

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_\_

DOUGLAS COUNTY

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STATE OF WISCONSIN  
17 West Main Street  
Post Office Box 7857  
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 12-CX-\_\_\_\_\_  
Complex Forfeiture: 30109

GRAYMONT (WI), LLC,  
a domestic limited liability company  
800 Hill Avenue  
Superior, Wisconsin 54880,

Defendant.

THE AMOUNT CLAIMED IS  
GREATER THAN THE  
AMOUNT CLAIMED UNDER  
WIS. STAT. § 799.01(1)(d).

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COMPLAINT

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The State of Wisconsin by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorneys General Cynthia R. Hirsch and Bradley Motl, brings this complaint against the above-named defendant at the request of the Wisconsin Department of Natural Resources (DNR) pursuant to Wis. Stat. ch. 285, which protects the public from air pollution. The DNR administers regulations and issues permits authorized by these statutes.

1. The plaintiff is a sovereign state of the United States of America with its principal offices at the State Capitol in Madison, Dane County, Wisconsin.

2. The defendant is registered as an LLC in Wisconsin and operates at its facility located at 800 Hill Avenue, Superior, Wisconsin.

3. The defendant operates a facility in Superior, Wisconsin on the Lake Superior waterfront to which limestone is transported to the Lake Superior dock (the "Superior Facility"). At the defendant's facility the limestone is calcined to produce finished products including but not limited to high calcium quicklime, high calcium hydrated lime, dolomitic quicklime, and precipitated calcium carbonate quicklime which are shipped out by truck and rail.

4. Prior to November 30, 2007, the physical assets known as the Superior Facility were owned by CLM Corporation. CLM Corporation was wholly-owned by Cutler-Magner Company. On November 30, 2007, Graymont Western US Inc. purchased substantially all of the equity of Cutler-Magner Company and became the controlling owner of that entity. Cutler-Magner Company continued to own its wholly-owned subsidiary, CLM Corporation, the sole owner of the Superior Facility. By virtue of Graymont Western US Inc. acquiring all of the equity of Cutler-Magner Company on November 30, 2007, Graymont Western US Inc. acquired the company which directly owns and controls the Superior Facility. Ultimately, the name of CLM Corporation was changed to Graymont (WI) Inc., which was later changed to Graymont (WI) LLC.

5. The Superior Facility has been subject to the following enforcement activities by the DNR: notice of violation dated April 9, 2007; enforcement conference on October 26, 2007; letter of non-compliance dated December 4, 2007; notice of violation August 22, 2008; notice of violation July 28, 2009; notice of violation September 17, 2009; enforcement conference on September 29, 2009; and notice of violation October 5, 2009.

6. The enforcement actions alleged violations of conditions in the following permits:

a. Facility-wide Title V Operation Permit 816036430-P01 issued August 26, 2004: conditions I.A.1.b.(1)(b); I.A.2.a.(2); I.B.2.a.(2); I.C.1.a.(1); I.C.2.a.(2); I.G.2.a.(1); I.I.6.a.(1); I.J.3.b.(1); and I.J.4.a.(1);

b. Construction Permit 07-DCF-145 for modification of kiln 5 and to material handling operations issued December 4, 2007: conditions I.N.1.a.(2)(a); I.N.1.a.(2)(b); I.N.4.a.(2) and I.N.5.a.(2);

c. Facility-wide Operation Permit Revision Permit 816036430-P02 issued February 15, 2008: conditions I.A.1.a.(1)(b); I.C.1.a.(1)(a); I.C.3.a.(1); I.C.3.a.(2); I.D.1.a.(1)(b); and I.D.3.a.(1)(a).

7. Wisconsin Admin. Code § NR 439.09(10) requires the owner or operator of a continuous emissions monitoring system to submit quarterly excess emission reports to the DNR within 30 days following the end of each calendar quarter. Wisconsin Admin. Code § NR 439.03(1)(b) requires the responsible official for a source that has received an operation permit to submit the results of monitoring required by the permit no less often

than every six months, or more frequently if required by the DNR. Wisconsin Admin. Code § NR 439.03(1)(c) requires the responsible official for a source that has received an operation permit to annually, or more frequently if required by the DNR, certify to the source's compliance status with the operation permit. Wisconsin Admin. Code § NR 460.09(5)(c) requires a source subject to federal hazardous air pollutant standards to submit excess emissions reports semi-annually.

