

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	No.
v.	)	
	)	
CARMEUSE LIME, Inc.,	)	Judge
	)	
Defendant.	)	
	)	

**CONSENT DECREE**

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WHEREAS, concurrently with the lodging of this Consent Decree, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency, filed a complaint in this action pursuant to Section 113(b) of the Clean Air Act (“CAA,” “the Act”), 42 U.S.C. § 7413(b), alleging that the Defendant Carmeuse Lime, Inc. (“Defendant”) violated the Act at its South Chicago Operation (the “Facility”) in Chicago, Illinois.

WHEREAS, the Complaint seeks injunctive relief and the assessment of civil penalties for alleged violations of the emissions limits and reporting requirements for opacity and fugitive dust at the Facility that are set forth in: Carmeuse Lime’s Title V Operating Permit, issued pursuant to Title V of the CAA, 42 U.S.C. § 7661 et seq.; Carmeuse Lime’s Approval to Construct Permit; the New Source Performance Standards for Lime (“Lime NSPS”), promulgated pursuant to Section 111 of the CAA and codified at 40 C.F.R. Part 60, Subpart HH, §§60.340 - 60.344; the National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants (“Lime NESHAP”), promulgated pursuant to Section 112(d) of the CAA and codified at 40 C.F.R., Subpart AAAAA, §§ 63.7080 - 63.7143; and standards set forth in the Illinois State Implementation Plan (“SIP”) adopted by the State of Illinois and approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410.

WHEREAS, Defendant does not admit any liability to the United States for or arising out of the transactions or occurrences alleged in the Complaint.

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

### **I. JURISDICTION AND VENUE**

1. The Court has jurisdiction of the subject matter of this civil action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper in this district pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and 28 U.S.C. §§ 1391(b), (c), and 1395(a), because the violations alleged in the complaint occurred and are occurring in Cook County, Illinois, the location of the Facility, which is operated by the Defendant in this District. For purposes of this Decree, of any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113 of the Act.

### **II. APPLICABILITY**

3. The obligations of this Consent Decree apply to and are binding upon the United States and upon the Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written

agreement, to EPA Region 5, the United States Attorney for the Northern District of Illinois, and the United States Department of Justice, in accordance with Section XV of this Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree. Any contractor or consultant retained to perform work required under this Consent Decree will be provided with the applicable requirements of the agreement specific to the project assigned. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### **III. DEFINITIONS**

7. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Access Plates" shall mean the cover for openings in chutes for inspection or adjustment.
- b. "Baghouse" shall mean a pollution control device designed to reduce emissions of particulate matter from the Facility's Kiln exhaust through the

use of filter bags excluding equipment within the definition of Capture System or Dust Capture System defined below.

- c. "Capture Ducts" shall mean duct work or hoods used as any part of any dust capture system.
- d. "Capture System" or "Dust Capture System" shall mean any collection of equipment installed and used for the purpose of capturing dust released from any component of the lime manufacturing process excluding equipment within the definition of Baghouse defined above.
- e. "Chutes" shall mean any trough, tube, or shaft used to convey a material to a lower level.
- f. "Complaint" shall mean the complaint filed by the United States in this action.
- g. "Consent Decree" or "Decree" shall mean this Decree.
- h. "Conveyor" shall mean any mechanical belt apparatus used to transport material from one location to another within the Facility.
- i. "Date of Lodging" shall mean the date the Consent Decree is filed for lodging with the Clerk of Court for the United States District Court for the Northern District of Illinois.
- j. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
- k. "Defendant" shall mean Carmeuse Lime, Inc.
- l. "Effective Date" shall have the definition provided in Section XVI.

- m. "Enclosure" shall mean any structure at the Facility that encloses a space or equipment.
- n. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
- o. "EQM Evaluation" shall mean the report, Environmental Quality Management, Fugitive Dust Emission Evaluation, Carmeuse Lime and Stone, Chicago Operation, PN 050495.0005 (February 18, 2009).
- p. "Excess Emission Reports" shall mean the reports that Defendant is required to submit under Section 7.2.10(a) of the Title V Renewable Operating Permit.
- q. "Facility" shall mean the Carmeuse Lime, Inc. - South Chicago Operation owned and operated by the Defendant and located at 3245 E. 103rd Street, Cook County, Chicago, Illinois 60617.
- r. "Fugitive Dust Operating Program" shall mean Defendant's plan to control Fugitive Dust emissions, submitted to Illinois EPA as required by section 5.2.3 of Defendant's Title V Permit.
- s. "Fugitive Particulate Matter" shall mean those emissions from Defendant's Facility that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- t. "General Areas" shall mean all other outdoor areas within the facility not routinely traveled by bulk trucks, facility vehicles and other mobile equipment, but accessed on an infrequent basis, as depicted in the Fugitive Dust Operating Program.

