

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA )  
 )  
and )  
 )  
THE STATE OF ILLINOIS, )  
 )  
Plaintiffs, )  
 )  
 )  
v. )  
 )  
 )  
H. KRAMER & CO., )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No. 13 CV 0771

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois on her own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), have filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant H. Kramer & Co. (“H. Kramer” or “Defendant”), violated Sections 111 and 112 of the Clean Air Act (“Act”), 42 U.S.C. §§ 7411 and 7412, Section 9(a) of the Illinois Environmental Protection Act (“Illinois Act”), 415 ILCS 5/9(a) (2010), and Section 201.141 of the Illinois Pollution Control Board (“Board”) Air Pollution Regulations, 35 Ill. Adm. Code 201.141. Separately, the State of Illinois also alleges that Defendant has created and maintained a common law public nuisance. H. Kramer owns and operates a secondary nonferrous metals facility (“Facility”), manufacturing primarily brass and bronze ingots, where a portion of the Facility’s production capacity is devoted to lead-containing metal alloys. The Facility is located in the Pilsen neighborhood of Chicago and contains operations that emit lead.

The Complaint alleges that Defendant violated the Illinois State Implementation Plan (“SIP”) at 35 Illinois Administrative Code § 201.141, which provides that no person shall cause or threaten or allow the discharge or emission of contaminants into the environment so as to cause or tend to cause air pollution or to prevent the attainment or maintenance of any applicable ambient air quality standard.

The Complaint also alleges that H. Kramer failed to comply with good air pollution practices so as to minimize emissions in violation of the General Provisions of the National Emissions Standards for Hazardous Air Pollutants (“NESHAPs”) for Source Categories

at 40 C.F.R. Part 63; the NESHAP for Secondary Nonferrous Metals Processing Area Sources at 40 C.F.R. Part 63, Subpart TTTTTT; and the General Provisions of the Standards of Performance for New Stationary Sources (“NSPS”), 40 C.F.R. Part 60, Subpart A.

On August 30, 2011, the State of Illinois filed a complaint (“State Complaint”) against H. Kramer in the Circuit Court of Cook County, which alleges that Defendant created a substantial danger to the environment, public health and welfare; violated the Illinois Act and the Board Air Pollution Regulations; and created and maintained a common law public nuisance.

The State and Defendant entered in an Agreed Preliminary Interim Injunction Order (“Interim Order”), attached as Appendix A, which was approved by the State Court on September 2, 2011. Defendant has taken the following actions pursuant to the Interim Order: repaired and sealed all significant openings and holes in the metal roof of the South Foundry Building by September 30, 2011; removed the stack located in the southwest corner of the Facility on July 30, 2011; and replaced existing doors with five high speed custom vertical doors in areas of major ingress and egress from buildings at the Facility, including on the two entrances to the building housing the two rotary furnaces (“South Foundry Building”) as of August 1, 2011.

Pursuant to the Interim Order, H. Kramer has also agreed, on an interim basis, (1) to collect and store baghouse dust in Super Sack containers, until a new method has been approved by Illinois EPA based upon the results from an evaluation by an outside consultant; (2) to continue to apply a dust suppressant agent on the gravel yard to reduce windblown dust, until the lead-contaminated gravels and soil are remediated and affected areas have been paved; and (3) to reduce rotary furnace production of two lead alloys, C-123 (81-3-7-9) and C-115 (85-5-5-

5) to a combined total of eight heats per week. Further, H. Kramer agreed, pursuant to the Interim Order and conditioned upon a final settlement agreement between the United States, the State, and H. Kramer, to replace existing pollution control technology serving the rotary furnaces in the South Foundry Building with state of the art pollution control technology, to include, but not be limited to, pulse jet baghouses, and all ancillary equipment, fans, motors, drives, foundations, inlet and outlet ductwork and electrical controls, and HEPA filters. Following approval by the State Court of the Interim Order, the United States, the State and Defendant began discussions regarding this Consent Decree.

On November 22, 2011, EPA designated the area in Chicago, Illinois bounded by Damen Avenue to the west, Roosevelt Road to the north, the Dan Ryan Expressway to the east, and the Stevenson Expressway to the south, as nonattainment for the 2008 National Ambient Air Quality Standard (“NAAQS”) for lead. The Facility is located in the nonattainment area.

From February 2011 until October 30, 2012, data collected from the State’s ambient air quality monitors in the Pilsen neighborhood indicate that the levels of lead in the ambient air have been below the lead NAAQS. Beginning in March 2011, the arithmetic mean concentration over each three-month rolling period has been below the NAAQS standard of 0.15 micrograms per meter cubed as recorded by the State’s ambient air quality monitors.

In September 2011, H. Kramer moved its refractory brick crusher indoors. In May of 2012, H. Kramer connected the briquettor to a new cartridge baghouse located inside the compressor room. Before H. Kramer uses the refractory brick crusher, H. Kramer shall also connect it to the new cartridge baghouse located inside the compressor room.

From approximately April through June of 2012, H. Kramer conducted ventilation studies of the South Foundry and Northeast Buildings at the Facility, and subsequently submitted reports of the findings of such studies to EPA and Illinois EPA.

Defendant denies any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint or the State Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue), and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, 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(b) of the Act, 42 U.S.C. § 7413(b), and over the Parties. This Court has supplemental jurisdiction over the State law claims asserted by the State of Illinois pursuant to 28 U.S.C. § 1367. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b); and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 111 and 112 of the Act, 42 U.S.C. §§ 7411 and 7412.

## II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and the State, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 5, the United States Attorney for the Northern District of Illinois, the United States Department of Justice, Illinois EPA and the State of Illinois, in accordance with Section XIV of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties include significant responsibility for compliance with any provision of this Decree, as well as any contractor retained by H. Kramer to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.



6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

7. Objectives. It is the express purpose of the Parties in entering this Consent Decree to further the objectives of the Act, as enunciated in Section 101 of the Act, 42 U.S.C. § 7401 *et seq.*, to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population, and the objectives of the Illinois Act, 415 ILCS 5/1 *et seq.* All plans, reports, construction, maintenance and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing H. Kramer to remain in full compliance with the Act and the Illinois Act at its Facility.

### III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Channel Furnaces" shall mean the two 5,000 pound channel electric furnaces in the Northeast Building at the Facility.

b. "Complaint" shall mean the complaint filed by the United States and the State in this action;

c. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto;

d. “Coreless Electric Furnaces” shall mean the three 10,000 pound coreless electric furnaces in the Northeast Building at the Facility.

e. “Date of Lodging” shall mean the date that this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Northern District of Illinois pending public comment and Court action;

f. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

g. “Defendant” or “H. Kramer” shall mean H. Kramer & Co.;

h. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

i. “Effective Date” shall have the definition provided in Section XV;

j. “Facility” shall mean Defendant’s secondary nonferrous metals foundry located at 1345 West 21<sup>st</sup> Street in Chicago, Illinois;

k. “Heat” shall mean the cycle time of a furnace that commences after raw material is charged, and concludes when the molten metal is removed from the furnace;

l. “HEPA” shall mean a high efficiency particulate air filter that has been certified by the manufacturer to remove 99.97 percent of all particles 0.3 micrometers and larger, as defined in 40 C.F.R. § 63.542;

m. “Illinois EPA” shall mean the Illinois Environmental Protection Agency;

n. “Interim Order” shall mean the order dated September 2, 2011, in the case of *People of the State of Illinois v. H. Kramer & Co.*, Case No. 11 CH 30569 (Circuit Court, Cook County, Illinois);

o. “Lead NAAQS” shall mean the national primary and secondary ambient air quality standards for lead and its compounds promulgated by EPA on November 12, 2008. 73 Fed. Reg. 67,052;

p. “Malfunction” shall mean any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not malfunctions;

q. “Northeast Building” shall mean the building at the Facility in which the three coreless electric furnaces and two channel electric furnaces are located;

r. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;

s. “Parties” shall mean the United States, the State, and Defendant;

t. “Permit” shall mean the air emission source construction permit issued to H. Kramer by the Illinois Environmental Protection Agency on January 31, 2012 and any subsequent revisions to the January 31, 2012 construction permit.

u. “Rotary Furnaces” shall mean Rotary Furnace #1 and Rotary Furnaces #2 in the South Foundry Building at the Facility;

v. “Rotary Furnace #1” shall mean the 35 ton refractory-lined furnace in the South Foundry Building at the Facility;

w. “Rotary Furnace #2” shall mean the 65 ton refractory-lined furnace in the South Foundry Building at the Facility;

x. “Section” shall mean a portion of this Decree identified by a roman numeral;

y. “South Foundry Building” shall mean the building at the Facility in which Rotary Furnace #1 and Rotary Furnace #2 are located;

z. “Startup” shall mean the setting in operation of an affected source or portion of an affected source for any purpose;

aa. “Shutdown” shall mean the cessation of operation of an affected source or portion of an affected source for any purpose;

bb. “State” shall mean the State of Illinois; and

cc. “United States” shall mean the United States of America, acting on behalf of EPA.

#### IV. CIVIL PENALTY

9. Within 30 Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$35,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging, of which \$17,500 (plus accrued interest on that amount) shall be paid to the United States in accordance with Paragraph 10 and \$17,500 (plus accrued interest on that amount) shall be paid to the State in accordance with Paragraph 12.

10. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Northern District of Illinois, 219 S. Dearborn Street, Fifth Floor, Chicago, IL 60604. At the time of payment, Defendant 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, et al. v. H. Kramer & Co.*, and shall reference the civil action number and DOJ case number 90-5-2-1-2177/2, to the United States in accordance with Section XIV of this Decree (Notices); by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

11. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal or State or local income tax.

12. H. Kramer shall pay the civil penalty due to the State by certified check payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund (“EPTF”).

Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name and case number shall appear on the face of the check. A copy of the certified

check and any transmittal letter shall be sent to:

Krystyna Bednarczyk  
Environmental Bureau  
Illinois Attorney General's Office  
69 West Washington Street, Suite 1800  
Chicago, IL 60602

#### V. COMPLIANCE REQUIREMENTS

13. H. Kramer shall maintain and operate the Rotary Furnaces, including all Rotary Furnace melting operations and all existing air pollution control equipment and monitoring equipment, at all times (including periods of startup, shutdown, and malfunction) and in a manner consistent with good air pollution control practices for minimizing emissions, and all new pollution control equipment in compliance with the Permit, which is attached hereto as Appendix B.

#### **Interim Measures.**

14. At all times until 30 Days after H. Kramer begins operation of all new pollution control equipment installed pursuant to Paragraph 16, H. Kramer shall reduce Rotary Furnace production of the two lead alloys, C-123 (81-3-7-9) and C-115 (85-5-5-5) to a combined total of eight Heats per week. H. Kramer shall at all times retain records reflecting the number of heats produced per day of each alloy at the Facility. Such records shall be available to EPA and Illinois EPA for inspection upon request.

15. H. Kramer has remediated lead-contaminated soils in the back gravel yard of the Facility pursuant to Section V.3 of the Interim Order, which is attached hereto as Appendix A and incorporated herein. H. Kramer has submitted a remedial action completion report to Illinois EPA. Illinois EPA issued a no further remediation letter on March 29, 2012.

**Installation of New Pollution Control Technology at the South Foundry Building.**

16. Before September 1, 2013, H. Kramer shall replace the existing pollution control equipment serving the two Rotary Furnaces of the South Foundry Building at the Facility with new pollution control technology as described in the Permit. H. Kramer shall operate and maintain the new pollution control equipment required by this Paragraph 16 and in compliance with the Permit. H. Kramer shall initiate construction of the pollution control equipment within twelve months of the issuance of the Permit. H. Kramer shall design, construct, install and operate two identical emission control systems, one to control particulate emissions from Rotary Furnace #1, and one to control particulate emissions from Rotary Furnace #2. Each emission control system shall include a spark arrestor, two pulse jet dust collector modules, two HEPA filter boxes, two fans (one fan shall be for back up), related drives and motors and one stack, each of which is connected to a baghouse. H. Kramer shall operate the new pollution control technology as described in the Permit for at least four (4) years after entry of this Consent Decree, unless H. Kramer is no longer operating the Rotary Furnaces in the South Foundry Building.

**Parametric Monitoring.**

17. Before September 1, 2013, H. Kramer shall install the parametric monitoring equipment (pressure drop and bag leak detection) required in the Permit on the new pollution control technology that will be installed on the Rotary Furnaces at the Facility. The parametric monitoring equipment requirements are specified in Paragraphs 18 to 22, below. H. Kramer shall operate and maintain all parametric monitoring equipment required by Paragraphs 17 to 22.

18. H. Kramer shall install, operate, and maintain a bag leak detection system (“BLDS”) for the outlet of each baghouse in the new pollution control system for the South Foundry Building as required by the Permit.

19. H. Kramer shall develop and maintain at the Facility a monitoring plan for each BLDS in the South Foundry Building (“BLDS Monitoring Plan”) as required by the Permit. H. Kramer shall submit the BLDS Monitoring Plan to EPA and Illinois EPA for approval pursuant to Paragraphs 32 to 36 of the Consent Decree. Upon approval of the BLDS Monitoring Plan by EPA, as provided in Paragraphs 32 to 36, below, H. Kramer shall operate and maintain each BLDS according to the approved BLDS Monitoring Plan at all times.

20. For each BLDS, H. Kramer shall initiate and maintain all procedures required by the Permit to determine the cause of every alarm.

21. H. Kramer shall install and operate a continuous monitor to measure the pressure drops across each baghouse and HEPA filter of each new pollution control system for the South Foundry Building as required by the Permit.

22. H. Kramer shall install and operate a continuous monitor that measures: 1) amperage for each variable speed motor; and 2) instrumentation for each fixed speed motor for each fan at the South Foundry Building as required by the Permit or, alternatively, record the measured data specified in this Paragraph at least twice during each Heat, at least once during charging and at least once during tapping, as required by the Permit. H. Kramer shall measure pressure drop across each control device for the three Coreless Electric Furnaces at the Northeast Building once per shift.



**Recordkeeping.**

23. The records generated by parametric monitoring devices identified in Paragraphs 18 to 22 and in the Parametric Monitoring Plan shall be maintained by H. Kramer for a period of three years and be made available to EPA and Illinois EPA upon request as provided in Section XI of this Consent Decree (Information Collection and Retention).

24. H. Kramer shall maintain records and supporting documentation, containing the following information for the baghouses and HEPA filters in each control system at the South Foundry Building as required by the Permit.

a. Design capacity (scfm) and performance of the device (*i.e.*, outlet PM concentration, in gr/dscf or mg/dscm) as specified by the manufacturer;

b. Operating procedures for each device recommended by the manufacturer, including recommended range of pressure drop, maximum operating temperature, and, for the baghouses, practices for cleaning of bags; and

c. Maintenance and inspection procedures recommended by the manufacturer.

25. H. Kramer shall maintain an operating log or other records for each Rotary Furnace that, at a minimum, contains the following information for each batch of material or heat processed in a furnace as required by the Permit:

a. Amount of raw material charged (tons) and description of raw materials processed (*i.e.*, estimated percentage of different components in the raw materials, such as vehicle radiators, water meters, manufacturing byproducts and miscellaneous scrap);

b. Start time and duration of the heat (hours);

c. Final batch size (tons), product type or grade, and lead content (percent by weight); and

d. Average charge rate per batch based on amount charged divided by batch time (tons/hour).

26. H. Kramer shall maintain an operating log or other records for each control system that, at a minimum, includes the following information for each Heat in a Rotary Furnace as required by the Permit:

a. Information confirming that the capture system was operational and did not malfunction, including proper settings for dampers in the ductwork during different phases of the Heat and the parametric monitoring information required by Paragraph 22, above;

b. Information confirming that the baghouse was operational and did not malfunction; and

c. Information confirming that the HEPA filter was operational and did not malfunction.

27. H. Kramer shall maintain an inspection and maintenance log or other records for each control system that, as required by the Permit, at a minimum, includes:

a. Inspection data (in accordance with the requirements of the Permit) including: (i) date and time of inspection; (ii) identification of personnel that performed each inspection; (iii) observed condition of control equipment; and (iv) recommendations based on inspection.

b. Maintenance and repair records (in accordance with the requirements of the Permit) including replacement of filters and: (i) dates maintenance and

repairs were initiated and completed; (ii) identification of personnel that performed each maintenance and repair; (iii) reason for the maintenance or repair (*e.g.*, regularly scheduled preventive maintenance or activity to respond to observed defect); and (iv) description of the maintenance and repairs.

28. H. Kramer shall maintain a log or other records of any malfunction and/or breakdown of the Rotary Furnaces and associated control equipment as required by the Permit. At a minimum, as required by the Permit, these records shall include:

- a. Date and duration of malfunction or breakdown;
- b. Detailed description of the malfunction or breakdown, with likely cause of the malfunction or breakdown;
- c. Effect of the malfunction or breakdown on emissions and, if any applicable emission limits may have been exceeded, an estimate of the quantity of additional emissions with supporting analysis;
- d. Measures used to reduce the quantity of emissions and the duration of the malfunction or breakdown; and
- e. Steps taken to prevent similar malfunctions or breakdowns or reduce their frequency and severity.

**Testing.**

29. Within 90 Days after initial startup of new pollution control equipment required by Paragraph 16 of this Consent Decree, H. Kramer shall conduct a stack test to measure PM and PM<sub>10</sub> in accordance with EPA Methods 1-5, metals emissions (excluding mercury) in accordance with EPA Method 29, and opacity in accordance with EPA Method 9,

from the exhaust of the new pollution control equipment under conditions which are representative of maximum operating conditions and maximum emissions. The maximum emission conditions shall include testing during operation with only one of the two dust collector modules in each of the baghouse systems in operation (representing one possible worst case situation with the other dust collector module in each baghouse system shut down for repair or maintenance). At least 60 Days prior to each proposed stack test, H. Kramer shall submit a written stack test protocol to EPA and Illinois EPA for approval pursuant to Paragraphs 32 to 36 (Approval of Deliverables) of this Consent Decree. The protocol shall be submitted as provided in Section XIV of this Consent Decree (Notices) and in accordance with this Paragraph. The test protocol shall describe in detail the proposed test methods and procedures, the operating parameters, and include the name and qualifications of the person conducting the stack test. Within 60 Days of approval of the test protocol by EPA, H. Kramer shall perform the stack test. H. Kramer shall provide EPA and Illinois EPA with at least 30 Days written notice of the actual test date to provide an opportunity to observe the stack test pursuant to Section XI of this Consent Decree (Information Collection and Retention). If testing is delayed, H. Kramer shall promptly notify EPA and Illinois EPA by e-mail, at least five Days prior to the scheduled date of testing or immediately, if the delay occurs within five Days of the scheduled date. This notification shall also include the new date and time for testing, if scheduled, or H. Kramer shall send a separate notification with this information as soon as practicable and in no event later than 24 hours before the rescheduled date for the testing.

30. Within 30 Days after the completion of the stack test, H. Kramer shall submit a complete report of the stack test to EPA and Illinois EPA. The report shall describe all

steps taken to comply with the test protocol, the conditions under which the stack test was carried out, and all stack test results. The report shall be addressed as provided in Section XIV of this Consent Decree (Notices) and in accordance with the Permit.

