

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA and)
STATE OF NEW JERSEY)
)
Plaintiffs,)
)
v.)
)
DURAND GLASS MANUFACTURING)
COMPANY, INC.,)
)
Defendant.)
)
)
_____)

Civil Action No. _____

CONSENT DECREE

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WHEREAS, the United States Environmental Protection Agency (“EPA”) has selected glass manufacturing facilities as a national enforcement priority under the Clean Air Act’s New Source Review Program;

WHEREAS, Durand Glass Manufacturing Company, Inc. (“Defendant” or “Durand”), owns and operates a tableware glass manufacturing facility (“Facility”) in Millville, New Jersey;

WHEREAS, on March 30, 2007, EPA issued a Notice of Violation (“NOV”) to Durand, with a copy to the New Jersey Department of Environmental Protection (“NJDEP”), in accordance with Section 113(a)(1) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(a)(1), in which EPA alleged Durand to be in violation of:

(a) the Prevention of Significant Deterioration (“PSD”) requirements in Part C of Subchapter I of the Act, 42 U.S.C. § 7470 *et seq.*, and in the implementing regulations promulgated at 40 C.F.R. § 52.21 (“PSD Regulations”); and

(b) N.J.A.C. 7:27-18.1 *et seq.* (“Emission Offset Rules”), developed by the State of New Jersey and approved by EPA into the federally-enforceable New Jersey State Implementation Plan (“SIP”) under Part D of Subchapter I of the Act (“Plan Requirements for Non-attainment Areas”), 42 U.S.C. § 7501 *et seq.*, and Section 110 of the Act, 42 U.S.C. § 7410, and enforceable under Section 113 of the Act, 42 U.S.C. § 7413;

WHEREAS, the discussions between the Parties have resulted in the settlement embodied in this Consent Decree;

WHEREAS the Parties represent that the proper installation and operation of selective catalytic reduction (“SCR”) air pollution control equipment is required by this Consent Decree in order to achieve the Lowest Achievable Emission Rate (“LAER”) equivalent for nitrogen oxide (“NO_x”) emissions, resulting in significant reductions in such emissions and improved air quality;

WHEREAS the Parties represent that the proper installation and operation of particulate matter (“PM”) and particulate matter of 10 micrometers or less (“PM-10”) air pollution control equipment is required by this Consent Decree, in order to achieve the Best Available Control Technology (“BACT”) equivalent for PM and PM-10 emissions, resulting in significant reductions in such emissions and improved air quality;

WHEREAS, for the purpose of settlement, Durand has waived any applicable federal or State requirements of statutory notice of the alleged violations;

WHEREAS, the United States of America (“the United States”), on behalf of EPA, and the State of New Jersey (“New Jersey” or the “State”), on behalf of NJDEP, collectively referred to as “Plaintiffs,” have concurrently filed a Complaint and lodged this Consent Decree with Durand, pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Sections 9 and 19 of the New Jersey Air Pollution Control Act (“New Jersey Air Act”), N.J.S.A 26:2C-9b(5) and 26:2C-19, and N.J.S.A. 13:1D-9, for injunctive relief and civil penalties for alleged past and continuing violations at the Facility of the PSD provisions of the Act, the PSD regulations, the Emission Offset Rules, the Permits and Certificates Regulations (N.J.A.C. 7:27-8.1 et seq.), and the Operating Permit Regulations (N.J.A.C. 7:27-22.1 et seq.);

WHEREAS, in its Complaint, Plaintiffs allege, among other things, that Durand failed to obtain the necessary permits, and install and operate the air pollution controls required under the Act to reduce its emissions of NO_x, PM, and PM-10;

WHEREAS, the Parties anticipate that after full implementation, compliance with the emission limitations required by this Consent Decree will result in a reduction in emissions of at least 173.6 tons per year (“tpy”) of NO_x and 23.8 tpy of PM;

WHEREAS, by signing this Consent Decree, Durand waives its right to service of process with respect to the Complaint, and the United States and New Jersey agree that Durand need not answer the Complaint;

WHEREAS, Durand consents to the concurrent filing of the Complaint and lodging of this Consent Decree, although it denies the violations alleged in the NOV and the Complaint, and has installed and commenced operation of air pollution control and monitoring equipment referenced herein, to comply with the emission limits established by this Consent Decree to reduce emissions of NO_x, PM and PM-10;

WHEREAS, the United States, New Jersey, and Durand have agreed, and the Court by entering this Consent Decree finds: that this Decree has been negotiated in good faith and at arm’s length; that this settlement is fair and reasonable, is consistent with the purposes and goals of the Act, and is in the best interests of the Parties and the public; and that entry of this Decree without further litigation is the most appropriate means of resolving this matter; and

WHEREAS, the United States, New Jersey, and Durand have consented to entry of this Consent Decree without adjudication of any issue of fact or law;

NOW, THEREFORE, without any admission of fact or law, and without any admission of the violations alleged in the Complaint, NOV or otherwise, and upon the consent and agreement of the Parties to this Consent Decree, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113 of the Act, 42 U.S.C. § 7413, and over the Parties. The Complaint alleges claims upon which relief can be granted against Durand, under Sections 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1355. The authority of the United States to bring this action is vested in the United States Department of Justice under 28 U.S.C. §§ 516 and 519, and Section 305 of the Act, 42 U.S.C. § 7605; and the authority of New Jersey to bring this action is vested in the Attorney General of New Jersey under the New Jersey Air Act, N.J.S.A. 26:2C-19.

2. Venue is proper in the United States District Court for the District of New Jersey, under 28 U.S.C. §§ 1391(b) and (c), and 1395(a), and Section 113(b) of the Act, 42 U.S.C. § 7413(b), because the violations alleged in the Complaint are alleged to have occurred in, and Durand conducts business in, this judicial district.

3. Notice of the violations alleged in the Complaint has been given to Durand and New Jersey pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), and notice of the commencement of this action has been given to NJDEP pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b).

4. Solely for the purposes of this Consent Decree and the underlying Complaint, Durand waives any and all objections and defenses that it may have to the Court's jurisdiction over this action, to the Court's personal jurisdiction over Durand, and to venue in this District. Durand shall not contest this Court's jurisdiction to enter, implement and enforce this Consent Decree and shall not contest the terms of this Decree in any subsequent proceeding to implement or enforce them. Except as expressly provided for in this Decree, this Decree shall not create any rights in any party other than the United States, New Jersey and Durand. Except as provided in Section XXII (Public Comment) of this Consent Decree, the Parties consent to entry of this Consent Decree without further notice.

II. APPLICABILITY

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

6. After the Date of Lodging, Durand shall provide a copy of this Consent Decree to all of its 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 Decree. For any contract entered into after the Date of Lodging, Durand shall condition any such contract upon performance of the work in conformity with the terms of this Decree. Notwithstanding any retention of contractors to perform any work required under this Consent Decree, Durand shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree. For this reason, in any action to enforce this Consent Decree, except as provided in Section XII (Force Majeure), Durand shall

not assert as a defense the failure of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with this Decree.

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act and the New Jersey Air Act, or either's implementing regulations, shall have the meanings provided in the Act and the New Jersey Air Act, or such regulations, unless otherwise provided in this Decree.

Whenever the terms set forth below are used in this Decree, the following definitions shall apply:

(a) "Business Day" means any day, except Saturday, Sunday and federal holidays.

(b) "Calendar Year" shall mean the period commencing on January 1 and ending on December 31 of the same year.

(c) "CERMS" or "Continuous Emission Rate Monitoring System" shall mean, for obligations involving NO_x emissions and/or NO_x emission rates under this Consent Decree, except for the Interim Limit for US1 in Section IV (Compliance Requirements), the total equipment required to sample, condition (if applicable), analyze, and provide a written record of such emissions and/or Emission Rates, expressed on a continuous basis. Such equipment includes, but is not limited to, sample collection and calibration interfaces, pollutant analyzers, diluent analyzer (including oxygen monitor), stack gas volumetric flow monitors, and data recording and storage devices.

(d) "CERMS Certification" means the certification as specified in 40 C.F.R. § 60.13 and NJDEP Technical Manual 1005, which are applicable to CEMS (excluding those provisions only applicable to Continuous Opacity Monitoring Systems), and in accordance with 40 C.F.R. Part 60, Appendices B and F, and N.J.A.C. 7:27B.

(e) “CERMS Plan” shall mean one of the CERMS Plans for Furnaces US1, US2, and US3, which includes the specific methodology for converting parts per million and flow rate CERMS data into pounds of NO_x per Ton of glass pulled, and that are attached to this Consent Decree as Appendix A.

(f) “Clean Air Act” or “Act” means the federal Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., and its implementing regulations.

(g) “Cold Startup” shall mean with respect to a Furnace, a sequence of events beginning with the combustion of fuel in order to heat the refractory in a Furnace from ambient temperature to a temperature sufficient to allow production of glass. A Cold Startup shall not include the resumption of Operation following repairs conducted when the Furnace is still hot.

(h) “Complaint” shall mean the complaint(s) filed by the United States and New Jersey in this action.

(i) “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of any conflict between the text of this Consent Decree and any Appendix, the text of this Consent Decree shall control.

(j) “Date of Lodging” shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court, District of New Jersey.

(k) “Day” shall mean a calendar day. In computing any period of time for determining reporting deadlines under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal or state holiday, the period shall run until the close of business of the next Business Day.

(l) “Effective Date” shall mean the date upon which this Consent Decree is entered by the Court or a motion to enter the Decree is granted, whichever occurs first, as recorded on the Court’s docket.

(m) “Emission Rate” shall mean the number of pounds of NO_x or PM or PM-10 emitted per Ton of glass pulled from a glass furnace, and/or pounds of NO_x or PM or PM-10 emitted per hour, Day, or year of Operation of a glass furnace.

(n) “Emissions Credit” or “Allowances” shall mean an authorization or credit to emit a specified amount of the pollutants NO_x, PM, or PM-10 that is allocated or issued under an emissions trading or marketable permit program of any kind established under the Act or a state implementation plan.

