



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 28 2009

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Brian Wheeler, Vice President-Administration
National Lime and Stone Company
551 Lake Cascades Parkway
Findlay, Ohio 45839

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

Dear Mr. Wheeler:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves National Lime and Stone Company, Docket No. CAA-05-2009-0002. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on APR 28 2009

Pursuant to paragraph 10 of the CAFO, National Lime and Stone Company must pay the civil penalty within 30 days of _____ . Your check must display the case name, case docket number CAA-05-2009-0002 the billing document number 2750903A019 . (CAA-05-2009-0002) JV

Please direct any questions regarding this case to Jose C. DeLeon, Associate Regional Counsel, at (312) 353-7456.

Sincerely,

Bonnie Bush, Chief
Air Enforcement and Compliance Assurance (MI/WI)

Enclosure

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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)

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Consent Agreement and Final Order

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5, brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

REGIONAL HEARING CLERK
ENVIRONMENTAL
PROTECTION AGENCY

2. On November 17, 2008, EPA filed the Complaint in this action against Respondent National Lime and Stone Company. The Complaint alleges that Respondent violated Section 502(a) of the Act, 42 U.S.C. § 7661a (a), and OAC 3745-31-05(A) (3) at its facility in Carey, Ohio.

3. Respondent filed an Answer and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

Stipulations

4. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint other than those admitted in National Lime and Stone Company's Answer.

5. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).

6. Respondent certifies that it is complying fully with OAC 3745-31-05(A) (3) and

Section 502(a) of the Act, 42 U.S.C. § 7661a (a).

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

8. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

9. In consideration of Respondent's agreement to perform two supplemental environmental projects and other mitigating factors, Complainant agrees to mitigate the proposed penalty of \$167,000 to \$13,000.

10. Within 30 days after the effective date of this CAFO, Respondent must pay the \$13,000 civil penalty by a cashier's or certified check payable to the "Treasurer, United States of America," to:

For checks sent by U.S. Postal Service
U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For checks sent by express mail
U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the case title, the docket number of this CAFO and the billing document number.

11. A transmittal letter stating the Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent

must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

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

13. If Respondent does not pay timely the civil penalty or any stipulated penalties due under paragraph 26, below, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

14. Pursuant to 31 C.F.R. § 901.9, 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. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5).

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.

Supplemental Environmental Project

15. Respondent must complete two supplemental environmental projects (SEP). The first project, which is the replacement of a Caterpillar Diesel engine with electrical power, is designed to eliminate the diesel related emissions of the Caterpillar Diesel. The second project, which is the replacement of the existing baghouse with a larger more efficient baghouse, is designed to protect the environment by collection of fugitive dust in the loading and material handling area of the dried stone operation.

16. By no later than September 30, 2009, Respondent must complete at its Carey, Ohio facility, the replacement of the Caterpillar 600 horsepower direct drive primary crusher engine with commercial electrical power and by April 1, 2011 the replacement of the existing 8,000 CFM baghouse with an air to cloth ratio of > 6:1 with a 10,000 CFM baghouse with an air to cloth ratio of < 4:1 and associated duct work in the loading and material handling area of the dried stone operation.

17. Respondent must spend at least \$155,000 to purchase and install the equipment.

18. Respondent must continuously use or operate the equipment installed as the SEP for 5 years following its installation.

19. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

20. EPA may inspect the facility at any time to monitor Respondent's compliance with

this CAFO's SEP requirements.

21. Respondent must submit SEP completion reports to EPA by October 31, 2009 for the above described Caterpillar engine exchange SEP and by May 31, 2011 for the above described Baghouse SEP. These reports must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

22. Respondent must submit all notices and reports required by this CAFO by first class mail to:

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

23. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

24. Following receipt of the SEP completion report described in paragraph 21, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 26.

25. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 26, below.

26. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent spent less than the amount set forth in paragraph 17, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 17.
- b. If Respondent has completed the SEP but the SEP is not satisfactory, Respondent must pay \$10,000 in addition to any penalty required under subparagraph 26.a.
- c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$20,000 in addition to any penalty required under subparagraph 26.a, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 16, above, for implementing the SEP, fails to submit timely the SEP completion report required by paragraph 21, above, Respondent must pay stipulated penalties for

each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$500	1 st through 14 th day
\$750	15 th through 30 th day
\$1,000	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

27. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

28. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 10, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

29. Any public statement that Respondent makes referring to the SEP must include the following language, "National Lime and Stone Company undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against National Lime and Stone Company's for alleged violations of the Clean Air Act."

30. Force Majeure- If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased cost for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

31. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

32. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

33. The effect of the settlement described in paragraph 32, above, is conditional upon the accuracy of the Respondent's representations to U.S. EPA, as memorialized in Respondent's letters dated January 19 and February 2, 2009.

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

35. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 32, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

36. This CAFO constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full

compliance history” under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

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

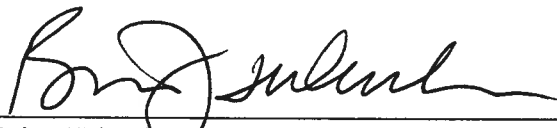
38. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to bear its own cost and attorneys’ fees in this action.

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

National Lime and Stone Company, Respondent

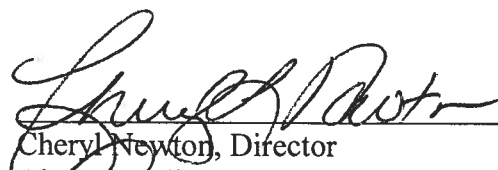
4/20/09
Date



Brian Wheeler, Vice President - Operation
National Lime and Stone Company

United States Environmental Protection Agency, Complainant

4/24/09
Date



Cheryl Newton, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

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

Final Order

This Consent Agreement and Final Order, as agreed to by 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.

4/27/09
Date

Walter W. Kaulitz
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

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U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-13J), United States Environmental Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that mailed by Certified Mail, Receipt No. 7001 0320 0005 8919 2799, the second original to Respondent, addressed as follows:

Brian Wheeler, Vice President-Operations
National Lime and Stone Company
551 Lake Cascades Parkway
Findlay, Ohio 45839

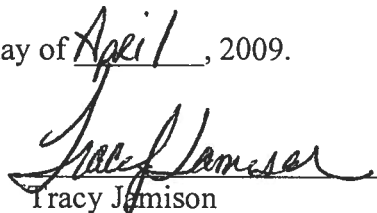
and

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

and that I delivered a correct copy by intra-office mail, addressed as follows:

Barbara A. Gunning
U.S. Environmental Protection Agency
Office of Administration Law Judges
Mailcode 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

On this 28 day of April, 2009.


Tracy Jamison

Office Automation Clerk
Air Enforcement and Compliance Assurance (MI/WI)

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U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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