31. To the extent that the Permit conditions relating to testing are modified in the future and in the event of conflict between the requirements of the Permit and H. Kramer's obligations to conduct testing pursuant to Paragraph 29 of this Consent Decree, above, such testing shall be controlled by the then current Permit.

32. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA, after consultation with the State, 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 the submission, pursuant to the provisions of this Consent Decree.

33. If the submission is approved pursuant to Paragraph 32.a, Defendant 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, pursuant to Paragraph 32.b or .c, Defendant shall, upon written direction from EPA, after consultation with the State, take all actions required by the approved plan, report, or other item that EPA, after consultation with the State, determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or the disapproved portions, under Section X of this Decree (Dispute Resolution).

34. If the submission is disapproved in whole or in part pursuant to Paragraph 32.c or .d, Defendant shall, within 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, Defendant shall proceed in accordance with the preceding Paragraph.

35. Any stipulated penalties applicable to the original submission, as provided in Section VIII of this Decree, shall accrue during the 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 Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

36. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with the State, may again require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to Defendant's right to invoke Dispute Resolution and the right of EPA and the State to seek stipulated penalties as provided in the preceding Paragraphs.

37. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions reasonably necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section IX of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation

resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, including any building or other permits from the City of Chicago or any other permitting authority, if Defendant has submitted timely and complete applications and has taken all other actions reasonably necessary to obtain all such permits or approvals.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

38. Defendant shall implement a Diesel Retrofit Supplemental Environmental Project (“Diesel Retrofit SEP”), in accordance with all provisions of Appendix C of this Consent Decree. The Diesel Retrofit SEP shall be completed in accordance with the schedule set forth in Appendix C. The Diesel Retrofit SEP involves retrofitting school bus diesel vehicles operating in the Pilsen neighborhood and surrounding areas of Chicago, Illinois with emissions control equipment designed to reduce emissions of particulates and/or ozone precursors in diesel vehicle exhaust.

39. Defendant is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. “Satisfactory completion” means completion of the SEP in accordance with the provisions of this Section VI of the Consent Decree and Appendix C. Defendant may use contractors or consultants in planning and implementing the SEP.

40. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

a. that, as of the date of executing this Decree, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not

required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

b. that the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

c. that Defendant has not received and will not receive credit for the SEP in any other enforcement action; and

d. that Defendant will not receive any reimbursement for any portion of the SEP from any other person.

41. Defendant also certifies the following:

I certify that I am not a party to any open federal financial assistance that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing for providing federal financial assistance whose performance period has not yet expired.

42. SEP Completion Report

a. Within 45 Days after the date set for completion of the SEP, Defendant shall submit a SEP Completion Report to the United States and the State, in accordance with Section XIV of this Consent Decree (Notices). The SEP Completion Report shall contain the following information:



- i. a detailed description of the SEP as implemented;
- ii. a description of any problems encountered in completing the SEP and the solutions thereto;
- iii. an itemized list of all eligible SEP costs expended;
- iv. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- v. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

43. EPA and/or Illinois EPA pursuant to Section XI (Information Collection and Retention) of the Consent Decree may require information in addition to that described in the preceding Paragraph, in order to evaluate Defendant's completion report. After receiving the SEP Completion Report, the United States shall notify Defendant whether or not Defendant has satisfactorily completed the SEP. If Defendant has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section VIII of the Consent Decree.

44. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section X of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

45. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 50.

46. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP under this Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, *United States, et al. v. H. Kramer & Co.*, taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act and on behalf of the People of the State of Illinois under the Illinois Environmental Protection Act.”

47. For federal income tax purposes, Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

#### VII. REPORTING REQUIREMENTS

48. Defendant shall submit the following reports:

a. Within 30 Days after the end of each calendar-year quarter (*i.e.*, by April 30, July 30, October 30, and January 30) after lodging of this Consent Decree, until termination of this Decree pursuant to Section XVIII (Termination), Defendant shall submit a written quarterly report for the preceding quarter that shall include the status of any construction or compliance measures; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; status of permit applications; operation and maintenance; and reports to state agencies; and a discussion of Defendant’s progress in satisfying its obligations in connection with the Diesel Retrofit SEP under Section VI of this Decree including, at a minimum, a narrative description of activities undertaken; status of any construction or compliance measures, including the completion of any milestones set forth in

the SEP Work Plan attached as Appendix C to this Decree, and a summary of costs incurred since the previous report.

b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States and the State of such violation and its likely duration, in writing, within ten working Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section IX of this Consent Decree (Force Majeure).

49. Whenever any violation of the Consent Decree or any other event affecting Defendant's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare of the environment, Defendant shall notify EPA and the State orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event.

50. All reports shall be submitted to the persons designated in Section XIV of this Consent Decree (Notices). Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

51. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or Illinois Act or their implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

52. Any information provided pursuant to this Consent Decree may be used by the United States or the State in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### VIII. STIPULATED PENALTIES

53. Defendant shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all

applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

54. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV of this Consent Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,500 per Day for each Day that the penalty is late.

55. Interim Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of an interim requirement of Paragraph 14:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,250	1st through 14th Day
\$2,500	15th through 30th Day
\$3,000	31st Day and beyond

56. Compliance Milestones

a. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in subparagraph b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
1st through 14th Day	\$300
15th through 30th Day	\$500
31st Day and beyond	\$1,000

b. Failure to install and operate new pollution control technology at the South Foundry Building in accordance with the requirements of Paragraph 16; failure to implement the Parametric Monitoring Plan in accordance with the requirements of Paragraphs 17

to 22; and failure to perform the testing in accordance with the requirements of Paragraphs 29 and 30.

57. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VII of this Consent Decree (Reporting) and the recordkeeping requirements of Paragraphs 23 to 28:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th Day
\$300	15th through 30th Day
\$500	31st Day and beyond

58. SEP Compliance.

a. If Defendant fails to satisfactorily complete the Diesel Retrofit SEP by the deadline set forth in Appendix C, Defendant shall pay stipulated penalties for each Day for which it fails to satisfactorily complete the SEP, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
1st through 14th Day	\$300
15th through 30th Day	\$500
31st Day and beyond	\$1,000

b. If Defendant fails to implement the Diesel Retrofit SEP, or halts or abandons work on the SEP, Defendant shall pay a stipulated penalty of \$52,000 minus all other stipulated penalties paid under Paragraph 58a. The penalty under Paragraph 58b. shall accrue as of the date specified for completing the SEP or the date performance ceases, whichever is earlier.

c. If Defendant has not satisfactorily completed the SEP but Defendant has made good faith and timely efforts to complete the SEP, Defendant shall pay a stipulated penalty amounting to \$52,000 minus the amount of money Defendant spent in eligible costs on the Diesel Retrofit SEP.

59. Except as provided in Paragraph 58, stipulated penalties under this Section shall begin to accrue on the Day after 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. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

60. Defendant shall pay stipulated penalties to the United States and the State within 30 Days of a written demand by either Plaintiff. Defendant shall pay fifty percent of the total stipulated penalty amount due to the United States and fifty percent to the State. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

61. Either Plaintiff may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

62. Stipulated penalties shall continue to accrue as provided in Paragraph 60, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA or the State that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States or the State within 30 Days of the effective date of the agreement or the receipt of EPA's or the State's decision or order.

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c., below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

63. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. Defendant shall pay stipulated penalties owing to the State by the method set forth in Paragraph 12.

64. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

65. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), 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 for Defendant's violation of this Consent Decree or applicable law. Where a violation of this



Consent Decree is also a violation of the Clean Air Act, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### IX. FORCE MAJEURE

66. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant of any entity controlled by Defendant, or of Defendant’s contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant’s best efforts to fulfill the obligation. The requirement that Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include Defendant’s financial inability to perform any obligation under this Consent Decree.

67. Potential Force Majeure Event: Depending upon the circumstances and H. Kramer’s response to such circumstances, failure of a permitting authority to issue a necessary permit in a timely fashion may constitute a Force Majeure Event where the failure of the permitting authority to act is beyond the control of H. Kramer and H. Kramer has taken all steps available to it to obtain the necessary permit, including, but not limited to: submitting a complete permit application; responding to requests for additional information by the permitting authority in a timely fashion; and accepting lawful permit terms and conditions after expeditiously exhausting any legal right to appeal terms and conditions imposed by the permitting authority.

68. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to Krystyna Bednarczyk at KBednarczyk@atg.state.il.us and Kushal Som at Som.Kushal@epa.gov, within 48 hours of when Defendant first knew that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant or any entity controlled by Defendant or Defendant's contractors knew or should have known.

69. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment

by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

70. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

71. If Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 66 and 68, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

#### X. DISPUTE RESOLUTION

72. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as

a defense to an action by the United States or the State to enforce any obligation of Defendant arising under this Decree.

73. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after consultation with the State, or the State, if the United States is not a party to the dispute, shall be considered binding unless, within 20 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

74. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

75. The United States and/or the State shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' or the State's Statement of Position, as applicable, shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon

by the United States and/or the State. The United States' or the State's Statement of Position, as applicable, shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

76. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' or the State's Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

77. The United States and/or the State shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

78. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 74 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA and/or Illinois EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the

administrative record, that the position of the United States or the State, as applicable, is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 74, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the Objectives of the Consent Decree.

79. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 67. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

#### XI. ACCESS AND INFORMATION COLLECTION AND RETENTION

80. During the term of this Consent Decree, the United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendant's compliance with this Consent Decree.

81. Upon request, during the term of this Consent Decree, Defendant shall provide EPA and the State or their authorized representatives, splits of any samples taken by Defendant. Upon request, EPA and the State shall provide Defendant splits of any samples taken by EPA or the State, or their agents.

82. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

83. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States and the State at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of

the preceding Paragraph and, upon request by the United States or the State, Defendant shall deliver any such documents, records, or other information to EPA or the State. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

84. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2, Section 7 of the Illinois Act, 415 ILCS 5/7 (2010), and/or 2 Ill. Adm. Code Part 1828, and/or 35 Ill. Adm. Code Part 130. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2 as to the United States, and the procedures at 35 Ill. Adm. Code Part 130 or 2 Ill. Adm. Code Part 1828 as to the State.

85. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.



XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

86. This Consent Decree is entered into as a full and final settlement of this action to the following extent: the Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action and the civil claims of the State for the violations alleged in the State Complaint filed in the State Court action through the Date of Lodging.

87. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 86. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or implementing regulations, under the Illinois Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 86. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

88. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should

have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 86 of this Section.

89. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401 *et seq.*, or the Illinois Act, 415 ILCS 5/1 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

90. This Consent Decree does not limit or affect the rights of Defendant or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

91. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

### XIII. COSTS

92. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIV. NOTICES

93. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-2177/2

To EPA:

Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5  
77 W. Jackson Blvd. (AE-17J)  
Chicago, IL 60604  
Attn: Compliance Tracker

and

Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 W. Jackson Blvd. (C-14J)  
Chicago, IL 60604

To the State:

Chief, Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, IL 60602

To Illinois EPA:

Deputy Counsel – Air Enforcement  
Division of Legal Counsel  
Illinois Environmental Protection Agency

1021 North Grand Avenue East  
Springfield, Illinois 62702

Manager, Division of Air Pollution Control  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702

To Defendant:

H. Kramer & Co.  
1345 West 21st Street  
Chicago, Illinois 60608  
Attn: President

and

Todd R. Wiener, Esq.  
McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago, Illinois 60606

94. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

95. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

96. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

97. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering

orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

98. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

99. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 78, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

100. After Defendant has completed the requirements of Section V (Compliance Requirements) of this Decree, has complied with all other requirements of this Consent Decree, including those relating to the SEP required by Section VI of this Consent Decree, has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, and three years have passed since the Effective Date of this Consent Decree, Defendant may serve upon the United States and the State a Request for Termination, stating that Defendant has satisfied those requirements, together with any necessary supporting documentation.

101. Following receipt by the United States and the State of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any

disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the State, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation or motion terminating the Decree.

102. If the United States, after consultation with the State, does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section X of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 74 of Section X, until 30 Days after service of its Request for Termination.

#### XIX. PUBLIC PARTICIPATION

103. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

#### XX. SIGNATORIES/SERVICE

104. Each undersigned representative of Defendant, the State of Illinois and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice or her designee certifies that he or she is fully authorized to enter into the

terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

105. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### XXI. INTEGRATION

106. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

#### XXII. FINAL JUDGMENT

107. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIII. APPENDICES

108. The following appendices are attached to and part of this Consent Decree:

“Appendix A” is the Interim Order.

“Appendix B” is the Permit.

“Appendix C” is the Supplemental Environmental Project Plan.

Dated and entered this \_\_\_ day of \_\_\_\_\_, 2013.

---

UNITED STATES DISTRICT JUDGE FOR  
THE NORTHERN DISTRICT OF ILLINOIS



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and State of Illinois v. H. Kramer & Co. (N.D. Illinois)*, subject to public notice and comment.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: January 28, 2013      s/Robert E. Maher, Jr.  
ROBERT E. MAHER, JR.  
Acting Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

Date: January 28, 2013      s/Annette M. Lang  
CATHERINE BANERJEE ROJKO  
Senior Attorney  
ANNETTE M. LANG  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 514-5315 (phone: C. Rojko)  
(202) 514-4213 (phone: A. Lang)  
(202) 514-0097 (fax)  
[annette.lang@usdoj.gov](mailto:annette.lang@usdoj.gov)

GARY S. SHAPIRO  
Acting United States Attorney  
Northern District of Illinois

Date: January 28, 2013      s/Kurt N. Lindland  
LINDA A. WAWZENSKI  
KURT N. LINDLAND  
Assistant United States Attorneys  
Northern District of Illinois  
219 South Dearborn Street, Suite 500  
Chicago, Illinois 60604  
(312) 353-1994 (phone: L. Wawzenski)  
(312) 353-4163 (phone: K. Lindland)  
[kurt.lindland@usdoj.gov](mailto:kurt.lindland@usdoj.gov)

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and State of Illinois v. H. Kramer & Co. (N.D. Illinois)*, subject to public notice and comment.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

DATE: January 16, 2013      s/Susan Hedman\*\*\*  
SUSAN HEDMAN  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

DATE: December 31, 2012      s/Robert A. Kaplan\*\*\*  
ROBERT A. KAPLAN  
Regional Counsel  
U.S. Environmental Protection Agency  
Region 5

DATE: December 28, 2012      s/Christine M. Liszewski\*\*\*  
CHRISTINE M. LISZEWSKI  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

\*\*\* Signed with permission.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and State of Illinois v. H. Kramer & Co. (N.D. Illinois)*

FOR PLAINTIFF THE STATE OF ILLINOIS:

LISA MADIGAN, Attorney General

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos Litigation Division

DATE: January 30, 2013

s/Elizabeth Wallace\*\*\*  
ELIZABETH WALLACE, Chief  
Environmental Bureau  
Assistant Attorney General  
69 West Washington Street, Suite 1800  
Chicago, IL 60602

THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

JOHN J. Kim, Interim Director  
Illinois Environmental Protection Agency

DATE: January 29, 2013

s/John J. Kim\*\*\*  
JOHN J. KIM  
Interim Director  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

\*\*\* Signed with permission.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States and State of Illinois v. H. Kramer & Co. (N.D. Illinois)*:

FOR H. KRAMER & CO.:

DATE: December 24, 2012

s/Randall K. Weil\*\*\*  
RANDALL K. WEIL  
Executive Vice President  
H. Kramer & Co.

\*\*\* Signed with permission.

# **APPENDIX A**

Atty. No. 99000

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)
<i>ex rel.</i> LISA MADIGAN, Attorney	)
General of the State of Illinois,	)
	)
Plaintiff,	)
	)
v.	)
	)
H. KRAMER & CO., an Illinois corporation,	)
	)
Defendant.	)

No. 11 CH 30569

**AGREED PRELIMINARY INTERIM INJUNCTION ORDER**

This matter coming before the Court on Plaintiff's Motion for Immediate and Preliminary Injunction, due notice having been given, the Parties being represented in open court, the Court having reviewed Plaintiff's Verified Complaint for Injunctive Relief and Civil Penalties and Plaintiff's Motion for Immediate and Preliminary Injunction, and the Court being fully advised in the premises;

NOW THEREFORE, Plaintiff having alleged that a substantial danger to the environment or to the health and welfare of persons exists pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (2010) ("Act"), and the Parties having agreed to the entry of this Preliminary Injunction, the Court enters the following Agreed Preliminary Injunction which shall remain in effect until further order by this Court:

**I. BACKGROUND**

1. Plaintiff alleges in its Verified Complaint filed on August 30, 2011 ("Verified Complaint") that as a result of the discharge into the environment of lead from the Facility

located at 1345 West 21st Street in Chicago, Cook County, Illinois ("Facility"), Defendant created a substantial danger to the environment, public health and welfare, violated the Act and the Illinois Pollution Control Board ("Board") Air Pollution Regulations, and created and maintained a common law public nuisance.

2. At all times relevant to the Verified Complaint, Defendant H. KRAMER & CO., ("H. Kramer"), was and is an Illinois corporation registered to do business in the State of Illinois.

3. At all times relevant to the Verified Complaint, H. Kramer owns and operates a secondary copper smelting facility where a portion of the Facility's production capacity is devoted to lead-containing metal alloys.

4. The Facility contains two rotary furnaces which emit lead.

5. The Clean Air Act, 42 U. S. C. § 7401 *et seq.*, is specifically designed to deal with the health problems associated with lead and other pollutants in the ambient air. Section 108 of the Clean Air Act, 42 U.S.C. § 7408, requires the U.S. Environmental Protection Agency ("US EPA") to list lead as a pollutant for which an air quality criteria document must be prepared, and for which national ambient air quality standards ("NAAQS") should be promulgated under Section 109 of the Act, 42 U.S.C. § 7409.

6. Effective January 12, 2009, the lead NAAQS under the primary (health-based) and secondary (welfare-based) standard was and is at a level of 0.15 micrograms of lead per cubic meter ( $\mu\text{g}/\text{m}^3$ ), arithmetic mean concentration over a three (3) month period. See 73 Fed. Reg. 67052 (November 12, 2008) and 40 C.F.R. § 50.16.

7. In January 2010, the Illinois EPA installed and began operating a total suspended particulate ("TSP") monitor ("Monitor") at the Manuel Perez Jr. Elementary School ("Perez

School”) located at 1241 West 19th Street, Chicago, Cook County, Illinois, two (2) blocks northeast of the Facility.

8. Plaintiff alleges that monitoring results of greater than  $0.15 \mu\text{g}/\text{m}^3$  for lead were registered at the Perez School Monitor on April 2, May 2, June 1, June 25, July 19, August 30, and September 23, 2010.

9. Plaintiff alleges that because of additional results greater than  $0.15 \mu\text{g}/\text{m}^3$  on October 29, November 22, December 10 and December 28, 2010, the three (3) month average concentration of lead as measured by the Perez School Monitor was  $0.24 \mu\text{g}/\text{m}^3$  and, therefore, in excess of the  $0.15 \mu\text{g}/\text{m}^3$  lead standard.

10. Plaintiff alleges that additional results greater than  $0.15 \mu\text{g}/\text{m}^3$  of lead occurred on January 3 and March 16, and June 8, 2011 at the Perez School Monitor.

