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

SEP 13 2016

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Stacey King
Area Environmental Manager
Carmeuse Lime, Inc.
3964 County Road 41
Millersville, Ohio 43435

Dear Ms. King:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves the Carmeuse Lime, Inc. case, docket no. **CAA-05-2016-0040**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 13, 2016.

Pursuant to paragraphs 38 and 39 of the CAFO, Carmeuse Lime, Inc. must pay the civil penalty within 30 days of the filing date. Your check or electronic funds transfer must display the case name and case, docket number **CAA-05-2016-0040**.

Please direct any questions regarding this case to Kathleen Schnieders, Attorney at (312) 353-8912.

Sincerely,

for

Nathan Frank Chief
IL/IN Section
Air Enforcement and Compliance Assurance Branch

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Kathleen Schnieders/C-14J

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No.** **CAA-05-2016-0040**
	)	
Carmeuse Lime. Inc.	)	**Proceeding to Assess a Civil Penalty**
Millersville, Ohio	)	**Under Section 113(d) of the Clean Air Act,**
	)	**42 U.S.C. § 7413(d)**
	)	
Respondent.	)	
	)	

REGIONAL HEARING CLERK
RECEIVED
SEP 13 2016
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified in the U.S. Code of Federal Regulations (C.F.R.) at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Carmeuse Lime, Inc. (Carmeuse Lime) a corporation doing business in Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

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

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

Jurisdiction and Waiver of Right to Hearing

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

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

Statutory and Regulatory Background

9. Section 112(b) of the CAA, 42 U.S.C. § 7412(b), provides a list of hazardous air pollutants developed by Congress and modified in accordance with the CAA.

10. Section 112(c)(1) of the CAA, 42 U.S.C. § 7412(c)(1), requires the Administrator to publish, and from time to time revise, if appropriate, a list of all source categories and subcategories of major sources and area sources of the air pollutants listed pursuant to Section 112(b).

11. Section 112(c)(2) of the CAA, 42 U.S.C. § 7412(c)(2), requires the Administrator establish emissions standards in accordance with Section 112(d) for the categories and subcategories the Administrator lists.

12. Section 112(d) of the CAA, 42 U.S.C. § 7412(d), requires the Administrator to promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation.

13. Section 112(d) of the CAA, 42 U.S.C. § 7412(d), also identifies the minimum requirements under which the Administrator is to develop and promulgate such regulations.

14. The Administrator published an initial list of categories and subcategories of major sources and area sources in accordance with Section 112 of the CAA, 42 U.S.C. § 7412, on July 16, 1992. 57 Fed. Reg. 31576.

15. The initial list of categories and subcategories includes lime manufacturing plants. 57 Fed. Reg. 31592.

16. The Administrator published the General Provisions of 40 C.F.R. Part 63 on December 29, 1992, as amended. 59 Fed. Reg. 61992 (codified at 40 C.F.R. Part 63, Subpart A).

17. The Administrator issued, in accordance with the requirements of Section 112 of the CAA, a final rule for the National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants (40 C.F.R. Part 63, Subpart AAAAA) on January 5, 2004. 69 Fed. Reg. 393.

18. The Administrator issued, in accordance with the requirements of section 112 of the CAA, a final rule for the National Emission Standards for Lime Manufacturing Plants (40 C.F.R. Part 63, Subpart AAAAA) on January 5, 2004. 69 Fed. Reg. 393.

19. 40 C.F.R. § 63.1(a)(2) of the General Provisions states this part contains national emission standards for hazardous air pollutants (NESHAP) established pursuant to section 112 of the CAA. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants listed in this part pursuant to section 112(b) of the CAA.

20. The General Provisions of 40 C.F.R. Part 63 establish requirements for owners or operators of stationary sources and major sources subject to a NESHAP listed in 40 C.F.R. Part 63. 40 C.F.R. § 63.7081(a)(2) states that a major source is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAPs at a rate of 25 tons or more per year from all emission sources at the plant site.

21. 40 C.F.R. § 63.7081(a) states an affected source to which the provisions of this subpart shall apply is each lime manufacturing plant that is located at or a part of, a major source of HAPs.

22. PM emissions from each affected lime kiln utilizing a wet scrubber (which the scrubber itself was operating prior to January 5, 2004) shall not exceed 0.60 pounds of particulate matter (PM) per ton of stone feed. 40 C.F.R. Part 63.7090(a) and Table 1 to Subpart AAAAA of Part 63.

