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

UNITED STATES OF AMERICA)	
)	
and)	
)	
STATE OF NEW JERSEY,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	
DURAND GLASS MANUFACTURING)	
COMPANY, INC.,)	COMPLAINT
)	
Defendant.)	
)	

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (EPA), and the State of New Jersey (New Jersey), by authority of the Attorney General of New Jersey and through undersigned counsel, acting at the request of the New Jersey Department of Environmental Protection (NJDEP), file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action brought against Durand Glass Manufacturing Company, Inc. (Durand) pursuant to Section 113(b) of the Clean Air Act (the Act), 42 U.S.C. § 7413, and the New Jersey Air Pollution Control Act (New Jersey Air Act), N.J.S.A. 26:2C1, et seq., seeking injunctive relief and civil penalties against Durand, for violations of Parts C and D of Title I of the Act, 42 U.S.C. §§ 7470-7492, 7501-7515, the Prevention of Significant Deterioration (PSD) and Non-attainment New Source Review (NNSR) provisions of the Act; and the federally-enforceable State Implementation Plan (SIP) adopted by New Jersey and approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410, which incorporates and/or implements the above-listed federal NNSR requirements; and Title V of the Act, 42 U.S.C. §§ 7661-7661f and New Jersey's federally-enforceable Title V Operating Permit Program, N.J.A.C. 7:27-22.1, et seq.

2. The violations alleged in this Complaint occurred at Durand's glass manufacturing facility (Facility), located in Millville, New Jersey. Durand constructed a new glass furnace (Furnace US3) at the Facility without first properly obtaining the required preconstruction permits authorizing the construction and/or modification and subsequent operation of Furnace US3; failed to install and employ the best available control technology (BACT) and achieve the lowest achievable emissions rate (LAER) to control emissions of nitrogen oxides (NO_x); failed to install

and operate BACT to control emissions of particulate matter (PM) and/or any particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10), as the Act, the applicable federal regulations, and the SIP require; and failed to obtain a Title V Operating Permit that includes the applicable LAER requirements for NO_x and the applicable BACT requirements for PM and PM-10.

JURISDICTION AND VENUE

3. This Court has jurisdiction of the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

4. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), this Court has personal jurisdiction over Durand, which is incorporated and doing business in the State of New Jersey.

5. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because the violations which constitute the basis of this complaint occurred in this District.

NOTICES

6. The United States provided notice of the violations alleged herein to Durand and to New Jersey pursuant to Section 113 of the Act, 42 U.S.C. § 7413.

7. The 30-day period established in Section 113, 42 U.S.C. § 7413, between the notice of violation provided by the United States and the commencement of this civil action has elapsed.

THE DEFENDANT

8. Durand is a New Jersey corporation doing business in Millville, New Jersey. Durand is a person within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

9. At all times relevant to this Complaint, Durand owned and operated the Facility, located at 901 S. Wade Boulevard, Millville, New Jersey.

STATUTORY AND REGULATORY BACKGROUND

10. As set forth in Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1), the Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population.

The National Ambient Air Quality Standards

11. Sections 108 and 109 of the Act, 42 U.S.C. §§ 7408 and 7409, require EPA to promulgate national ambient air quality standards (NAAQS) to protect the public health and welfare for certain criteria air pollutants. Primary NAAQS are to be adequate to protect the public health, and secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air. EPA has identified and promulgated primary and secondary NAAQS for the air pollutants NO_x, ozone, and PM-10, among others, which are codified at 40 C.F.R. §§ 50.6, 50.9, 50.10 and 50.11.

12. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is a "non-attainment" area for such pollutant.

13. At times relevant to this Complaint, the area in which the Facility is located has been classified as attainment for NO_x and PM-10, and non-attainment for ozone. PM does not have a NAAQS limit and New Jersey does not have a non-attainment standard for PM.

The Prevention of Significant Deterioration Requirements

14. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare; to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources; and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470.