11. Plaintiff further alleges that because of results greater than  $0.15 \mu\text{g}/\text{m}^3$  on November 22, December 10 and December 28, 2010 and on January 3, 2011, the three (3) month average concentration of lead as measured by the Perez School Monitor was  $0.29 \mu\text{g}/\text{m}^3$  and, therefore, in excess of the  $0.15 \mu\text{g}/\text{m}^3$  lead standard.

12. Plaintiff alleges that on March 13, 2011, the Illinois EPA installed a second TSP monitor at the Benito Juarez High School (“Juarez School”) located at 2150 South Laflin Street, Chicago, Cook County, Illinois, two (2) blocks southwest of the Facility and four (4) blocks southwest of the Perez School Monitor.

13. Plaintiff alleges that monitoring results greater than  $0.15 \mu\text{g}/\text{m}^3$  for lead were registered at the Juarez School Monitor on April 15, 2011.



14. Plaintiff alleges that laboratory analysis of fines collected from baghouses at the Facility and of particles collected by the Perez School Monitor filter indicates that the Facility is a source of lead that contributed to lead values in excess of the  $0.15 \mu\text{g}/\text{m}^3$  lead standard.

15. Plaintiff alleges that the Facility will continue to emit lead at levels that will contribute to or threaten to contribute to lead monitoring results that are greater than  $0.15 \mu\text{g}/\text{m}^3$  and exceed the  $0.15 \mu\text{g}/\text{m}^3$  lead standard until such a time as Defendant identifies and addresses all possible sources of emissions, and implements measures to reduce future particulate emissions from the Facility to levels that comply with statutory and regulatory standards.

## II. ACTIVITIES UNDERTAKEN TO DATE

### a. Roof

Defendant H. Kramer advised Plaintiff that on March 8, 2011, it retained a contractor to repair and seal all significant openings or holes in the metal roof. These repair activities are substantially completed and expected to be fully completed by September 30, 2011. Additionally, on July 28, 2011, Defendant H. Kramer removed the stack located in the southwest corner of the Facility.

### b. Replacement of Doors

Defendant H. Kramer advised the Plaintiff that on April 25, 2011, it retained a contractor to install, and did place an order to purchase, five (5) high speed custom vertical doors in areas of major ingress and egress from the buildings on the Facility property, including on the two entrances to the building housing the rotary furnaces. On August 1, 2011, Defendant H. Kramer completed installation of these doors.

### c. Replacement of Baghouse Dust Storage Containers

Defendant H. Kramer advised Plaintiff that it has purchased and begun using Super Sack containers to replace the boxes that were previously used to collect and store baghouse dust. Further, that during the pendency of this Order, Defendant H. Kramer will at all times collect and store baghouse dust in Super Sack containers, unless and until a preferable storage method is approved by the Illinois EPA based on the results from an evaluation by an outside consultant.

**d. Remediation of Lead-Contaminated Gravels**

Defendant H. Kramer advised Plaintiff that on April 30, 2011, and August 6, 2011, it applied a dust suppressant agent on the gravel yard to reduce potential windblown dust, and that it will continue to apply a dust suppressant agent on the gravel yard, as necessary, and as recommended, by its remediation consultant, Conestoga-Rovers & Associates, to reduce windblown dust from the gravel yard at the Facility, until such time the lead-contaminated gravels and soil are remediated and affected areas have been paved.

**e. Stack Testing**

Defendant H. Kramer has completed three series of stack testing pursuant to the stack test protocol previously submitted to Illinois EPA on April 20, 2011, and pursuant to amended stack test protocols submitted April 29, 2011 and May 3, 2011. The amended stack test protocols reflect changes in the testing schedule from the original protocol and confirm that the second and third stack test series were completed under conditions representative of maximum lead emissions from the production of metal alloy 81-3-7-9. The first series of tests includes the Venturi scrubber and mist eliminator, which control the channel furnaces, and Baghouse # 4, which controls the coreless furnaces. The second series of tests includes Baghouse # 1 and Baghouse # 5, which control the fugitive emissions from the rotary furnaces.

The third series of tests includes Baghouse # 2 and Baghouse # 6, which control the process emissions from the rotary furnaces. Each series of stack tests were conducted pursuant to the Illinois EPA-approved stack test protocol then in effect. On April 26, 2011, Defendant H. Kramer commenced the first series of stack testing, and tested Baghouse # 4 on April 29, 2011. For the second series of testing, Defendant H. Kramer tested Baghouse # 1 on May 6, 2011 and Baghouse # 5 on May 13, 2011. Defendant H. Kramer simultaneously tested Baghouse # 2 and #6 on June 3, 2011.

f. **Stack Test Results**

Defendant H. Kramer has provided Illinois EPA reports of the results of the stack tests. The stack tests results showed average flow weighted lead concentrations ranging from 0.0029 mg/dscm to 0.1616 mg/dscm.

**III. APPLICABILITY**

This Order shall apply to and be binding upon Plaintiff and Defendant H. Kramer. This Order has no impact on any third Parties, including the United States.

**IV. NOT A FINAL RESOLUTION ON THE MERITS**

This Order is not to be considered a final resolution on the merits of Plaintiff's Verified Complaint for Injunctive Relief and Civil Penalties filed herein, but rather addresses Plaintiff's immediate concerns regarding the matters alleged in the Verified Complaint. Additionally, Plaintiff and Defendant H. Kramer contemplate the entry of a final order that resolves all issues in this matter.

The Parties agree to negotiate in good faith to finalize a settlement agreement that resolves all issues in this matter within 90 days of the entry of this Order. The Parties anticipate that U.S. EPA will join in these settlement discussions to resolve the finding of violation and notice of violation issued by U.S. EPA to H. Kramer.

**V. IMMEDIATE ACTION**

**Compliance Obligations**

**1. Reduction in Lead-Containing Production Processes**

Defendant H. Kramer will reduce rotary furnace production of the two lead alloys, C-123 (81-3-7-9) and C-115 (85-5-5-5) to a combined total of eight heats per week during the pendency of this Order or until December 31, 2011, whichever comes first. H. Kramer shall at all times retain records reflecting the number of heats produced per day of each alloy at the Facility. Such records shall be available to Illinois EPA and US EPA for inspection upon request.

**2. Preliminary Proposal for the Installation of State of the Art Pollution Control Technology**

Conditioned on a final settlement agreement being reached by the Parties resolving all issues in this matter and subject to negotiations between H. Kramer, U.S. EPA and the State as outlined in Paragraph 2 of this Section V.2., Defendant H. Kramer will replace the existing pollution control technology serving the rotary furnaces in the south foundry building with new state of the art pollution control technology, which shall include, but not be limited to, jet pulse baghouses, and all ancillary equipment, fans, motors, drives, foundations, inlet and outlet ductwork and electrical controls, and HEPA filters, and will have an outside engineering expert

conduct a ventilation study of the rotary furnace building including addressing the appropriate size of the pulse jet baghouses and all associated ancillary equipment.

Defendant H. Kramer has submitted to the Illinois EPA, with a copy to US EPA, a preliminary proposal for the installation of new state of the art pollution control technologies. Within ten (10) days of this Interim Order, the Parties shall meet to discuss said proposal. The Parties contemplate that the work plan and schedule relating to the installation of any new state of the art pollution control technology and the ventilation study will be contained in or exhibits to a final settlement agreement, to be negotiated between the Parties.

**3. Remediation of Lead-Contaminated Gravels**

On July 13, 2011, Defendant H. Kramer submitted to Illinois EPA a remedial action plan to address lead-contaminated soils in the back gravel yard portion of the Facility property. On July 27, 2011, Illinois EPA granted conditional approval to the remedial action plan, subject to Defendant H. Kramer submitting to Illinois EPA a Remedial Action Plan Addendum, which shall include but not be limited to, stabilization pilot test results, a waste profile and landfill selection, and an approval letter and permits issued by the City of Chicago. On August 3, 2011, Defendant H. Kramer submitted to Illinois EPA a confirmation sampling plan for the back gravel yard portion of the Facility property. On August 8, 2011, Illinois EPA approved the confirmation sampling plan. On or before September 9, 2011, Defendant H. Kramer shall submit to Illinois EPA the Remedial Action Plan Addendum. Within fourteen (14) days of approval by the Illinois EPA of the Remedial Action Plan and Remedial Action Plan Addendum, Defendant H. Kramer shall begin implementing the remedial action plan. H. Kramer can begin remediation based on the conditional approval and without approval of the RAP Addendum. The remedial activities shall be conducted in accordance with the Illinois EPA-approved plan and any schedule contained therein. All remediation activities required herein shall be completed by no later than December 31, 2011 (provided that Illinois EPA provides

approval of the RAP Addendum by September 23, 2011), provided that Defendant H. Kramer shall apply to the Illinois EPA for a No Further Remediation (“NFR”) Letter by March 1, 2012.

Defendant H. Kramer shall provide monthly reports on the progress of the remediation activities being conducted to address the lead-contaminated soils. The report shall outline all activities completed and activities that remain to be completed. The report shall be provided on the 15<sup>th</sup> day of every month to the individuals listed in Section VI., herein.

**General Provisions**

1. **Review and Approval**

All reports and other submittals required under this Order shall be subject to Illinois EPA review, comment and approval.

2. **Submission of Reports**

Defendant H. Kramer shall submit all reports and other submittals required by this Order within the timeframes indicated in this Order.

**VI. NOTICES**

All submittals and correspondence relating to the requirements of this Order shall be directed to the following persons:

**FOR PLAINTIFF**

Krystyna Bednarczyk  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General’s Office  
69 West Washington Street, 18th Floor  
Chicago, Illinois 60602

Chris Pressnall  
Assistant Counsel  
Division of Legal Counsel

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

FOR DEFENDANT

Todd R. Wiener  
Mark Bilut  
McDermott Will & Emery  
227 West Monroe Street  
Chicago, Illinois 60606

FOR US EPA (WHERE REQUIRED)

Kushal Som  
Air & Radiation Division  
US EPA, Region 5  
77 W. Jackson Boulevard (AE-17J)  
Chicago, IL 60604

**VII. DUTY TO COOPERATE**

The Parties to this Order shall cooperate with each other in implementation of this Order.

