

IN THE CIRCUIT COURT FOR THE TWENTY-FIRST JUDICIAL CIRCUIT  
KANKAKEE COUNTY, ILLINOIS

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

Plaintiff, )

v. )

VULCAN CONSTRUCTION MATERIALS, )  
LP, a Delaware Limited Partnership, )

Defendant. )

No. DB L 169

FILED  
DEC 27 2005  
Kathryn Thomas  
CIRCUIT COURT CLERK

**CONSENT ORDER**

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (Illinois EPA), and Defendant, Vulcan Construction Materials, LP, together with its officers, directors, agents and predecessors in interest (collectively "Vulcan"), have agreed to the making of this Consent Order and submit it to this Court for approval. The parties agree that the statement of facts contained herein represent a fair summary of the evidence and testimony which would be introduced by the parties if a trial were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Consent Order, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If this Court approves and enters this Consent Order, Defendant agrees to be

bound by the Consent Order and not to contest its validity in any subsequent proceeding to implement or enforce its terms. However, it is the intent of the parties to this Consent Order that it be a final judgment on the merits of this matter, subject to the provisions of Section VIII.F. (Release from Liability) and Section VIII.H. (Modification of Consent Order).

## **I. JURISDICTION**

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act (Act), 415 ILCS 5/1 et seq. (2004).

## **II. AUTHORIZATION**

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

## **III. STATEMENT OF FACTS**

### **A. Parties**

1. On December 27, 2006, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2004), against the Defendant.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).

3. At all times relevant to the Complaint, Vulcan was authorized to transact business in the State of Illinois.

**B. Site Description**

1. At all times relevant to the Complaint, Vulcan owned and operated a lime plant located in Manteno, Kankakee County, Illinois ("facility or Manteno lime plant").

2. Vulcan ceased operation of the facility in May 2003.

**C. Allegations of Non-Compliance**

Plaintiff contends that the Defendant has violated the following provisions of the Act and Board regulations:

Count I: Violating Prevention of Significant Deterioration, in violation of Section 9(b) and 9.1(d) of the Act, 415 ILCS 5/9(b), 9.1(d) (2004), and Condition 2.b.i. of Construction Permit 96020014.

Count II: Constructing An Emission Source Without A PSD Construction Permit, in violation of Section 9(b) and 9.1(d) of the Act, 415 ILCS 5/9(b) and 9.1(d) (2004) and 35 Ill. Adm. Code 201.142.

Count III: Air Pollution, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a)(2004), and 35 Ill. Adm. Code 201.241.

Count IV: Failure to File Annual Emission Reports, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b)(2004), and 35 Ill. Adm. Code 201.302(a) and 254.202(a).

Count V: Operating A Major Source Without A CAAPP Permit, in violation of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2004).

**D. No Admission of Violations**

The Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested

litigation. By entering into this Consent Order and complying with its terms, the Defendant does not affirmatively admit the allegations of fact and/or law within the Complaint and referenced within Section III.C herein, and this Consent Order shall not be interpreted as including such admission.

#### **IV. APPLICABILITY**

A. This Consent Order shall apply to and be binding upon the Plaintiff and Vulcan as well as any successors or assigns of the Defendant. The Defendant shall not raise as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order.

B. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Defendant under this Consent Order. In the event of any conveyance of title, easement or other interest in the facility, the Defendant shall continue to be bound by and remain liable for performance of all obligations under this Consent Order. In appropriate circumstances, however, the Defendant and a proposed purchaser or operator of the facility may jointly request, and the Plaintiff, in its discretion, may consider modification of this Consent Order to obligate the proposed purchaser or operator to carry out future requirements of this Consent Order in place of, or in addition to, the Defendant.

C. In the event that the Defendant proposes to sell or transfer any real property or operations subject to this Consent Order prior to payment of the amounts due under Sections VIII.A. below, the Defendant shall notify the Plaintiff 30 days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Defendant shall make the prospective purchaser or successors compliance with this Consent Order a condition of any such sale or transfer and shall provide a copy of this Consent Order to any such successor in interest. This provision does not relieve the Defendant from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

#### **V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This Consent Order in no way affects the responsibilities of the Defendant to comply with any other federal, state or local laws or regulations, including but not limited to the Act, and the Board Regulations, 35 Ill. Adm. Code, Subtitles A through H.

#### **VI. VENUE**

The parties agree that the venue of any action commenced in the circuit court for the purposes of interpretation and enforcement of the terms and conditions of this Consent Order shall be in the Circuit Court of Kankakee County, Illinois.