15. Section 165(a) of the Act, 42 U.S.C. § 7475(a), and implementing regulations (herein referred to as the Prevention of Significant Deterioration, or PSD, regulations), prohibit the construction or modification of a major stationary source in any NAAQS attainment area unless a preconstruction PSD permit has been issued setting forth emission limitations for such facility which conform to the PSD requirements. The PSD regulations referred to in this complaint are the regulations that were in effect in 1999, the year that the violations alleged in this complaint began to occur.

16. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines “major emitting facility” as a specified stationary source that emits or has the potential to emit 100 tons per year (TPY) or more of any air pollutant, or any other source with the potential to emit 250 TPY or more of any air pollutant.

17. The PSD regulations define “major stationary source” as, among other things, a specified stationary source that emits or has the potential to emit 100 TPY or more of any air

pollutant, or any other source with the potential to emit 250 TPY or more of any air pollutant subject to regulation under the Act. 40 C.F.R. § 52.21(b)(1)(i).

18. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines “construction” to include “modification” (as defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a)).

“Modification” is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be “any change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.”

19. The PSD regulations define “major modification” as “any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act.” 40 C.F.R.

§ 52.21(b)(2)(i).

20. The PSD regulations define “significant” as a net emissions increase of, or the potential of a source to emit, NO_x that would equal or exceed 40 TPY, PM that would equal or exceed 25 TPY, and PM-10 that would equal or exceed 15 TPY. 40 C.F.R. § 52.21(b)(23)(i).

21. The PSD regulations define “net emissions increase” as “the amount by which the sum of the following exceeds zero: (a) any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and (b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.” 40 C.F.R. § 52.21(b)(3).

22. The PSD regulations, 40 C.F.R. §§ 52.21(i) and (k), require the owner or operator to obtain a permit prior to construction of a major stationary source or of a major modification and,

among other things, to demonstrate that the construction or modification, taken together with other increases or decreases of air emissions, will not violate applicable air quality standards.

23. As set forth at 40 C.F.R. § 52.21(j)(2), a new major stationary source located in an attainment area must install and operate BACT, as defined in 40 C.F.R. § 52.21(b)(12), for each pollutant subject to regulation under the Act that it would have the potential to emit in significant amounts.

24. As set forth in 40 C.F.R. § 52.21(m), the owner/operator of a proposed major stationary source or major modification must conduct and submit, as part of a PSD permit application, an ambient air quality analysis for each pollutant that the source would have the potential to emit in a significant amount, and/or each pollutant for which the modification would result in a significant net emissions increase.

25. As set forth in 40 C.F.R. § 52.21(n), the owner/operator of a proposed major stationary source or major modification shall submit all information necessary to perform any analysis or make any determination required under the PSD regulations.

26. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the attainment and maintenance of the NAAQS.

27. Section 161 of the Act, 42 U.S.C. § 7471, requires SIPs to contain emission limitations and such other measures as may be necessary, as determined under the regulations promulgated pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas.

28. A state or regional air authority may comply with Section 161 of the Act, 42 U.S.C. § 7471, by being delegated by EPA the authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD regulations approved by EPA as part of its SIP, which

must be at least as stringent as the requirements set forth at 40 C.F.R. § 51.166. In 1980, EPA incorporated by reference the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the New Jersey SIP, 40 C.F.R. § 52.1603. The Federal PSD regulations set forth in 40 C.F.R. § 52.21 are still incorporated into and part of the New Jersey SIP. 40 C.F.R. § 52.1603.

29. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, the New Jersey SIP as approved by EPA is federally enforceable. See, 40 C.F.R. § 52.1605.

30. The New Jersey Air Act, N.J.S.A. 26:2C-1, et seq., and implementing regulations require that a person who constructs or modifies a significant source must first obtain a permit. N.J.A.C. 7:27-8.3.

31. A person who constructs or modifies a major source of air pollution at a major facility emitting threshold levels of designated air contaminants shall obtain a Title V Operating Permit. N.J.A.C. 7:27-22.1, et seq.