**VIII. COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This Order in no way affects the responsibilities of Defendant H. Kramer to comply with any other federal, state, or local laws or regulations, including but not limited to the Act, 415 ILCS 5/1 *et seq.* (2010), and the Board's Regulations, Title 35 of the Illinois Administrative Code.

**IX. STIPULATED PENALTIES**

1. If Defendant H. Kramer fails to complete any activity required by this Order by the date specified herein, Defendant H. Kramer shall provide notice to Plaintiff of each failure to

comply with this Order. In addition, Defendant H. Kramer shall pay to the Plaintiff stipulated penalties in the amount of \$500.00 per day, per violation, until such time that compliance is achieved. In addition, if Defendant H. Kramer fails to comply with the Reduction in Lead-Containing Production Processes limitation specified in Section V.1.: Immediate Action (Compliance Obligations), Defendant H. Kramer shall pay to the Plaintiff stipulated penalties in the amount of \$2,500.00 per violation.

2. Plaintiff is not required to provide Defendant H. Kramer with notice of noncompliance for the imposition of stipulated penalties. However, in the event the Plaintiff determines that a violation that could be subject to stipulated penalties has occurred, Plaintiff will provide written notification of such violation to Defendant H. Kramer as set forth in Section VI. of this Order. Failure by the Plaintiff to provide such written notification shall not be construed as a waiver of Plaintiff's right to seek stipulated penalties under this Order.

3. All stipulated penalties owed pursuant to this Order shall be payable within thirty (30) calendar days of the receipt of written demand from Plaintiff. Stipulated penalties shall be paid by certified check payable to the Treasurer of the State of Illinois for deposit in the Environmental Protection Trust Fund and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

The case name and number and Defendant H. Kramer's Federal Tax Identification number shall appear on the face of the check or money order.

4. Stipulated penalties shall be in addition to, and not as a substitute for, any other remedy available to Plaintiff.



**X. DISPUTE RESOLUTION**

The Parties to this Order shall use their best efforts to resolve any and all disputes or differences of opinion arising with regard to this Order, informally and in good faith. If, however, a dispute arises concerning this Order that the Parties are unable to resolve informally, any party to this Order may, by written motion, request that an evidentiary hearing be held before the Circuit Court for Cook County, Illinois, to resolve the dispute between the Parties. Defendant H. Kramer shall bear the burden of proving it did not violate this Order.

**XI. FORCE MAJEURE**

Defendant H. Kramer may declare *force majeure* in appropriate circumstances as follows:

1. A *force majeure* event is an event arising solely beyond the control of Defendant H. Kramer which prevents the timely performance of any of the requirements of this Order. For the purposes of this Order, *force majeure* shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, or labor disputes beyond the reasonable control of Defendant H. Kramer.

2. When, in the opinion of Defendant H. Kramer, a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Order, Defendant H. Kramer shall orally notify the Plaintiff within forty-eight (48) hours of the occurrence. Written notice shall be given to the Plaintiff as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence.

3. Failure by Defendant H. Kramer to comply with the notice requirements of the preceding paragraph shall render this *force majeure* provision voidable by Plaintiff as to the

specific event for which Defendant H. Kramer has failed to comply with the notice requirement. If voided, this section shall be of no effect as to the particular event involved.

4. An increase in costs associated with implementing any requirement of this Order shall not, by itself, excuse Defendant H. Kramer under the provisions of this Order from a failure to comply with such a requirement.

## **XII. RIGHT OF ENTRY**

In addition to any other authority, the Illinois EPA, its employees and representatives, the US EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Facility which is the subject of this Order at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, the US EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

## **XIII. EXTENSIONS AND MODIFICATIONS**

Plaintiff and Defendant H. Kramer may, by mutual consent, extend any compliance dates under this Order without leave of Court. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and incorporated into this Order by reference. Any request from Defendant H. Kramer for an extension shall be made by a separate submission

to the State, and shall not be included in or combined with any other report or submission otherwise required by this Order.

**XIV. RESERVATION OF RIGHTS**


Nothing contained herein shall be deemed an admission of any wrongful conduct or violations of any applicable statute, law or regulation thereunder by Defendant H. Kramer, nor a finding of fact or adjudication by this Court of any of the facts or claims contained in the Verified Complaint for Injunctive Relief and Civil Penalties filed herein. Plaintiff reserves its right to pursue additional technical and legal relief from Defendant H. Kramer.

**XV. STATUS CONFERENCE WITH THE COURT**

This matter is set for status hearing on \_\_\_\_\_, 2011 at \_\_\_\_\_ without further notice.

FOR PLAINTIFF:  
PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN,  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

DATED: 8/30/11

FOR DEFENDANT:  
H. KRAMER & CO.

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATED: \_\_\_\_\_

ENTERED: \_\_\_\_\_  
JUDGE

DATED: \_\_\_\_\_

to the State, and shall not be included in or combined with any other report or submission otherwise required by this Order.

**XIV. RESERVATION OF RIGHTS**

Nothing contained herein shall be deemed an admission of any wrongful conduct or violations of any applicable statute, law or regulation thereunder by Defendant H. Kramer, nor a finding of fact or adjudication by this Court of any of the facts or claims contained in the Verified Complaint for Injunctive Relief and Civil Penalties filed herein. Plaintiff reserves its right to pursue additional technical and legal relief from Defendant H. Kramer.

**XV. STATUS CONFERENCE WITH THE COURT**

This matter is set for status hearing on December 14, 2011 at 10:00am without further notice.

FOR PLAINTIFF:  
PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN,  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY: \_\_\_\_\_  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

DATED: \_\_\_\_\_

FOR DEFENDANT:  
H. KRAMER & CO.

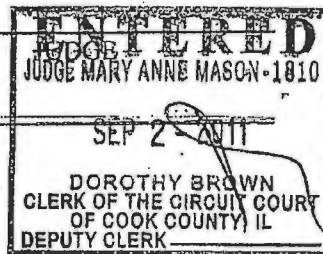
BY: Howard K. Chapman Jr.

ITS: President

DATED: 8-29-11

ENTERED: \_\_\_\_\_

DATED: \_\_\_\_\_



## **APPENDIX B**



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19506, SPRINGFIELD, ILLINOIS 62794-9506-(217) 782-2113

PAT QUINN, GOVERNOR

JOHN J. KIM, INTERIM DIRECTOR

217/785-1705

TDD: 217/782-9143

CONSTRUCTION PERMIT-NESHAP Source

PERMITTEE

H. Kramer & Company  
Attn: Randall K. Weil  
1339-59 West 21st Street  
Chicago, Illinois 60608

**NSPS/NESHAP**

Application No.: 11110045

I.D. No.: 031600AGL

Applicant's Designation: Baghouses

Date Received: November 21, 2011

Subject: South Foundry Baghouses

Date Issued: January 31, 2012

Location: 1339-59 West 21st Street, Chicago, Cook County, 60608

This permit is hereby granted to the above-designated Permittee to CONSTRUCT air pollution control equipment consisting of two (2) new baghouse systems (Baghouse A and Baghouse B) to control particulate matter emissions from Rotary Furnaces #1 and #2 and fugitive emissions from the South Foundry Building with each of the two systems to include a spark arrestor, two dust collector modules, two after filter boxes with HEPA filters, two fans, and one stack, pursuant to the above-referenced application. The two new baghouse systems will replace existing Baghouses #1, #2, #5, and #6. This permit is subject to standard conditions attached hereto and the following special condition(s):

1. This permit is based on the construction and testing of the two new baghouse systems resulting in no increase in process weight rate or emissions to the atmosphere.
2. The two new baghouse systems can be operated under this construction permit for a period not to exceed eighteen (18) months from the date of issuance of this construction permit.
3. This permit is issued based on the potential to emit (PTE) for hazardous air pollutants (HAPs) as listed in Section 112(b) of the Clean Air Act being less than 10 tons/year of any single HAP and 25 tons/year of any combination of such HAPs, or such less quantity as USEPA may establish by rule which would require the Permittee to obtain a Clean Air Act Permit Program (CAAPP) permit from the Illinois EPA.
- 4a. All furnace melting operations at this source are subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Nonferrous Metals Processing Area Sources, 40 CFR Part 63 Subparts A and TTTTTT. The Illinois EPA is administering the NESHAP in Illinois on behalf of the United States EPA under a delegation agreement.
- b. Pursuant to 40 CFR 63.11465(a), the Permittee shall route the emissions from each existing affected source through a fabric filter or baghouse that achieves a particulate matter (PM) control efficiency of at least 99.0 percent or an outlet PM concentration limit of 0.034 grams per dry

Page 2

standard cubic meter (g/dscm) (0.015 grains per dry standard cubic feet (gr/dscf)).

- c. The Permittee shall comply with the applicable testing, monitoring, notification, and recordkeeping requirements in 40 CFR Part 63 Subparts A and TTTTTT.
- 5. Emissions and operation of the following equipment shall not exceed the following limits:

Item of Equipment	Process Weight	Particulate Matter	
	Rate (Tons/Hour)	Emissions (Lbs/Hour)	(Tons/Year)
Rotary Furnace #1	2.1	3.77	16.5
Rotary Furnace #2	2.5	4.18	18.3

Natural Gas Combustion Emissions	Nitrogen Oxides		Carbon Monoxide	
	(Lbs/Hr)	(Tons/Yr)	(Lbs/Hr)	(Tons/Yr)
Rotary Furnace #1 (11.5 mmBtu/hr)	1.15	5.04	0.97	4.23
Rotary Furnace #2 (20.8 mmBtu/hr)	2.08	9.11	1.74	7.65

These limits are based on the maximum process rates and firing rates indicated by the Permittee, continuous operation (8,760 hours/year), standard emission factors for fuel combustion (AP-42) and allowable particulate matter in 35 Ill. Adm. Code 212.321 as this is more restrictive than the 0.015 gr/dscf limit required by 40 CFR 63.11465(a). Compliance with annual limits shall be determined from a running total of 12 months of data.