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

(p) “Facility” shall mean the tableware glass manufacturing plant located at 901 S. Wade Boulevard, Millville, New Jersey, consisting of the following glass furnaces: US1, US2 and US3 and all glass manufacturing equipment that is ancillary to US1, US2, and US3.

(q) “Final NO_x Limit(s)” shall mean the emission limits required by this Consent Decree pursuant to Paragraph 9(b)(5) and/or (b)(6), and incorporated into the Facility Title V Operating Permit.

(r) “Furnace Stabilization” shall mean a period when Operation of a Furnace is being stabilized following a Cold Startup, in accordance with Paragraph 9(d) of this Consent Decree.

(s) “Gas Conditioning Scrubber” shall mean a pollution control device that involves the addition of an alkaline material (sorbent) into the gas stream to react with acid gases such as

SO₂ and hydrochloric acid. The acid gases react with the alkaline sorbents to form solid salts in a reaction chamber or reaction area, and a portion of the solid salts are removed from the exhaust gas stream using a Particulate Filter.

(t) “Malfunction” means, consistent with 40 C.F.R. § 60.2, any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner, but shall not include failures that are caused in part by poor maintenance or careless operation.

(u) “Month” shall mean a calendar month.

(v) “National Ambient Air Quality Standards” or “NAAQS” means national ambient air quality standards that are promulgated pursuant to Section 109 of the Act, 42 U.S.C. § 7409.

(w) “New Jersey” or “State of New Jersey” means the State of New Jersey acting on behalf of NJDEP.

(x) “New Jersey Air Act” means the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and its implementing regulations at N.J.A.C. 7:27-1 et seq., 7:27A-1 et seq., and 7:27B-1 et seq.

(y) “New Jersey Administrative Code” or N.J.A.C. means an official publication of the State of New Jersey containing all effective rules adopted by State Agencies and filed with the Office of Administrative Law pursuant to N.J.S.A. 52: 14B-1 et seq.

(z) “New Jersey Statutes Annotated” or N.J.S.A. means the publication containing New Jersey statutes published by the West Publishing Company.

(aa) “New Source Review” or “NSR” shall mean the PSD and Nonattainment New Source Review (“NNSR”) provisions in Parts C and D of Subchapter I of the Act, 42 U.S.C.

§§ 7470-7492, 7501-7515, and the applicable state implementation plan of New Jersey that implements those provisions.

(bb) “NJDEP” means the New Jersey Department of Environmental Protection.

(cc) “NO_x” shall mean oxides of nitrogen, measured in accordance with the provisions of the Consent Decree.

(dd) “Operate,” “Operation,” “Operating,” and “Operated,” shall mean with respect to a Furnace any period when fuel is fired in the Furnace.

(ee) “Operating Day” shall mean any Day during which any fuel is fired into a Furnace. The Day starts at 12:00 a.m. and ends at 11:59 p.m.

(ff) “Ownership Interest” shall mean all or part of Durand's legal or equitable interest in the Durand Facility.

(gg) “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.

(hh) “Particulate Filter” shall mean a control device that employs filtration technology in order to reduce particulate matter emissions.

(ii) “Particulate Matter” and “PM” shall mean all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by EPA Method 5 (40 C.F.R. Part 60, Appendix A-3). *See also* 40 C.F.R. § 51.100(pp).

(jj) “Parties” shall mean Durand, the United States of America and the State of New Jersey.

(kk) “Party” shall mean either Durand, New Jersey or the United States.

(ll) “Permitting State” shall mean the State of New Jersey.

(mm) “Plaintiffs” shall mean the United States of America and the State of New Jersey.

(nn) “PM-10” shall mean any particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, including condensable particulate matter, that is measured in accordance with EPA Method 201A (40 C.F.R. Part 51, Appendix M) and EPA Method 202 (40 C.F.R. Part 51, Appendix M).

(oo) “Section” shall mean a portion of this Consent Decree identified by a roman numeral.

(pp) “Selective Catalytic Reduction” and “SCR” shall mean a pollution control device or system that employs selective catalytic reduction technology to reduce NO_x emissions.

(qq) “Stationary Source,” as defined in 40 C.F.R. § 52.21(b)(5), means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

(rr) “Title V Permit” or “Title V Operating Permit” shall mean the operating permit (as amended) issued to Durand under Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e, and N.J.A.C. 7:27-22.1 et seq.

(ss) “Ton of glass pulled” shall mean with respect to an emission rate, an estimate of the rate of glass produced (in terms of short tons) based on the set speed of each machine that is making glass product (in cuts per minute) to form a “gob” which is at a weight designed for the specific job that is being filled, consistent with the rate of glass produced as used in production yield calculations.

(tt) “United States” shall mean the United States of America.

IV. COMPLIANCE REQUIREMENTS

8. Durand shall comply with all applicable requirements in the following regulations:

(a) the PSD requirements in Part C of Subchapter I of the Act, 42 U.S.C. § 7470 et seq., and in the implementing regulations promulgated at 40 C.F.R. § 52.21; and

(b) the federally-enforceable New Jersey Emission Offset Rule at N.J.A.C. 7:27-18.1 et seq., developed by the State of New Jersey and approved by EPA under Section 110 of the Act, 42 U.S.C. § 7410, and enforceable under Section 113 of the Act, 42 U.S.C. § 7413.

9. **Specific Compliance Requirements.** Durand shall comply with the following specific requirements, which, if not implemented prior to the Effective Date, shall be implemented by the dates set forth in the following subparagraphs:

(a) **Furnaces US1 and US3—Interim NO_x Emission Limit and Monitoring.** Prior to the Date of Lodging, Durand voluntarily used best efforts to Operate Furnaces US1 and US3 with NO_x emissions in amounts less than 3.25 pounds per Ton of glass pulled, as determined on a 30-Day rolling average basis, and installed, calibrated and certified with NJDEP a NO_x continuous emission monitoring system for Furnace US3, and using its Ultramat device to measure NO_x emissions from Furnace US1.

(b) **Furnaces US1, US2 and US3—Final NO_x Controls, Limits and Monitoring**

(1) To comply with the final NO_x Emission Rate limits established under this subparagraph, Durand has installed, and shall operate, selective catalytic reduction (“SCR”) controls on Furnaces US1, US2 and US3, and has installed,

and shall operate, NO_x continuous emission rate monitoring systems (“CERMS”) on Furnaces US1, US2 and US3 as described in this subparagraph:

(A) On February 26, 2012, Durand completed the installation of SCR controls on Furnace US2 and commenced a Cold Startup of Furnace US2. After the Date of Lodging, in accordance with the terms of this Consent Decree, Durand shall not Operate Furnace US2 without:

- (i) SCR controls installed and operating; and
- (ii) A NO_x CERMS installed and operating.

(B) On February 5, 2012, Durand shut down Furnace US3. On April 12, 2012, Durand completed the installation of SCR controls on Furnace US3 and commenced a Cold Startup of Furnace US3. After the Date of Lodging, in accordance with the terms of this Consent Decree, Durand shall not Operate Furnace US3 without:

- (i) SCR controls installed and operating; and
- (ii) A NO_x CERMS installed and operating.

(C) On June 25, 2012, Durand completed the installation of SCR controls on Furnace US1. After the Date of Lodging, in accordance with the terms of this Consent Decree, Durand shall not Operate Furnace US1 without:

- (i) SCR controls installed and operating; and
- (ii) A NO_x CERMS installed and operating.

(2) Durand shall install, calibrate, certify, obtain NJDEP approval, maintain and operate the Furnace US1, US2 and US3 NO_x CERMS in accordance with the provisions of 40 C.F.R. § 60.13 that are applicable to CERMS, with Part 60 Appendices B and F, and with NJDEP Technical Manual 1005 and the applicable performance specification tests of 40 C.F.R. Part 60, Appendix B, and N.J.A.C. 7:27B. Prior to the Date of Lodging, Durand conducted the performance specification tests (“PST”) on the NO_x CERMS for Furnaces US1, US2 and US3 and submitted the PST reports to NJDEP and EPA for Furnaces US2 and US3. Durand shall submit the PST report for Furnace US1 to NJDEP (with a copy to EPA) within thirty (30) Days after the Date of Lodging or thirty (30) Days after conducting the PST, whichever is later. On the first Day after the Date of Lodging, Durand shall begin collecting and recording CERMS data for each Furnace, consistent with the requirements in this subparagraph. Durand shall demonstrate compliance with the Final NO_x Limits in accordance with subparagraph 9(c), below.

(3) Durand shall ensure that each SCR control device installed to comply with the requirements under this Paragraph is designed for a NO_x removal efficiency of at least 90 percent, as demonstrated by the SCR manufacturer’s specifications.

(4) After the Date of Lodging, in addition to complying with the Final NO_x Limits as provided in subparagraphs 9(b)(5) and 9(b)(6) of this Decree, Durand shall operate and maintain the SCR, including the SCR catalyst, in accordance with the manufacturer’s specifications, and with good air pollution control

practices for minimizing emissions, consistent with 40 C.F.R. § 60.11(d), taking into consideration ammonia slip.

(5) **30-Day Rolling Average NO_x Limit.** Except as specifically provided in subparagraph 9(d) of this Consent Decree, commencing on the first Operating Day after the Date of Lodging, or on the first Operating Day after receiving notice of NJDEP's and EPA's approval of the PST report for CERMS for each Furnace, whichever is later, Durand shall not emit NO_x from that Furnace in amounts greater than 1.20 pounds per Ton of glass pulled, as determined on a continuous 30-Day rolling average basis. Compliance with this NO_x Limit shall be determined in accordance with subparagraph 9(c), below.

(6) **365-Day Rolling Average NO_x Limit.** Except as specifically provided in subparagraph 9(d)(1) of this Consent Decree (pertaining to Cold Startup and Furnace Stabilization), and in addition to the 30-Day rolling average NO_x Limit, commencing on the first Operating Day after the Date of Lodging, or on the first Operating Day after receiving notice of NJDEP's and EPA's approval of the PST report for CERMS for each Furnace, whichever is later, Durand shall not emit NO_x from that Furnace in amounts greater than 1.00 pounds per Ton of glass pulled, as determined on a continuous 365-Day rolling average basis. Compliance with this NO_x Limit shall be determined in accordance with subparagraph 9(c), below.