#### **VII. SEVERABILITY**

It is the intent of the Plaintiff and Defendant that the provisions of this Consent Order shall be severable, and should any provision be declared by a court of competent jurisdiction to

be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

### **VIII. JUDGMENT ORDER**

This Court, having jurisdiction over the parties and subject matter, the parties having appeared, due notice having been given, the Court having considered the stipulated facts and being advised in the premises, this Court finds the following relief appropriate:

#### **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

##### **A. Payments**

1. The Defendant shall pay a civil penalty of One Million Dollars (\$1,000,000.00).

Payment shall be tendered at time of entry of the consent order as follows:

- a. A certified check or money order for Five Hundred Thousand Dollars (\$500,000.00) made payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to the Plaintiff in open court.
- b. A certified check or money order for Two Hundred and Fifty Thousand Dollars (\$250,000.00) made payable to the Illinois EPA for deposit into the Special State Projects Trust Fund for the purpose of funding future supplemental environmental projects and submitted to the Plaintiff in open court.
- c. A certified check or money order for Two Hundred and Fifty Thousand Dollars (\$250,000.00) made payable to the Illinois Attorney General State Projects and Court

Ordered Distribution Fund to be used at the discretion of the Illinois Attorney General's Office for the advancement of environmental enhancement projects and education activities in Illinois and submitted to the Plaintiff in open court.

2. The Defendant shall make a payment in the amount of Two Hundred and Fifty One Thousand and Three Dollars (\$251,003.00) for past due permit fees. This payment shall be tendered at time of entry of the Consent Order, and made by a certified check or money order made payable to CAAPP 091 Fund and submitted to the Plaintiff in open court.

3. The Defendant shall make a payment of Forty Nine Thousand One Hundred Dollars (\$49,100.00) made payable to the Iroquois-Kankakee Regional Office of Education for its use in retrofitting school buses to reduce emissions from its school buses.

4. The Defendant shall make a payment of Nine Hundred Dollars (\$900.00) made payable to Bradley School District No. 61 for the purchase and utilization of 20% biodiesel ("B20") fuel in its school buses, to reduce emissions from its school buses.

5. The name and number of the case and Defendant's Federal Employer Identification Number (FEIN) shall appear on the face of each certified check or money order.

**B. Future Compliance**

Defendant shall obtain all necessary permits and satisfy all applicable statutory and regulatory requirements prior to any construction activity, including restarting, and prior to any operation of the Manteno lime plant. Defendant shall not resume any operation(s) at the Manteno lime plant for which a construction or operating permit issued by the Illinois EPA Bureau of Air are required without first applying for and obtaining any and all such necessary permits from the Illinois EPA.

Defendant understands that Illinois law requires that for the Illinois EPA Bureau of Air to consider and issue any construction or operating permit for the Manteno Lime plant, any application must be complete and accurate and fully address the requirements under PSD as well as any other applicable laws and regulations.

**C. Supplemental Environmental Project**

1. As part of its settlement of this matter, within fourteen (14) days of the entry of this Order, Defendant Vulcan shall contribute the sum of \$49,100.00 to the Iroquois-Kankakee Regional Office of Education ("I-K ROE") for distribution by I-K ROE to school districts located within the Illinois counties of Kankakee and Iroquois, for use by such school districts for retrofitting school buses with particulate filters or oxidation catalysts to reduce emissions from existing school buses owned and operated by such school district(s).

2. Defendant Vulcan shall submit a check for \$49,100.00 payable to Iroquois-Kankakee Regional Office of Education, within fourteen (14) days of entry of this Consent Order. The check shall be sent to:

Iroquois-Kankakee Regional Office of Education  
189 East Court Street, Suite 600  
Kankakee, Illinois 60901  
Attn: Dr. Kay Pangle

3. As part of its settlement of this matter, within fourteen (14) days of the entry of this Order, Defendant Vulcan shall contribute the sum of \$900.00 to Bradley School District No. 61 for the purchase and utilization of B20 fuel in its school buses, to reduce emissions from school buses owned and operated by such school district.



4 Defendant Vulcan shall submit a check for \$900.00 payable to Bradley School District No. 61, within fourteen (14) days of entry of this Consent Order. The check shall be sent to:

Bradley School District No. 61  
111 N. Crosswell Street  
Bradley, Illinois 60915  
Attn: Larry Macari

5. Defendant shall send a copy of the checks and any accompanying cover letters to Plaintiff pursuant to Section VIII.D. (Correspondence, Reports and Other Documents) below. Defendant's obligations under this Section VIII.C. shall be to submit the \$49,100.00 and \$900.00 checks as provided in subsections C.2. and C.4. above, and to follow up with the Kankakee County Regional School Superintendent and also the Director of Finance for Bradley School District No. 61, to meet its obligation under subsection C.6. below.