- 6a. Pursuant to 35 Ill. Adm. Code 212.301 the Permittee shall not cause or allow the emission of fugitive particulate matter from any process, including any material handling or storage activity, that is visible to an observer looking generally toward the zenith at a point beyond the property line of the source.
- b. Pursuant to 35 Ill. Adm. Code 212.321, no person shall cause or allow the emission of particulate matter into the atmosphere in any one hour period from any new process emission unit which, either alone or in combination with the emission of particulate matter from all other similar process emission units for which construction or modification commenced on or after April 14, 1972, at a source or premises, exceeds the allowable emission rates specified in 35 Ill. Adm. Code 212.321(c).
- c. The Permittee shall operate the source in such a way that the opacity of emissions does not exceed the limits specified in 35 Ill. Adm. Code 212.123.
- 7. Pursuant to 35 Ill. Adm. Code 216.121, no person shall cause or allow the emission of carbon monoxide (CO) into the atmosphere from any fuel combustion emission source with actual heat input greater than 2.9 MW (10 mmBtu/hr) to exceed 200 ppm, corrected to 50 percent excess air.

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- 8a. Within 90 days after initial startup of the two new baghouse systems, PM, PM<sub>10</sub>, and metals emissions, and opacity from the exhaust of each of the two new baghouse systems shall be measured during conditions which are representative of maximum operating conditions and maximum emissions. The maximum emissions conditions shall include testing during operation with only one of the two dust collector modules in each of the baghouse systems in operation (representing one possible worst case situation with the other dust collector module in each baghouse system shut down for repair or maintenance).
- b. The following methods and procedures shall be used for testing of emissions, unless another method is approved by the Illinois EPA. Refer to 40 CFR Part 60 Appendix A and 40 CFR Part 63 Subparts A and TTTTTT for USEPA test methods.

Location of Sample Points	USEPA Method 1 or 1A;
Gas Flow and Velocity	USEPA Method 2, 2A, 2C, 2F, or 2G;
Flue Gas Weight	USEPA Method 3, 3A, or 3B;
Moisture	USEPA Method 4;
Particulate Matter	USEPA Method 5;
PM <sub>10</sub>	USEPA Method 201 or 201A; USEPA Method 5 may be substituted provided all emissions are considered PM <sub>10</sub>
Condensable PM <sub>10</sub>	USEPA Method 202 (condensable);
Opacity	USEPA Method 9 or 22 (if no visible emissions are observed for 90 percent of the readings over 1 hour); and
Metals	USEPA Method 29(excluding Hg)

- c. At least 60 days prior to the actual date of testing, the Permittee shall submit a written test plan to the Illinois EPA, Compliance Section. This plan shall include at a minimum:
- i. The name (or other identification) and location of the emission points to be tested and the name and address of the facility at which they are located;
  - ii. The name and address of the independent testing service(s) who will be performing the tests, with their experience with similar tests;
  - iii. The specific determinations of emissions and/or performance which are intended to be made, including the site(s) in the ductwork or stacks at which sampling will occur;
  - iv. The specific conditions under which testing will be performed, including a discussion of why these conditions will be representative of maximum emissions, minimum control performance, the levels of operating parameters for the emission units, including associated control equipment, at or within which



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compliance is intended to be shown, and the means by which the operating parameters will be determined;

- v. The test method(s) which will be used, with the specific analysis method, if the method can be used with different analysis methods. The specific sampling, analytical and quality control procedures which will be used, with an identification of the standard methods upon which they are based;
  - vi. Any minor changes in standard methodology proposed to accommodate the specific circumstances of testing, with justifications;
  - vii. Any proposed use of an alternative test method, with detailed justification; and
  - viii. The format and content of the Source Test Report.
- d. The Permittee shall provide the Illinois EPA with written notification of testing at least thirty (30) days prior to testing to enable the Illinois EPA to have an observer present. This notification shall include the name and location of emission points to be tested, scheduled date and time, and contact person with telephone number.
- e. If testing is delayed, the Permittee shall promptly notify the Illinois EPA by facsimile, at least 5 days prior to the scheduled date of testing or immediately, if the delay occurs in the 5 days prior to the scheduled date. This notification shall also include the new date and time for testing, if set, or a separate notification shall be sent with this information when it is set.
- f. The Permittee shall submit the Final Source Test Report(s) for these tests accompanied by a cover letter stating whether or not compliance was shown, to the Illinois EPA without delay, within 30 days after the test results are compiled, but no later than 60 days after the final date of sampling. The Final Source Test Report shall include at a minimum:
- i. General information describing the test, including the name, location, and identification of the emission source which was tested, date of testing, name of testing service and names of personnel performing the tests, and Illinois EPA/USEPA observers, if any;
  - ii. A summary of results;
  - iii. Detailed description of test procedures and method(s), including description and map of emission units and of sampling points, sampling train, testing and analysis equipment, and test schedule;
  - iv. Detailed description of test conditions, including:

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- A. List and description of the equipment (including serial numbers or other equipment specific identifiers) tested and process information (i.e., mode(s) of operation, process rate, fuel or raw material consumption rate, and heat content of the fuels);
  - B. Control equipment information (i.e., equipment condition and operating parameters) during testing; and
  - C. A discussion of any preparatory actions taken (i.e., inspections, maintenance and repair).
- v. Data and calculations, including copies of all raw data sheets and records of laboratory analyses, sample calculations, and data on equipment calibration. Identification of the applicable regulatory standards and permit conditions that the testing was performed to demonstrate compliance with, a comparison of the test results to the applicable regulatory standards and permit conditions, and a statement whether the test(s) demonstrated compliance with the applicable standards and permit conditions;
  - vi. An explanation of any discrepancies among individual tests, failed tests or anomalous data.
  - vii. The results and discussion of all quality control evaluation data, including a copy of all quality control data; and
  - viii. The applicable operating parameters of the pollution control device(s) during testing (temperature, pressure drop, scrubbing flow rate, etc.), if any, during testing.
- g. Satisfactory completion of this test so as to demonstrate compliance with applicable emission standards is a prerequisite to issuance of a revised operating permit, pursuant to 35 Ill. Adm. Code 201.160.
- 9a. The Permittee shall, in accordance with the manufacturer(s) and/or vendor(s) recommendations, perform periodic inspections and maintenance on the equipment covered under this permit such that the equipment is kept in proper working condition and not cause a violation of the Environmental Protection Act or regulations promulgated therein.
  - b. Pollution control devices shall be in operation at all times when the associated emission unit(s) is in operation and emitting air contaminants.
- 10. a. The Permittee shall install, operate, and maintain a bag leak detection system ("BLDS") for the outlet of the baghouse in each control system. The BLDS should be designed and operated as referenced in 40 CFR 63.11468(c)(1).
  - b. The Permittee shall develop and maintain onsite a monitoring plan as referenced in 40 CFR 63.11468(c)(2). The Permittee shall take

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corrective actions for the baghouses as referenced in 40 CFR 63.11468(c)(3). The Permittee shall also keep all records as referenced in 40 CFR 63.11470(a)(2), including records related to the operation of the BLDS and the operation of the baghouses relative to the BLDS.

- c. The baghouse and the HEPA filter in each control system shall be equipped and operated with continuous operational monitoring for the pressure drop across the device, which both measure this information and record this information at least every 15 minutes.
  - d. The motors powering fans in each control system shall be equipped and operated with continuous operational monitoring for each variable speed motor and instrumentation for each fixed speed motor for the amperage of the motors. If the information from this instrumentation is not continuously monitored, as provided above, measured data shall be recorded at least twice during each heat, at least once during charging and once during tapping.
11. The Permittee shall maintain the following records during the operation of the rotary furnaces and associated baghouses and HEPA filters under the authority of this Construction Permit:
- a. A file containing the following information for the baghouses and HEPA filters in each control system, with supporting documentation:
    - i. The design capacity (scfm) and performance of the device (outlet PM concentration, in gr/dscf or mg/dscm), as specified by the manufacturer;
    - ii. The operating procedures for each device recommended by the manufacturer, including recommended range of pressure drop, maximum operating temperature, and, for the baghouses, practices for cleaning of bags; and
    - iii. The maintenance and inspection procedures recommended by the manufacturer.
  - b. An operating log or other records for each rotary furnace that at a minimum, contains the following for each batch of material or heat processed in a furnace:
    - i. Amount of raw material charged (tons) and description of raw materials processed, i.e., (Estimated percentage of different components, in the raw materials, e.g., vehicle radiators, water meters, manufacturing byproducts and miscellaneous scrap).
    - ii. Start time and duration of the heat (hours);