(7) **Ammonia Slip Limit.** Commencing on the first Operating Day after the Date of Lodging, and during all times when an SCR control device is operated,

Durand shall limit the ammonia slip from the SCR to 10 parts per million volume dry basis (“ppmvd”) or less, corrected to 15 percent oxygen (“O₂”). For purposes of demonstrating compliance with this Consent Decree, ammonia stack testing shall be conducted at the common stack as part of each of the three annual PM-10 stack tests that are required pursuant to subparagraph 9(e), below. All ammonia stack testing shall be conducted in accordance with a test protocol approved by NJDEP (in consultation with EPA). The results of each ammonia stack test shall be submitted to EPA and NJDEP within forty-five (45) Days after completing the stack test.

(c) Compliance Demonstration for Final NO_x Limits

(1) For Furnaces US2 and US3, beginning on the first Operating Day after the Date of Lodging, and for Furnace US1, beginning on the first Operating Day after that Furnace’s NO_x CERMS is certified in accordance with subparagraph 9(b), above, or on the first Operating Day after the Date of Lodging, whichever is later, Durand shall demonstrate compliance with the Final NO_x Limits, or an applicable alternative operating scenario (“AOS”) limit, using the NO_x CERMS required by Paragraph 9(b)(2) and using the following calculation methods (collectively the “Emission Calculating Methodology”).

(A) Durand shall calculate each hourly block average NO_x Emission Rate, in terms of pounds of NO_x per hour, according to EPA Test Method 19 (40 C.F.R. Part 60, Appendix A), using

pollutant concentration and stack gas volume as measured by the CERMS.

(B) Durand shall calculate each daily block average NO_x Emission Rate for a Day, in terms of pounds of NO_x per Day, as the sum of the 24-hourly block average NO_x Emission Rates during that Day.

(C) Durand shall calculate the daily block average NO_x Emission Rate for a Day, in terms of pounds of NO_x per Ton of glass pulled, by dividing the daily block average NO_x Emission Rate, in terms of pounds of NO_x per Day, by the Tons of glass pulled during that Day.

Durand shall follow the methods, calculations and frequencies of measurement specified in the applicable CERMS Plan to monitor and calculate NO_x emissions from each Furnace. Durand shall begin calculating the 30-Day rolling average NO_x Emission Rate on the 31st Operating Day after the Furnace's NO_x CERMS is certified, and shall calculate a new 30-Day rolling average NO_x Emission Rate on the Day following each Operating Day, consistent with subparagraph 9(c)(2), below. Durand shall begin calculating the 365-Day rolling average NO_x Emission Rate on the 366th Day after the Furnace's NO_x CERMS is certified or re-certified, and shall calculate a new 365-Day rolling average NO_x Emission Rate on the Day following each Operating Day, consistent

with subparagraph 9(c)(2), below. Within thirty (30) Days after the Date of Lodging, or within 30 Days after the date that Durand receives notice that EPA and NJDEP approved the CERMS Plans, whichever is later, Durand shall submit an application to amend/modify its Title V Operating Permit to incorporate the Emission Calculating Methodology.

(2) The daily block average NO_x Emission Rate calculations required under this subparagraph shall be used to calculate the 30-Day and 365-Day rolling average NO_x Emission Rates for each Furnace, in accordance with the applicable CERMS Plan.

(A) When more than one Furnace is subject to the same Final NO_x Limit (i.e., 30-Day and/or 365-Day rolling average), compliance with that emission limit may be determined by averaging the daily CERMS emission data from each Furnace, provided that the emission limits are the same for the entire averaging period. For the 30-Day rolling average NO_x limit, each Furnace included in the emission averaging must Operate for 30 consecutive Days with no AOS periods. For the 365-Day rolling average NO_x limit, each Furnace included in the emission averaging must Operate for 365 consecutive Days with no Cold Startup and Furnace Stabilization AOS periods.

(B) Following an applicable AOS period, the subject Furnace shall comply with the 30-Day rolling average NO_x limit on an individual basis, until emissions from such Furnace are eligible to be averaged with the

other Furnaces' emissions in accordance with this subparagraph 9(c).

Following the AOS period, the individual Furnace's compliance with the 30-Day rolling average NO_x limit shall be determined using the Furnace's daily block average NO_x emissions from the 30 most recent non-AOS Operating Days, which shall include at least one post-AOS Day. For example, on the first Day following an AOS period, compliance with the 30-Day rolling average NO_x limit shall be determined for the subject Furnace by including the daily block average emissions from that Day with the daily block average emissions from the 29 most recent Operating Days prior to the AOS period.

(C) The 365-Day rolling average NO_x limit shall be calculated using the daily block averages, including for all AOS days except Cold Startup and Furnace Stabilization AOS days provided for in subparagraph 9(d)(1), below. Following any subsequent Cold Startup and Furnace Stabilization of a Furnace, the 365-Day rolling average shall be calculated using the 365 most recent Operating Days, which shall include at least one post-Cold Startup and Furnace Stabilization AOS Operating Day, and exclude the Cold Startup and Furnace Stabilization AOS Days. For example, on the first Day following a subsequent Cold Startup and Furnace Stabilization AOS period, compliance with the 365-Day rolling average NO_x limit shall be determined for the subject Furnace by including the daily block average emissions from that Day with the daily block average

emissions from the 364 most recent Operating Days prior to the Cold Startup and Furnace Stabilization AOS period.

(3) When a Furnace is subject to an AOS emission limit, that Furnace shall comply with the AOS limit as set forth in subparagraph 9(d), below. Such Furnace's emissions shall not be included when calculating the average emissions from any other Furnaces, consistent with subparagraphs 9(c)(1) and 9(c)(2), above.

(4) For each Furnace, Durand shall record the daily NO_x emissions, 30-Day rolling average and 365-Day rolling average NO_x Emission Rate calculations, along with all supporting data and information, including electronic information. Durand shall keep these records in a location such that they are readily available for EPA and NJDEP review upon request, in accordance with Section XIV (Information Collection and Retention).

(5) Durand shall report to EPA and NJDEP the calculated values required by subparagraph 9(c)(4) (e.g., the daily NO_x emissions and the 30- and 365-Day rolling average calculations), in accordance with Section X (Reporting Requirements) of this Consent Decree.

(d) Alternative Operating Scenarios and Emission Limits. On any Operating Day described in subparagraphs 9(d)(1) through 9(d)(3), Durand may exclude the emissions generated during the Operating Day from the affected Furnace from the 30-Day rolling average NO_x Emission Rate; and on any Operating Day described in subparagraph 9(d)(1), Durand may exclude the emissions generated during the Operating Day from the

affected Furnace from the 365-Day rolling average NO_x Emission Rate, as provided below.

(1) **Cold Startup & Furnace Stabilization (collectively “Cold Startup AOS Period”)**. During the Cold Startup AOS Period of a Furnace, Durand may exclude the emissions generated by that Furnace on each Operating Day from the 30-Day rolling average NO_x Emission Rate and/or the 365-Day rolling average NO_x Emission Rate. During the Operating Days(s) excluded from the 30-Day rolling average NO_x Emission Rate and/or 365-Day rolling average NO_x Emission Rate, Durand shall Operate each affected Furnace in accordance with the following AOS, which shall have a total duration of no greater than forty (40) Days per Cold Startup AOS Period. Due to the ceramic candle filter SCR design and Durand’s triple and double pass regeneration processes, no greater than thirty (30) Days of SCR bypass (per Furnace) shall be allowed during a Cold Startup AOS.

(A) Beginning on the first Day of a Cold Startup of a Furnace, in accordance with the manufacturer’s specifications, Durand may bypass the SCR control device until the temperature at the inlet plenum of the filter housing is maintained at 450 degrees Fahrenheit for 24 hours. However, in no event shall the SCR bypass period exceed thirty (30) Days for each Furnace.

(B) During a Cold Startup, total natural gas consumption shall be limited to no greater than 14.4 million standard cubic feet (“scf”) at

Furnace US1, no greater than 9.4 million scf at Furnace US2 and no greater than 19.7 million scf at Furnace US3. Compliance with these natural gas consumption limits shall be monitored by gas flow meters. Any exceedances of these limits shall be reported to EPA and NJDEP pursuant to Paragraph 40 of this Consent Decree.

(C) The daily NO_x limit during a Furnace Stabilization period shall be calculated using the following formula: (Actual Furnace glass pull rate) x (4.0 pounds of NO_x per Ton of glass pulled) = allowable NO_x emissions, expressed in pounds per Day.

(2) **SCR Startup, Maintenance and Malfunction.** This AOS shall only apply with respect to the 30-Day rolling average NO_x Emission Rate. During any Operating Day on which (1) an SCR startup (other than a Cold Startup under subparagraph 9(d)(1) of this Consent Decree), (2) a malfunction of the SCR, Gas Conditioning Scrubber or Particulate Filter, or (3) maintenance of the SCR, Gas Conditioning Scrubber or Particulate Filter occurs, Durand may exclude the emissions generated by the affected Furnace from the 30-Day rolling average NO_x Emission Rate (but not from the 365-Day rolling average NO_x Emission Rate). During the Operating Day(s) excluded from the 30-Day rolling average NO_x Emission Rate, the daily NO_x emission limit shall be calculated using the following formula: (permitted Furnace glass pull rate) x (4.0 pounds of NO_x per Ton of glass pulled) = allowable NO_x emissions, expressed in pounds per Day. In no event shall this AOS apply on more than twelve (12) Days in a calendar year

for each Furnace. For purposes of calculating the number of days that Durand elects to exclude under this AOS, any startup, malfunction or maintenance event of less than one Day in duration shall be deemed to occur for the full Day.

