



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2019

REPLY TO THE ATTENTION OF

VIA E-MAIL

Chris Imbrogno
Environmental Director
Carmeuse North America

E-mail: Chris.Imbrogno@carmeusena.com

Dear Mr. Imbrogno:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Carmeuse Lime & Stone, docket no. CAA-05-2019-0034. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

September 30, 2019.

Pursuant to paragraph 50 of the CAFO, Carmeuse Lime & Stone (Carmeuse) must pay the civil penalty within 30 days of the filing date. Your check or electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Kathleen Schnieders, Associate Regional Counsel, at 312-353-8912 or Schnieders.Kathleen@epa.gov.

Sincerely,

Natalie M. Thi

for Nathan Frank, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer via electronic mail
Regional Hearing Clerk via electronic mail
Kathleen Schnieders via electronic mail
Scott Dismukes via electronic mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Carmeuse Lime & Stone
Gary, Indiana

Respondent.



Docket No. CAA-05-2019-0034

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air Act,
42 U.S.C. § 7413(d)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Carmeuse Lime & Stone (Carmeuse) a corporation doing business in Indiana.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. EPA is concurrently issuing an Administrative Consent Order (ACO) with this CAFO which contains Findings which are identical to the Factual Allocations and Alleged Violations contained in this CAFO.

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO in any action to enforce this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

10. The Prevention of Significant Deterioration (PSD) provisions of Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, and their implementing regulations at 40 C.F.R. § 52.21 (collectively “the PSD program”), establish specific pre-construction requirements applicable to the construction and modification of “major emitting facilities” located in areas designated as either attainment or unclassifiable for purposes of meeting the National Ambient Air Quality Standards.

11. The PSD program prohibits, among other things, a “major emitting facility” from constructing a “major modification” unless it has obtained a PSD permit that applies “Best Available Control Technology” (BACT) to control emissions from the proposed modified emissions unit, and conducts an analysis to determine the air quality impacts of the modification. Sections 165(a) and 169(2)(C) of the Act, 42 U.S.C. §§ 7475(a) and 7479(2)(C), and 40 C.F.R. § 52.21(i).

12. Pursuant to Section 169 of the Act, 42 U.S.C. § 7479(1), a “major emitting facility” is defined to include any lime plant which emits, or has the potential to emit, 100 tons per year or more of any regulated PSD pollutant.

13. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a State Implementation Plan (SIP) containing regulations implementing the PSD program.

14. A state may comply with Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, by having its own PSD regulations approved by EPA as part of its SIP, provided that the state PSD regulations are at least as stringent as those set forth at 40 C.F.R. § 51.166.

15. Pursuant to 40 C.F.R. § 52.21(a), if a state does not have PSD regulations that EPA has approved and incorporated into its SIP, EPA may incorporate the federal PSD regulations set forth at 40 C.F.R. § 52.21 into the SIP.

16. Pursuant to 40 C.F.R. § 52.23, any person failing to comply with an approved regulatory provision of a SIP is subject to an enforcement action under Section 113 of the Act, 42 U.S.C. § 7413.

17. On August 7, 1980, EPA disapproved Indiana’s proposed PSD program, and incorporated by reference the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the Indiana SIP. 45 Fed. Reg. 52676, 52741. On September 30, 1980, EPA delegated to the Indiana Department of Environmental Management (IDEM) certain authorities of the federal PSD program. 46 Fed. Reg. 9580, 9583. On March 3, 2003, EPA conditionally approved Indiana’s PSD regulations at 326 Indiana Administrative Code (IAC) 2-2. 68 Fed. Reg. 9892 (effective April 2, 2003). On May 20, 2004, EPA provided final approval of 326 IAC Rule 2-2 into the

Indiana SIP. 69 Fed. Reg. 29071 (effective July 19, 2004). On June 18, 2007, EPA partially approved revisions to 326 IAC 2-2 related to EPA's New Source Review (NSR) Reform regulations. 72 Fed. Reg. 33395 (effective July 18, 2007).

18. At all times relevant to these alleged violations, the PSD regulations included as part of Indiana's federally approved SIP were applicable and federally enforceable.

19. 326 IAC 2-1.1-3(a) of the Indiana SIP prohibits any person from commencing construction or modification of any air pollution source without first applying for and obtaining a construction permit from the commissioner of IDEM.

