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October 29, 2014

CONFIDENTIAL SETTLEMENT DISCUSSIONS INADMISSIBLE AS EVIDENCE

Via Email and Regular Mail

Seema Kakade, Esq.
Attorney Advisor, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Room 1111B, ARS: MC-2242A
Washington, DC 20460

Elliot M. Rockler, Esq.
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
PO Box 7611
Washington, DC 20044-7611

Re: Formal Dispute Resolution
United States, et. al., v. Essroc Cement Corp.

Dear Ms. Kakade and Mr. Rockler:

The Essroc team is looking forward to another fruitful settlement meeting with your team on November 5, 2014. As requested, Essroc provides the following counter proposal for resolution that we believe is in substantial alignment with EPA's previous offer:

Essroc's Resolution Key Elements

1) Upon written confirmation by EPA (headquarters and Region 5) and IDEM that the performance of a second SCR study may proceed without consideration of any potentially adverse environmental, permitting, or regulatory implications, Essroc will engage CRI to conduct a second SCR study at the Logansport kiln. Essroc will submit a design report for approval prior to performing the study. The study will be designed to use a gas reheat system to achieve a temperature above ---- (to be discussed) but below --- (to be discussed). At the second study, the proposed outline and plan will be provided to and agreed to by EPA prior to performance of the study. The study will collect at least 120 operating days of valid data. The pilot system will be evaluated based upon the parameters listed in paragraph 5 of Appendix B of the Consent Decree. Essroc will produce a comprehensive technical report for the study that EPA may use for permit writers, the public and the industry.

2) Essroc will install and operate SNCR on Logansport kiln 1 by September 30, 2015 and Logansport kiln 2 by September 30, 2016. The SNCRs will go through the Test and Set process as outlined in the Consent Decree. SCR will be removed from the Consent Decree as an option for the Logansport kilns.

3) Essroc will abandon the current Test and Set being performed at the San Juan kiln for NOx and will agree to a 30-day rolling average of 1.75 lb/ ton of clinker.

4) Essroc will agree to modify the Speed 2 kiln NOx 30-day rolling average emission limit to 2.0 lb/ton of clinker.

5) Essroc will commit to replace the Tier 0 engine in a CAT 992 D Loader at the Logansport facility, estimated cost to be $250,000. A finalized figure will be provided to EPA when available from Caterpillar.

6) The settlement must be an "all-in" resolution of any violations of the Consent Decree, including the assessment of stipulated penalties, if any. Put simply, the amended Consent Decree must provide a "clean slate."

Procedure for Potential Judicial Review

As we discussed in detail during our October 1, 2014 settlement meeting, we feel very confident that Essroc will prevail in a judicial review of the dispute. By way of example, a few key points are:

- Stack gas reheat was not discussed during settlement negotiations and was not a part of the settlement as memorialized by the Consent Decree. Had stack gas reheat been raised during the negotiations, the Essroc representatives would have resoundingly objected. The Logansport kilns combust RCRA hazardous waste which triggers the HWC MACT requirements restricting dioxin and furan emission. Reheating stack gas from a RCRA hazardous waste combustor creates more dioxin and furan. Moreover, any stack gas reheat would, for example, cause an increase in greenhouse gas emissions. The members of the Essroc team who negotiated with the EPA team are prepared to testify during the judicial review.

- CRI designed the test equipment and the test protocol with the expectation that the low temperature catalyst would work in the stack gas conditions presented by the Logansport kilns. A CRI representative will testify regarding the test equipment and test protocol during the judicial review.

- The modifications that Essroc made to the test equipment during the test were made at the direction of CRI. A CRI representative will testify regarding the rationale for the modification to the equipment operations during the judicial review.

- Sufficient information existed beyond the CEMS data to support the conclusion that the low temperature catalysts was not compatible with the Logansport stack gas conditions. A CRI representative will testify regarding the determination of incompatibility during the judicial review.

As requested at our last meeting, we provide the following outline of potential timing and procedure for the judicial review of our dispute that would be implemented if our meeting on November 5th does not yield sufficient progress towards settlement:

- On or before December 12, 2014, Essroc will file with the United States District Court for the Western District of Pennsylvania (the "Court") a motion (the "Motion") requesting judicial resolution of the Logansport dispute. In accordance with Paragraph 78 of the Consent Decree, the Motion shall include:

  Essroc's statement of the disputed issues;

  A brief statement of Essroc's position on each disputed issue; The supporting factual data, analysis, opinion and documentation gathered to date regarding each disputed issue;

  The relief requested by Essroc;

  The proposed schedule for resolution of the dispute, including sufficient time to conduct discovery and fully brief the issues in dispute upon conclusion of needed discovery; and

  The applicable standard of law for resolving each disputed issue.

- Within 30 days of filing the Motion, the EPA and Affected State (collectively, the "EPA") may file a response (the "Response") to the Motion. The Response shall include:

  EPA's statement of the disputed issues or concurrence with Essroc's statement of disputed issues;

  A brief statement of the EPA's position on each disputed issue;

  The supporting factual data, analysis, opinion and documentation gathered to date regarding each disputed issue;

  The relief requested by the EPA;

  The proposed schedule for resolution of the dispute;

- Essroc anticipates that the parties would negotiate a scheduling order to address timing of discovery and briefing of the issues in dispute.

- The applicable standard of law for resolving each disputed issue.

- The parties issue written discovery (Essroc anticipates additional documents to be produced by the EPA) and conduct depositions (Essroc intends to depose certain EPA

and state employees and experts) in accordance with the agreed-upon schedule.

- Depending on the cooperation of the parties and availability of the witnesses and counsel, Essroc believes discovery could be completed in four (4) months.

- Within fourteen (14) days of completing discovery, the parties shall submit to nonbinding mediation with the Magistrate Judge or pursuant to other procedures mutually agreeable to the parties.

- Essroc is open to continuing settlement discussions with the EPA during the judicial review process.

- If mediation proves unsuccessful, within 30 days of the conclusion of mediation, Essroc will file a brief setting forth its factual and legal positions on the issues in dispute.

- Within 30 days thereafter, EPA will file a response brief setting forth its factual and legal positions on the issues in dispute.

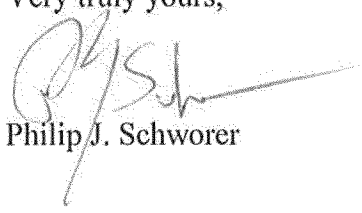
- Within 15 days thereafter, Essroc may file a reply brief.

- At the convenience of the Court, the Court shall hold oral argument and/or an evidentiary hearing to decide factual disputes and rule on the legal merits of the parties' briefs.

Essroc truly appreciates the opportunity to reach a resolution of the dispute prior to judicial involvement. As we have stated, Essroc is fully committed to completing the terms of the Consent Decree.

Let me know if you have any questions that need to be answered prior to our meeting on November 5, 2014.

Very truly yours,



Philip J. Schworer

PJS/lbh

cc: Anthony Jones

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