(3) **Abnormally Low Production Rate.** This AOS shall only apply with respect to the 30-Day rolling average NO_x Emission Rate. For any Operating Day on which a Furnace is Operated at less than 50 percent of its permitted pull rate on a calendar day basis, Durand may exclude the emissions generated by that Furnace from the 30-Day rolling average NO_x Emission Rate (but not from the 365-Day rolling average NO_x Emission Rate). During the Operating Day(s) excluded from the 30-Day rolling average NO_x Emission Rate, the daily NO_x limit shall be calculated using the following formula: $(0.5) \times (\text{permitted Furnace glass pull rate, in tons per day}) \times (4.0 \text{ pounds of NO}_x \text{ per Ton of glass pulled}) = \text{allowable NO}_x \text{ emissions, expressed in pounds per Day.}$

(4) Compliance with the AOS NO_x emission limits established under this subparagraph 9(d) shall be determined based on NO_x CERMS data, in accordance with the attached CERMS Plan in Appendix A. For each Operating Day excluded from a 30-Day rolling average NO_x Emission Rate or a 365-Day rolling average NO_x Emission Rate, Durand shall record each daily average NO_x Emission Rate calculation, along with all supporting data and information, including electronic information. Durand shall keep these records in a location such that they are readily available for EPA and NJDEP review upon request, in accordance with applicable recordkeeping requirements.

(5) Durand shall report to EPA and NJDEP the calculations required by this subparagraph 9(d), in accordance with Section X (Reporting Requirements) of this Consent Decree.

(e) **Furnaces US1, US2 and US3—Final PM Controls, Limits and Monitoring**

(1) After the Date of Lodging, to comply with the final PM emissions limits established under this subparagraph, Durand shall not Operate without PM controls (i.e., Gas Conditioning Scrubber and Particulate Filter) on Furnaces US1, US2 and US3, except as provided in subparagraph 9(e)(5), below.

(2) **Final PM Emission Limit.** No later than the first Operating Day after the Date of Lodging, except as provided in subparagraph 9(e)(5), Durand shall not emit PM from Furnaces US1, US2 and US3 in amounts greater than 0.20 pounds per Ton of glass pulled. Compliance with this emission limit shall be demonstrated by each of three (3) annual stack tests, to be conducted in conjunction with the establishment of the PM-10 emissions limit required pursuant to subparagraphs 9(e)(3) and (4), below. Each PM stack test shall include three (3) test runs and shall be performed at the common stack for the three Furnaces, using EPA Method 5. Testing shall be performed in accordance with test protocols approved by NJDEP (in consultation with EPA). The initial PM stack test shall be conducted no later than ninety (90) Days after the Date of Lodging. Each subsequent annual PM stack test shall be performed during the same calendar quarter in the following two (2) calendar years. The results of each

PM stack test conducted pursuant to this subparagraph shall be submitted to EPA and NJDEP within forty-five (45) Days after completing the test.

(3) **PM-10 Demonstration Period.** Durand shall perform three (3) PM-10 stack tests at annual intervals during the same calendar quarter in order to gather data to establish a final PM-10 emission limit. Each PM-10 stack test shall be performed in conjunction with the three (3) PM stack tests required in subparagraph 9(e)(2), above. Each PM-10 stack test performed pursuant to this subparagraph shall include three (3) test runs and shall be performed at the common stack for the three Furnaces, using EPA Methods 201A and 202 (both filterable and condensable fractions are included to determine actual PM-10 emissions) and in accordance with a test protocol approved by NJDEP (in consultation with EPA). The results of each PM-10 stack test performed pursuant to this subparagraph shall be submitted to EPA and NJDEP within forty-five (45) Days after completing the test. NJDEP (in consultation with EPA) will notify Durand whether the submitted stack test results are accepted.

(4) **Final PM-10 Emission Limit.** As part of the third annual stack test results submitted to EPA and NJDEP pursuant to subparagraph 9(e)(3), above, Durand shall propose a final PM-10 emission limit by submitting an NSR preconstruction and Title V Operating Permit amendment/modification application, in accordance with this subparagraph and with N.J.A.C. 7:27-22.1 et seq. Based on the accepted results of the three (3) annual stack tests performed pursuant to subparagraph 9(e)(3), Durand's final PM-10 emission limit shall be

established at a level equal to 1.25 times the highest average result from the three annual stack tests, where the average result of each stack test is the arithmetic mean of three (3) emission test runs, expressed in units of pounds of PM-10 per Ton of glass pulled, rounded to two significant digits. Notwithstanding the previous sentence, in no event shall the final PM-10 emissions limit be greater than 0.70 pounds of PM-10 per Ton of glass pulled, nor less than 0.35 pounds of PM-10 per Ton of glass pulled. For example, if the average results of the three annual PM-10 stack tests are 0.32, 0.40, and 0.48 pounds of PM-10 per Ton of glass pulled, then the final PM-10 emission limit shall be 0.60 pounds per Ton of glass pulled. The final PM-10 emission limit shall take effect upon Durand's receipt of the Title V Operating Permit amendment/modification from NJDEP. Compliance with the final PM-10 emission limit shall be based on stack testing at the common stack and averaging the results from three (3) test runs.

(5) Bypass of the Particulate Filter shall be allowed during Cold Startup of a Furnace, consistent with subparagraph 9(d)(1), and during Startup, Maintenance, or Malfunction of a Gas Conditioning Scrubber or Particulate Filter, consistent with subparagraph 9(d)(2), above. During these periods, the PM and PM-10 emission limits in subparagraphs 9(e)(2) and 9(e)(4) shall not apply, and Durand shall comply with the applicable PM pounds per hour limits contained in the Title V Operating Permit for each Furnace.

(6) Durand shall keep complete records of each PM and PM-10 stack test required under this subparagraph, including all supporting data and information,

in a format (including electronically) and location that is readily available for EPA and NJDEP review upon request, in accordance with Paragraph 77, below.

V. REVIEW AND APPROVAL OF SUBMITTALS

10. After review of any plan, report, or other item that is required to be submitted by Durand pursuant to this Consent Decree, EPA and NJDEP 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 (with explanation) the submission.

11. If the submission is approved, Durand 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, Durand shall, upon written direction of EPA and NJDEP, take all actions required by the approved portions of the plan, report, or other item that EPA and NJDEP determine are technically severable from any disapproved portions, subject to Durand's right to dispute only the specified conditions, the disapproved portions, or the severability of approved portions, under Section XIII (Dispute Resolution) of this Consent Decree.

12. If the submission is disapproved in whole or in part, Durand shall, subject to its right to dispute the disapproved portions pursuant to Section XIII (Dispute Resolution), within forty-five (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, Durand shall proceed in accordance with the preceding Paragraph.

13. Any stipulated penalties applicable to the original submission, as provided in Section XI (Stipulated Penalties) of this Consent Decree, shall accrue during the forty-five (45) Day period or other specified period, but 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 Durand's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

14. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA and NJDEP may again require Durand to correct any deficiencies, in accordance with the preceding Paragraphs, or may themselves correct any deficiencies, subject to Durand's right to invoke Dispute Resolution under Section XIII (Dispute Resolution) and the right of EPA and NJDEP to seek stipulated penalties as provided in Section XI (Stipulated Penalties).

VI. PERMITS

15. This Consent Decree does not relieve Durand of its obligations to obtain all required federal, state, or local permits necessary for performing any compliance obligation under this Consent Decree, including, but not limited to, permits for construction and/or installation and operation of pollution control equipment. The NSR preconstruction and Title V Operating Permit programs have been integrated in the State of New Jersey. Specifically,

Durand's federally enforceable preconstruction and Title V permits include the preconstruction approval and the integration of the following ongoing requirements:

- (a) All Final NO_x Limits and compliance requirements in subparagraphs 9(b), 9(c) (except 9(c)(1) (CERMS Plan/ Emission Calculating Methodology)) and 9(d) (except 9(d)(1) (30-Day bypass)) of this Consent Decree;
- (b) The final PM emission limit in subparagraph 9(e)(2) and the PM and PM-10 provisions in subparagraph 9(e)(5) of this Consent Decree;
- (c) The PM-10 Test and Set provisions in subparagraph 9(e) (except with respect to Test Method 201A) of this Consent Decree; and
- (d) All testing, monitoring, recordkeeping and reporting requirements in subparagraphs 9(b), 9(c), 9(d) and 9(e) of this Consent Decree.

16. Prior to seeking termination under Section XXIII (Termination) of this Consent Decree, Durand shall apply for and obtain an NSR preconstruction permit/approval and an amendment or modification (as applicable) to the Facility Title V Operating Permit, to incorporate the requirements in subparagraphs 9(c)(1) (CERMS Plan/Emission Calculating Methodology), 9(d)(1) (30-Day bypass) and 9(e)(4) (final PM-10 emission limit), and all NO_x Allowance and Credit requirements in Section VII of this Consent Decree. Following submission of the permit applications, Durand shall cooperate with the NJDEP to ensure that such applications are complete. Durand shall file any additional information or applications necessary to incorporate those requirements into an NSR preconstruction permit/approval and into the Title V Operating Permit. The incorporation of the requirements identified in this Paragraph 16 into an NSR preconstruction permit/approval and into the Title V Operating Permit

shall be in accordance with State NSR preconstruction and Title V rules, including the applicable administrative amendment provisions of such rules.

17. Notwithstanding the reference to a Title V Operating Permit in this Consent Decree, the enforcement of such permit shall be in accordance with its own terms, the Act, and the New Jersey Air Act. The Title V Operating Permit shall not be enforceable under this Consent Decree, although any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become part of a Title V Operating Permit, subject to the terms of Section XXIII (Termination) of this Consent Decree. Nothing in this Consent Decree is meant to preclude enforcement of the underlying federally enforceable minor or major NSR permit or other permit or any term included in the Title V Operating Permit.

18. EPA and NJDEP will each use its discretion to decide whether to enforce under the Title V Operating Permit or under this Consent Decree.

19. Using the procedures set forth in Section XV (Notices), Durand shall provide to the persons listed in Paragraph 81 of this Consent Decree a copy of each application for a federally enforceable permit necessary to implement the requirements of this Consent Decree that is filed after the Effective Date.

