quality Demonstration Period" shall mean the 24-month period following the end of the Steady State Operating Period at a Kiln;

v. "Section" shall mean a portion of this Decree identified by a Roman numeral;

w. "SO₂" shall mean the pollutant sulfur dioxide, measured in accordance with the provisions of this Consent Decree;

x. "State" shall mean the State of Ohio;

y. “Steady State Operating Period” shall mean the period of time between the initial Kiln start up following installation of SO₂ controls and the lesser of (a) the time until the Kiln achieves steady state operations or (b) 120 Days;

z. “Title V Permit” shall mean a permit required by and issued in accordance with the requirements of 42 U.S.C. § 7661-7661f;

aa. “Ton” or “Tons” shall mean short ton or short tons; and

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

IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date, Defendant shall pay the sum of \$800,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. Defendant shall pay the civil penalty due at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of Ohio after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

John Gillan
2710 Wycliff Road
Raleigh, NC 27607
(919) 783-4657
john.gillan@martinmarietta.com

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XVI (Notices).

10. At the time of payment, Defendant shall send notice that the payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to the United States via email or regular mail in accordance with Section XVI (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Martin Marietta Magnesia Specialties*, and shall reference the civil action number, CDCS number, and DOJ case number 90-5-2-1-10203.

11. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

A. SO₂ and NO_x Emissions Controls

12. Defendant shall install and commence operations of (i) a preheater at Kiln 1 within 29 months following the Effective Date; and (ii) a preheater at Kiln 2 within 29 months following the Product Quality Demonstration Period (unless such obligation is modified by Paragraphs 22-24 below).

13. Commencing on the 30th Operating Day following certification of the respective CEMS for Kiln 1 and Kiln 2, pursuant to Paragraphs 17 and 18 below, Defendant shall demonstrate compliance and thereafter maintain compliance with the 30-Day Rolling Average Emission Limit of 1.7 lbs. SO₂/Ton lime at both Kiln 1 and Kiln 2, unless modified by

Paragraphs 22-24 below. If Defendant employs a Common Baghouse, the Parties recognize that Defendant may raise the lack of certification of the CEMS and/or lack of steady-state operations during the Kiln 2 Steady State Operating Period as potential defenses in dispute resolution regarding any stipulated penalty incurred for violation of the SO₂ Limit during the period between the routing of Kiln 2 to the Common Baghouse and the certification of the CEMS for Kiln 2.

14. Commencing on the 365th Day following certification of the CEMS for Kiln 1, pursuant to Paragraph 17 below, Defendant shall demonstrate compliance and thereafter maintain compliance with the 12-Month Rolling Tonnage Limit of 1,400 Tons of NO_x per year from Kiln 1. If Defendant employs a Common Baghouse, the obligation to comply with the Limit set forth in this Paragraph shall terminate when Kiln 2 has been routed to the Common Baghouse.

15. Commencing on the 365th Day following certification of the CEMS for Kiln 2, pursuant to Paragraph 18 below, Defendant shall demonstrate compliance and thereafter maintain compliance with the 12-Month Rolling Tonnage Limit of 2,800 Tons of NO_x per year from Kiln 1 and Kiln 2 combined (“Combined NO_x Limit”). If, however, Defendant employs a Common Baghouse, the obligation to demonstrate compliance with the Combined NO_x Limit shall commence on the 365th Day following Kiln 2 having been routed to the Common Baghouse. The Parties recognize that Defendant may raise the lack of certification of the CEMS and/or lack of steady-state operations during the Kiln 2 Steady State Operating Period as potential defenses in dispute resolution regarding any stipulated penalty incurred for violation of the Combined NO_x Limit during the period between the routing of Kiln 2 to the Common Baghouse and the certification of the CEMS for Kiln 2.

