

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE: :
: DOCKET NO. CAA-03-2010-0018
O-N Minerals (Chemstone) Company :
1696 Oranda Road, Strasburg, Va. :
: **PROCEEDING UNDER:**
Respondent. :
: Section 113(d) of the Clean Air Act,
: 42 U.S.C. § 7413(d).
: :
:

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Complainant, which is the Director of the Air Protection Division, U.S. Environmental Protection Agency, Region III (“EPA” or “the Agency”), and O-N Minerals (Chemstone) Company (“O-N” or the “Respondent”), pursuant to Section 113(d) of the Clean Air Act (“CAA” or the “Act”), as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”) found at 40 C.F.R Part 22, with specific reference to the Consolidated Rules at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3). This Consent Agreement and the accompanying Final Order (collectively referred to herein as the “CAFO”) addresses alleged violations by Respondent of Sections 110, 111 and 165 of the Act, certain provisions of the Virginia State Implementation Plan (“Va. SIP”), and the federal regulations implementing the New Source Performance Standards (“NSPS”)

found at 40 C.F.R. Part 60, Subpart HH, the Standards of Performance for Lime Manufacturing Plants.

II. GENERAL PROVISIONS

2. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.
3. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this Consent Agreement, except as provided in Paragraph 2, above.
4. Respondent agrees not to contest EPA's jurisdiction with respect to the execution and enforcement of this Consent Agreement or the issuance of the accompanying Final Order.
5. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
6. Respondent consents to the issuance of the CAFO and agrees to comply with the terms of the CAFO.
7. Respondent shall bear its own costs and attorneys' fees.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. Under Sections 110 and 165 of the Act, 42 U.S.C. §§ 7410 and 7475, EPA has promulgated regulations, found at 40 C.F.R. § 52.21, for the prevention of significant deterioration ("PSD") of air quality in areas that attain national ambient air quality

standards (“NAAQS”). Until April 21, 1998, the Federal requirements for “prevention of significant deterioration” (PSD), found at 40 C.F.R. § 52.21, were incorporated by reference and made a part of the Commonwealth of Virginia’s SIP and were applicable to stationary sources of air pollution in areas in Virginia that attain the NAAQS. See 40 C.F.R. § 52.2451(b)(1997, superseded). Since April 21, 1998, equivalent Virginia PSD requirements found at 9 Va.Admin.Code 5-80-1700 *et seq.*, approved by EPA and incorporated into the Virginia SIP at 63 Federal Register 13795 (1998), have applied to such sources.

9. Under Section 111 of the Act, 42 U.S.C. § 7411, EPA has promulgated NSPS for lime kilns, which are set forth at 40 C.F.R. Part 60, Subpart HH, the Standards of Performance for Lime Manufacturing Plants.
10. Complainant has determined that Respondent has violated Sections 110, 111 and 165 of the Act, including certain requirements of the federally-approved Va. SIP as set forth below, as well as provisions of 40 C.F.R. Part 60, Subpart HH, the Standards of Performance for Lime Manufacturing Plants. In accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R Part 22, with specific reference to the Consolidated Rules set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law.

11. O-N Minerals (Chemstone) Company owns and operates a lime production facility near Strasburg, Virginia, located at 1696 Oranda Road (the “Strasburg Facility”). O-N Minerals (Chemstone) Company is a wholly-owned subsidiary of Oglebay Norton Company.
12. In February 2008, Oglebay Norton Company was purchased in its entirety by Carmeuse Lime & Stone, Inc., which is a corporation organized under the laws of Delaware. The Respondent in this matter is O-N Minerals (Chemstone) Company, a corporation organized under the laws of Delaware.
13. Respondent O-N Minerals (Chemstone) Company is a “person” within the meaning of Sections 113(a) and 502 of the Act, 42 U.S.C. §§ 7413 and 7661a, and as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
14. The Strasburg Facility is classified as a “major stationary source,” as defined in 9 VAC 5-80-1615(C), because it has the potential to emit more than 100 tons of SO₂ per year, and Respondent or its predecessors has reported actual emissions of more than 100 tons per year of SO₂ in the past.
15. The Strasburg Facility currently operates, among other equipment, a primarily coal-fired

rotary lime kiln (the "Rotary Kiln") and hydrator for manufacturing lime and hydrated lime. The Strasburg Facility also operates other equipment supporting the manufacture of lime, including limestone crushing, sizing and screening equipment, and equipment for transfer, storage, loadout, and shipping of lime.