32. The New Jersey Air Act requires any person who constructs, reconstructs, installs or modifies new equipment or control apparatus to incorporate advances in the art of air pollution control as provided by federal and state law and to install the applicable air pollution control technology. N.J.S.A. 26:2C-9.2c.

33. The New Jersey Air Act requires any person who constructs, reconstructs or modifies equipment or control apparatus in non-attainment areas to secure emission offsets. N.J.A.C. 7:27-18.1, et seq.

34. Pursuant to N.J.S.A. 26:2C-19, and implementing regulations at N.J.A.C. 7:27-8.26, 7:27-18.12, and 7:27A-3.1, et seq., New Jersey is authorized to enforce the New Jersey Air Act and institute an action for injunctive relief and civil penalties.

Non-attainment New Source Review

35. Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, sets forth provisions that direct States to include in their SIPs requirements that provide for reasonable progress towards attainment of the NAAQS in non-attainment areas. Section 172(c)(5) of the Act, 42 U.S.C. § 7502(c)(5), provides that SIPs shall require permits for the construction and operation of new or modified major stationary sources anywhere in the non-attainment area, in accordance with Section 173 of the Act, 42 U.S.C. § 7503, in order to facilitate “reasonable further progress” towards attainment of the NAAQS.

36. Section 173 of Part D of the Act, 42 U.S.C. § 7503, requires that in order to obtain a permit in a non-attainment area, the source must, among other things: (a) obtain federally enforceable emission offsets at least as great as the new source’s emissions; (b) comply with the LAER as defined in Section 171(3) of the Act, 42 U.S.C. § 7501(3); and (c) conduct an air quality impact analysis, including analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source and demonstrate that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

37. As set forth in 40 C.F.R. § 52.24, no major stationary source shall be constructed or modified in any non-attainment area as designated in 40 C.F.R. Part 81, Subpart C (non-attainment area) to which any applicable implementation plan applies, if the emissions from such source will cause or contribute to concentrations of any pollutant for which a NAAQS is exceeded in such area, unless, as of the time of application for a permit for such construction, such plan meets the requirements of Part D, Title I, of the Act.

38. A state may comply with Sections 172 and 173 of the Act by having its own NSSR

regulations, which must be at least as stringent as those set forth at 40 C.F.R. § 51.165, approved by EPA as part of the SIP.

39. Sections 110(a)(2)(C) and (I) of the Act, 42 U.S.C. §§ 7410(a)(2)(C) and (I), require that each SIP contain a program meeting the requirements of Part D of the Act for the pre-construction review and permitting of new and modified stationary sources located in or near areas designated as non-attainment for a criteria pollutant pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d).

40. As reflected in the relevant sections of 40 C.F.R. Part 52, New Jersey has adopted such a program, and EPA has approved it into the relevant SIP. N.J.A.C. 7:27-18.1 *et seq.* The approved program regulates through the permitting process both the construction and operation of new and modified stationary sources in or near designated non-attainment areas.

Enforcement Provisions

41. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that:

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may . . .

* * *

(C) bring a civil action in accordance with subsection (b) of this section.

42. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this

subchapter the Administrator may bring a civil action in accordance with subsection (b) of this section.

43. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction and/or for civil penalties against any person whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan, and other requirements of the Act.

Title V Operating Permit Program

44. Title V of the Act, 42 U.S.C. §§ 7661-7661f, contains requirements for operating permit programs for certain sources, including “major sources” and any source required to have a NNSR and/or PSD permit. Section 502(a) of the Act, 42 U.S.C. § 7661a(a).

45. Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), on July 21, 1992, EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a major source operating permit program to be administered by any air pollution control agency. 57 Fed. Reg. 32,250 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

46. In accordance with Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), 40 C.F.R. Part 70, and the New Jersey Air Act, NJDEP developed the New Jersey Title V Operating Permit Program, at N.J.A.C. 7:27-22.1, et seq.