6. Defendant will use its best efforts to ensure that the money contributed to I-K ROE and to Bradley School District No. 61 is spent for the designated purposes within 2 years after entry of this Consent Order. For the purposes of this subsection C.6., best efforts shall mean Defendant's issuance of written instructions to I-K ROE and to Bradley School District No. 61 that the money contributed is to be used for the purposes identified in subsections C.1. and C.3. above, and Defendant requesting semi-annual or annual accounting from I-K ROE and Bradley School District No. 61 of the expenditures, until the projects are completed.

7. By signature on this Consent Order, Defendant Vulcan certifies that, as of the date of filing of this Consent Order, it is not required to perform or develop the foregoing Supplemental Environmental Project (SEP) by any federal, state or local law or regulation, nor is it required to perform or develop the SEP by agreement or injunctive relief in any other case.

Defendant further certifies that it had not received, and is not presently negotiating to receive credit for the SEPs in any other enforcement action.

8. Any public statement, oral or written, in print, film or other media, made by Defendant making reference to any SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Illinois Attorney General and the Illinois EPA for alleged violations of the Illinois Environmental Protection Act and regulations promulgated thereunder."

**D. Correspondence, Reports and Other Documents**

Any and all correspondence, except for payments pursuant to Sections VIII.A (Payments) of this Consent Order shall be submitted as follows:

Zemeheret Bereket-Ab or Designee  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

Crystal Myers-Wilkins  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

**E. Right of Entry**

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Defendant's facility which is the subject of this Stipulation, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its

employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

**F. Cease and Desist**

The Defendant shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C (Allegations of Non-Compliance) of this Stipulation.

**G. Release from Liability**

In consideration of the Defendant's compliance with Section VIII.B. and C. above and payment of the \$1,000,000.00 penalty, past due permit fees in the amount of \$251,003.00, additional payments of \$49,100.00 and \$900.00 as described in Section VIII.A.3. and 4. above, the Plaintiff releases, waives and discharges Vulcan from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Plaintiff's Complaint filed on December 27, 2006. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against the Defendant with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations;
- d. liability or claims based on the Defendant's failure to satisfy the requirements of this Consent Order; and

e. any and all claims, causes of action, charges, complaints, demands, obligations, liabilities, costs, damages (including punitive damages), injuries, rights, attorneys' fees, expenses, penalties, fines, and prayers for relief which have been raised or sought or which may in the future be raised or sought in the pending action titled, The People of the State of Illinois and Illinois Department of Transportation v. Vulcan Materials Company, 01 CH 15986 in the Circuit Court of Cook County, Illinois.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), or entity other than Vulcan.

**H. Retention of Jurisdiction**

This Court shall retain jurisdiction of this matter for the purposes of interpreting and enforcing the terms and conditions of this Consent Order.

**I. Modification of Consent Order**

The parties may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of court. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.C. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing, signed by authorized representatives of each party, filed with the court and incorporated into this Consent Order by reference.

**J. Enforcement of Consent Order**

1. Upon the entry of this Consent Order, any party hereto, upon motion, may reinstate these proceedings for the purpose of enforcing the terms and conditions of this Consent Order. This Consent Order is a binding and enforceable order of this Court and may be enforced as such through any and all available means.

2. Defendant agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

**K. Execution of Document**

This Order shall become effective only when executed by all parties and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument.

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

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AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS,  
ex rel. LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:

ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: \_\_\_\_\_

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY:

ROBERT A. MESSINA  
Chief Legal Counsel

DATE: \_\_\_\_\_

VULCAN CONSTRUCTION MATERIALS, LP,  
a Delaware Limited Partnership,

BY:

William J. Benson

Title: Sr. Vice President,  
General Counsel + Secretary

DATE: December 14, 2006

ENTERED:

\_\_\_\_\_  
JUDGE

DATE: \_\_\_\_\_

G:\Environmental Enforcement\Z BEREKET-AB\Vulcan ConOrd 12-7-06.doc

AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS,  
ex rel. LISA MADIGAN  
Attorney General  
State of Illinois

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

BY: Rose Marie Cazeau/rab  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 12/26/06

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY: Robert A. Messina  
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 12/21/06

VULCAN CONSTRUCTION MATERIALS, LP,  
a Delaware Limited Partnership,

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

DATE: \_\_\_\_\_

ENTERED:  
[Signature]  
JUDGE

DATE: \_\_\_\_\_