16. Defendant has until 365 Days following the applicable deadline for certification of the CEMS for Kiln 1 or Kiln 2 to submit a Petition for Relief from the applicable NO_x Limit to demonstrate it is unable to achieve the 12-Month Rolling Tonnage Limit for NO_x set forth in Paragraph 14 or Paragraph 15 respectively using then existing equipment. Failure to submit a Petition for Relief within 365 Days will be deemed final consent to the 12-Month Rolling Tonnage Limit for NO_x.

a. Any Petition submitted pursuant to Paragraph 16 must comply with the requirements of Appendix A. In the Petition, Defendant shall propose an Alternate Limit for NO_x emissions that represents the lowest Emission Rate that the Kiln can achieve and maintain during normal source operations, based upon all available data and information collected during the preceding 365 Days, and shall explain the basis for its proposal. The proposed Alternate Limit for NO_x Emissions shall, at a minimum, reflect the operation of the preheater on the Kiln(s), subject to Paragraphs 22-24. In no event shall Defendant propose an Alternate Limit for NO_x Emissions greater than 3,066 tons of NO_x per year. Upon request by EPA, Defendant shall submit any additional available data that EPA determines it needs to evaluate the Petition.

b. If Defendant proposes an Alternate Limit for NO_x Emissions in the Petition for Relief, Defendant shall achieve and maintain a 12-Month Rolling Tonnage Limit of no greater than the proposed Alternate Limit for NO_x Emissions immediately upon submission of the Petition for Relief, and will be subject to stipulated penalties for the failure to do so pursuant to Section X (Stipulated Penalties).

c. Following receipt of the Petition for Relief, EPA may, as a result of EPA's review of the Petition for Relief and other data submitted or developed pursuant to the Consent Decree, as well as all other available and relevant information: (a) determine that Defendant

failed to demonstrate that it cannot achieve and maintain a 12-Month Rolling Tonnage Limit set forth in Paragraph 14 and/or 15 and determine that the 12-Month Rolling Tonnage Limits set forth in Paragraphs 14 and/or 15 remain in effect; (b) approve Defendant's proposed Alternate Limit for NO_x Emissions; or (c) establish a different 12-Month Rolling Tonnage Limit for NO_x emissions higher than set forth in Paragraph 14 and/or 15.

d. Within 60 Days after receiving notice of EPA's determination under Paragraph 16.c, and continuing thereafter, Defendant shall achieve and maintain an Emission Limit of no greater than the NO_x Emission Limit set under Paragraph 16.c, above, and be subject to stipulated penalties for failure to do so pursuant to Section X (Stipulated Penalties). Defendant may contest EPA's determination pursuant to Section XII (Dispute Resolution).

B. Installation and Operation of NO_x and SO₂ CEMS

17. By no later than 29 months following the Effective Date, Defendant shall install NO_x and SO₂ continuous emissions monitoring systems ("CEMS") at Kiln 1, capable of measuring the NO_x and SO₂ emissions at Kiln 1. Within 60 Days following the end of the Steady State Operating Period for Kiln 1, Defendant shall calibrate and certify the CEMS at Kiln 1.

18. By no later than 29 months following the Product Quality Demonstration Period, Defendant shall install NO_x and SO₂ CEMS at Kiln 2, capable of measuring the NO_x and SO₂ emissions at Kiln 2. Within 60 Days following the end of the Steady State Operating Period for Kiln 2, Defendant shall calibrate and certify the CEMS at Kiln 2. If Defendant elects to install a Common Baghouse pursuant to Paragraph 25, Defendant may utilize the same NO_x and SO₂ CEMS for both Kiln 1 and Kiln 2.

19. The CEMS required by Paragraphs 17 and 18 shall consist of analyzers to measure NO_x and SO₂ concentrations and stack volumetric flow rate. The NO_x and SO₂ concentration analyzers shall comply with 40 C.F.R. Part 60, Appendix B, Performance Specification 2. The stack volumetric flow rate analyzer shall comply with 40 C.F.R. Part 60, Appendix B, Performance Specification 6. Both analyzers shall comply with the quality assurance/quality control requirements specified in 40 C.F.R. Part 60, Appendix F.