- u. "Hood" shall mean a cover that extends over an area of potential particulate matter emissions and that facilitates capture of dust through suction into the cover.
- v. "Hydrator System" shall mean all equipment identified on flow chart 669-M05 in Appendix A.
- w. "Kiln No. 4 Hummer House" shall mean the enclosure that houses the Kiln No. 4 lime handling belts and related equipment immediately following the cooler as identified in the February 2009 EQM report (Appendix B, drawing 699-M08 K4 Hummer Building).
- x. "Kiln No. 5 Cooler Product Belts" shall mean all conveyors transporting product from Kiln No. 5 as identified in the February 2009 EQM report (Appendix C, drawing 699-M09 K5 System).
- y. "Kiln No. 5 Hummer House" shall mean the enclosure that houses the Kiln No. 5 lime handling belts and related equipment immediately following the cooler as identified in the February 2009 EQM report (Appendix C, drawing 699-M09 K5 System).
- z. "Kiln No. 5 Opacity Exceedance" shall mean any 6 minute block opacity average, including all periods of Startup, Shutdown, and Malfunction, as determined by the continuous opacity monitors ("COMS") for Kiln No. 5, which is greater than 10 percent.
- aa. "Optimum flow" shall mean the air flow needed to reduce particulate matter emissions to a de minimis amount.
- bb. "PM" shall mean particulate matter.

- cc. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral.
- dd. "Parties" shall mean the United States and Defendant.
- ee. "Roads" shall mean all paved and unpaved roads routinely traveled by bulk trucks, facility vehicles and other mobile equipment, as depicted in the Fugitive Dust Operating Program.
- ff. "Rebalance" shall mean adjusting the air flow in each duct of a dust capture system to optimize flow at each capture hood.
- gg. "Section" shall mean a portion of this Decree identified by a roman numeral.
- hh. "Title V Renewable Operating Permit" shall mean the Title V Permit RO Permit Number 95090136, issued by the Illinois Environmental Protection Agency to the Facility with the effective date of June 3, 2003, and renewed effectively as of June 3, 2008.
- ii. "United States" shall mean the United States of America, acting on behalf of EPA.

#### IV. CIVIL PENALTY & SUPPLEMENTAL ENVIRONMENTAL PROJECT

8. Within 30 Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$350,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is entered by the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. Within thirty (30) days of the Effective Date of the Consent Decree, Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following Entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Northern District of Illinois, at United States Courthouse (Eastern Division), 219 South Dearborn Street, 5th floor, Chicago, IL 60604, 312-469-6298. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Carmeuse Lime, Inc. and shall reference the civil action number and DOJ case number 90-5-2-1-08599/1, to the United States in accordance with Section XV of this Decree (Notices); by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

10. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section IX (Stipulated Penalties) in calculating its federal income tax.

11. Carmeuse will complete a supplemental environmental project (SEP) designed to protect families from lead-based paint hazards by replacing windows in a number of residential

properties in the Englewood, West Englewood, or East Side neighborhoods of Chicago, Illinois, as further described herein. This SEP will entail replacing windows that pose lead hazard in low income residences whose occupants are unable to afford the replacement cost.

1. Carmeuse expects to complete the SEP by contracting with CNT Energy, a non-profit organization that is experienced in replacing windows for lead abatement and energy efficiency purposes. Carmeuse retains the option of selecting a different contractor. Carmeuse shall conduct the SEP according to all applicable federal and state work practice and notification requirements including, but not limited to, the United States Department of Housing and Urban Development's Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing and the State of Illinois,

13. Carmeuse will spend at least \$125,000 (one hundred twenty-five thousand dollars) to replace windows pursuant to this SEP, and will provide the funds to CNT Energy in the manner set forth in Appendix D (MOA between Carmeuse and CNT). Carmeuse will complete the SEP within two years after entry of the Consent Decree, provided that this date may be extended by mutual agreement of the parties in writing.

14. SEP Certifications:

- a. Carmeuse 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 Consent Decree.
- b. Carmeuse certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.
- c. Carmeuse certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.
- d. Carmeuse certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction

proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

15. At the conclusion of the SEP, Carmeuse will submit a SEP completion report to EPA containing the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems implementing the SEP 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 cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Defendant has completed the SEP in compliance with this Consent Decree; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible). Include the number of properties for which windows were replaced under the SEP.

16. Carmeuse will submit the SEP Completion Report by first class mail to the addresses provided in Section XV (Notices), Paragraph 84.

17. The SEP Completion Report must include the following certification, signed by one of Carmeuse's 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.

