

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: $(0.5) \times (\text{permitted Furnace glass pull rate, in tons per day}) \times (4.0 \text{ pounds of NO}_x \text{ per Ton of glass pulled}) =$ allowable NO_x 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