20. Continuous Operation of CEMS and Minimization of CEMS Downtime. After the applicable dates set forth in Paragraphs 17 and 18, and except during CEMS breakdowns, analyzer malfunctions, repairs, and required quality assurance or quality control activities (including calibration checks, and required zero and span adjustments), the NO_x and SO₂ CEMS at Kiln 1 and Kiln 2 shall be in continuous operation. Defendant shall take all reasonable steps necessary to minimize CEMS breakdowns and downtime. This shall include, but is not limited to, operating and maintaining the CEMS in accordance with best practices and maintaining a reasonable on-site inventory of spare parts or other supplies necessary to make rapid repairs to the equipment.

21. Use of CEMS to Demonstrate Compliance with Emission Limits. For purposes of this Consent Decree, all emissions of NO_x and SO₂ from Kiln 1 and Kiln 2 shall be measured by CEMS and the CEMS measurements shall be used to demonstrate compliance with the Emission Limits. During any time when NO_x or SO₂ CEMS are inoperable and otherwise not measuring emissions of NO_x or SO₂, Defendant shall apply the missing data substitution procedures in 40 C.F.R. Part 75, Subpart D.

C. Product Quality Assessment.

22. If Defendant determines within 24 months following the end of the Steady State Operating Period for Kiln 1 or Kiln 2 (“Product Quality Demonstration Period”) that installation of a preheater unacceptably impacts product quality and/or production, Defendant may elect to cease operation of the preheater (or installation of the preheater if such determination is made prior to completion of installation). Upon notification to EPA of an adverse product quality determination, Defendant may operate Kiln 1 (and/or Kiln 2 if applicable) without the continuous operation of a preheater. If Defendant makes such notification and discontinues operation of the preheater (and/or installation of the preheater), Defendant may discontinue compliance with the relevant Emission Limits.

23. Within 90 Days of notification to EPA of its election to cease operation of the Kiln 1 preheater (and/or installation or operation of the Kiln 2 preheater if applicable) pursuant to Paragraph 22, Defendant shall submit to EPA for review and approval a Revised Plan to control SO₂ from Kiln 1 and/or Kiln 2, as applicable. The Revised Plan should include, at a minimum, a description of the control equipment and/or method(s), conceptual design drawings and general specifications for any proposed control equipment, and a schedule identifying key milestone dates for completion of the plan to control SO₂. The proposed control equipment and/or method(s) shall be designed to achieve at least a 90% reduction in SO₂ emissions. The Revised Plan shall identify the reduction in SO₂ that is anticipated from the designed control equipment and/or method(s). The schedule should reflect that the actions will be taken as expeditiously as practicable. The Revised Plan will include provisions and a schedule for proposing and meeting new 30-Day Rolling Average Emission Limits for Kiln 1 and/or Kiln 2, as applicable, within two years following EPA’s approval of the Revised Plan. The proposed

new 30-Day Rolling Average Emission Limit(s) shall be consistent with the rate achievable by the approved control equipment and/or method and shall be submitted to EPA for review and approval.

24. Within two years following EPA's approval of the Revised Plan, Defendant shall operate Kiln 1 and/or Kiln 2, as applicable, in compliance with the EPA-approved, revised 30-Day Rolling Average Emission Limits. Stipulated penalties shall accrue for any exceedances of the EPA-approved, revised 30-Day Rolling Average Emission Limits following that date. Defendant, however, may request from EPA an extension, not to exceed one year, to achieve those standards for reasons including but not limited to complexity, difficulty of installation, or excessive cost, and stipulated penalties shall not accrue during such extension.