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- iii. Final batch size (tons), product type or grade, and lead content (percent by weight); and
  - iv. Average charge rate per batch based on amount charged divided by batch time (Tons/hr).
- c. Records of the following information for the rotary furnaces:
- i. Total metal production (tons/month and tons/year); and
  - ii. Total natural gas usage (scf/month and scf/year);
- d. An operating log or other records for each control system that, at a minimum, includes the following information for each heat in a rotary furnace:
- i. Information confirming that the capture system operated properly, including proper settings for dampers in the ductwork during different phases of the heat;
  - ii. Information confirming that the baghouse operated properly; and
  - iii. Information confirming that the HEPA filter operated properly.
- e. An inspection and maintenance log or other records for each control system, that, at a minimum, include:
- i. Inspection data:
    - A. Date and time of inspection;
    - B. Identification of personnel that performed each inspection;
    - C. Observed condition of control equipment; and
    - D. Recommendations based on inspection;
  - ii. Maintenance and repairs records, including replacement of filters:
    - A. Dates maintenance and repairs were initiated and completed;
    - B. Identification of personnel that performed each maintenance and repairs;
    - C. Reason for maintenance or repair, e.g., regularly scheduled preventive maintenance or activity to respond to observed defect; and

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- D. Description of the maintenance and repairs.
- f. A log or other records for malfunction and breakdown for the rotary furnaces and associated control equipment. At a minimum, these records shall include:
  - i. Date and duration of malfunction or breakdown;
  - ii. A full and detailed description of the malfunction or breakdown, with likely cause of the malfunction or breakdown;
  - iii. The effect of the malfunction or breakdown on emissions and, if applicable emission limits may have been exceeded, an estimate of the quantity of additional emissions, with supporting analysis;
  - iv. The measures used to reduce the quantity of emissions and the duration of the malfunction or breakdown; and
  - v. The steps taken to prevent similar malfunctions or breakdowns or reduce their frequency and severity.
- g. Records related to emissions of the rotary furnaces that contain the following information:
  - i. A file for each rotary furnace that contains the allowable emission rate of 35 Ill. Adm. Code 212.321 for each batch based on the average charge rate determined in condition 11(b)(iv), with supporting documentation.
  - ii. A file that contains calculations for the maximum emissions of PM, and lead from the rotary furnaces, in pounds/hour, when operating at their maximum rates, with supporting documentation, which shall be updated as necessary to kept accurate and true; and
  - iii. Records of emissions of PM, NOx, CO, and lead (tons/month and tons/year), with supporting calculations.
- 12. All records and logs required by this permit shall be retained at a readily accessible location at the source for at least three years from the date of entry and shall be made available for inspection and copying by the Illinois EPA upon request. Any records retained in an electronic format (e.g., computer) shall be capable of being retrieved and printed on paper during normal source office hours so as to be able to respond to an Illinois EPA request for records during the course of a source inspection.
- 13a. If a malfunction or breakdown of the rotary furnaces or associated control system occurs, the Permittee shall notify the Illinois EPA's

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Air Compliance Section and Regional Office in writing by electronic mail or facsimile by 10:00 a.m. of the next business day. This notification shall include the date and duration of the incident and a brief description of the incident and need not include a copy of the detailed records required by Condition 11(f).

Illinois Environmental Protection Agency  
Division of Air Pollution Control  
9511 West Harrison  
Des Plaines, Illinois 60016  
Facsimile No. 847/294-4018  
Email: Emilio.salis@illinois.gov

- b. If there is an exceedance of or deviation from the requirements of this permit, the Permittee shall submit a report to the Illinois EPA's Compliance Section in Springfield, Illinois within 30 days after the exceedance/deviation. The report shall include any emissions released as a result of the deviation, a copy of relevant records, a description of the exceedance or deviation, the causes and efforts to reduce emissions, deviations and future occurrences.
14. One (1) copy of required reports and notifications shall be sent to:

Illinois Environmental Protection Agency  
Division of Air Pollution Control  
Compliance Section (#40)  
P.O. Box 19276  
Springfield, Illinois 62794-9276

one (1) copy shall be sent to the Illinois EPA's regional office at the following address unless otherwise indicated:

Illinois Environmental Protection Agency  
Division of Air Pollution Control  
Field Operation Section  
9511 West Harrison  
Des Plaines, Illinois 60016

and one (1) copy shall be sent to the Illinois EPA's Source Monitoring Unit at the following address unless otherwise indicated:

Illinois Environmental Protection Agency  
Division of Air Pollution Control  
Source Monitoring Unit  
9511 West Harrison  
Des Plaines, Illinois 60016

In addition to a hard copy submitted according to this condition, the notifications required by Condition 8, above, shall be submitted via electronic mail to Ray.Pilapil@Illinois.gov and Kevin.Mattison@Illinois.gov.

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The source shall apply for a revised operating permit after the construction and testing are successfully completed in accordance with the construction permit. This information must be submitted in triplicate and should reference the application and I.D. numbers assigned above.

If you have any questions on this permit, please contact Charlie Zeal at 217/785-1705.

**COPY**

Original Signed by  
Edwin C. Bakowski, P.E.

*ECBA*

Date Signed: 01-31-2012

Edwin C. Bakowski, P.E.  
Manager, Permit Section  
Division of Air Pollution Control

ECB:CAZ:jws

cc: *RE*  
Region 1  
Ray Pilapil, Compliance Section  
Chris Pressnall, DLC

# **APPENDIX C**



Appendix C

**DIESEL RETROFIT SUPPLEMENTAL ENVIRONMENTAL PROJECT**

- A. The Diesel Retrofit Supplemental Environmental Project ("Diesel Retrofit SEP") is designed to reduce emissions of particulate matter and/or ozone precursors in diesel vehicle exhaust from school bus diesel vehicles in the Pilsen neighborhood and surrounding areas of Chicago, Illinois.
- B. H. Kramer shall retrofit at least eleven school bus diesel vehicles operating in the Pilsen neighborhood of Chicago, Illinois, unless the cost of the retrofits exceeds \$40,800, in which case, H. Kramer shall only be obligated to spend the maximum of \$40,800 in connection with the Diesel Retrofit SEP. The vehicles covered by the Diesel Retrofit SEP will be operated by Illinois Central School Bus or a similar diesel school bus operator ("Bus Operator"). H. Kramer may utilize contractors or consultants to assist in the implementation of the Diesel Retrofit SEP. H. Kramer anticipates that the contractor that will be utilized to do the work will be Inland Power. Eligible costs counting toward \$40,800 shall be limited to the costs of purchasing and installing emissions control equipment.
- C. In order to provide the greatest long term benefits under this program, the Diesel Retrofit SEP shall give preference for converting buses which are operated in the Pilsen neighborhood. The conversion shall be performed on buses expected to remain in regular service for at least three (3) years following the conversion.
- D. The Diesel Retrofit SEP shall involve the purchase and installation of EPA or California Air Resources Board ("CARB") verified emissions control technologies, including either diesel particulate filters or idle reduction technology, such as direct fired heaters.
- E. In addition to the information specified in Paragraph 42 of the Consent Decree, H. Kramer shall provide in the SEP Completion Report the information specified in Exhibit 1 to this Appendix C. H. Kramer shall also provide in the SEP Completion Report a copy of the invoice(s) for the installation of retrofit technology on the vehicles, indicating the cost of the clean diesel technology unit and the associated labor cost of installation. H. Kramer shall further submit Certificates of Installation for each retrofitted vehicle, as forth in Exhibit 2 to this Appendix C.
- F. H. Kramer shall complete the Diesel Retrofit SEP no later than two hundred seventy (270) Days after the Effective Date of the Consent Decree. For purposes of Paragraph 46 of the Consent Decree, the Diesel Retrofit SEP will be deemed to be complete if EPA or

CARB verified emissions control equipment has been installed on the buses selected for retrofit in accordance with this Appendix C.

# **EXHIBIT 1**

Vehicle Information Spreadsheet  
Exhibit 1 to Appendix C

Fleet Name:

Contact Name:

Vehicle Information: (List the vehicles/equipment involved in this Diesel Retrofit Supplemental Environmental Project)

Make	Model	Model Year	VIN #	Vehicle Class	Engine Type	Engine Horse Power	Clean Diesel Option	Fuel Type	Estimated gallons consumed annually	Estimated Annual Miles	Estimated # Idling hrs./day	Average # days per year vehicle is in use	Anticipated Remaining Years of Service

Fuel Type Key:  
D = Diesel  
B = Biodiesel (i.e. B5, B11, B20)

Clean Diesel Option Key:  
DOC = Diesel Oxidation Catalyst  
DPF = Diesel Particulate Filter  
CCV = Closed Crankcase Ventilation  
REP = Engine Repower  
DFH = Direct Fired Heater  
APU = Auxiliary Power Unit  
HYB = Diesel Hybrid Vehicle

## **EXHIBIT 2**

## CERTIFICATION OF INSTALLATION

### Exhibit 2 to Appendix C

**Equipment Installation Firm:** \_\_\_\_\_

Contact Name and Telephone Number: \_\_\_\_\_

**Fleet / Vehicle Owner:** \_\_\_\_\_

Contact Name and Telephone Number: \_\_\_\_\_

**Vehicle Information:**

Vehicle Manufacturer: \_\_\_\_\_

Vehicle VIN Number: \_\_\_\_\_

Vehicle ID Number: \_\_\_\_\_

Vehicle Make, Model & Year \_\_\_\_\_

**Emission Reduction Equipment Information:**

Equipment Type: \_\_\_\_\_

Equipment Manufacturer: \_\_\_\_\_

Equipment Model: \_\_\_\_\_

<b>Equipment Type:</b>		
DOC: Diesel Oxidation Catalyst	CCV: Closed Crankcase Ventilation	DMF: Diesel Multi-Stage Filter
DPF: Diesel Particulate Filter	DFH: Direct-Fired Heater	APU: Auxiliary Power Unit

**We certify that we have installed the above-referenced emissions reduction equipment in accordance with the manufacturer's specifications and warranty requirements. We certify that the equipment installed is a "Verified Technology" by the USEPA or California Air Resources Board for the subject vehicle. We further certify that we have assessed the operation of such equipment, to the extent possible, and it is functioning as intended:**

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Work Order Number

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Invoice Number

\_\_\_\_\_  
Date