In certifying the report, the signatory may rely on documentation, assertions or other information provided by CNT Energy or alternate contractor chosen to complete the SEP.

18. Following receipt of the SEP completion report described in paragraph 15, above, EPA will notify Carmeuse 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 that EPA will give Defendant 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 48.

19. If Defendant makes any public statement referring to the SEP, it must include the following language: "Carmeuse Lime undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Carmeuse for alleged violations of the Clean Air Act." Defendant's contractual agreement with CNT Energy or alternate SEP contractor shall not be considered such a public statement.

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

#### **V. COMPLIANCE REQUIREMENTS**

21. Defendant shall comply with all requirements of its Title V Operating Permit for the Facility, its Approval to Construct Permit for the Facility, Fugitive Dust Operating Program, the applicable provisions of the Clean Air Act and New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants promulgated thereunder, and the Illinois SIP.

22. Within 30 days of the Effective Date of this Consent Decree or by the date of resumed kiln operations, whichever is later, Defendant shall complete the following corrective actions:

- a. Install new access plates for all access openings in the Kiln 5 Hummer House;

b. In the Kiln No. 4 Hummer House, repair the holes in the Chutes; clean out and repair the Capture Ducts; realign the Capture Ducts to ensure that they are optimally located to maximize dust capture and minimize dust deposits; ensure proper connection of the Hoods to the Capture System;

c. Replace the bearings in the Kiln No. 4 Baghouse Hopper dust discharge airlocks and install a continuous grease system, or other technology approved by EPA that meets or exceeds this performance standard, to prevent leakage of PM emissions at the air seals;

d. Replace the seal plates (leaves) at the feed end of Kiln 5, seal the firing hood, and maintain adequate draft through the kiln to eliminate PM emissions.

e. Evaluate all currently operating Capture Systems and any additional systems upon restart according to engineering standards for minimum exhaust rates as published by the American Conference of Governmental Industrial Hygienists in chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice" (Appendix E) or other similarly applicable reference, engineering standard, or industry practice approved by EPA. Repair the Capture Systems as needed to achieve Optimum Flow and particulate matter capture, collection, and retention. The Capture Systems shall include those which capture particulate matter emissions from the Grinding Circuit Conveyors Kiln 4 Hummer House, and Kiln 5 Cooler Product Belts as identified in the February 2009 EQM report (Appendix B, drawing 699-M08 K4 Hummer Building; Appendix C, drawing 699-M09 K5 System; and Appendix F, drawing 699-M04 Grinding Building). A description of the evaluations and repairs is to be included in the quarterly report that is to be submitted under the provisions of paragraph 38.

f. Conduct an initial employee training session as described in paragraph 26.a.i.

g. Design and install a retractable cover to completely cover the slot opening of the rail car during loading, or install equivalent material technology approved by EPA.

h. Install roll-up doors at the south end of the north truck loading bays as recommended in the February 2009 EQM report Table 4, item 9.b.

i. Install clear signs prohibiting routine traffic, and restricting non-routine traffic from the General Areas of the Facility. Signs will read "Routine vehicle traffic prohibited. Enter area only with appropriate measures in place to minimize fugitive dust." The referenced appropriate measures will be included in Carmeuse's Fugitive Dust Operating Program.

j. Employ on-site vacuum trucks or contract with a third-party firm to perform a thorough cleaning of the Facility, inside and out, to remove all accumulations of lime dust and coal dust. The cleaning will include removal of historic deposits that may become airborne from disturbances, such as those on employee walkways and stairwells. Employ measures to minimize fugitive dust generation during the cleaning process and ensure that any fugitive dust generated as a consequence of the removal of material is cleaned up once the removal process is complete.

k. Compliance with the above sub-paragraphs a-j will be documented in the first quarterly report submitted pursuant to Section VIII. For equipment not able to undergo corrective action due to idle status at the time the first quarterly report is submitted, compliance with the applicable sub-paragraph a-j will be documented in the report due following restart of the specified equipment.

23. Defendant shall abide by the following actions and include such actions in written standard operating procedures for the areas of the plant addressed in this paragraph:

a. Access doors: Keep all access openings closed in all areas except when needed for immediate access or visual observation by personnel.

b. North End Truck Loading Area: The roll-up doors shall be kept closed except when trucks are entering or exiting the loading bays and the loading spout skirt shall be in contact with the material in the truck or truck bed during loading.

c. Roads and General Areas:

i. On a daily basis, use a wet street sweeper to remove silt and dust from all routinely accessed paved surfaces unless temperatures are below freezing or during precipitation events.

ii. On a daily basis, suppress dust emissions by watering all unpaved surfaces unless temperatures are below freezing or during precipitation events.