47. In accordance with Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), EPA granted interim approval of the New Jersey Title V Operating Permit Program, with an effective date of June 17, 1996. 61 Fed. Reg. 24,715 (May 16, 1996).

48. In accordance with Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), EPA

granted final approval of the New Jersey Title V Operating Permit Program, with an effective date of November 30, 2001. 66 Fed. Reg. 63,168 (December 5, 2001).

49. The New Jersey Title V Operating Permit Program requires that a major source shall apply for and obtain a Title V permit that includes all applicable requirements, including all PSD and/or NNSR requirements. Sections 502(a) and 504(a) of the Act, 42 U.S.C. §§ 7661a(a) and 7661(c)(a); N.J.A.C. 7:27-22.1, et seq.

50. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), the federal Title V regulations, 40 C.F.R. § 70.7(b), and the New Jersey Title V Operating Permit Program, N.J.A.C. 7:27-22.1, et seq., have at all relevant times made it unlawful for any person to operate any source required to have a PSD or NNSR permit, except in compliance with a permit issued by a permitting authority under Title V.

51. Section 504 of the Act, 42 U.S.C. § 7661c, the federal Title V regulations, 40 C.F.R. §§ 70.1(b), 70.6(a), and the New Jersey Title V Operating Permit Program, N.J.A.C. 7:27-22.1, et seq., have at all relevant times required that each Title V permit include, among other things, enforceable emission limits and such other conditions as are necessary to assure compliance with applicable requirements of the Act and the requirements of the applicable SIP. These requirements include any NNSR and PSD requirements, including the requirement to comply with an emission rate that reflects LAER to control emissions of NO_x and BACT to control emissions of PM and PM-10.

52. Sections 503(b) and (c) of the Act, 42 U.S.C. § 7661b(b) and (c), and the New Jersey Title V Operating Permit Program, N.J.A.C. 7:27-22.1, et seq., have at all relevant times provided that any person required to have a permit must submit to the permitting authority a compliance plan describing how the source will comply with all applicable requirements, and an

application for a permit signed by a responsible official who must certify the accuracy of the information submitted.

53. The federal Title V regulations, 40 C.F.R. § 70.5, and the New Jersey Title V Operating Permit Program, N.J.A.C. 7:27-22.1, et seq., have at all relevant times required any owner or operator of a source subject to Title V permitting requirements to submit a complete permit application which, among other things, identifies all applicable requirements (including the NNSR and PSD requirements to comply with an emission rate that reflects LAER to control emissions of NO_x and BACT to control emissions of PM and PM-10), certifies compliance with all applicable requirements, and contains a compliance plan for all applicable requirements for which the source is not in compliance.

54. Title V permit applicants are required to submit supplementary facts or corrected information as necessary to the permitting authority after submitting an initial application where such application contains incorrect information and to provide additional information to address any requirements that become applicable to the source after the date it filed a complete application, but prior to release of a draft permit. 40 C.F.R. § 70.5(b); N.J.A.C. 7:27-22.1, et seq.

GENERAL ALLEGATIONS

55. At all times relevant to this Complaint, Durand owned and operated the Facility. The Facility has been in operation since 1982, producing a variety of tableware glass products.

56. At all times relevant to this Complaint, the Facility has been a major stationary source of NO_x, as defined by 40 C.F.R. § 52.21(b)(1)(i)(b), and a major facility for NO_x, as defined by N.J.A.C. 7:27-22.1.

57. At all times relevant to this Complaint, the Facility was and is a “major source” within the meaning of Title V of the Act, the federal Title V regulations, and the New Jersey Title V Program. 42 U.S.C. § 7661(2); 40 C.F.R. § 70.2; N.J.A.C. 7:27-22.1, *et seq.*

58. EPA conducted an investigation of Durand and the Facility, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information concerning construction and operation of the Facility. On information and belief, the United States and New Jersey allege the following based on the results of that investigation.