VII. PROHIBITION ON NETTING AND USE OF OFFSETS FOR REDUCTIONS RESULTING FROM REQUIRED CONTROLS

20. Durand may not use, purchase, or otherwise obtain Emission Credits or Allowances to comply with the requirements of this Consent Decree. However, notwithstanding the preceding sentence, if the Facility undergoes a modification with respect to any pollutant for

which the area is in non-attainment, or which is treated as in non-attainment, nothing in this Consent Decree shall preclude Durand from acquiring or utilizing any legally required Emission Credits or Allowances, nor relieve Durand of any obligation to obtain Emission Credits or Allowances to use as Offsets in permitting such Facility modification.

21. In no event shall any NO_x, PM, or PM-10 emission reductions generated by Durand to comply with any of the requirements in this Consent Decree be considered creditable contemporaneous emission decreases for the purpose of netting under the Act's PSD and/or Non-attainment NSR provisions under 40 C.F.R. § 52.21(b)(3), nor shall any such emissions reductions be used as Offsets under the Act's Non-attainment NSR provisions or the Emission Offset Rule provisions under N.J.A.C. 7:27-18.5 et seq.

22. The limitations on the generation and use of netting credits or Offsets set forth in Paragraphs 20 and 21 do not apply to emission reductions achieved by Durand that are greater than those required under this Consent Decree. For purposes of this Paragraph, emission reductions from a Durand furnace are greater than those required under this Consent Decree if they result from Durand's compliance with federally-enforceable emission limits that are more stringent than those limits established pursuant to this Decree, and under applicable provisions of the Act and the New Jersey State Implementation Plan. Nothing in this Decree is intended to preclude the emission reductions generated under this Decree from being considered by NJDEP or EPA for the purpose of attainment demonstrations submitted pursuant to Section 110 of the Act, 42 U.S.C. § 7410, or in determining impacts on NAAQS, PSD increments, or air quality related values, including visibility, in a Class I area.

VIII. CIVIL PENALTY

23. Durand shall pay to the United States and New Jersey a civil penalty of \$300,000 in accordance with this Section.

24. Within thirty (30) calendar days after the Effective Date of this Consent Decree, Durand shall pay to the United States a civil penalty in the amount of \$150,000, together with interest accruing from the Date of Lodging at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

25. Durand shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice, in accordance with written instructions to be provided to Durand, following the Date of Lodging, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of New Jersey (Federal Building, Room 701, 970 Broad Street, Newark, New Jersey 07102-2506, (973) 645-2911). The costs of the EFT shall be the responsibility of Durand. Any funds received after 11:00 p.m. eastern standard time will be credited on the next business day. At the time of payment, Durand shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States of America and State of New Jersey v. Durand Glass Manufacturing Company, Inc.*, and shall reference the civil action number and DOJ case number 90-5-2-1-09182, to the United States in accordance with Section XV (Notices) of this Decree; by email to acctsreceivable.CINWD@epa.gov; and by mail to:

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

26. Within thirty (30) calendar Days after the Effective Date of this Consent Decree, Durand shall pay to the State of New Jersey a civil penalty in the amount of \$150,000, together with interest accruing from the Date of Lodging, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

27. Durand shall pay the civil penalty due to New Jersey by check made payable to “Treasurer, State of New Jersey,” and remit to:

Director of Air and Hazardous Materials Compliance and Enforcement
New Jersey Department of Environmental Protection
Mail Code 420
P.O. Box 422
Trenton, NJ 08625-0420

28. Upon the Date of Entry, this Consent Decree will constitute an enforceable judgment for purposes of post-judgment collection, in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 et seq., and any other applicable federal authority. The United States and New Jersey will be deemed judgment creditors for purposes of collecting each Party’s respective portion of any unpaid amounts of the penalty and interest due pursuant to this Section, or any stipulated penalty owed pursuant to Section XI (Stipulated Penalties).

29. The civil penalty set forth in this Section, and any stipulated penalty incurred under Section XI (Stipulated Penalties) of this Consent Decree, is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and therefore Durand shall not deduct any such penalties in calculating its Federal or State income tax.

IX. EFFECT OF SETTLEMENT

30. Entry of this Consent Decree shall resolve all civil liability of Durand to the United States and New Jersey that arose from any construction or modification commenced at the Durand Facility prior to the Date of Lodging of this Consent Decree, under any or all of:

(a) Parts C or D of Subchapter I of the Clean Air Act, 42 U.S.C. §§ 7470-7492, 7501-7515, and the regulations promulgated thereunder at 40 C.F.R. § 52.21, 40 C.F.R. §§ 51.165(a) and (b), 40 C.F.R. Part 51, Appendix S, and 40 C.F.R. § 52.24;

(b) N.J.A.C. 7:27-18.1 et seq. (“Emission Offset Rules”), developed by the State of New Jersey and approved by EPA into the federally-enforceable New Jersey SIP under Part D of Subchapter I of the Act (“Plan Requirements for Non-attainment Areas”), 42 U.S.C. § 7501 et seq., and Section 110 of the Act, 42 U.S.C. § 7410, and enforceable under Section 113 of the Act, 42 U.S.C. § 7413;

(c) Sections 502(a) and 504(a) of Title V of the Clean Air Act, 42 U.S.C. §§ 7661a(a) and 7661c(a), but only to the extent that such claims are based on Durand’s failure to obtain a Permit that reflects the applicable requirements under Parts C or D of Subchapter I of the Act;

(d) Any State or local law counterparts to the provisions above in this Paragraph; and

(e) Any allegations set forth in the Notice of Violation issued by EPA on March 30, 2007, and the Complaint(s).

The resolution of liability set forth in this Paragraph shall apply for the pollutants NO_x and PM (including PM-10 and PM-2.5), and shall not apply to any other pollutants.

31. The United States and New Jersey reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in

Paragraph 30 of this Decree. This Decree shall not be construed to limit the rights of the United States or New Jersey 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 30.

32. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Durand is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; and Durand's compliance with this Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as expressly provided by Paragraph 30. The United States and New Jersey do not, by their consent to the entry of this Decree, warrant or aver in any manner that Durand's compliance with any aspect of this Decree will result in compliance with provisions of the Act, or with any other provisions of federal, State, or local laws, regulations, or permits.

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

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

X. REPORTING REQUIREMENTS

35. Beginning thirty (30) Days after the end of the first full calendar quarter following the Effective Date of this Consent Decree, and continuing on a semi-annual basis until

termination of this Decree, Durand shall submit to EPA and NJDEP a progress report that contains:

(a) All information generated during each reporting period and required to be reported under Section IV (Compliance Requirements) of this Consent Decree;

(b) All information relating to emission allowances and credits that Durand claims to have generated in accordance with Paragraphs 20 through 22 of this Consent Decree by achieving actual emission reductions that are more stringent than those required under this Consent Decree;

(c) CERMS emissions data generated during each reporting period indicating the daily, 30-Day rolling average and 365-Day rolling average NO_x Emission Rates for Furnaces US1, US2, and US3, the CERMS emissions data from each applicable AOS Day described in subparagraph 9(d), and the PM, PM-10 and ammonia emissions from the stack tests required under this Consent Decree; and

(d) All information regarding any delays or reasonably anticipated delays of the installation and commencement of operation of any pollution control device required under this Consent Decree, which includes the nature and cause(s) of the delay, and the steps taken by Durand to mitigate such delay.

36. In any semi-annual progress report submitted pursuant to this Section, Durand may incorporate by reference information previously submitted under its Title V Permit, provided that Durand attaches the Title V Permit report and provides a specific reference to the provisions of the Title V Permit report that are responsive to the information required in the semi-annual progress report required under this section of the Decree.

37. The reporting requirements of this Consent Decree do not relieve Durand 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. The reporting requirements of this Section are in addition to any other reports, plans or submissions required by other Sections of this Consent Decree.

38. Any information provided pursuant to this Consent Decree may be used by the United States or New Jersey in any proceeding to enforce the provisions of this Decree and as otherwise permitted by law, and may be made available to the public upon request, if not otherwise protected as confidential business information, pursuant to 40 C.F.R. Part 2 and/or NJDEP determines that no disclosure is required in accordance with the Open Public Records Act, N.J.S.A. 47:1A-1 to -13 and N.J.A.C. 7:27-1.9 to -1.30.

39. If Durand violates, or has reason to believe that it may violate, any requirement or emission limit of this Consent Decree, Durand shall notify the United States and New Jersey of such violation(s) and its likely duration, in writing, within ten (10) Days of the day Durand first becomes aware of the violation(s), with an explanation of the likely cause(s) of the violation(s) and of the remedial steps taken, or to be taken, to prevent or minimize such violation(s). If the cause(s) of a violation(s) cannot be fully explained at the time the report is due, Durand shall so state in the report. Durand shall investigate the cause(s) of the violation(s) and shall then submit an amendment to the report, including a full explanation of the cause(s) of the violation(s), within thirty (30) Days of the day Durand becomes aware of the cause of the violation(s). Nothing in this Paragraph relieves Durand of its obligation to provide the notice required by Section XII (Force Majeure) of this Decree.

40. All reports required under this Section of this Consent Decree shall be submitted to the persons designated in Section XV (Notices) of this Decree.

41. Each report required under this Consent Decree shall be signed by Durand's Environmental Engineer, or, in his or her absence, the Vice President of Manufacturing, or higher ranking official, and shall contain the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I understand that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

XI. STIPULATED PENALTIES

42. Durand shall be liable for stipulated penalties to the United States and New Jersey for violations of this Consent Decree as specified in this Section, unless excused under Section XII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree within the specified time schedules established by or approved under this Decree.

43. If Durand fails to pay the civil penalty required to be paid under Section VIII (Civil Penalty) of this Consent Decree when due, Durand shall pay a stipulated penalty of \$5,000 per Day for each Day that the payment is late. Late payment of the civil penalty shall be made in accordance with the instructions in Section VIII, above. Stipulated penalties shall be paid in accordance with the instructions in this Section. All transmittal correspondence shall state that

any such payment is for late payment of the civil penalty due under this Consent Decree, or for stipulated penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 25, above.