8. In accordance with Wis. Stat. § 285.87(1), any person who violates any permit issued under Wis. Stat. ch. 285 or administrative rule promulgated under Wis. Stat. ch. 285 shall forfeit not less than \$10 or more than \$25,000 for each daily violation. The permits and administrative rules listed in paragraphs 6, 7, and 13 were issued and promulgated under Wis. Stat. ch. 285.

#### VIOLATION ONE

9. The permit conditions I.I.6.a.(1) and I.J.4.a.(1) of defendant's operation permit prohibits fugitive emissions from exceeding 0% opacity.

10. The defendant reported that its facility processes named P85, P41, P42, P43, P45, P86B, and P84 exceeded 0% opacity fugitive emissions as measured by Method 22 testing in violation of the permit conditions referenced in paragraph 9 thereafter for the processes combined.

11. The permit condition I.J.3.b.(1) of defendant's operation permit requires opacity readings once every six months.

12. The defendant missed five visible emissions tests in the Fall of 2004, Spring of 2005, Fall of 2005, Spring of 2006, and Fall of 2006 for the process P79 emitting through stack S29 resulting in five violations of the permit conditions described in paragraph 9.

#### VIOLATION TWO

13. Wisconsin Admin. Code § NR 438.03(1), promulgated under Wis. Stat. ch. 285, requires emission inventory reports and reporting of hydrogen chloride (HCL) and carbon dioxide (CO<sub>2</sub>) if emissions are above reporting levels by March 1 following the end of the calendar year. HCL is required to be reported when emissions are greater than or equal to 1,777 pounds per year. CO<sub>2</sub> emissions are to be reported when emissions are greater than or equal to 100,000 tons per year.

14. The defendant failed to report HCL and CO<sub>2</sub> emissions by March 1, 2005, for emissions in 2004 and by March 1, 2006, for emissions in 2005. Both the March 1, 2005, report and the March 1, 2006, report were ultimately received by the DNR on May 8, 2007. The defendant's failure to report the HCL and CO<sub>2</sub> emissions within the required time constitutes two violations of Wis. Admin. Code § NR 438.03(1).

#### VIOLATION THREE

15. Condition I.A.1.b.(1)(b) of defendant's operation permit required the defendant to operate process P31 with the feed no more than 14 tons per hour (kiln 1).

16. The defendant submitted the production data from the November 8, 2006, stack test which documented the feed rate of P31 in excess of 14 tons for kiln 1.

17. The defendant operated in 2005 with an average of 15.3-16.1 tons of limestone per hour. The defendant operated in 2006 for approximately 274 days with an average of 15.2-16 tons of limestone per hour. The defendant operated in 2007 with an average of 14.8-15.6 tons of limestone per hour.

18. The defendant operated for approximately 652 days in violation of the permit condition described in paragraph 15.

#### VIOLATION FOUR

19. Permit conditions I.A.2.a.(2), I.B.2.a.(2), I.C.2.a.(2), and I.G.2.a.(1) of the defendant's operation permit states that sulfur dioxide (SO<sub>2</sub>) from kilns 1, 2, and 3 and the fuel oil heater may not exceed 103.14 tons of SO<sub>2</sub> per month when averaged over three months.

20. The defendant's quarterly report from May through July 2007 documents that the three month average sulfur dioxide emissions from kilns 1, 2, and 3 and P39 were 106 tons for the time period between May and July of 2007. This exceeded the permit limit of 103.14 tons per month and constituted approximately 92 violations of the permit conditions described in paragraph 19.

#### VIOLATION FIVE

21. Condition I.N.4.a.(2) of the defendant's permits impose an emission limit of 1.83 pounds nitrogen oxide (NO<sub>x</sub>) per ton stone feed as a 24 hour rolling average, 0.7 lbs/MMBTU on a monthly average, and not more than 98.8 pounds per hour as a 3 hour average (kiln 5).

22. The 2008, 2009, and 2010 quarterly excess emission reports submitted by the defendant indicate that on approximately 43 occasions the NOx/tsf exceeded 1.83 pounds per 24 hour average; and on approximately 53 occasions the pounds per hour exceeded 98.8 pounds per 3 hour average. On approximately 4 occasions the monthly average exceeded 0.7 pounds. These exceedances result in approximately 100 daily incidents in which the defendant violated the permit conditions described in paragraph 21.

#### VIOLATION SIX

23. Permit condition I.N.5.a.(2) of the defendant's permit sets forth an emission limit of 1.56 pounds carbon monoxide per ton stone feed as a 24 hour average and not more than 84.2 pounds per hour as a 3 hour average (kiln 5).