59. Under the PSD regulations, Durand was required to submit a permit application containing complete and accurate information regarding Furnace US3, specifically in regard to NO_x emissions and PM and/or PM-10 emissions.

60. Prior to construction of Furnace US3 in 1999, however, Durand submitted to New Jersey incomplete and inaccurate information, such that Durand did not obtain and operate Furnace US3 under a valid preconstruction permit pursuant to the PSD regulations.

61. Under the NNSR regulations, Durand was required to submit a permit application containing complete and accurate information regarding Furnace US3, specifically in regard to the Facility’s location in an ozone non-attainment area.

62. Based on the same incomplete and inaccurate information noted above, Durand failed to obtain and operate Furnace US3 under a NNSR permit.

63. As a result of Durand’s failure to provide accurate and complete information in its Title V operating permit application or to properly supplement or correct its application, Durand failed to obtain and operate the Facility pursuant to a proper or adequate Title V operating permit. The Title V operating permit did not contain emission limits for NO_x that reflect LAER or PM and PM-10 emission limits that met BACT.

FIRST CLAIM FOR RELIEF
(PSD Violations)

64. Paragraphs 1 through 63 are realleged and incorporated herein by reference.

65. At a time relevant hereto, Durand commenced construction or constructed a major modification, as defined in the Clean Air Act, at the Facility. This major modification included construction, installation, and operation of Furnace US3 at the Facility. This modification resulted in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following pollutants: NO_x and PM and/or PM-10.

66. At times relevant hereto, Durand violated/is in violation of Section 165(a) of the Act, 42 U.S.C. § 7475(a), the PSD regulations set forth in 40 C.F.R. § 52.21, and the corresponding SIP, by undertaking such major modification(s) and operating Furnace US3 at the Facility without first properly obtaining a PSD permit as required by the Act and the PSD regulations, and by failing to install and operate BACT for each pollutant as required by 40 C.F.R. § 52.21(j)(2).

67. Unless ordered by this Court, the violations of the Act alleged in this First Claim for Relief could continue.

68. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Durand to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997; up to \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to \$32,500 per day for each such violation between March 15, 2004, and January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990,

28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see 40 C.F.R. Part 19, 69 Fed. Reg. 7126 (Feb. 13, 2004). See, 73 Fed. Reg. 75,340 (Dec. 11, 2008).

SECOND CLAIM FOR RELIEF

(Non-attainment New Source Review Violations)

69. Paragraphs 1 through 68 are realleged and incorporated herein by reference.

70. At times relevant hereto, Durand commenced construction or constructed a major modification, as defined in the Clean Air Act, at the Facility. These major modifications included, but are not limited to construction, installation, and operation of Furnace US3 at the Facility. This major modification at the Facility occurred in a non-attainment area for ozone. These major modifications resulted in significant net emission increases of NO_x, a precursor to ozone formation, as defined by the Act, 42 U.S.C. §§ 7501-7515.

71. By undertaking such major modification and operating the Facility after the modification without properly obtaining a NNSR permit as required by the applicable SIP, Durand violated/is in violation of the Act, including the requirements under 42 U.S.C. §§ 7501-7515, to: (1) install, operate or achieve LAER for control of NO_x; (2) obtain and operate with federally enforceable emission offsets at least as great as the modified source's emissions; (3) certify that all other major sources that it owns or operates at the Facility are/were in compliance with the Act; and (4) conduct an air quality impact analysis, including a demonstration that the benefits of the modifications significantly outweigh/outweighed the environmental and social costs imposed as a result of the modifications.

72. At times relevant hereto, Durand violated/is in violation of the NNSR provisions of Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, that EPA approved into the relevant SIP pursuant to Sections 110(a)(2)(C) and (I) of the Act, 42 U.S.C. §§ 7410(a)(2)(C) and (I), and 40

C.F.R. § 51.165, by failing to comply with limits, terms and conditions in permits issued pursuant to such programs; by failing to properly apply for and obtain necessary permits prior to performing major modification and/or construction; and/or by failing to represent in its application, as necessary, the emission level or air quality consequences of proposed construction or modification.