D. Baghouse Installation

25. Baghouse Installation at Kiln 1. By no later than 29 months following the Effective Date, Defendant shall complete the installation of a Baghouse at the Facility to address emissions from Kiln 1. The Baghouse may be a common baghouse to receive emissions from both Kiln 1 and Kiln 2 ("Common Baghouse"). The Baghouse shall be designed to capture all particulate matter emissions from Kiln 1 (and Kiln 2 if a Common Baghouse) and control both particulate matter emissions and opacity to the levels required by the Lime MACT and the Facility's Title V Permit. The Baghouse or Common Baghouse shall be designed to continuously meet the applicable emission limits for the lifetime of the equipment with reasonable maintenance and repair. The Baghouse or Common Baghouse will also be designed and constructed to be able to control emissions that occur from as many types of common upset conditions experienced by the Kiln(s) as practicable.

26. Stack Testing for Particulate Matter and Opacity at Kiln 1. By no later than 60 Days following the end of the Steady State Operating Period, Defendant shall conduct a stack test to determine compliance with the Lime MACT particulate matter and opacity emission limits at Kiln 1. If Defendant elects to install a Common Baghouse in a single phase, the stack test for Kiln 1 shall be conducted while one-half of the baghouse is blinded off. Within 45 Days of conducting the stack test, Defendant shall submit a stack test report to EPA. The stack test report shall include, at a minimum, a summary of the test results, the Kiln's operating rate, a description of how the Kiln's operating rate and conditions were set to maximize particulate matter and opacity emissions for the stack test, and the EPA Reference Methods that were used.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

27. Defendant shall implement a Supplemental Environmental Project ("SEP"), the replacement of a Woodville nonroad diesel haul truck, in accordance with all provisions of this Section. The SEP shall be completed by no later than the latter of September 1, 2018 or six months following the Effective Date. The SEP shall consist of replacing a 70 ton haul truck with a Tier 1 engine (with an anticipated replacement date of 2021), in use at the Woodville facility and adjoining lime mine, with a 70 ton haul truck with a Tier 4 engine. The replaced truck shall either be scrapped or otherwise permanently taken out of service. Federal emission standards for Tier 4 engines are significantly more stringent than those for Tier 1 engines. Based on Defendant's typical truck operation of 3,200 hours/year, it is estimated that the SEP would result in approximate annual emissions reductions of no less than:

NO_x: 10.3 tpy

PM: 0.8 tpy

CO: 14.4 tpy.

28. Defendant is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. Defendant may use contractors or consultants in planning and implementing the SEP.

29. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

- a. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Defendant in good faith estimates that the cost to implement the SEP is no less than \$375,000;
- b. that, as of the date of executing this Decree, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. that the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;
- d. that Defendant has not received and will not receive credit for the SEP in any other enforcement action;
- e. that Defendant will not receive any reimbursement for any portion of the SEP from any other person; and

- f. Defendant certifies under penalty of law that it would have agreed to perform a comparably valued, alternative project other than a diesel emissions reduction SEP, if EPA were precluded by law from accepting a diesel emissions reduction SEP.

30. SEP Completion Report. Within 30 days after the date set for completion of the SEP, Defendant shall submit a SEP Completion Report to the United States, in accordance with Section XVI (Notices). The SEP Completion Report shall contain the following information:

- i. a detailed description of the SEP as implemented;
- ii. a description of any problems encountered in completing the SEP and the solutions thereto;
- iii. an itemized list of all eligible SEP costs expended;
- iv. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- v. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

31. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Defendant's completion report.

32. After receiving the SEP Completion Report, the United States shall notify Defendant whether or not Defendant has satisfactorily completed the SEP. If Defendant has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section X.

33. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section XII (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

34. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 50.

35. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP under this Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, *United States v. Martin Marietta Magnesia Specialties, LLC*, taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act.”

36. For federal income tax purposes, Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

VII. REVIEW AND APPROVAL PROCEDURES

37. After review of any plan, report, or other document that is required to be submitted pursuant to this Consent Decree, EPA shall, in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

38. If the submission is approved pursuant to Paragraph 37.a, Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 37.b or c, Defendant shall, upon written direction of EPA, take all actions required by the approved plan, report, or

other item that EPA determines are technically severable from any disapproved portions, subject to Defendant's rights to dispute only the specified conditions or disapproved portions, under Section XII of this Decree (Dispute Resolution).

