

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
THE COMMONWEALTH OF)	
PENNSYLVANIA, DEPARTMENT OF)	
ENVIRONMENTAL PROTECTION,)	
THE STATE OF INDIANA,)	
THE STATE OF WEST VIRGINIA, and)	
THE COMMONWEALTH OF)	CIVIL ACTION NO. 11-1650
PUERTO RICO,)	
)	JUDGE DAVID S. CERCONE
Plaintiffs,)	
)	<i>(Electronic Filing)</i>
v.)	
)	
ESSROC CEMENT CORP.,)	
)	
Defendant.)	

NOTICE OF LODGING OF FIRST MODIFICATION TO CONSENT DECREE

Pursuant to 28 C.F.R. § 50.7, a proposed First Modification to Consent Decree is concurrently being lodged with the Court in this Civil Action, after having been concurred to and signed by the settling parties. After the requisite Federal Register Notice has been published, the time period for comments has run, and the comments, if any, have been evaluated, the Court will be further advised as to any action which may be required by the Court at that time. During the pendency of the Federal Register Notice comment period under 28 C.F.R. § 50.7, no action is required of the Court.

Respectfully submitted,

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Environment and Natural Resources
Division

/s/Elliot Rockler
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Dated: November 10, 2015

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, <i>et al.</i> ,)	
)	
Plaintiffs,)	FIRST MODIFICATION TO
)	CONSENT DECREE
v.)	
)	Civil Action No. 11-1650
ESSROC CEMENT CORP.)	
)	JUDGE DAVID S. CERCONE
)	
Defendant.)	<i>(Electronic Filing)</i>

WHEREAS, prior to November 2011, the United States of America (“United States”) and Essroc Cement Corporation (“Essroc”) engaged in negotiations to resolve alleged Clean Air Act violations at Essroc’s cement production facilities in a cooperative manner, without the transaction costs associated with protracted litigation;

WHEREAS, the Commonwealth of Pennsylvania, Department of Environmental Protection, the State of West Virginia, the State of Indiana, and the Commonwealth of Puerto Rico (the “Affected States”) joined these negotiations along with several other states and state pollution control agencies (collectively, “State Parties”);

WHEREAS, as a result of these negotiations, an agreement was reached and embodied in a consent decree (the “2012 Decree”), which resolved certain claims alleged by the United States and the State Parties against Essroc under the Clean Air Act and comparable state laws;

WHEREAS, the 2012 Decree required that Essroc implement certain consensual compliance measures and mitigation projects at several Essroc cement production facilities and pay civil penalties for alleged past violations;

WHEREAS, this Court entered the 2012 Decree on February 15, 2012, and has retained jurisdiction over implementation and enforcement of the 2012 Decree;

WHEREAS, on July 31, 2013, Essroc submitted an SCR Pilot Study Report to the United States Environmental Protection Agency (“EPA”) pursuant to Paragraph 19 and Appendix B of the 2012 Decree;

WHEREAS, the SCR Pilot Study Report contained the conclusion that SCR (Selective Catalytic Reduction) is not a feasible emissions reduction system at Essroc’s Logansport kiln in Indiana.

WHEREAS, on December 17, 2013, EPA disapproved the SCR Pilot Study Report and directed Essroc to correct alleged deficiencies in it;

WHEREAS, on December 26, 2013, Essroc requested informal dispute resolution regarding the SCR Pilot Study Report and, on April 28, 2014, Essroc requested formal dispute resolution regarding the SCR Pilot Study Report, under the provisions of the 2012 Decree;

WHEREAS, the State of Indiana is a party to the dispute regarding the SCR Pilot Study, and the State of Indiana and the Commonwealth of Puerto Rico have interests in additional issues concerning Essroc’s implementation of the 2012 Decree at its Speed, Indiana, and San Juan, Puerto Rico facilities;

WHEREAS, Essroc, the United States, and the Affected States (collectively the “Parties”) have agreed to this First Consent Decree Modification (the “First Modification”) to resolve the dispute regarding the SCR Pilot Study and the additional Consent Decree compliance issues referenced above;

WHEREAS, Paragraph 103 of the 2012 Decree allows the Decree to be amended by written agreement of the United States, Essroc, and those State Parties that are affected by the amendment;

WHEREAS, the Parties agree, and the Court by entering this First Modification of the 2012 Decree finds, that the amendments to the 2012 Decree set forth herein are fair, reasonable, and in the public interest;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED that the 2012 Decree in this matter is modified as follows:

1. This First Consent Decree Modification (“First Modification”) shall apply to, and be binding upon, the Parties as an amendment to the 2012 Decree.
2. Essroc shall make available a copy of this First Modification to each principal environmental contractor retained to perform any activity required or affected by this First Modification.
3. This First Modification shall not be construed to alter, affect or amend the 2012 Decree in any way other than provided herein and shall not affect the rights under the 2012 Decree of any State Parties other than the Affected States.
4. It is the purpose of the Parties in entering into this First Modification to further the objectives of the Parties as provided in the 2012 Decree.
5. Unless otherwise defined herein, terms used in this First Modification shall have the meaning given to those terms in the 2012 Decree, the Clean Air Act and the regulations promulgated thereunder.
6. Table 2 in Paragraph 17 of the 2012 Decree (NOx controls) is modified to show changes in the controls and in the 30-Day Rolling Average Emission Limits for the units at Logansport, Speed, and San Juan and reads as follows:

Table 2

Kiln	Control Technology	30-Day Rolling Average Emission Limit (lb/ton clinker produced)	Date required to meet 30-Day Rolling Average Emission Limit¹
Bessemer Kiln 4	N/A	Retire	December 31, 2011
Bessemer Kiln 5	N/A	Retire	December 31, 2011
Martinsburg Kiln 1	SNCR	2.15	December 31, 2012
Logansport Kiln 1	SNCR	Demonstration of SNCR pursuant to Paragraphs 19 and Appendix A, Emission Limit no higher than 7.00	Schedule pursuant to Paragraph 19 and Appendix A
Logansport Kiln 2	SNCR	Demonstration of SNCR pursuant to Paragraphs 19 and Appendix A, Emission Limit no higher than 7.00	Schedule pursuant to Paragraph 19 and Appendix A
Speed Kiln 1	SNCR	3.00	July 1, 2015
Speed Kiln 2	SNCR	1.95	July 1, 2015
Nazareth Kiln 1	SNCR	2.30	July 1, 2012
San Juan Kiln 3	SNCR	1.85	December 31, 2015

7. Paragraph 18 of the 2012 Decree is modified to set NO_x limits at San Juan Kiln 3 and reads as follows:

¹ Date listed is the first day of the 30-day rolling average.

“b. Essroc shall achieve and maintain compliance with a 30-Day Rolling Average Emission Limit for NO_x at San Juan Kiln 3 of 1.85 lbs/ton clinker by December 31, 2015.

c. Essroc shall not emit more than 600 tons of NO_x per year at San Juan Kiln 3.”

8. Paragraph 19 of the 2012 Decree is modified to require Essroc’s installation and operation of Selective Non-Catalytic Reduction (“SNCR”) at Logansport Kilns 1 and 2 and Essroc’s performance of a Selective Catalytic Reduction (“SCR”) demonstration project at Logansport 1 and reads as follows:

Subparagraph e. in Paragraph 19 of the 2012 Decree is deleted. Subparagraphs a., b., and c. and d. are replaced, as follows:

a. By July 30, 2015, Essroc shall submit a Design Report to EPA that follows the Design Report requirements found in Appendix A Para 4.a. and Para 5 of the 2012 Decree. The Design Report shall be reviewed and approved by the EPA as soon as practicable.

b. Essroc shall install and operate new ammonia continuous emission monitoring systems (CEMS) at Logansport Kiln 1 by January 30, 2016. Essroc shall install and Commence continuous Operation of SNCR technology by May 30, 2016, at Logansport Kiln 1. Essroc will implement Appendix A of the 2012 Decree to undertake the optimization and demonstration of the SNCR at Logansport Kiln 1. Essroc shall propose, by March 30, 2018 a 30-Day Rolling Average Emission Limit for NO_x, pursuant to Appendix A, which is applicable to Logansport Kiln 1, that is no less stringent than 7.00 lb/ton of clinker and that represents the optimal performance and Continuous Operation of the SNCR technology. Within 30 Days after proposing a 30-Day Rolling Average Emission Limit for NO_x at Logansport Kiln 1 under Appendix A, Essroc shall achieve and thereafter maintain compliance with the proposed 30-Day

Rolling Average Emission Limit for NO_x at the Kiln. U.S. EPA shall review the proposed 30 Day Rolling Average Emission Limit pursuant to Appendix A and Section XI (Review and Approval of Submittals). Pursuant to Paragraph 24 of Appendix A, if EPA's review results in an alternative final 30-day Rolling Average Emission Limit, Essroc shall comply with the alternative final 30-day Rolling Average Emission Limit within 30 days of EPA's notice. During the optimization and demonstration of the SNCR on Logansport Kiln 1, Essroc shall attempt to control ammonia injection based on the amount of ammonia slip measured by the ammonia CEMs.