44. Emission Limits. The following stipulated penalties shall accrue per violation, per Day, for each violation of the Final NO_x Limit required under Paragraph 9(b)(5) (final 30-Day rolling average NO_x limit), or 9(d) (AOS limits as measured on a pounds of NO_x per Day basis):

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|---|
| \$1,000 | 1 st through 14 th Day |
| \$2,500 | 15 th through 30 th Day |
| \$5,000 | 31 st Day and beyond |

For the purpose of determining stipulated penalties under this Paragraph, Days of noncompliance are cumulative from the Effective Date and need not be continuous. Any Operating Day where the 30-Day rolling average NO_x limit is exceeded is a separate one (1) Day violation.

45. The following stipulated penalties shall accrue per violation, per Day, for each violation of the Final NO_x Limit required under Paragraph 9(b)(6) (final 365-Day rolling average NO_x limit), measured on a 365-Day rolling average basis:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|---|
| \$5,000 | 1 st through 30 th Day |
| \$10,000 | 31 st through 60 th Day |
| \$15,000 | 61 st Day and beyond |

For the purpose of determining stipulated penalties under this Paragraph, Days of noncompliance

are cumulative from the Effective Date and need not be continuous. Any Operating Day where the 365-Day rolling average NO_x limit is exceeded is a separate one (1) Day violation.

46. For each PM or PM-10 stack test conducted as required in Paragraph 9(e)(2) (final PM limit) or 111(b) (final PM-10 limit) where the applicable limit is exceeded, a stipulated penalty of \$15,000 shall accrue per violation. Upon exceeding any limit referred to in this Paragraph, Durand shall take action to correct the exceedance, and shall re-test for the relevant pollutant, as soon as practicable. If Durand fails to take corrective action and re-test within sixty (60) Days of an exceedance, an additional stipulated penalty of \$20,000 shall accrue per violation, and additional stipulated penalties of \$20,000 per violation shall accrue for each subsequent sixty (60) Day period until Durand takes corrective action and conducts the required re-test.

47. Installation and Operation of Pollution Controls. The following stipulated penalties shall accrue per violation, per Day, for each violation of the prohibition on Operating a Furnace without operating the pollution controls required under Paragraph 9(b) (SCR controls for NO_x) or 9(e) (Particulate Filter controls for PM and PM-10) of this Consent Decree, consistent with Paragraph 9(d) (AOS periods):

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|---|
| \$1,000 | 1 st through 14 th Day |
| \$3,500 | 15 th through 30 th Day |
| \$5,000 | 31 st Day and beyond |

48. The following stipulated penalties shall accrue per violation, per Day, for each violation of a requirement to conduct stack testing in accordance with the schedules and/or the

protocols approved under Paragraphs 9(b)(7) (ammonia slip), 9(e) (PM and/or PM-10) or 110(b) of this Consent Decree:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|---|
| \$1,000 | 1 st through 30 th Day |
| \$3,500 | 31 st through 60 th Day |
| \$5,000 | 61 st Day and beyond |

49. The following stipulated penalties shall accrue per violation, per Day, for each violation of the requirements to install, calibrate, certify and/or operate a NO_x CERMS in accordance with Paragraph 9(b) of this Consent Decree:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|---|
| \$1,000 | 1 st through 30 th Day |
| \$3,500 | 31 st through 60 th Day |
| \$5,000 | 61 st Day and beyond |

50. Reporting or Recordkeeping Requirements. The following stipulated penalties shall accrue per violation, per Day, for each violation of the reporting or recordkeeping requirements in Paragraph 9 or Section X (Reporting Requirements) of this Consent Decree:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--|
| \$500 | 1 st through 30 th Day |
| \$750 | 31 st Day and beyond |

51. The following stipulated penalties shall accrue for violations of any other requirement under this Consent Decree, except Paragraph 8 for which no stipulated penalties shall accrue:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|---|
| \$1,000 | 1 st through 30 th Day |
| \$1,500 | 31 st through 60 th Day |
| \$2,000 | 61 st Day and beyond |

52. All stipulated penalties shall begin to accrue on the day after the performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

53. Durand shall pay all stipulated penalties to the United States and New Jersey within thirty (30) Days of receipt of written demand to Durand from the United States and New Jersey, unless Durand elects within twenty (20) Days of receipt of written demand to Durand from the Plaintiffs to dispute the accrual of stipulated penalties in accordance with the provisions in Section XIII (Dispute Resolution) of this Consent Decree.

54. Stipulated penalties shall continue to accrue as provided in accordance with Paragraph 52 during any dispute, with interest on accrued stipulated penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

(a) If the dispute is resolved by agreement, or by a decision of Plaintiffs pursuant to Section XIII (Dispute Resolution) of this Consent Decree that is not appealed to the Court, accrued stipulated penalties agreed to or determined to be owing, together with accrued interest,

shall be paid within thirty (30) Days of the effective date of the agreement or Durand's receipt of Plaintiffs' decision;

(b) If the dispute is appealed to the Court and Plaintiffs prevail in whole or in part, Durand shall, within sixty (60) Days of receipt of the Court's decision or order, pay all accrued stipulated penalties determined by the Court to be owing, together with accrued interest, except as provided in subparagraph 54(c), below;

(c) If the Court's decision is appealed by any Party, Durand shall, within fifteen (15) Days of receipt of the final appellate court decision, pay all accrued stipulated penalties determined to be owed, together with accrued interest.

55. All stipulated penalties, including accrued interest, shall be paid 50 percent to the United States and 50 percent to New Jersey in the manner set forth in Section VIII (Civil Penalty) of this Consent Decree.

56. Should Durand fail to pay stipulated penalties in compliance with the terms of this Consent Decree, the Plaintiffs shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961.

57. Subject to the provisions of Section IX (Effect of Settlement) of this Consent Decree, 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 or the State for Durand's violation(s) of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of relevant statutory or regulatory requirements, Durand shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

58. The United States and/or New Jersey may, in the unreviewable exercise of discretion, reduce or waive stipulated penalties otherwise due to the United States and/or New Jersey under this Consent Decree.

XII. FORCE MAJEURE

59. For purposes of this Consent Decree, a “Force Majeure Event” shall mean an event that has been or will be caused by circumstances beyond the control of Durand, its contractors, or any entity controlled by Durand that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite Durand’s best efforts to fulfill the obligation. “Best efforts to fulfill the obligation” include using best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event: (a) as it is occurring; and (b) after it has occurred, such that the delay or violation is minimized to the greatest extent possible.

60. Notice of Force Majeure Events. If any event occurs or has occurred that may delay compliance with or otherwise cause a violation of any obligation under this Consent Decree, as to which Durand intends to assert a claim of Force Majeure, Durand shall notify the Plaintiffs in writing as soon as practicable, but in no event later than fourteen (14) Days following the date on which Durand first knew that the event might cause a delay. Within ten (10) Business Days thereafter, Durand shall reference this Paragraph of this Consent Decree and describe the anticipated length of time that the delay or violation may persist, the cause or causes of the delay or violation, all measures taken or to be taken by Durand to prevent or minimize the delay or violation, the schedule by which Durand proposes to implement those measures, and Durand’s rationale for attributing a delay or violation to a Force Majeure Event. Durand shall

adopt all reasonable measures to avoid or minimize such delays or violations. Durand shall be deemed to know of any circumstance which Durand, its contractors, or any entity controlled by Durand knew.

61. Failure to Give Notice. If Durand fails to comply with the notice requirements of this Section, the Plaintiffs may void Durand's claim for Force Majeure as to the specific event for which Durand has failed to comply with such notice requirement.

62. Plaintiff's Response. The Plaintiffs shall notify Durand in writing regarding Durand's claim of Force Majeure after a reasonable opportunity for review of the notice provided under Paragraph 60 of this Consent Decree. If the Plaintiffs agree that a delay in performance has been or will be caused by a Force Majeure Event, the Parties shall stipulate to an extension of deadline(s) for performance of the affected compliance requirement(s) by a period equal to the delay actually caused by the event. In such circumstances, an appropriate modification shall be made pursuant to Section XIX (Modification) of this Consent Decree.

63. Disagreement. If the Plaintiffs do not accept Durand's claim of Force Majeure, or if the Parties cannot agree on the length of the delay actually caused by the Force Majeure Event, the matter shall be resolved in accordance with Section XIII (Dispute Resolution) of this Consent Decree.

64. Burden of Proof. In any dispute regarding Force Majeure, Durand shall bear the burden of proving by a preponderance of the evidence that any delay in performance or any other violation of any requirement of this Consent Decree was caused by or will be caused by a Force Majeure Event. Durand shall also bear the burden of proving that Durand gave the notice required by this Section and the burden of proving the anticipated duration and extent of any

delay(s) attributable to a Force Majeure Event. An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date.

65. Events Excluded. Unanticipated or increased costs or expenses associated with the performance of Durand's obligations under this Consent Decree shall not constitute a Force Majeure Event.

66. As part of the resolution of any matter submitted to this Court under Section XIII (Dispute Resolution) of this Consent Decree regarding a claim of Force Majeure, the Parties by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of any delay agreed to by the Plaintiffs or approved by the Court. Durand shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule.

XIII. DISPUTE RESOLUTION

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

68. 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 Durand sends the United States and NJDEP a written Notice of

Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (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, after consultation with NJDEP, shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, Durand invokes formal dispute resolution procedures as set forth below.

69. Formal Dispute Resolution. Durand shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and NJDEP 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 Durand's position and any supporting documentation relied upon by Durand.

70. The United States, after consultation with NJDEP, shall serve its Statement of Position within forty-five (45) Days of receipt of Durand'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 Durand, unless Durand files a motion for judicial review of the dispute in accordance with the following Paragraph.

71. Durand may seek judicial review of the dispute by filing with the Court and serving on the United States and NJDEP, in accordance with Section XV (Notices) of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within fifteen (15) Days of receipt of the United States' Statement of Position. The motion shall contain a written statement of Durand'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.

72. The United States, after consultation with NJDEP, shall respond to Durand's motion within the time period allowed by the Local Rules of this Court. Durand may file a reply memorandum, to the extent permitted by the Local Rules.

73. Standard of Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 69 (Formal Dispute Resolution) Durand 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 and/or New Jersey reserve the right to argue that their/its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with the law, and Durand reserves the right to oppose this position.

74. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Durand 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 54. If Durand does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

XIV. INFORMATION COLLECTION AND RETENTION

75. Any authorized representative of the Plaintiffs, including their attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry upon the premises of the Durand facility at any reasonable time for the purpose of:

- (a) monitoring the progress of activities required under this Consent Decree;
- (b) verifying any data or information submitted to the Plaintiffs in accordance with the terms of this Consent Decree;
- (c) obtaining samples and, upon request, splits of any samples taken by Durand or its representatives, contractors, or consultants; and
- (d) assessing Durand's compliance with this Consent Decree.

76. Until at least three (3) years after the termination of this Consent Decree, Durand 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 Durand'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 EPA and NJDEP, Durand shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

77. All information and documents submitted by Durand pursuant to this Consent Decree shall be subject to any requests under applicable law providing public disclosure of

documents unless: (a) the information and documents are subject to legal privileges or protection; or (b) Durand claims that the information and documents contain confidential business information, and EPA determines that no disclosure is required in accordance with 40 C.F.R. Part 2 and/or NJDEP determines that no disclosure is required in accordance with the Open Public Records Act, N.J.S.A. 47:1A-1 to -13 and N.J.A.C. 7:27-1.9 to -1.30.

78. Nothing in this Consent Decree shall limit the authority of the Plaintiffs to conduct tests and inspections at Durand's facilities under Section 114 of the Act, 42 U.S.C. § 7414, or any other applicable federal or state laws, regulations or permits.

79. The information retention requirements of Section XIV (Information Collection and Retention) shall survive termination of this Consent Decree and shall be enforceable by this Court even after such termination. 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 or New Jersey pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Durand to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XV. NOTICES

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

As to the United States of America:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
DJ# 90-5-2-1-08085

As to EPA, with copies to the Regional Office

Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

EPA Region 2:

Chief, Air Compliance Branch
Division of Compliance Assurance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, NY 10007-1866

Chief, Air Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

As to Durand:

Fred Dohn, President
Durand Glass Manufacturing Company, Inc.
901 S. Ward Boulevard
Millville, New Jersey 08332

Thierry Decroocq, Vice President of Manufacturing
Durand Glass Manufacturing Company, Inc.
901 S. Ward Boulevard
Millville, New Jersey 08332

Mike Griffith, Environmental Engineer
Durand Glass Manufacturing Company, Inc.
901 S. Ward Boulevard
Millville, New Jersey 08332

Ellen Radow Sadat, Esquire
Drinker Biddle & Reath LLP
105 College Road East
P.O. Box 627
Princeton, New Jersey 08542-0627

As to New Jersey:

Section Chief
Environmental Enforcement and Homeland Security
Division of Law
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, NJ 08625-093

and

Director, Air and Hazardous Waste Compliance and Enforcement
New Jersey Department of Environmental Protection
Mail Code 401-04B
P.O. Box 420
Trenton, NJ 08625-0420

and

Manager
Southern Regional Air Compliance and Enforcement
New Jersey Department of Environmental Protection
2 Riverside Drive, Suite 201
Camden, NJ 08103

81. In addition to the addresses identified in Paragraph 80, unless otherwise provided herein, whenever permit application submissions, or related communications are required by this Consent Decree, they shall be made in writing and also addressed as follows:

Chief, Bureau of Air Permits
Division of Air Quality
New Jersey Department of Environmental Protection
401 E. State Street, 2nd Floor East Wing
Mail Code 401-02
P.O. Box 027
Trenton, NJ 08625-0027

and

Chief, Air Compliance Branch
Division of Compliance Assurance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, NY 10007-1866

82. All notifications, communications or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or delivery service; (b) certified or registered mail, return receipt requested; or (c) electronic transmission, unless the recipient is not able to review the transmission in electronic form. All notifications, communications and transmissions: (a) sent by certified or registered mail shall be deemed submitted on the date they are postmarked; or (b) sent by overnight delivery service shall be deemed submitted on the date they are delivered to the delivery service. All notifications, communications, and submissions made by electronic transmission shall be electronically signed and certified, and shall be deemed submitted on the date that Durand receives written acknowledgment of receipt of such transmission.

83. Any Party may change either the notice recipient or the address for providing notices to it by serving the other Party with a notice setting forth such new notice recipient or address.

XVI. SALES OR TRANSFERS OF OWNERSHIP INTERESTS

84. If Durand proposes to sell or transfer an operational or Ownership Interest in the Facility, at least thirty (30) Days prior to any sale or transfer, Durand shall advise the proposed transferee in writing of the existence of this Consent Decree and shall provide a copy of this Consent Decree to the proposed transferee. Durand shall provide written notice of any prospective sale or transfer to the United States and New Jersey, pursuant to Section XV (Notices) of this Consent Decree, at least thirty (30) Days prior to such proposed sale or transfer. Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

85. Durand shall condition any transfer, in whole or in part, of an operational, Ownership Interest, or other interest in the Facility subject to this Consent Decree, upon: (1) certification by the transferee that it has the financial and technical ability to assume the obligations and liabilities under this Consent Decree, and (2) the execution by the transferee of a modification to the Consent Decree, making the terms and conditions of the Decree that apply to such Facility applicable to the transferee.

86. Durand shall submit an application for modification promptly to the Court after such transfer making the terms and conditions of the Consent Decree that apply to the Facility applicable to the transferee. Upon approval by the Court of such modification, in accordance with Section XIX (Modification) of this Consent Decree, making the transferee a party to this Consent Decree and liable for all the requirements of this Decree that are applicable to the transferred or purchased interest, Durand shall be released from the obligations and liabilities of this Consent Decree as to the transferred or purchased interests, provided that all civil penalties

pursuant to Section VIII (Civil Penalties) and stipulated penalties pursuant to Section XI (Stipulated Penalties) have been fully paid.

87. This Consent Decree shall not be construed to impede the transfer of any Ownership Interests between Durand and any Third Party as long as the requirements of this Consent Decree are met. This Consent Decree shall not be construed to prohibit a contractual allocation – as between Durand and any Third Party of Ownership Interests – of the burdens of compliance with this Decree, provided that both Durand and such Third Party shall remain jointly and severally liable to EPA and NJDEP for the obligations of this Consent Decree applicable to the transferred or purchased Ownership Interests, except as provided in Paragraphs 84 through 86 of this Consent Decree.

88. Notwithstanding the foregoing, however, Durand may not assign, and may not be released from, any obligation under this Consent Decree that is not specific to the purchased or transferred Ownership Interests, including the obligations set forth in Sections IX (Civil Penalty) and XII (Stipulated Penalties). Durand may propose and the Plaintiffs may agree to restrict the scope of joint and several liability of any purchaser or transferee for any obligations of this Consent Decree that are not specific to the transferred or purchased Ownership Interests, to the extent such obligations may be adequately separated in an enforceable manner.

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 that a motion to enter the Decree is granted.

XVIII. RETENTION OF JURISDICTION

90. Continuing Jurisdiction. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, modification, or adjudication of disputes. During the term of this Consent Decree, either Party to this Consent Decree may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XIX. MODIFICATION

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

XX. GENERAL PROVISIONS

92. This Consent Decree is not a permit. Compliance with the terms of this Consent Decree does not guarantee compliance with all applicable federal, state, or local laws or regulations. The obligations set forth herein do not relieve Durand from any obligation to comply with other state and federal requirements under the Clean Air Act, including Durand's obligation to satisfy any state modeling requirements set forth in the New Jersey State Implementation Plan.

93. This Consent Decree does not apply to any claim(s) of alleged criminal liability.

94. In any subsequent administrative or judicial action initiated by the Plaintiffs for injunctive relief or civil penalties relating to the Facility, Durand shall not assert any defense or claim based upon principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim

preclusion, or claim splitting, or any other defense based upon the contention that the claims raised by the United States or New Jersey in the subsequent proceeding were brought, or should have been brought, in the instant case; provided, however, that nothing in this Paragraph is intended to affect the validity of Section IX (Effect of Settlement).

95. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Durand of its obligation to comply with all applicable federal, state, and local laws and regulations. Subject to the provisions in Section IV (Compliance Requirements), nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States and New Jersey to obtain penalties or injunctive relief under the Act or other federal, state, or local statutes, regulations, or permits.

96. The United States 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, Durand's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

97. New Jersey reserves all rights under the New Jersey Air Act and common law, to take additional actions if New Jersey determines that such actions are necessary to protect public health, safety, welfare, and the environment.

98. Notwithstanding any other provisions of this Consent Decree, the United States and New Jersey reserve all rights with respect to liability for assessment and damages for injury to, destruction of or loss of natural resources under otherwise applicable federal, state or other law and regulation.

99. Nothing in this Consent Decree is intended to, or shall, alter or waive any applicable law (including but not limited to any defenses, entitlements, challenges, or clarifications related to the Credible Evidence Rule, 62 Fed. Reg. 8,315 (Feb. 27, 1997)) concerning the use of data for any purpose under the Act, generated either by the reference methods specified herein or otherwise.

100. Each limit and/or other requirement established by or under this Decree is a separate, independent requirement.

101. Performance standards, emissions limits, and other quantitative standards set by or under this Consent Decree must be met to the number of significant digits in which the standard or limit is expressed. For example, an Emission Limit of 0.100 is not met if the actual Emissions are 0.101. Durand shall round the fourth significant digit to the nearest third significant digit, or the third significant digit to the nearest second significant digit, depending upon whether the limit is expressed to three or two significant digits. For example, if actual Emissions are 0.1004, that shall be reported as 0.100, and shall be in compliance with an Emission Limit of 0.100, and if actual Emissions are 0.1005 that shall be reported as 0.101, and shall not be in compliance with an Emission Limit of 0.100. Durand shall report data to the number of significant digits in which the corresponding emission standard or limit is expressed.

102. This Consent Decree does not limit, enlarge or affect the rights of any Party to this Consent Decree as against any third parties.