39. If the submission is disapproved in whole or in part pursuant to Paragraph 37.c or d, Defendant shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

40. Any stipulated penalties applicable to an original submission that is disapproved in whole or in part pursuant to Paragraph 37.c or d, as provided in Section X (Stipulated Penalties) of this Decree, shall continue to accrue during the period specified in Paragraph 39, but any stipulated penalties that accrue following the receipt of the submission shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

41. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant to correct any deficiencies in accordance with the preceding Paragraphs, or may itself correct any deficiencies and seek stipulated penalties, subject to Defendant's right to invoke Dispute Resolution under Section XII of this Consent Decree.

VIII. PERMITS

42. Where any compliance obligation under this Decree requires Defendant to obtain a federal, state, or local permit or modification thereof or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits, modifications, or approvals. Defendant may seek relief under the provisions of Section XI (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit, modification, or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits, modifications, or approvals.

43. If all the requirements and limitations enumerated in and established under this Consent Decree are not incorporated into the preconstruction permit(s) obtained under Paragraph 42, then, within 12 months of the close of the Product Quality Demonstration Period, Defendant shall apply to the State to include the requirements and limitations enumerated in and established under this Consent Decree in a permit or approval (other than a Title V permit) which is federally enforceable, issued under the Ohio SIP, and issued under the authority independent of the State's authority to issue Title V permits. The permit or approval shall require compliance with any and all Emission Limits, monitoring requirements, and continuous operation of devices or controls intended to reduce emissions. Following submission of the application for the permit or approval, Defendant shall cooperate with the appropriate permit authority by promptly submitting all information that such permit authority seeks regarding the permit application.

44. Upon issuance of any permit or approval required under Paragraphs 42 and 43, Defendant shall file any applications necessary to incorporate the requirements of that permit into the Title V operating permit.

45. In lieu of incorporating the terms of the Consent Decree directly into a permit issued under the Ohio SIP pursuant to Paragraph 43, Defendant may request the State submit the portions of this Consent Decree to EPA for approval under the Ohio SIP in accordance with 42 U.S.C. § 7410(k). Upon approval by EPA, those portions of this Consent Decree will be incorporated into the Ohio SIP, and subsequently incorporated into Title V permits consistent with applicable requirements in 40 C.F.R. Part 70 or State-specific rules adopted and approved consistent with Part 70. Defendant agrees not to contest to EPA the submittal of any such proposed SIP revision that incorporates the terms of this Consent Decree, or EPA's approval of such submittal, or the incorporation of the applicable portions of this Consent Decree through these SIP requirements into the Title V permits. Nothing in this Consent Decree shall limit Defendant's right to contest portions of any such SIP revision which are more stringent than or not consistent with the terms of this Consent Decree.

46. The following Emission Limits, requirements and standards imposed by this Consent Decree shall survive termination of this Consent Decree:

- a. The relevant definitions in Paragraph 7.
- b. 30-Day Rolling Average Emission Limits in Paragraph 13 or established via the requirements of Paragraphs 22-24;
- c. 12-Month Rolling Tonnage Limit in Paragraph 15 or any Alternate Limit set pursuant to Paragraph 16; and
- d. Emission monitoring (CEMS) requirements.