16. In April 2000, stack testing was conducted on the Rotary Kiln using coal with a sulfur content of 0.84% to 1.44% as the fuel. The stack test results showed that the SO₂ emissions from the outlet of the kiln (the rotary baghouse) averaged 0.46 lbs SO₂ per hour at an average lime production rate of 23.49 tons per hour. This is equivalent to an SO₂ emission factor of 0.02 pounds of SO₂ per ton of lime produced.
17. Respondent's predecessor performed certain projects and made certain modifications to the Rotary Kiln between 2000 and 2003, inclusive. Neither a permit application under 9 VAC 5-80-10 nor a permit application under 9 VAC 5-80-1700 et seq. was submitted to Virginia DEQ for the modifications described in paragraphs 18 through 19 below.
18. Between January 2001 and October 2001, Respondent's predecessor performed certain modifications to the rotary kiln, as described in a document obtained from Respondent labeled "CAR 01-013" (which has been claimed as Confidential Business Information by Respondent) in order to increase production from the kiln. This kiln-lengthening project was completed by October 31, 2001.

19. Between January and May of 2003, Respondent's predecessor further modified the rotary kiln, as described in a document obtained from Respondent labeled "CAR Number 03-10104" (which has been claimed as Confidential Business Information by Respondent), by modifying the feed end of the kiln. This rotary feed end modification project was completed by May 31, 2003.
20. The projects described above are modifications as that term is defined at 9 VAC 5-80-10(B).
21. On October 30, 2007, stack testing was conducted by Air Control Techniques, P.C. for the Rotary Kiln. The SO₂ emissions from the Rotary Kiln baghouse were 66.1 lbs/hr at a limestone feed rate of 50 tons per hour ("tph"). Using this information, an emission factor of 1.32 pounds of SO₂ per ton of stone fed was calculated.
22. Based on production data submitted by O-N Minerals in response to EPA's Section 114 letter, and the results of the 2000 and 2007 stack tests, SO₂ emissions from the Strasburg Facility increased by greater than 40 tons per year as a result of the projects described above. For the purposes of this CAFO, Respondent has not yet provided evidence of contemporaneous pollution control projects which would have offset this increase in SO₂ emissions.

23. The modifications referenced above meet the definition of major modification in 9 VAC 5-80-1710(C) because each is a physical change or change in the method of operation of a major stationary source that resulted in a significant net emissions increase of SO₂, which is a pollutant subject to regulation under the federal Clean Air Act.
24. Following Carmeuse Lime & Stone, Inc.'s purchase of Oglebay Norton Company, the Strasburg Facility's Rotary Kiln was stack tested in August 2008 by a different stack testing company. The results of that stack testing purport to show that the outlet of the Rotary Kiln baghouse averaged less than 2.60 lbs SO₂/hr at an average stone feed rate of 51.26 tph. Using this information, an emission factor of 0.05 pounds of SO₂ per ton of stone fed was calculated.
25. On July 29, 2008, EPA issued a Notice of Violation ("NOV") to Carmeuse NA for these and other CAA violations alleged at the Strasburg facility. A copy of the NOV was provided to Virginia DEQ. EPA met with representatives of Carmeuse and O-N Minerals (Chemstone) Company on September 26, 2008, to discuss the violations alleged in the NOV.
26. Prior to EPA's NOV, Virginia DEQ issued an NOV to Respondent on June 3, 2008 for alleged emission exceedances and regulatory violations both similar to and additional to those alleged in EPA's NOV, including performing a major modification without a

permit and exceeding the SO₂ hourly emission rate which was the basis for the 1981 permit approval. These enforcement actions were pursued separately yet concurrently, with close cooperation between EPA and Virginia DEQ to try to ensure that all applicable violations were addressed without duplication of penalties, efforts, or corrective actions.