c. Essroc shall install and operate new ammonia continuous emission monitoring systems (CEMS) at Logansport Kiln 2 by December 31, 2016. Essroc shall install SNCR and commence Continuous Operation of SNCR technology at Logansport Kiln 2, by March 30, 2017. Essroc will implement Appendix A of the 2012 Decree to undertake the optimization and demonstration of the SNCR at Logansport Kiln 2. Essroc shall propose, by March 30, 2019, a 30-Day Rolling Average Emission Limit for NO_x, pursuant to Appendix A, which is applicable to Logansport Kiln 2, that is no less stringent than 7.00 lbs/ton of clinker and that represents the optimal performance and Continuous Operation of the SNCR technology. Within 30 Days after proposing a 30-Day Rolling Average Emission Limit for NO_x at Logansport Kiln 2 under Appendix A, Essroc shall achieve and thereafter maintain compliance with the proposed 30-Day Rolling Average Emission Limit for NO_x at the Kiln. U.S. EPA shall review the proposed 30 Day Rolling Average Emission Limit pursuant to Appendix A and Section XI (Review and Approval of Submittals). Pursuant to Paragraph 24 of Appendix A, if EPA's review results in an alternative final 30-day Rolling Average Emission Limit, Essroc shall comply with the alternative

final 30-day Rolling Average Emission Limit within 30 days of EPA's notice. During the optimization and demonstration of the SNCR on Logansport Kiln 2, Essroc shall control ammonia injection based on the amount of ammonia slip measured by the ammonia CEMs.

d. Essroc shall perform a Selective Catalytic Reduction (SCR) Pilot study project.

(1) Essroc will submit a Second SCR Pilot Study design report for approval by November 30, 2015. The design report will include a plan to measure any dioxin/furan in the test gas stream.

(2) The Second SCR Pilot Study will be designed to use a gas reheat system to achieve a temperature high enough to prevent ammonium bisulphate fouling of the catalyst.

(3) Essroc will not implement the proposed plan until the EPA has approved the proposed plan. The study will collect at least 120 operating days of valid data.

(4) The Second SCR Pilot Study Report, subject to EPA's review and approval, will be evaluated based upon the parameters listed in paragraph 5 of Appendix B of the 2012 Decree.

(5) After approval of the Second SCR Pilot Study and subject to Essroc's claim of Confidential Business Information under 40 C.F.R. Part 2, Essroc will produce a comprehensive technical report for the Second SCR Pilot Study.

(6) Essroc will publish the Second SCR Pilot Study technical report on its website and in written form and/or verbally at conferences, as appropriate.

(7) EPA, in its discretion, may publish the Second SCR Pilot Study technical report on its website.

(8) The EPA and IDEM recognize that Essroc is concerned about a potential increase in dioxin/furan from the demonstration.

9. Paragraph 20 of the 2012 Decree is modified to add:

“at Logansport, Essroc will install and make operational, 30 days prior to the start of each optimization period, a CEM for ammonia emissions.”

10. Appendix C to the 2012 Decree is amended as follows:

In paragraph 1, substitute \$995,000 for \$745,000, to reflect Essroc’s enhanced mitigation effort.

Insert a new subparagraph 1.e), as follows:

“e) By July 30, 2016, at Logansport, Essroc shall replace the CAT 992 D engine with a new or equivalent engine, estimated to cost \$250,000.”

11. In the exercise of their discretion under Paragraph 60 of the 2012 Decree, EPA and the Affected States hereby waive stipulated penalties assessed or to be assessed for violations of 2012 Decree at Essroc’s Logansport, Speed and San Juan facilities during the period from February 16, 2012 through December 11, 2014.

12. The parties agree that the Date of Commencement of Continuous Operation under Section VI (NOx Control Technology, Emission Limits, and Monitoring Requirements) shall be extended by one year, as provided in Paragraph 103 of the 2012 Decree, for Logansport, Speed, and San Juan.

13. Paragraph 105 is amended as follows:

Termination as to an Individual Facility: After Essroc has paid the civil penalties and any penalties due under this Consent Decree, and satisfied the requirements of Sections VI (NOx Control Technologies, Emission Limits, and Monitoring Requirements), VII (SO2 Control Technologies, Emission Limits, and Monitoring Requirements), IX (Prohibition

on Netting Credits or offsets from Required Controls) and X (Permits) of this Decree and has maintained operation of any Control Technology required by this Consent Decree for a period of thirty-six consecutive months at an individual Facility, Essroc may serve upon the United States and the Affected State a Request for Termination, stating that Essroc has satisfied those requirements, together with all necessary supporting documentation. For any individual Facility that is subject to a new change in a Control Technology, Emission Limit, or Monitoring Requirement, pursuant to the Consent Decree Modification, the period of thirty-six consecutive months is reduced to a period of twelve consecutive months. If the United States and the Affected State agree that the Decree as it relates to an individual Facility may be terminated, the parties shall submit, for the Court's approval, a joint stipulation terminating those provisions of the Decree.

