



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kevin D. Hahn
Vice President of Administration
National Lime and Stone Company
551 Lake Cascades Parkway
Findlay, Ohio 45839

Re: National Lime and Stone Company
Carey, Ohio
CAA Docket No. **CAA-05-2009-0002**

Dear Mr. Hahn:

Enclosed herein is a Complaint and Notice of Opportunity for Hearing filed against National Lime and Stone Company (National), pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d). We are alleging in the Complaint that National has violated the Ohio State Implementation Plan requirements and its Title V Operation Permit at its facility located in Carey, Ohio.

We call your attention to that part of the Complaint entitled "Opportunity to Request a Hearing." National is required to respond to this Complaint within thirty (30) days of receipt, or the proposed civil penalty shall become due and payable sixty (60) days after a final order is issued upon default.

For additional information or clarification of any issues regarding this matter, you may contact Manojkumar P. Patel, Environmental Engineer (AE-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-3565. With legal questions you may contact Mr. Jose C. de Leon, Associate Regional Counsel, (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-7456.

Sincerely,


Cheryl L. Newton
Acting Director
Air and Radiation Division

Enclosures

RECEIVED

NOV 17 2008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)
)
National Lime and Stone Company)
Findlay, Ohio)
Respondent.)
_____)

Docket No. CAA-05-2009-0002
Proceeding to Assess a Civil Penalty
Under Section 113 (d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

Complaint

1. This is an administrative action to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).
2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois.
3. The Respondent is National Lime and Stone Company, a for profit corporation, doing business in Ohio.

Statutory and Regulatory Background

Ohio State Implementation Plan

4. EPA approved OAC 3745-31 as part of the federally enforceable state implementation plan (SIP) for Ohio. 45 Fed. Reg. 72119 (October 31, 1980).
5. Among the rules approved in this action was OAC 3745-31-05(A)(3), which provides that the director of the Ohio Environmental Protection Agency (OEPA) shall issue a permit to install (PTI) if he or she determines that the air contaminant source will employ best available technology (BAT). OAC 3745-31-01 defines BAT as any combination of work practices, raw material specifications, throughput limitations, source design characteristics, an evaluation of the annualized cost per ton of air pollutant removed, and air pollution control

devices that have been previously demonstrated to the director of the OEPA to operate satisfactorily in Ohio or other states with similar air quality on substantially similar air pollution sources.

6. OAC 3745-31-01 defines "Organic compounds" as any chemical compound containing carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, metallic carbonates, ammonium carbonate, non landfill gas methane and ethane.

Clean Air Act Title V Operating Permit Program

7. EPA granted full approval to the Ohio Title V operating permit program on August 15, 1995, effective October 1, 1995. 60 Fed. Reg. 42045.

8. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no person may operate a "major source" except in compliance with a Title V operating permit.

9. 40 C.F.R. § 70.1(b) provides that all sources subject to the Part 70 regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.

10. The term "major source" means, in relevant part, any stationary source which directly emits or has the potential to emit 100 tons per year or more of any air pollutant and/or 10 tons per year or more of any single "hazardous air pollutant." Section 501(2) of the CAA, 42 U.S.C. § 7661(2); Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), and Section 302(j) of the CAA, 42 U.S.C. § 7602(j).

11. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per

day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

12. 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

13. 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 complaint.

General Allegations

14. Respondent owns and operates a non-metallic mineral processing plant at North Patterson Street, Carey, Ohio (Carey Plant). Respondent operates a variety of process equipment, including but not limited to, crushers, screens, kilns, hydrators, coolers, dryers, and a pelletized limestone dryer identified as P023.

15. Respondent is a "person" as defined at Section 302 (e) of the Act, 42 U.S.C. § 7602(e).

16. Respondent is a "major source as defined by Section 501(2) of the CAA, 42 U.S.C. § 7661(2); Section 112(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1) and Section 302(j) of the CAA, 42 U.S.C. § 7602(j).

17. Organic Compounds and Carbon Monoxide are "air pollutants" as defined in Section 302(g) of the CAA, 42 U.S.C § 7602(g).

18. Respondent's pelletized limestone dryer identified as P023 emits air pollutants, including organic compounds (OC) and carbon monoxide (CO). OEPA issued an initial PTI Number 03-07409 on April 13, 1995, for equipment/processes at Respondent's Carey Plant, including the pelletized limestone dryer P023. OEPA issued a modified PTI Number 03-07409 on June 20 and July 11, 2002, respectively. On December 31, 2002, OEPA issued an amended Title V Permit 03-88-00-0004 (Title V Permit) to the Respondent, for facility operations and incorporated the PTI 03-07409 permit conditions and the requirement to employ BAT under OAC 3745-31-05(A)(3)

19. On July 17, 2007, EPA issued a Request for Information to Respondent under Section 114 of the Clean Air Act, 42 U.S.C. §7414, for equipment/processes at Respondent's Carey Plant. On July 27, 2007, Respondent responded to the Request for Information.