IX. REPORTING REQUIREMENTS

47. Defendant shall submit the following reports:

a. By July 31st and January 31st of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XX (Termination), Defendant shall submit to EPA in accordance with Section XVI (Notices) a semi-annual report for the preceding six months that shall include:

- i. a report on the status of any construction or compliance measures Defendant has undertaken pursuant to Section V (Compliance Requirements);
- ii. certification of completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions;
- iii. status of permit applications; operation and maintenance; and reports to State agencies;
- iv. after the installation of CEMS for each Kiln, a summary of the total time per calendar quarter during the reporting period that the CEMS was not in continuous operation (expressed as a percentage of the operating time of the process unit(s) being monitored);
- v. for each CEMS that is not in continuous operation for at least 95% of the total operating time of the process unit(s) being monitored per calendar quarter, a listing of the times and dates for the periods when the CEMS was inoperative, as well as an explanation of the cause(s) of the downtime (such as maintenance or malfunction). If the cause of the downtime included a malfunction, the Semi-Annual Report must include an explanation and a description of any corrective action(s) taken;

- vi. a summary of the test results, including relevant production rates, for all performance tests conducted on Kiln 1 or Kiln 2 during the reporting period;
- vii. the 30-day Rolling Average SO₂ values, and the 12-month rolling NO_x values, for each Kiln 1 and Kiln 2, for the reporting period;
- viii. an explanation and example calculation demonstrating how the 30-day rolling average SO₂ values and the 12-month rolling NO_x values were determined; and
- ix. a summary of costs incurred since the previous report.

b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree since the submission of the previous Semi-Annual Report and an explanation of the violation's likely cause and the remedial steps taken, or to be taken, to prevent or minimize such violation. For exceedances of Emission Limits, the report shall identify the start and end date and time of the exceedance and shall report the total amount of time during each calendar quarter that an Emission Limit was exceeded, expressed as a percentage of the operating time of the process unit(s). The report shall also identify the total number of tons of excess emissions that occurred due to each exceedance.

c. In addition to the requirement to submit a description of any non-compliance in the Semi-Annual Report, if Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States of such violation and its likely duration, in writing, within 15 Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully

explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section XI (Force Majeure).

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

49. All reports shall be submitted to the persons designated in Section XVI (Notices).

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

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

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

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

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

X. STIPULATED PENALTIES

54. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in Table 1 below, unless excused under Section XI (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

55. Violation of an Emission Limit that is based on a 30-Day Rolling Average is a violation on every Day on which the average is based. Each subsequent Day of violation after a violation of a 30-Day Rolling Average Emission Limit is subject to the corresponding penalty per Day specified in Table 1, below. Where a violation of a 30-Day Rolling Average Emission Limit (for the same pollutant and from the same Kiln) recurs within periods less than 30 Days, Defendant shall not be obligated to pay a daily stipulated penalty for any Day of the recurrence for which a stipulated penalty is already payable. Stipulated penalties may only be assessed once for a given Day or month within any averaging period for violation of any particular Emission Limit. Stipulated penalties for consecutive periods of violation of an Emission Limit shall be calculated based upon the violation of the Emission Limit for the same pollutant from the same Kiln.

TABLE 1

Consent Decree Violation	Stipulated Penalty
Failure to pay the civil penalty as specified in Section IV (Civil Penalty) of this Consent Decree.	\$7,500 for each Day
Failure to comply with the 30-Day Rolling Average Emission Limit for SO ₂ where the emissions are less than 5% in excess of the limits set forth in this Consent Decree.	\$1,500 for each Day during any 30-Day rolling period where the violation is less than 5% in excess of the Limit.
Failure to comply with the 30-Day Rolling Average Emission Limit for 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.	\$3,000 for each 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.
Failure to comply with the 30-Day Rolling Average Emission Limit for SO ₂ where the emissions are equal to or greater than 10% in excess of the limits set forth in this Consent Decree.	\$5,000 for each Day during any 30-Day rolling period where the violation is equal to or greater than 10% in excess of the Limit.
Failure to comply with a 12-Month Rolling Tonnage Limit for NO _x where the tons of pollutant are less than 5% in excess of the applicable 12-Month Rolling Tonnage Limit set forth in this Consent Decree.	\$7,500 for each month during the initial 12 months, and \$10,000 for each consecutive month thereafter, of a violation of the 12-Month Rolling Tonnage Limit where the violation is less than 5% in excess of the Limit.