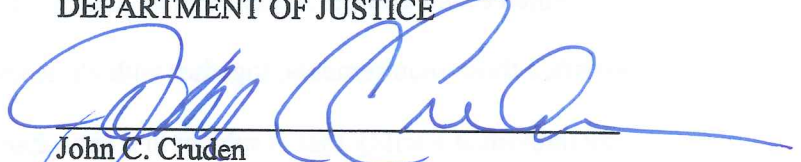
Dated and entered this _____ day of _____ 2015.

UNITED STATES DISTRICT JUDGE

The Undersigned Parties Enter into this First Modification to Consent Decree in the case of
United States of America v. Essroc Cement Corporation, Civil Action No. 2:11-cv-01650-DSC.

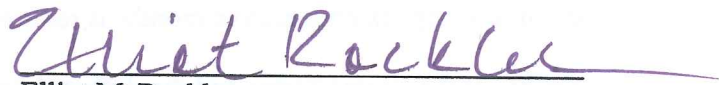
FOR THE UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE

Date: 10/28/15



John C. Cruden
Assistant Attorney General
Environment and Natural Resources Division

Date: 11/2/15

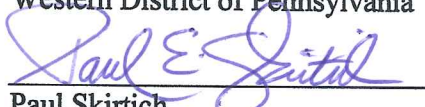


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Date: 10 Nov 2015

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The Undersigned Parties Enter into this First Modification to Consent Decree in the case of
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UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Date:

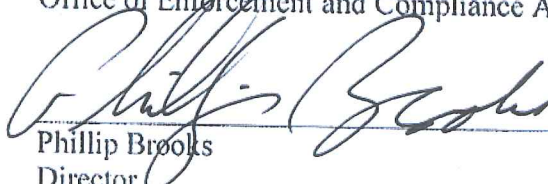
11/6/15



Cynthia Giles
Assistant Administrator
Office of Enforcement and Compliance Assurance

Date:

10/29/2015



Phillip Brooks
Director
Air Enforcement Division

Date:

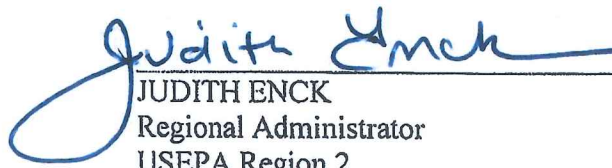
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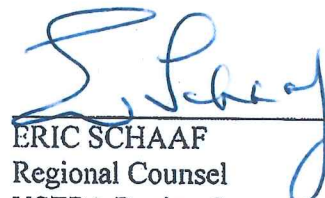
SEEMA KAKADE
Attorney-Advisor, Air Enforcement Division
Office of Enforcement and Compliance Assurance

The Undersigned Parties Enter into this First Modification to Consent Decree in the case of *United States of America v. Essroc Cement Corporation*, Civil Action No. 2:11-cv-01650-DSC.

Date: 10/5/15

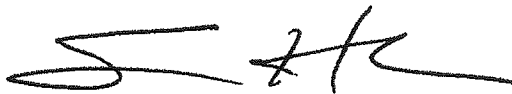

JUDITH ENCK
Regional Administrator
USEPA Region 2

Date: 10/1/15


ERIC SCHAAF
Regional Counsel
USEPA Region 2

The Undersigned Parties Enter into this First Modification to Consent Decree in the case of *United States of America v. Essroc Cement Corporation*, Civil Action No. 2:11-cv-01650-DSC.

Date: 11/15/2015

A handwritten signature in black ink, appearing to read 'S. Hedman', written over a horizontal line.

SUSAN HEDMAN
Regional Administrator
USEPA Region 5

The Undersigned Parties Enter into this First Modification to Consent Decree in the case of
United States of America v. Essroc Cement Corporation, Civil Action No. 2:11-cv-01650-DSC.

FOR THE STATE OF INDIANA

Date: 10/2/2015



Carol S. Comer
Commissioner
Indiana Department of Environmental Management

As to form and legality:

Gregory F. Zoeller
Indiana Attorney General

Date: October 15, 2015



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The Undersigned Parties Enter into this First Modification to Consent Decree in the case of *United States of America v. Essroc Cement Corporation*, Civil Action No. 2:11-cv-01650-DSC.

FOR THE COMMONWEALTH OF PUERTO RICO

Date:

Nov. 3, 2015



Weldin Ortiz, Chairman
Puerto Rico Environmental Quality Board
San Juan, Puerto Rico

The Undersigned Parties Enter into this First Modification to Consent Decree in the case of
United States of America v. Essroc Cement Corporation, Civil Action No. 2:11-cv-01650-DSC.

FOR ESSROC CEMENT

A handwritten signature in blue ink, appearing to read "Alex Car", is written over a horizontal line.

Alex Car
President and Chief Executive Officer
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