20. On March 31, 2008, EPA issued a Notice of Violation to National Lime and Stone Company for violations of the Ohio SIP regulation OAC 3745-31-01 and applicable Ohio SIP requirements specified in the Title V Permit.

21. On June 17, 2008, EPA and Respondent held a conference to discuss the March 31, 2008 Notice of Violation.

Count I

22. Complainant incorporates paragraphs 1 through 21 of this Complaint, as if set forth in this paragraph.

23. Part III.A.I.1. of the Title V Permit prohibits pelletized limestone dryer (P023) from exceeding the listed applicable emission limitation of 5.32 pounds of OC per hour or 23.30 tons of OC per year.

24. Based on an evaluation of the 2003 stack test report submitted to EPA, EPA has determined that the pelletized limestone dryer (P023) emissions exceeded the OC emissions limit, as follows:

Year	Emission Unit ID	Pollutant	EMISSIONS TEST RESULTS
11/18/2003	P023	OC	5.88 lbs./hour

Respondent violated the Ohio SIP OAC 3745-31-05(A)(3) and Part III.A.1.1. of the Title V Permit, Section 502(a) and 503(c) of the Act, 42 U.S.C. §§ 7661(a) and 7661b(c), and 40 C.F.R. §70.7(b), By exceeding the limit for OC emissions from the pelletized limestone dryer, and thereafter operating the “major source” out of compliance from November 2003 through January 2007.

Count II

25. Complainant incorporates paragraphs 1 through 21 of this Complaint, as if set forth in this paragraph.

26. Part III.A.I.1. of the Title V Permit prohibits pelletized limestone dryer (P023) from exceeding the listed applicable emissions limitations of 1.34 lbs. of carbon monoxide (CO) per hour or 5.87 tons of CO per year.

27. Based on an evaluation of the 2007 stack test report submitted to EPA, EPA has determined that the pelletized limestone dryer P023 exceeded the emission limit, as follows:

Year	Emission Unit ID	Pollutant	EMISSIONS TEST RESULTS
1/9/2007	P023	CO	3.65 lbs/hour

Respondent violated the Ohio SIP OAC 3745-31-05(A)(3) and Part III.A.1.1. of the Title V Permit, Section 502(a) and 503(c) of the Act, 42 U.S.C. §§ 7661(a) and 7661b(c), and 40 C.F.R. §70.7(b), by exceeding the limit for CO emissions from the pelletized limestone dryer, and thereafter operating the “major source” out of compliance from January through October 2007.

Proposed Civil Penalty

28. Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint of \$ 167,000.

Complainant determined the proposed civil penalty according to the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e). Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA’s *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991 (penalty policy). Enclosed with this Complaint is a copy of the penalty policy.

Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if Respondent establishes *bona fide* issues of ability to pay or other defenses relevant to the penalty’s appropriateness.

Rules Governing This Proceeding

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (the Consolidated Rules), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the EPA Regional Hearing Clerk the original and one copy of

each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Jose C. de Leon to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Jose DeLeon at (312) 353-7456. Jose C. de Leon's address is:

Jose C. de Leon (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Penalty Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America" and by delivering the check to:

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

Respondent must include the case name, docket number and billing document number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to the Regional Hearing Clerk and Jose C. de Leon at the addresses given above, and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address given above.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of

- defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing.

If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

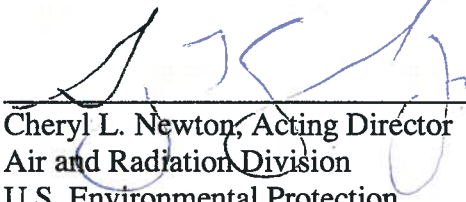
Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts alleged in the Complaint and to discuss a settlement. To request an informal settlement conference, Respondent may contact Jose C. de Leon at (312) 353-7456.

Respondent's request for an informal settlement conference does not extend the 30-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

11/14/08
Date


Cheryl L. Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5

In the Matter of:
National Lime and Stone Company
Docket No. **CAA-05-2009-0002**

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PROTECTION AGENCY

CERTIFICATE OF SERVICE

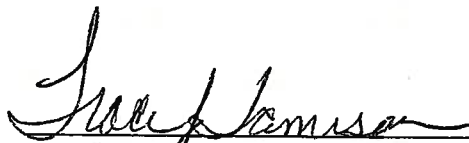
I, Tracy Jamison, certify that I hand delivered the original and one copy of the Complaint, docket number CAA-05-2009-0002 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* at 40 C.F.R. Part 22, and copies of the penalty policy described in the Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Kevin D. Hahn
Vice President of Administration
National Lime and Stone Company
551 Lake Cascades Parkway
Findlay, Ohio 45839

And

Brian P. Barger, Esq.
Brady, Coyle & Schmidt, LTD
4052 Holland-Sylvania Road
Toledo, Ohio 43623

on the 17 day of NOVEMBER, 2008.



Tracy Jamison, Office Automation Clerk
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0186 1962