Consent Decree Violation	Stipulated Penalty
Failure to comply with a 12-Month Rolling Tonnage Limit for NO _x where the tons of pollutant are greater than 5% and less than 10% in excess of the applicable 12-Month Rolling Tonnage Limit set forth in this Consent Decree.	\$10,000 for each month during the initial 12 months, and \$15,000 for each consecutive month thereafter, of a violation of the 12-Month Rolling Tonnage Limit where the violation is greater than 5% and less than 10% in excess of the Limit.
Failure to comply with a 12-Month Rolling Tonnage Limit for NO _x where the tons of pollutant are greater than 10% in excess of the applicable 12-Month Rolling Tonnage Limit set forth in this Consent Decree.	\$20,000 for each month during the initial 12 months, and \$32,500 for each consecutive month thereafter of a violation of the 12-Month Rolling Tonnage Limit where the violation is greater than 10% in excess of the Limit.
Failure to install or commence continuous operation or continuously operate the baghouse or a preheater at a Kiln required by the deadlines established in Sections V of this Consent Decree.	\$5,000 for each consecutive Day during the first 20 Days, \$ 10,000 for each consecutive Day for the next 40 Days, and \$32,500 for each consecutive Day thereafter.
Failure to apply for any permit or permit amendment or seek a SIP approval required by Section VIII (Permits).	\$1,000 for each Day for each such failure.
Failure to install or operate a CEMS or other monitoring device in conformance with the requirements of Section V.	\$1,000 for each Day for each such failure.
Failure to timely submit, modify, or implement, as approved, a report, plan, study, analysis, protocol, or other submittal required by this Consent Decree.	\$750 for each Day during the first 10 Days, \$1,000 per Day thereafter

Consent Decree Violation	Stipulated Penalty
Any other violation of this Consent Decree.	\$1,000 for each Day for each violation.

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

57. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

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

59. Stipulated penalties shall continue to accrue as provided in Paragraph 56, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest accruing from the 31st Day after the written demand in Paragraph 57, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest accruing from the 31st Day after the written demand in

Paragraph 57, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest accruing from the 31st Day after the written demand in Paragraph 57, within 15 Days of receiving the final appellate court decision.

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

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

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

XI. FORCE MAJEURE

63. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant’s contractors (excluding the preheater manufacturer contractor), which delays or prevents the performance of any obligation under this Consent Decree despite Defendant’s best efforts to fulfill the obligation. The requirement that Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) after it has occurred, such that the delay and any adverse effects of the delay are minimized. “Force Majeure” does not include Defendant’s financial inability to perform any obligation under this Consent Decree.

64. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA within 72 hours of when Defendant first knew that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with

the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors (excluding the preheater manufacturer contractor) knew or should have known.

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

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

67. If Defendant elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 63 and 64. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XII. DISPUTE RESOLUTION

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

69. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

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

71. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any

supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

72. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVI (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 15 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

74. Standard of Review. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 70 (Formal Dispute Resolution), Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and Defendant reserves the right to oppose this position.

75. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent

Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 72. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. INFORMATION COLLECTION AND RETENTION

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

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

77. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention

requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

78. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

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

80. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or

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

XIV. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

81. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging and the violations alleged in the July 15, 2010 and February 1, 2011 Notices of Violation / Findings of Violation (NOV/FOVs).

82. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 81. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 81. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

83. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by

the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 81.