27. On or about October 23, 2009, Respondent and Complainant entered into an administrative compliance order by consent, under Section 113(a)(1)(A) of the CAA, which requires, among other things, the installation and operation of a Continuous Emissions Monitoring System ("CEMS") for SO₂ by a date certain, and that Respondent meet the SO₂ emission rate and compliance date set forth in the BART permit to be issued by VADEQ.

28. The modifications described above occurred after May 3, 1977 and also meet the definition of "modification" set forth in 40 C.F.R. § 60.14, because post-modification stack testing performed in 2007 shows an increase in the hourly emissions rate of SO₂ over the pre-modification stack testing performed in April 2000. These modifications are not subject to any of the exceptions to the definition of modification at 40 C.F.R. § 60.14. EPA therefore alleges that these modifications subject the Strasburg Facility to the requirements of 40 C.F.R. Part 60, Subpart HH - Standards of Performance for Lime Manufacturing Plants.

29. Section 60.343(a) of Subpart HH requires that lime kilns subject to HH install, calibrate, maintain and operate a continuous monitoring system for the opacity of the gases discharged from any rotary lime kiln. Section 60.343(b) allows the owner or operator of a lime kiln having a control device with multiple stacks, such as O-N's Strasburg Rotary Kiln, to monitor visible emissions once per day using a certified visible emissions observer, in lieu of the requirement to install a continuous monitoring system.
30. EPA alleges that Respondent has violated 40 C.F.R. § 60.343(a) or (b) because the Strasburg facility does not have a continuous opacity monitoring system ("COMS") for opacity as set forth in §60.343(a), and in lieu of a COMS, Respondent was not complying with the visible emission monitoring requirement of § 60.343(b).
31. Section 60.343(d) of Subpart HH requires, for the purpose of conducting the performance test under § 60.8, that the rotary kiln install, calibrate, maintain and operate a device for measuring the mass rate of stone feed to an affected rotary lime kiln. Section 60.7(c) requires that any affected facility which must install a continuous monitoring system must submit an excess emission report. Section 60.343(e) requires a facility which chooses to perform visible emission observations in lieu of installing a continuous emission monitor to submit semi-annual excess emission reports.
32. EPA alleges that Respondent has violated 40 C.F.R. §§ 60.7(c) and 60.343(e) by failing

to submit any semi-annual excess emission reports, as required by § 60.7(c), and also violated § 60.343(d) because it does not have a device for measuring the mass rate of stone feed to the Rotary Kiln.

33. EPA alleges that Respondent is also in violation of 9 VAC 5-80-10(C) because the modifications and projects described above also meet the definition of modification at 9 VAC 5-80-10(B), but Respondent or its predecessor failed to submit an application to Virginia DEQ for a minor source permit to modify and operate the rotary kiln prior to each of these modifications.
34. EPA alleges that Respondent is also in violation of 9 VAC 5-80-1720 by failing to apply to Virginia DEQ for a Prevention of Significant Deterioration permit to perform the construction and modifications undertaken in 2001 and 2003.

IV. SETTLEMENT TERMS

35. In settlement of all violations alleged in this CAFO, Respondent agrees to pay a civil penalty in the amount of \$ 121,829, plus appropriate interest assessed at 3%, in two installments as set forth in paragraph 36 below. This settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty assessment criteria set forth in Section 113(e) of the Act, 42 U.S.C. § 7413(e), which include the size of the business, the economic impact of the penalty on the

business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment of previous penalties for the same violations, the seriousness of the violations and the economic benefit of noncompliance, as well as the Clean Air Act Stationary Source Civil Penalty Policy. In particular, EPA has taken into account the \$158,980 penalty paid to the Commonwealth of Virginia for similar violations alleged in VADEQ's Order by Consent issued to O-N Minerals (Chemstone) Company in October 2009.

36. Payment of the civil penalty shall be made by Respondent in accordance with this CAFO. No later than thirty (30) days after the effective date of this CAFO, Respondent shall pay \$60,914. On January 12, 2010, Respondent shall pay \$60,915, plus interest of \$425.57, for a total second installment amount of \$61,340.57.