iii. Ensure that all loaded lime trucks exiting the facility drive over rumble strips. Ensure each truck is washed with water around the level of the tires and fenders to remove all dust prior to exiting the facility. The truck wash station will be available 24-hours a day, 7-days a week, unless temperatures are below freezing. Routine and/or unexpected repairs to the truck wash will be made within 24 hours of discovery.

d. Rail Car Loading Area: The retractable covers or equivalent system approved by EPA shall completely cover the slot opening of the rail car whenever a rail car is being loaded.

e. Within the later of 30 days of the Effective Date of this Consent Decree, or 60 days prior to restart of kiln operations as applicable, Defendant shall submit copies of the standard operating procedures required by Paragraph 23 above to EPA for review and approval under the provisions of Section VI of this Consent Decree (Review and Approval of Submittals).

24. Defendant shall perform the following maintenance procedures whenever equipment is operating:

a. The following maintenance shall be performed on the dust collectors identified as ALG 400, ALG 210, ALG 250, ALG 300, ALG 440, ALG 500, ALG 570, and ALG 630:

i. Replace all fabric filters per the Facility O & M program referenced in paragraph 26.a.

ii. During each day of operation, monitor the pressure drop associated with the fabric filters. Evaluate and make necessary repairs if the pressure drop is less than the standard specified by the manufacturer, or not within the range identified by the capture systems evaluation identified in item 22.e above.

iii. On a weekly basis, inspect the operation of the pulse cleaning cycle to ensure that it is operating according to manufacturer's specifications. If the pulse cleaning cycle is not operating according to manufacturer's specifications, promptly make necessary repairs.

b. The following measures shall be employed to control dust accumulation in the interior areas of the structures which contain the Kiln 4 Operations, Kiln 5 Operations, Hydrate Operations, Grinding Mill Operations, South End Truck and Rail Car Loading Area, and the North End Truck Loading Area:

i. Once per week, all areas listed above will be inspected and accumulations of dust greater than 1" on and around operating equipment, walkways and other areas will be removed at that time. Between scheduled inspection and cleaning events discrete

accumulations as a result of equipment malfunctions or other spillage events will be removed by the end of the shift.

c. Chutes and Capture Ducts:

i. On a monthly basis, inspect all chutes for holes. Promptly repair any damage.

ii. On a monthly basis, check the alignment of the capture ducts to ensure that they are properly aligned (or within recommended alignment) and properly connected to the capture system.

iii. On a monthly basis, evaluate the inlet duct draft and when necessary, remove any material accumulation that may interfere with the efficient operation of the system.

d. Hydrator System:

i. On an annual basis, inspect the hydrate building to identify any hardened lime deposits. Promptly remove any deposits that may become airborne as a result of disturbances in the building.

e. Baghouse Hopper:

i. On a monthly basis, inspect the Kiln No. 4 Baghouse Hopper to ensure that the air seals prevent dust from escaping from the hopper. Promptly make repairs or replace the seals if dust is escaping.

f. Kiln No. 5 Seals:

i. On an annual basis, inspect the Kiln No. 5 Kiln Seals (leaves) to ensure that the seals prevent dust from escaping. If needed, replace the seals at the next available kiln outage.

25. Documentation:

a. Defendant shall create records to document compliance with inspection and maintenance activities required by the paragraphs of this Consent Decree, listed below, according to the following schedule for all active operations, and upon restart of subsequent facilities:

- i. Paragraph 24.a.ii. - Daily
- ii. Paragraphs 24.a.iii and 24.b.i - Weekly
- iii. Paragraphs 24.c.i-iii and 24.e.i - Monthly
- iv. Paragraphs 24.d.i and 24.f.i. - Annually

b. As part of the monthly inspections, Defendant shall document maximum dust levels in each area listed in paragraph 24.b. The documentation should include photographs taken on a monthly basis demonstrating compliance. Defendant shall keep the photographs filed on-site so they may be examined and referenced on an as-needed basis. If possible, photographs should be taken while associated equipment is in operation.

c. Loadout operators employed by Carmeuse shall complete a post-shift log documenting that loading procedures were followed during the shift.

26. Operation and Maintenance Plan:

a. Before resuming operation of the kilns, Defendant shall design and implement an operation and maintenance (O & M) plan to ensure optimum and proper operation of the fabric filter systems and all other equipment identified in Table 1 of the EQM Report (Appendix G). This O & M plan shall follow the format of the Reliability-Centered Maintenance (RCM) program, and must at a minimum include:

i. A Carmeuse employee training program for proper maintenance and operation of the plant for appropriate personnel. A general environmental awareness training will be developed and provided for all facility employees. A position-specific training program will also be provided to employees whose position and/or job duties may have specific impacts on requirements under the Consent Decree. As part of this training program, Defendant shall:

1. Explain procedures associated with truck washing and exiting during all appropriate Carmeuse employee annual training sessions to ensure that each truck undergoes appropriate dust removal prior to exiting the facility.