103. This Consent Decree constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree, and supersedes all prior agreements and understandings between the Parties related to

the subject matter herein. No document, representation, inducement, agreement, understanding, or promise constitutes any part of this Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

104. Each Party to this action shall bear its own costs and attorneys' fees.

XXI. SIGNATORIES AND SERVICE

105. Each undersigned representative of the Parties 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 to this document the Party he or she represents.

106. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

107. Each Party hereby 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.

XXII. PUBLIC COMMENT

108. The Parties agree and acknowledge that final approval by the Plaintiffs and entry of this Consent Decree is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of Plaintiffs to withdraw or withhold consent if the comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. Durand shall not oppose entry of this Consent Decree by this Court or challenge any

provision of this Consent Decree unless the Plaintiffs have notified Durand, in writing, that the United States or New Jersey no longer support entry of the Consent Decree.

XXIII. TERMINATION

109. Consistent with Paragraph 16 of this Consent Decree, prior to seeking termination of this Consent Decree under Paragraph 111, below, Durand shall certify in writing that the applicable requirements in subparagraphs 9(b), (c), (d) and (e), and the NO_x allowance and credit requirements in Section VII of this Consent Decree are contained in an NSR preconstruction permit/approval and incorporated/integrated into the Facility Title V Operating Permit. Durand may submit the relevant certified progress report to demonstrate compliance with these requirements.

110. Prior to seeking termination of this Consent Decree under Paragraph 111, below, Durand shall demonstrate compliance with the final PM-10 emission limit established under subparagraph 9(e)(3) and (4), and shall obtain an NSR preconstruction permit/approval and an amendment/modification to the Title V Operating Permit to incorporate the final PM-10 limit into such permit. Durand may demonstrate compliance with the final PM-10 limit pursuant to either subparagraph (a) or (b), below.

(a) if all three (3) annual PM-10 stack testing averages under subparagraph 9(e)(3) are equal to or less than 0.56 pounds of PM-10 per Ton of glass pulled, then EPA and NJDEP will accept those three annual average stack test results as Durand's demonstration of compliance with the final PM-10 limit established under subparagraph 9(e)(4), and no additional stack testing shall be required under this Consent Decree; or

(b) if any one of the annual averages is more than 0.56 pounds of PM-10 per Ton of glass pulled, then compliance with the final PM-10 limit of 0.70 pounds of PM-10 per Ton of glass pulled established under subparagraph 9(e)(4) shall be demonstrated by one (1) additional PM-10 stack test, which shall be conducted in accordance with the same test protocols required under subparagraph 9(e)(3) of this Consent Decree. The additional stack test shall be conducted the following year, in the same calendar quarter that the stack tests to establish the final PM-10 limit were performed. The results of the stack test shall be submitted to EPA and NJDEP within forty-five (45) Days after completing the test.

111. After Durand has (1) maintained continuous satisfactory compliance with the requirements of Section IV (Compliance Requirements) and Section X (Reporting) for at least a two (2) year period from the first Day that the final NO_x and PM limits in subparagraphs 9(b)(5), 9(b)(6) and 9(e)(2), respectively, are in effect for all three Furnaces; (2) obtained a Title V Operating Permit amendment/modification that incorporates the final PM-10 emission limit under subparagraph 110(a), or submitted the results of the additional PM-10 stack test conducted under subparagraph 110(b), as applicable, and has obtained all other permits required by this Consent Decree; and (3) paid the civil penalty and any accrued stipulated penalties as provided under Sections VIII (Civil Penalty) and XI (Stipulated Penalties) of this Consent Decree, Durand may serve upon the United States and New Jersey a certified request for termination stating that Durand has satisfied those requirements, together with all necessary supporting documentation. Durand shall be subject to stipulated penalties for violations of this Consent Decree, as set forth in Section XI (Stipulated Penalties), until the Parties have held the informal conference under Paragraph 113, below, and EPA and NJDEP determine that this Consent Decree may be

terminated. Durand shall submit any information requested by EPA or NJDEP that is necessary to determine Durand's compliance with the terms of this Consent Decree prior to termination.

112. The request to terminate the Consent Decree shall also contain the following statement, signed by a responsible corporate official:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this request is 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.

113. Following receipt by the United States and New Jersey of Durand's Request for Termination, the Parties shall confer informally concerning the Request for Termination and any disagreement that the Parties may have as to whether Durand has satisfactorily complied with the requirements for termination of this Consent Decree, as set forth in Paragraphs 109 through 112 of this Consent Decree. If the United States after consultation with New Jersey, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

114. If the United States or New Jersey, after consultation with the other, do not agree that the Decree may be terminated or the United States and New Jersey do not respond to the Request for Termination, Durand may invoke Dispute Resolution under Section XIII (Dispute Resolution) of this Consent Decree. However, Durand shall not seek Dispute Resolution of any dispute or the absence of a response by the United States and New Jersey regarding termination until sixty (60) Days after submission of Durand's Request for Termination.

XXIV. FINAL JUDGMENT

115. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment in the above-captioned matter between the Plaintiffs and Durand.

XXV. APPENDIX

(See attached Appendix A)

SO ORDERED, THIS ____ DAY OF _____, 2012.

THE HONORABLE _____
UNITED STATES DISTRICT COURT JUDGE

Signature Pages for Consent Decree in:

United States of America and the State of New Jersey

v.

Durand Glass Manufacturing Company, Inc., No. _____

FOR THE UNITED STATES OF AMERICA:

Date: _____

By:

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Date: _____

By: _____

BRIAN DONOHUE
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

Signature Pages for Consent Decree in:

United States of America and the State of New Jersey

v.

Durand Glass Manufacturing Company, Inc., No. _____

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: _____

By: _____

CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Date: _____

By: _____

PHILLIP BROOKS
Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Of Counsel
Tahani Ann Rivers
Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202

Signature Pages for Consent Decree in:

United States of America and the State of New Jersey

v.

Durand Glass Manufacturing Company, Inc., No. _____

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: _____

By: _____

JUDITH A. ENCK,
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York, 10007-1866

Date: _____

By: _____

ERIC SCHAAF
Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

Of Counsel:

ERICK R. IHLENBURG
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

Signature Pages for Consent Decree in:

United States of America and the State of New Jersey

v.

Durand Glass Manufacturing Company, Inc., No. _____

FOR THE STATE OF NEW JERSEY:

JEFFREY S. CHIESA
Attorney General of New Jersey

Date: _____

By: _____

SCOTT B. DUBIN
Deputy Attorney General
New Jersey Department of Law and Public Safety
Division of Law
25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093

BOB MARTIN
Commissioner
New Jersey Department of
Environmental Protection

Date: _____

By: _____

WOLFGANG SKACEL
Assistant Commissioner
Compliance and Enforcement
New Jersey Department of Environmental
Protection
Mail Code: 401-04B
401 East State Street
P.O. Box 420

Signature Pages for Consent Decree in:

United States of America and the State of New Jersey

v.

Durand Glass Manufacturing Company, Inc., No. _____

For Defendant Durand Glass Manufacturing
Company, Inc.:

Date: _____

By: _____
Fred Dohn, President

Date: _____

By: _____
Ellen Radow Sadat, Esq.
Drinker Biddle & Reath LLP

Appendix A

NO_X Emission Rate Calculation

1. The CERMS measures and reports NO_X concentration ($C_{\text{NO}_X\text{-ppmv}}$, expressed in units of parts per million by volume on a wet basis) and stack gas volumetric flow rate (Q_{gas} , expressed in standard cubic feet per minute, scfm, on a wet basis), each as hourly block averages.
2. The CERMS calculates the hourly block average NO_X emission rate ($C_{\text{NO}_X\text{-lb/scf}}$, expressed in units of pounds per standard cubic foot) using the following equation from Table 19-1 in EPA Reference Method 19 (appendix A-7 to 40 CFR part 60):

$$C_{\text{NO}_X\text{-lb/scf}} = C_{\text{NO}_X\text{-ppmv}} \times 1.194 \times 10^{-7}$$

3. The CERMS calculates and reports the hourly block average NO_X emission rate ($E_{\text{NO}_X\text{-lb/hr}}$, expressed in pounds per hour) using the following equation:

$$E_{\text{NO}_X\text{-lb/hr}} = C_{\text{NO}_X\text{-lb/scf}} \times Q_{\text{gas}} \times 60 \frac{\text{min}}{\text{hr}}$$

4. The CERMS calculates and reports daily block average NO_X emission rate ($E_{\text{NO}_X\text{-lb/day}}$, expressed in pounds per day) as the sum of the 24 hourly block average emission rates using the following equation:

$$E_{\text{NO}_X\text{-lb/day}} = \sum_{i=1}^{24} \left(E_{\text{NO}_X\text{-lb/hr}} \right)_i$$

5. The CERMS reports daily Tons of Glass Pulled (P_{glass} , expressed in tons per day), as defined in ¶ 7 of the Consent Decree, for each furnace.
6. The CERMS calculates and reports daily block average NO_X emission rate for each furnace ($E_{\text{NO}_X\text{-lb/ton}}$, expressed in pounds per ton of glass pulled) using the following equation:

$$E_{\text{NO}_X\text{-lb/ton}} = \frac{E_{\text{NO}_X\text{-lb/day}}}{P_{\text{glass}}}$$

7. The CERMS calculates and reports 30-day rolling average NO_x emission rate for each furnace ($E_{\text{NO}_x\text{-lb/ton}, 30}$, expressed in pounds per ton of glass pulled) using the following equation. Certain AOS days are excluded from this calculation as provided by ¶ 9 of the Consent Decree.

$$E_{\text{NO}_x\text{-lb/ton}30} = \frac{\sum_{i=1}^{30} \left(E_{\text{NO}_x\text{-lb/ton}} \right)_i}{30}$$

8. The CERMS calculates and reports 365-day rolling average NO_x emission rate for each furnace ($E_{\text{NO}_x\text{-lb/ton}, 365}$, expressed in pounds per ton of glass pulled) using the following equation. Certain AOS days are excluded from this calculation as provided by ¶ 9 of the Consent Decree.

$$E_{\text{NO}_x\text{-lb/ton}365} = \frac{\sum_{i=1}^{365} \left(E_{\text{NO}_x\text{-lb/ton}} \right)_i}{365}$$