37. Such civil penalty amount shall become due and payable in accordance with this CAFO upon Respondent's receipt of a copy of this CAFO signed by the Regional Judicial Officer or her designee. In order to avoid the assessment of additional interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty in two installments no later than the dates set forth in this CAFO. Payment of the civil penalty amount shall be made by either cashier's check, certified check or electronic transfer. All checks shall be made payable to "Treasurer, United States of America" and shall be remitted using one of

the following methods:

a. Via regular U.S. Postal Service Mail to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Eric Volck (513) 487-2105

b. Via commercial Overnight Delivery to the following address:

U.S. Bank
Government Lockbox 979077
U.S. Environmental Protection Agency
Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: (314) 418-1028

c. Respondent's civil penalty payment also may be made by electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA = 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
New York, NY 10045
Field tag 4200 of Fedwire message should read "D 68010727 Environmental Protection Agency"

d. Respondent's civil penalty payment also may be made by automated clearinghouse (ACH), also known as Remittance Express (REX) to the following account:

U.S Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking
33 Liberty Street

New York, N.Y. 10045

38. All payments made by check also shall reference the above case caption and docket number, CAA-03-2010-0018. At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Theresa Horgan, Air Protection Division (3AP12), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.
39. Respondent's failure to make timely payment of the civil penalty provided herein or to comply with the conditions in the CAFO may result in referral of this matter to the United States Attorney for enforcement of the accompanying Consent Agreement and this Final Order in the appropriate United States District Court. Additionally, Respondent's failure to make timely payment of the civil penalty provided herein or to comply with the conditions in the CAFO may result in the assessment of additional interest, penalties and/or late payment penalty charges, as described below.
40. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the

conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

41. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this executed CAFO is mailed or hand-delivered to Respondents. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Interest on the second installment payment of the penalty amount has already been assessed up to the due date of the second installment, and added to the second installment amount in this CAFO.
42. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
43. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 40

C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

44. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

V. RESERVATION OF RIGHTS

45. This Consent Agreement and the accompanying Final Order resolve only those violations alleged in this Consent Agreement and are subject to all limits on the scope of resolution and reservation of rights set forth in 40 C.F.R. § 22.18(c). Nothing in this Consent Agreement or the accompanying Final Order shall be construed to limit the authority of the EPA and/or the United States to undertake action against any person, including Respondent, in response to any condition which EPA or the United States determines may present an imminent and substantial endangerment to the public health, welfare or the environment, nor shall anything in this Consent Agreement or the accompanying Final Order be construed to resolve any claims for criminal sanctions now pending or that may be sought in the future, and the United States reserves its authority to pursue criminal sanctions.

46. Furthermore, EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations of which

Complainant has jurisdiction, to enforce the provisions of this CAFO, the CAA and its implementing provisions, and of any other federal laws or regulations for which it has jurisdiction, following entry of this CAFO.

VII. PARTIES BOUND

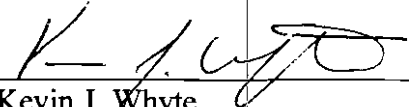
47. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the employees, contractors, successors and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized to enter into this Consent Agreement and to bind legally the Respondent to the terms and conditions of this Consent Agreement and accompanying Final Order.

VIII. EFFECTIVE DATE

48. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, having been signed by the Regional Administrator of U.S. EPA Region III or his designee, is filed with the Regional Hearing Clerk of U.S. EPA Region III.

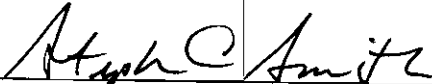
For the Respondent:

Date October 19, 2009



Kevin J. Whyte
Vice President, General Counsel

Date October 19, 2009

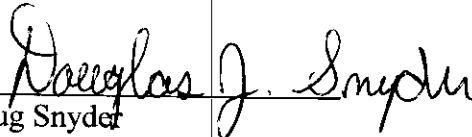


Stephen C. Smith
Deputy General Counsel
Environmental Director

For the Complainant:

United States Environmental Protection Agency
Region III

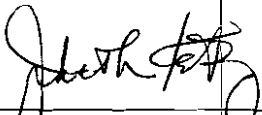
Date: 10/27/2009



Doug Snyder
Assistant Regional Counsel

The Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of U.S. EPA Region III or his designee issue the accompanying Final Order.

Date: 11/02/09



Judith Katz, Director
Air Protection Division