2. Explain loading procedures to appropriate Carmeuse personnel during annual training sessions to ensure that loading only occurs when the loading spout skirt is in contact with the top of the material in the truck or truck bed, or, should Defendant choose to employ the use of tarps or equivalent system during truck or rail car loading, when the tarp or its equivalent system is engaged to enclose the truck bed or rail car.

3. Clearly assign to appropriate Carmeuse personnel the duties of enforcing the prohibitions on motorized vehicles and equipment to unpaved areas that do not need to be accessed.

ii. An inspection and diagnostic evaluation of each system identified in Table 1 of the EQM Evaluation which will include: daily, weekly, and monthly checklists, and a quarterly internal audit of the system.

iii. A preventative maintenance program.

iv. An increase in fault monitoring systems which include: alarms, flow monitoring, and pressure loss monitoring.

b. As applicable, within 30 days of the Effective Date of this Consent Decree, or upon restart of kiln operations, Defendant shall submit the O & M plan to EPA for review and approval under the provisions of Section VI of this Consent Decree (Review and Approval of Submittals).

27. Third-party Audit. Defendant shall use a qualified, independent, third-party outside consultant to inspect and evaluate PM and fugitive emissions at the facility one year after the lodging of this Decree, or one year after kiln operations have resumed, whichever is later. A report of the consultant's audit findings shall be submitted within 30 days of completion of the audit. If the consultant concludes that inspections and corrective actions have not been conducted properly, Defendant must develop a Corrective Action Plan and submit it to EPA for approval under Section VI (Review and Approval of Submittals) within 60 days of completion of the audit. Within 30 days of EPA's approval or approval with conditions of the Corrective Action Plan, Defendant must implement the Corrective Action Plan.

#### **VI. REVIEW AND APPROVAL OF SUBMITTALS**

28. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission.

29. If the submission is approved pursuant to Paragraph 28.a, Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 28.b or c, Defendant shall, upon written direction from EPA, take all actions required by the approved plan, report, or

other item that EPA determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or the disapproved portions, under Section XI of this Decree (Dispute Resolution).

30. If the submission is disapproved in whole or in part pursuant to Paragraph 28.c or d, Defendant shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs, subject to Defendant's right to dispute the disapproval under Section XI of this Decree (Dispute Resolution). If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the preceding Paragraph.

31. Any stipulated penalties applicable to the original submission, as provided in Section IX of this Decree (Stipulated Penalties), shall accrue during the 45 Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

32. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to Defendant's right to invoke Dispute Resolution. Such action will not prejudice EPA's right to obtain stipulated penalties as provided in the preceding Paragraphs.

## VII. PERMITS

33. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provision of Section X of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

34. Incorporating Consent Decree Requirements Into Permits. Within 90 days of the Effective Date of this Consent Decree, Defendant shall submit an appropriate application to Illinois EPA to incorporate the specific requirements of the Consent Decree listed in Paragraphs 22 through 26 into federally enforceable non-Title V permits, including but not limited to Construction Permits under 35 IAC § 201, whether as new permits or modifications to existing permits, that will ensure that the requirements survive the termination of this Consent Decree and are federally enforceable. Following submission of the appropriate application, Defendant shall cooperate with Illinois EPA by promptly submitting to Illinois EPA all information that it seeks in connection with the permit application following its receipt of the application materials. Upon issuance of such permit, or in conjunction with such permitting, or in modifying any existing permit, Defendant shall file an updated Title V Permit renewal application to incorporate the requirements of that permit into the Title V Permit for the Facility.

35. Mechanism for Title V Permit Incorporation. The Parties agree that the incorporation of any requirement of this Consent Decree into the Title V Permit for the Facility will be in accordance with the Illinois EPA Title V permitting rules.

36. The requirements set forth in Paragraphs 22 through 26 above shall be enforceable under this Consent Decree and, when these requirements are incorporated into the non-Title V permits applicable to the Facility and then incorporated into the Facility's Title V Permit, these requirements shall also become enforceable pursuant to such permits.

37. Pursuant to the procedures set forth in Section XV (Notices), Defendant shall provide EPA with a copy of each application for a federally enforceable permit necessary to implement the requirements of this Consent Decree that is filed after the Effective Date of this Consent Decree, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any opportunity for public comment. If, as of the Effective Date of this Consent Decree, Defendant has received any permit necessary to implement the requirements of this Consent Decree, then no later than thirty (30) Days after the Effective Date of this Consent Decree, Defendant shall submit copies of such permits to EPA using the procedures set forth in Section XV (Notices). EPA may excuse in writing all or part of the latter submission if copies of such permits have already been submitted to EPA prior to the Effective Date of this Consent Decree.