23. Title I, Section 112 (i)(3)(A) states that after the effective date of any emissions standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard. 42 U.S.C. § 7412(i)(3)(A).

24. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), states whenever, on the basis of any information available to the Administrator of EPA, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of this subchapter, the Administrator may issue a penalty order in accordance with subsection (d). This authority has

been delegated to the Regional Administrator. EPA Delegation 7-6-A, 8/9/94; Region 5 Delegation 7-6-A, 2/4/00.

25. The Administrator of EPA (the Administrator) may assess a civil penalty of up to $37,500 per day of violation up to a total of $295,000 for violations that occurred after January 12, 2009 through December 6, 2013 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

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

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

Factual Allegations and Alleged Violations

28. Respondent owns and operates a lime manufacturing plant site at 3964 County Road 41, Millersville, Ohio (Facility).

29. The Facility is a stationary source, as defined in the CAA and 40 C.F.R. § 63.2.

30. The Facility consists of two rotary kilns that vent to wet scrubbers for PM control, which are affected sources as defined at 40 C.F.R. § 63.340(a).

31. The Facility conducted the PM testing on Kiln 1 utilizing a product named "Fusite" on November 19, 2013, following EPA Reference Method 5.

32. The results of the PM testing at Carmeuse Lime were provided to EPA via Email dated March 18, 2014.

33. Test results for Kiln 1 averaged 0.853 pounds of PM per ton of stone feed, over three, one-hour testing runs.

34. During the PM testing, the Kiln 1 average lime production in tons per hour was 25.49 tons of stone feed per hour.

35. Respondent violated the National Emission Standards for Lime Manufacturing Plants (40 C.F.R. Part 63, Subpart AAAAA) by exceeding the 0.60 pounds of PM per ton of stone feed limit at their affected kilns.

36. EPA issued a Finding of Violation (FOV) to Respondent on March 31, 2014.

37. Representatives of Carmeuse Lime and EPA met on June 23, 2014 to discuss the FOV issued March 31, 2014.

Civil Penalty

38. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the Clean Air Act Stationary Source Civil Penalty Policy, the economic impact of the penalty on Carmeuse Lime's business, the facts of this case, and Respondent's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is $ 140,000.

39. Within 30 days after the effective date of this CAFO, Respondent must pay a $ 140,000 civil penalty by cashier's check, certified check, or electronic funds transfer,

For checks sent by regular U.S. Postal Service mail: send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077

St. Louis, Missouri 63197-9000

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

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

The check must include the case name, docket number of this CAFO, and the billing document number.

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

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, include the case name, the docket number of this CAFO, and the billing document number.

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

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

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

Chicago, Illinois 60604

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

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

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

General Provisions

43. This CAFO resolves Respondent's liability to the EPA and the United States with respect to all claims that were raised in the Finding of Violation issued March 31, 2014 by EPA and as set forth in this Order.

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

45. This CAFO is being filed simultaneously with an Administrative Consent Order which seeks appropriate injunctive relief necessary to address alleged violations of law and assure ongoing compliance with all applicable regulations.

46. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in Paragraph 44, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

47. 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 CAA, 42 U.S.C. § 7413(e).

48. The terms of this CAFO bind Respondent, its successors, and assignees.

49. 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.

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

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

Consent Agreement and Final Order
In the Matter of: Carmeuse Lime. Inc.
Docket No. CAA-05-2016-0040

Carmeuse Lime. Inc., Respondent

August 11, 2016
Date

Kevin Whyte, Vice President and General Counsel
Carmeuse Lime. Inc.

United States Environmental Protection Agency, Complainant

8/29/16
Date

Edward Nam
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Carmeuse Lime. Inc.
Docket No. CAA-05-2016-0040

Final Order

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

6/30/16
Date

Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the matter of:
Docket Number: **CAA-05-2016-0040**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on [September 13, 2016], this day in the following manner to the addressees:

Copy by certified mail to Respondent:

Stacey King, Area Environmental Manager
Carmeuse Lime, Inc.
3964 County Road 41
Millersville, Ohio 43435

Copy by mail to Respondent's attorney:

Michael E. Born, Esq.
Shumaker, Loop & Kendrick, LLP
Huntington Center
41 South High Street, Suite 2400
Columbus, Ohio 43215

Copy by e-mail to Complainant:

Kathleen Schnieders
Schnieders.Kathleen@epa.gov

Copy by e-mail to Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: September 13, 2016 LD Whitehead

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

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 6882

7011 1150 0000 2640 6905