20. 326 IAC 2-1-3(c) requires any person proposing the construction or modification of a major stationary PSD source or major PSD modification, which is or which will be located in an attainment area or unclassified area, to comply with the requirements of 326 IAC 2-2 of the Indiana SIP.

21. 326 IAC 2-2-2 of the Indiana SIP states that new or modified major stationary sources or major modifications, constructed in an area designated as attainment, are subject to 326 IAC 2-2, which contains the PSD provisions of the Indiana SIP.

22. 326 IAC 2-2-1(ff)(2) of the Indiana SIP defines a "major stationary source" in an attainment area to include any lime plant with the potential to emit 100 tons per year or more of any regulated NSR pollutant.

23. 326 IAC 2-2-1(dd) of the Indiana SIP defines a "major modification" as any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase and a significant net emission increase of a regulated NSR pollutant from the major stationary source.

24. 326 IAC 2-2-1(ii) of the Indiana SIP defines “net emissions increase” as the amount by which the sum of the increase in emissions from a physical change or change in the method of operation and any other contemporaneous increases or decreases in emissions exceeds zero.

25. For nitrogen oxides (NO_x), 326 IAC 2-2-1(w) of the Indiana SIP defines “significant” with regard to a net emissions increase as a rate of emissions that would equal or exceed 40 tons per year.

26. 326 IAC 2-2-3(3) of the Indiana SIP requires that owners or operators making a major modification apply best available control technology (BACT) for each regulated NSR pollutant for which the modification would result in a significant net emissions increase.

27. 326 IAC 2-2-1(i) of the Indiana SIP defines BACT as an emissions limitation based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major modification while taking into account energy, environmental, and economic impacts and other costs.

28. 326 IAC 2-2-5 of the Indiana SIP requires that owners or operators of a proposed major modification demonstrate that allowable emission increases, in conjunction with all other applicable emission increases or reductions, will not cause or contribute to air pollution in violation of any ambient air quality standard or applicable maximum allowable increase over the baseline concentration in any area.

29. Under Section 113(a)(1) of the CAA, 42 U.S.C. § 7413 (a)(1), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating a SIP. The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

30. The Administrator of EPA may require any person who owns or operates an emission source to make reports; install, use and maintain monitoring equipment; sample emissions; and provide information required by the Administrator under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

31. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015 and \$45,268 per day of violation up to a total of \$362,141 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

32. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

33. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

34. Carmeuse owns and operates a lime manufacturing facility at One North Carmeuse Drive, Gary, Indiana (the facility).

35. Carmeuse is a “major stationary source,” as that term is defined at 326 IAC 2-3-1(ff)(2), in that it is a lime plant that emits, or has the potential to emit, several regulated NSR pollutants in excess of 100 tons per year.

36. The facility is located in Lake County, Indiana, which at all times relevant to this Notice was classified as attainment for NO_x.

37. On November 16, 2009, IDEM issued to Carmeuse a Title 5 Part 70 Operating Permit for the facility, No. 089-27040-00112 (Title 5 permit).

38. On March 6, 2012, EPA inspected the facility. On November 7, 2012, EPA issued Carmeuse a Request for Information Pursuant to the Clean Air Act.

39. On July 27, 2010, Carmeuse submitted a written request to IDEM for a minor source modification to allow it to install a hot face dam in Kiln 3. On November 12, 2010, IDEM issued Carmeuse a minor source modification to install a hot face dam on Kiln 3.

40. In or around November 2010, Carmeuse installed a hot face dam in Kiln 3.

41. On January 17, 2011, Carmeuse requested to withdraw its application for the significant permit modification that would approve the operation of a hot face dam in Kiln 3. On February 7, 2011, IDEM revoked the minor source modification approving the construction of a hot face dam in Kiln 3.

42. The installation of the hot face dam on Kiln 3 caused a significant net emissions increase in NO_x, as defined in 326 IAC 2-2-1(ww) and constituted a “major modification,” as that term is defined in 326 IAC 2-2-1(dd).

43. Carmeuse failed to apply for an/or obtain a PSD permit prior to commencing construction of the hot face dam on Kiln 3 and failed to install and operate BACT for NO_x, as required by 326 IAC 2-1-3(c).