#### **VIII. REPORTING REQUIREMENTS**

38. Within 30 Days after the end of each calendar quarter after lodging of this Consent Decree, until termination of this Decree pursuant to Section XIX (Termination), Defendant shall submit a quarterly report for the preceding quarter that shall include: Defendant's Excess Emissions Report for that calendar quarter; the status of all work completed

or ongoing pursuant to the requirements of Section V of this Consent Decree (Compliance Requirements), with the problems encountered or anticipated, together with implemented or proposed solutions; the status of all permit applications; any changes to the standard operating procedures or O & M plans initially submitted under the provisions of paragraphs 23 and 26, respectively; and a description of any non-compliance with the requirements of this Consent Decree and an explanation of the non-compliance's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such non-compliance.

39. Each Excess Emissions Report shall include the following information:

a. The magnitude of excess emissions computed in accordance with 40 C.F.R. § 60.13(h), any conversion factor(s) used, the date and time of commencement and completion of each time period of excess emissions, and the process operating time during the reporting period;

b. Specific identification of each period of excess emissions that occurs during Startups, Shutdowns, and Malfunctions of the affected facility. The nature and cause of any Malfunction (if known), the corrective action taken or preventative measures adopted;

c. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments; and

d. A statement, if applicable, indicating that no excess emissions have occurred and the continuous monitoring systems have not been inoperative, repaired, or adjusted.

40. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States of such violation and its likely duration, in writing, within ten working Days of the Day Defendant first becomes aware of the

violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section X of this Consent Decree (Force Majeure).

41. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendant's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

42. All reports shall be submitted to the persons designated in Section XV of this Consent Decree (Notices).

43. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the

system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

44. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

45. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### **IX. STIPULATED PENALTIES**

46. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

47. Stipulated Penalties shall be paid in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the

payment is for stipulated penalties and shall state for which violations the penalties are being paid.

48. The following penalty amounts apply:

a. Late Payment of Civil Penalty: If Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty and Supplemental Environmental Project) when due, Defendant shall pay a stipulated penalty of \$2,000 per Day for each Day that the payment is late.

b. Failure to Timely Submit Quarterly Reports: Should Defendant fail to timely submit a required quarterly report, the following stipulated penalties shall accrue:

<u>Penalty Per Inadequate Quarterly Report</u>	<u>Period of Noncompliance</u>
\$500	1st day through 14th day
\$1,000	15th day through 30th day
\$1,500	31st day and beyond

c. Failure to Submit Complete, and Accurate Quarterly Reports: If a quarterly report is materially incomplete or contains materially inaccurate content, Defendant shall correct the deficiency within ten days after EPA notifies Defendant of the deficiency. Should Defendant fail to correct the deficiency within the ten days, the following stipulated penalties shall accrue:

<u>Penalty Per Inadequate Quarterly Report</u>	<u>Period of Noncompliance</u>
\$500	1st day through 14th day
\$1,000	15th day through 30th day
\$1,500	31st day and beyond

d. Inspection, Maintenance, Operation and Documentation Requirements:

The following Stipulated Penalties shall accrue per day for each violation of a requirement identified in paragraphs 22 through 26 in Section V (Compliance Requirements):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st day through 14th day
\$1000	15th day through 30th day
\$1,500	31st day and beyond

e. Dust Releases: Stipulated penalties shall accrue in the event that Visible

Emissions in excess of regulatory requirements are observed from Defendant's baghouses; associated capture and collection devices; product tanks and associated equipment; structures which contain the Kiln 4 Operations, Kiln 5 Operations, Hydrate Operations, and Grinding Mill Operations; the South End Truck and Rail Car Loading Area; or the North End Truck Loading Area:

<u>Penalty Per Visible Emission Occurrence</u>	
\$1,000	For any second or third occurrence of 30 seconds or more in a 24 hour period;
\$2,000	For any fourth occurrence of 30 seconds or more in a seven day period.

f. Opacity: If Defendant exceeds 10% opacity as a six-minute average

(excluding periods of calibration, startup, shutdown and malfunction, in accordance with the provisions of 40 CFR §63.7121(d)) as measured by the COMS on Baghouse No. 5, Defendant shall pay the following stipulated penalty for each such excess opacity observation:

<u>Opacity Level</u>	<u>Number of Violations Per Day</u>	<u>Penalty</u>
10-40%,	1-10 6-minute averages in any day	\$500 per 6-minute average