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

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

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

XV. COSTS

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

XVI. NOTICES

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

As to the United States by email: eesdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-10203

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-2-1-10203

As to EPA: Compliance Tracker (AE-18J)
Air Enforcement and Compliance Assurance Branch
U.S. EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

As to Defendant: Executive Vice President, General Counsel
and Corporate Secretary
Martin Marietta Magnesia Specialties
2710 Wycliff Road
Raleigh, North Carolina 27607

Director of Engineering Services
Martin Marietta Magnesia Specialties
755 Lime Rd.
Woodville, Ohio 43469

XVII. EFFECTIVE DATE

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

XVIII. RETENTION OF JURISDICTION

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

XIX. MODIFICATION

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

92. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 74, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XX. TERMINATION

93. After Defendant has completed the requirements of Section V (Compliance Requirements), has thereafter maintained satisfactory compliance with this Consent Decree for a period of 18 months, has complied with all other requirements of this Consent Decree, has incorporated all Emission Limits and CEMS requirements into federally-enforceable permits, and has paid the civil penalty and any stipulated penalties demanded by the United States as required by this Consent Decree, Defendant may serve upon the United States a Request for

Termination, certifying in accordance with Paragraph 50 that Defendant has satisfied those requirements, together with all necessary supporting documentation.

94. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

95. If the United States does not agree that the Decree may be terminated, Defendant may invoke dispute resolution under Section XII (Dispute Resolution). However, Defendant shall not seek dispute resolution of any dispute regarding termination until 60 Days after service of its Request for Termination.

XXI. PUBLIC PARTICIPATION

96. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XXII. SIGNATORIES AND SERVICE

97. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

98. 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.

XXIII. INTEGRATION

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

XXIV. FINAL JUDGMENT

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

Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

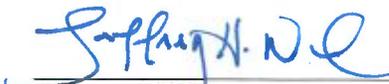
Dated and entered this __ day of _____, 2018

UNITED STATES DISTRICT JUDGE

Signature Page for *United States v. Martin Marietta Magnesia Specialties* (N.D. Ohio)

FOR THE UNITED STATES OF AMERICA:

Date



JEFFREY H. WOOD
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice



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FOR THE UNITED STATES OF AMERICA:

3.19.2018
Date

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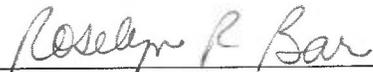


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FOR MARTIN MARIETTA MAGNESIA SPECIALTIES:

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ROSELYN R. BAR
Executive Vice President, General Counsel
and Corporate Secretary

APPENDIX A

Petition for Relief from the NO_x Emission Limit

This Appendix identifies the procedures and details of a potential Petition for Relief from the 12-Month Rolling Tonnage Limit for NO_x emissions (identified in Paragraphs 14 and 15 of the Consent Decree).

If Defendant chooses to submit a Petition for Relief under Paragraph 16 of the Consent Decree, the Petition for Relief must be submitted by the deadline identified in Paragraph 16 and must contain:

- a. A description of the operation of the preheater on the applicable Kiln(s), and a detailed analysis of the reason(s) that Defendant has identified that the Kiln(s) is/are unable to continuously meet the 12-Month Rolling Tonnage Limit for NO_x emissions in Paragraphs 14 and/or 15 of the Consent Decree.
- b. A description of all steps taken to adjust the system during the preceding 365 Days to meet the limit in Paragraphs 14 and/or 15.
- c. The following data collected while the preheater was operating during the period between the start of Continuous Operation of the CEMS and the submittal of this Petition. 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 all data not collected:
 - 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 lime (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. Daily average NO_x and SO₂ concentrations (ppm - dry basis) and mass rates;
 - vi. Flue gas volumetric flow rate (daily average in dry acfm);
 - vii. Temperatures in or near the burning zone (daily average);
 - viii. Kiln system fuel feed rate and type of fuel by weight or heat input rate (calculated to a daily average);
 - ix. Kiln amps (daily average);

- x. Kiln back end O₂ concentration (daily average);
 - xi. Kiln system draft fan settings;
 - xii. Documentation of all Startup, Shutdown, or Malfunction events; and
 - xiii. An explanation of any gaps in the data or missing data.
- d. A proposed Alternate Limit for NO_x Emissions for Kiln 1 or Kilns 1 and 2. In no event shall Defendant propose an Alternate Limit for NO_x Emissions greater than 3,066 tons of NO_x per year.