44. Carmeuse violated the PSD requirements found at Section 165 of the Act, 42 U.S.C. § 7475, and the Indiana SIP.

45. Carmeuse owns or operates an “emission source” within the meaning of Section 114 (a)(1) of the CAA, 42 U.S.C. § 7414(a)(1) and is therefore subject to the requirements of Section 114(a)(1).

46. On September 24, 2014, EPA issued a Notice and Finding of Violation (NOV/FOV) to Carmeuse alleging that it violated the PSD provisions of the Indiana SIP by failing to apply for and/or obtain a PSD permit prior to commencing construction of the hot face dam at Kiln 3 and failing to install and operate BACT for NOx, as required by 326 IAC 2-1-3(c).

47. On October 30, 2014, representatives of Carmeuse and EPA discussed the September 24, 2014, NOV/FOV.

48. On or around December 2016, Carmeuse installed a custom-made multi-channel, low NOx burner to reduce NOx emissions at Kiln 3.

Civil Penalty

49. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Respondent’s cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$ 50,000.00.

50. Within 30 days after the effective date of this CAFO, Respondent must pay a \$ 50,000.00 civil penalty by cashier’s or certified check, electronic funds transfer or online payment.

51. For payment by cashier’s or certified check, make the check payable to “Treasurer, United States of America,” and send to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

For checks sent by express mail, send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note Respondent's name and the docket number of this CAFO.

52. For electronic funds transfer, make payable to "Treasurer, United States of America," and send to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045

Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

53. For Automated Clearinghouse (ACH) also known as REX or remittance express, ACH electronic funds transfer, make payable to "Treasurer, United States of America," and send to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

54. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

55. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (ECA-18J)
Air Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

56. This civil penalty is not deductible for federal tax purposes.

57. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

58. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

59. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: Schnieders.Kathleen@epa.gov (for Complainant), and Chris.Imbrogno@carmeusena.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

60. This CAFO resolves Respondent's liability for federal civil penalties for the violations alleged in the September 24, 2014 NOV/FOV as well as the Factual Allegations and Alleged Violations contained in this CAFO and in the September 24, 2014 NOV/FOV.

61. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

62. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 60, above,

compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

63. Respondent certifies that it is complying fully with the relevant provisions of the Indiana SIP.

64. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

65. The terms of this CAFO bind Respondent, its successors and assigns.

66. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

67. Each party agrees to bear its own costs and attorneys fees in this action.

68. This CAFO constitutes the entire agreement between the parties.

Carmeuse Lime & Stone, Respondent

5/20/19

Date



Kevin Whyte
Vice President, General Counsel
Carmeuse-North America

United States Environmental Protection Agency, Complainant

9/24/2019
Date

Michael D. Harris
Michael D. Harris
Acting Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

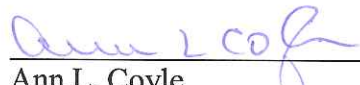
Consent Agreement and Final Order
In the Matter of: Carmeuse Lime & Stone
Docket No. CAA-05-2019-0034

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/26/19

Date



Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Carmeuse Lime & Stone
Docket Number: CAA-05-2019-0034

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2019-0034, which was filed on 9/30/2019, in the following manner to the following addressees:

Copy by E-mail to Respondent: Chris Imbrogno
Chris.Imbrogno@carmeusena.com
11 Stanwix Street-21st Floor
Pittsburgh, PA 15222

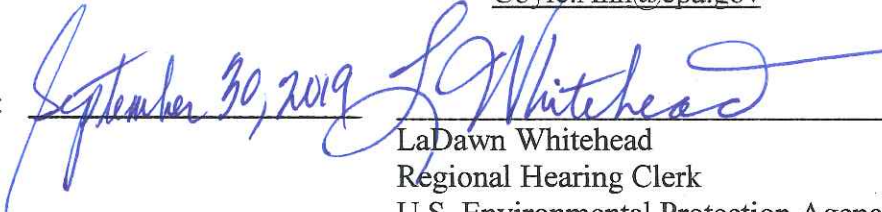
Copy by E-mail to
Attorney for Complainant: Kathleen Schnieders
Schnieders.Kathleen@epa.gov

Copy by E-mail to
Attorney for Respondent: Scott Dismukes
sdisumukes@eckertseamans.com

Copy by E-mail to
the State Agency: Phil Perry
PPerry@idem.in.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
Coyle.Ann@epa.gov

Dated:

September 30, 2019 

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5