24. Between the first quarter of 2008 and the fourth quarter of 2010, the defendant reports there were approximately 112 exceedances of the 24 hour average limit and approximately 571 exceedances of the 3 hour average limit with respect to the defendant's emissions, constituting approximately 682 instances in which the defendant operated in violation of the permit conditions described in paragraph 23.

#### VIOLATION SEVEN

25. Permit condition I.D.3.a.(1)(a) of defendant's operation permit limits emissions of NOx to 1.55 pounds per ton of limestone feed (kiln 4).

26. The defendant's November 18, 2008, stack test resulted in 1.66 pounds of NOx which exceeded the emission limit in violation of the permit conditions described in paragraph 25.

#### VIOLATION EIGHT

27. Permit condition I.A.1.a.(1)(b) of defendant's operation permit sets forth an emission limit of 0.12 pounds per ton stone feed for an existing lime kiln (kiln 1).

28. On June 24, 2009, a stack test for kiln 1 at defendant's facility showed emissions of 0.2495 pounds per ton stone feed which exceeded the particulate matter permit limitation. Facility records indicate that the electrostatic precipitator control device had been operating ineffectively for approximately 21 days, resulting in 21 daily violations of the permit conditions described in paragraph 27.

#### VIOLATION NINE

29. Permit condition I.C.1.a.(1) of the defendant's operation permit requires emissions from process P33 at kiln 3 may not exceed the allowable rate of 4.0 pounds particulate matter (PM) per hour.

30. On November 9, 2006, a stack test at defendant's facility showed emissions of 5.095 pounds per hour which exceeded the permit limit and violated the permit conditions set forth in paragraph 29.

31. A July 28, 2009, and an October 27, 2009, stack test for kiln 3 at defendant's facility showed emissions of 7.82 pounds per hour and 8.51 pounds per hour respectively in excess of the conditions set forth in the permit as described in paragraph 29.

#### VIOLATION TEN

32. Permit condition I.D.1.a.(1)(b) of defendant's operation permit states that PM emissions from the kiln 4 stack may not exceed 4.8 pounds of PM per hour.

33. On November 18, 2008, at the defendant's facility a stack test showed 4.92 pounds of PM per hour in excess of the permit limit as described in paragraph 32.

#### VIOLATION ELEVEN

34. Permit condition I.N.1.a.(2) of defendant's permit 07-DCF-145 sets forth an emission limit of 0.10 pounds of PM per stone feed as a 3 hour average, and no more than 5.4 pounds per hour as a 3 hour average, with respect to kiln 5.

35. On three occasions from January through April of 2008 test results showed that the defendant's facility showed emissions in excess of the PM emissions limits for kiln 5, in violation of the permit conditions described in paragraph 34.

#### VIOLATION TWELVE

36. Permit condition I.C.3.a.(1) of the defendant's operation permit and condition I.C.3.a.(2) of defendant's operation permit limit visible emissions to

20% opacity based on state visible emission limitations and 15% opacity based on the federal hazardous air standard.

37. The defendant submitted quarterly excess emission reports summarizing the amount of operating time that the opacity from kiln 3 exceeded the limit. Quarterly excess emissions for kiln 3 from 2006 through 2012 show that defendant was in violation of the permit conditions described in paragraph 36 (kiln 3) for at least 233 days.

#### PENALTIES

Wisconsin Stat. § 285.87(1) states that any person who violates this chapter or any rule promulgated under this chapter or any permit issued under this chapter shall forfeit not less than \$10 nor more than \$25,000 for each violation. Each day of continued violation is a separate offense.

WHEREFORE, plaintiff asks the Court to enter judgment as follows:

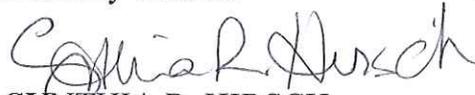
1. Forfeitures as provided in Wis. Stat. § 285.87(1);
2. The 26% penalty surcharge pursuant to Wis. Stat. § 814.75(18), the 10% environmental surcharge pursuant to Wis. Stat. § 814.75(12), the 1% jail surcharge pursuant to Wis. Stat. § 814.75(14), \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1), the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68.00 court support services surcharge under Wis. Stat. § 814.75(2), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15); and

3. Any other relief the Court deems just and appropriate.

Dated this 5th day of October 2012.

J.B. VAN HOLLEN

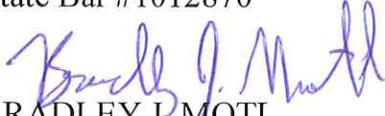
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