73. Unless ordered by this Court, the violations of the Act alleged in this Second Claim for Relief could continue.

74. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Durand to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997; up to \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to \$32,500 per day for each such violation between March 15, 2004, and January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. See 40 C.F.R. Part 19, 69 Fed. Reg. 7,126 (Feb. 13, 2004). See 73 Fed. Reg. 75,340 (Dec. 11, 2008).

THIRD CLAIM FOR RELIEF
(Title V Violations)

75. Paragraphs 1 through 74 are realleged and incorporated herein by reference.

76. As alleged above, in or about 1999, Durand commenced a major modification at the Facility as defined under the aforesaid PSD and NNSR regulations. As a result, this modification triggered the requirements to obtain a preconstruction permit, including, among other things, the requirement to establish emission limits and operate in compliance with LAER for NO_x and BACT for PM and PM-10. Durand failed to comply with these requirements.

77. On June 2, 2004, Durand obtained a Title V Operating Permit for the Facility.

78. As a result of Durand's failure to provide accurate and complete information in its application or to properly supplement or correct its application, Durand failed to obtain and operate the Facility pursuant to a proper or adequate Title V Operating Permit. The Title V Operating Permit did not contain emission limits for NO_x that reflected LAER, as required by Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, that EPA approved into the relevant New Jersey SIP pursuant to Sections 110(a)(2)(C) and (I) of the Act, 42 U.S.C. §§ 7410(a)(2)(C) and (I), 40 C.F.R. § 51.165, and N.J.A.C. 7:27-22.1 et seq. The Title V operating permit also did not contain PM emission limits that met BACT and did not and continues to not include PM-10 emission limits that meet BACT as required by Sections 502(a) of the Act, 42 U.S.C. §§ 7661a(a), 40 C.F.R. §§ 70.1(b), 70.6(a), and N.J.A.C. 7:27-22.1, et seq.

79. Durand thereafter operated/operates the Facility without meeting such emission limits and without having an operating permit that requires compliance with such emission limits or that contains a compliance plan for all applicable requirements for which the Facility is not in compliance.

80. Durand's conduct violated/is in violation of Sections 502, 503, and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b, and 7661c, and the New Jersey Title V Operating Permit Program, N.J.A.C. 7:27-22.1, et seq.

81. Unless ordered by this Court, the violations alleged in this Third Claim for Relief could continue.

82. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Durand to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997; up to \$27,500 per day for each such violation between January

30, 1997 and March 15, 2004; and up to \$32,500 per day for each such violation between March 15, 2004, and January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. See 40 C.F.R. Part 19, 69 Fed. Reg. 7,126 (Feb. 13, 2004), See 73 Fed. Reg. 75,340 (Dec. 11, 2008).

PRAYER FOR RELIEF

WHEREFORE, the United States of America and New Jersey request that this Court:

1. Permanently enjoin Durand from operating Furnace US3 at the Facility, including the construction of future modifications, except in accordance with the Clean Air Act and applicable regulatory requirements;
2. Order Durand to remedy its past violations by, among other things, requiring Durand to install, as appropriate, BACT and to achieve LAER, or such other emissions control technology required by law, on Furnace US3 at the Facility for each pollutant subject to regulation under the Act;
3. Order Durand to apply for permits, as may be necessary, that are in conformity with the requirements of the Act and SIP requirements, and to comply with such permits as may be issued;
4. Assess a civil penalty against Durand of up to \$25,000 per day for each violation of the Act occurring prior to January 30, 1997, up to \$27,500 per day for each violation of the Act occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation of the Act occurring between March 15, 2004 and January 12, 2009; and up to \$37,500 for each violation occurring after January 12, 2009;
5. Award Plaintiff its costs of this action; and,

6. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

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