	7-18 6-minute averages in any day	\$1000 per 6-minute average
	19 or more 6-minute averages in any day	\$1,500 per 6-minute average
41-60%	1-4 6-minute averages in any day	\$500 per 6-minute average;
	5-9 6-minute averages in any day	\$1000 per 6-minute average
	10 or more 6-minute averages in any day	\$1,500 per 6-minute average
61% or greater	1 <sup>st</sup> 6-minute average	\$500
	2-4 6-minute averages in any day	\$1000 per 6-minute average
	5 or more 6-minute averages in any day	\$1,500 per 6-minute average

g. SEP: In the event that Carmeuse fails to fully and satisfactorily complete the SEP by the completion date, Carmeuse will pay a stipulated penalty of \$137,500, but Carmeuse will receive credit towards the penalty amount for any sums that were satisfactorily expended towards the SEP pursuant to Paragraph 13.

h. In the event that Carmeuse fails to timely submit the SEP completion report required by Paragraph 15, Carmeuse must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 <sup>st</sup> through 14 <sup>th</sup> day
\$150	15 <sup>th</sup> through 30 <sup>th</sup> day
\$250	31 <sup>st</sup> day and beyond

49. The following Stipulated Penalties shall accrue per violation per day for Defendant's failure to comply with any requirement of this Consent Decree not specifically referenced in Paragraph 48, above, including, but not limited to, failing to perform any obligation required by any work plan or schedule approved under this Decree, within the specified time schedules established by or approved under this Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st day through 14th day
\$500	15th day through 30th day
\$1000	31st day and beyond

50. Stipulated Penalties in this Section shall begin to accrue on the day after performance is due or on the day the violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree.

51. Defendant shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand.

52. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due under this Consent Decree.

53. Obligations Prior to the Effective Date: Upon the Effective Date of this Consent Decree, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations of obligations under Section V (Compliance Requirements) of this Decree that occurred prior to the Effective Date of the Decree, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Decree is entered by the Court. Defendant waives any argument that the United States should not be permitted to seek stipulated penalties for violations of Consent Decree requirements that occurred between the Date of Signature by Defendant and the Effective Date of this Decree.

54. Stipulated Penalties shall continue to accrue as provided in Paragraphs 48 and 49, above, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA, that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, at the rate specified in 28 U.S.C. § 1961 within 30 days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay accrued penalties determined by the Court to be owing, together with interest, at the rate specified in 28 U.S.C. § 1961, within 60 days of the Court's decision or order, except as provided in Subparagraph c, below.

c. If any party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, at the rate specified in 28 U.S.C. § 1961, within 15 Days of receiving the final appellate court decision.

55. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

56. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

57. No amount of the Stipulated Penalties to be paid by Defendant shall be used to reduce its federal or state tax obligations.

## X. FORCE MAJEURE

58. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

59. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA, within 72 hours of when Defendant first knew that the event might cause a delay. Within seven days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for

that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

60. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

61. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

62. If Defendant elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraph 59, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

## XI. DISPUTE RESOLUTION

63. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

64. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 15 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

65. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

66. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any

supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

67. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 14 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

68. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

69. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 64 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 64, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better further the objectives of the Consent Decree.

70. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 53. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

## **XII. INFORMATION COLLECTION AND RETENTION**

71. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. Monitor the progress of activities required under this Consent Decree;
  - b. Verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
  - c. Obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
  - d. Obtain documentary evidence, including photographs and similar data;
- and
- e. Assess Defendant's compliance with this Consent Decree.

72. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

73. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

74. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the

document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

75. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

76. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

### **XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

77. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the Date of Lodging.

78. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 77. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 77. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by,

Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

79. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 77.

80. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401 et seq., or with any other provisions of federal, state, or local laws, regulations, or permits.

81. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

82. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

#### XIV. COSTS

83. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

#### XV. NOTICES

84. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-08599/1

and

Jonathan C. Haile  
Assistant United States Attorney  
United States Attorney's Office  
Northern District of Illinois  
219 S. Dearborn Street, 5th Floor  
Chicago, Illinois 60604

To EPA:

Sabrina Argentieri  
Associate Regional Counsel  
U.S. EPA, Region 5 (C-14J)

Office of Regional Counsel  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Natalie Topinka  
Environmental Scientist  
U.S. EPA, Region 5 (AE-17J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

To Defendant:

Chris Imbrogno  
Environmental Manager  
Carmeuse Lime  
9043 Highway 154  
Butler, KY 41006

Stephen C. Smith  
Deputy General Counsel/Environmental Director  
Carmeuse North America  
11 Stanwix Street, 11th Floor  
Pittsburgh, PA 15222

Scott R. Dismukes  
Eckert Seamans Cherin & Mellott, LLC  
U.S. Steel Tower  
600 Grant Street, 44th Floor  
Pittsburgh, PA 15219

85. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

86. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

**XVI. EFFECTIVE DATE**

87. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted,

whichever occurs first, as recorded on the Court's docket; provided, however, that Defendant hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

#### **XVII. RETENTION OF JURISDICTION**

88. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XI (Dispute Resolution) and XVIII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

#### **XVIII. MODIFICATION**

89. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

90. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 69, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

#### **XIX. TERMINATION**

91. After Defendant has completed the requirements of Section V (Compliance Requirements) of this Decree, has thereafter maintained continuous satisfactory compliance with

this Consent Decree and the Title V Renewable Operating Permit, Approval to Construct Permit, Lime NSPS, Lime NESHAP, and Illinois SIP for a period of 3 years after resumed kiln operations, has complied with all other requirements of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

92. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

93. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section XI of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until 90 Days after service of its Request for Termination.

## **XX. PUBLIC PARTICIPATION**

94. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to

challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

#### **XXI. SIGNATORIES/SERVICE**

95. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

96. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### **XXII. INTEGRATION**

97. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

#### **XXIII. FINAL JUDGMENT**

98. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant. The

Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

**XXIV. APPENDICES**

99. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A: Hydrator System Flow Chart 669-M05.

Appendix B: Drawing 699-M08 K4 Hummer Building.

Appendix C: Drawing 699-M09 K5 System.

Appendix D: Memorandum of Agreement between Carmeuse Lime, Inc. and Center for Neighborhood Technology (CNT).

Appendix E: Chapters 3 and 5, "Industrial Ventilation: A Manual of Recommended Practice," American Conference of Governmental Industrial Hygienists, (23rd edition, 1998).

Appendix F: Drawing 699-M04 Grinding Building.

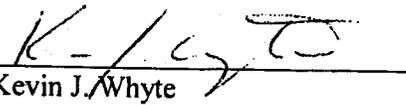
Appendix G: Table 1 of EQM Report.

Dated and entered this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

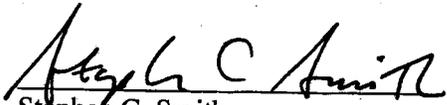
UNITED STATES DISTRICT JUDGE  
Northern District of Illinois

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Carmeuse Lime, Inc., relating to alleged violations of the Clean Air Act:

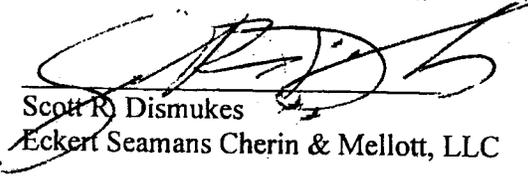
FOR DEFENDANT CARMEUSE LIME, INC.:

Date: February 13, 2012 

Kevin J. Whyte  
Vice President Environmental Health & Safety, General  
Counsel  
Carmeuse Lime

Date: Feb 13, 2012 

Stephen C. Smith,  
Deputy General Counsel/Environmental Director  
Carmeuse North America

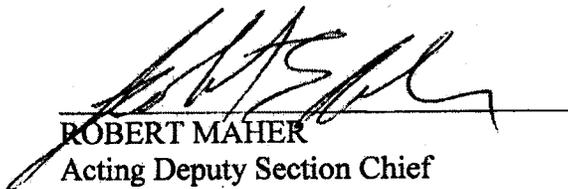
Date: 2/8/12 

Scott R. Dismukes  
Eckert Seamans Cherin & Mellott, LLC

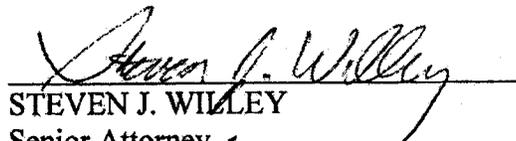
FOR PLAINTIFF UNITED STATES OF AMERICA:

IGNACIA MORENO  
Assistant Attorney General  
Environment and Natural Resources Division

Date: July 2, 2012

  
ROBERT MAHER  
Acting Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division

Date: July 2, 2012

  
STEVEN J. WILLEY  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division

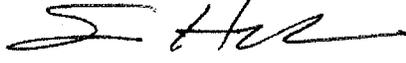
PATRICK FITZGERALD  
United States Attorney for the  
Northern District of Illinois

Date: July 13, 2012

By:   
JONATHAN C. HAILE  
Assistant United States Attorney

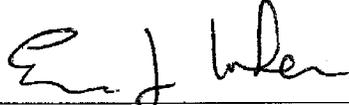
FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: June 11, 2012



SUSAN HEDMAN  
Regional Administrator  
U.S. EPA, Region 5

Date: 6/5/12



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SABRINA ARGENTIERI  
Associate Regional Counsel  
U.S. EPA, Region 5