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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