

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)	
)	
Lhoist North America of Alabama, LLC)	
Montevallo Plant)	CONSENT ORDER NO.
Calera, Shelby County, Alabama)	
)	
<u>Air Facility ID No. 411-0008</u>)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and Lhoist North America of Alabama, LLC (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a lime manufacturing facility (hereinafter, the “Facility”) known as the Montevallo Plant, located in Calera, Shelby County, Alabama (ADEM Air Facility ID No. 411-0008).

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer

and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. The Permittee operates four rotary lime kilns at the Facility, (hereinafter, “Kiln No. 1”, “Kiln No. 2”, “Kiln No. 3”, and “Kiln No. 4”) under the authority of Major Source Operating Permit No. 411-0008 (hereinafter, the “Permit”), which was initially issued by the Department on January 18, 2001, and most recently renewed on February 22, 2012.

5. Permit Proviso No. 5 of the Calcining Process Emissions Standards Section states:

In accordance with 40 CFR 63, Subpart AAAAA, “Emissions Limitations”, affected sources shall comply with the following: (a) Each applicable emissions limit specified in Table 1 of Subpart AAAAA. Table 1 of Subpart AAAAA, “Emissions Limits”, is provided in Appendix A [of Permit]”. For lime kilns that have a wet scrubber installed and operated before January 5, 2004, Table 1 in Appendix A of the MSOP states “PM emissions must not exceed 0.60 lb/tsf.

DEPARTMENT’S CONTENTIONS

6. On November 12, 2015, the Permittee performed a particulate matter (PM) emissions test on Kiln No. 1 in accordance with Method 5 of 40 CFR 60, Appendix A.

7. On December 20, 2015, the Department received a report from the Permittee summarizing the results of the November 12, 2015 PM emissions test on Kiln No. 1, which indicated a measured PM emissions rate of 0.720 lb/tsf that exceeded the permitted PM emissions limit.

8. On January 21, 2016, the Permittee performed a PM emissions test on Kiln No. 2 in accordance with Method 5 of 40 CFR 60, Appendix A.

9. On February 22, 2016, the Department received a report from the Permittee summarizing the results of the January 21, 2016 PM emissions test on Kiln No. 2. Results indicated a measured PM emissions rate of 1.468 lb/tsf, which exceeded the permitted PM emissions limit.

10. On April 6, 2016, the Department issued a Notice of Violation (hereinafter, the "NOV") to the Permittee for the following violations:

(a) During the test performed on November 12, 2015, measured PM emissions rate from Kiln No. 1 exceeded the applicable PM emissions rate as set forth in Permit Proviso No. 5 of the Calcining Process Emissions Standards Section.

(b) During the test performed on January 21, 2016, measured PM emissions rate from Kiln No. 2 exceeded the applicable PM emissions rate as set forth in Permit Proviso No. 5 of the Calcining Process Emissions Standards Section.

11. On May 13, 2016, the Department received a response to the NOV from the Permittee that addressed the following issues: a) The cause of the exceedances; b) Monitoring parameters of the scrubbers during testing; c) Actions taken once Permittee became aware of the exceedances; and, d) Actions to be taken to assure future compliance with permitted PM emissions limits.

12. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such

violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following.

A. SERIOUSNESS OF THE VIOLATION: The Department considers Permittee's exceedance of the PM emissions limits set forth in the Permit on Kiln No. 1 and Kiln No. 2 to be serious violations. However, the Department is not aware of any irreparable harm to the environment resulting from these violations.

B. THE STANDARD OF CARE: The Permittee failed to exhibit a sufficient standard of care by exceeding the permitted PM emissions limits for Kiln No. 1 and Kiln No. 2.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any evidence indicating that the Permittee received any significant economic benefit from these violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Permittee shutdown Kiln No. 1 and Kiln No. 2 shortly after results indicated that emissions were potentially above permitted limits to determine the cause of the exceedances.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has a significant history of enforcement actions with the Department as a result of exceedances of permitted PM emissions rates at the Facility. The Permittee was penalized \$125,000 in a Consent

Order issued June 22, 2011, \$17,500 in a Consent Order issued July 30, 2008, and \$12,500 in a Consent Order issued January 26, 2006 for exceedances of permitted PM emissions rates.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

13. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate (*See* "Attachment A", which is made a part of Department's Contentions).

14. The Department neither admits nor denies Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE'S CONTENTIONS

15. Permittee neither admits nor denies the Department's contentions. Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and the Department has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$130,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee Agrees to perform quarterly particulate matter (PM) emissions tests on Kiln 1 and Kiln 2 of the Facility in accordance with Method 5 of 40 CFR 60, Appendix A, until two (2) consecutive quarterly tests show PM emissions at or below 0.45 lb/tsf (75% of the permitted limit) or until eight (8) consecutive quarterly tests show PM emissions at or below 0.60 lb/tsf (the permitted limit), whereupon the frequency of such PM emissions tests shall revert to the annual frequency required under the Permit without further action by the Department. In addition, the Permittee may seek written

approval of the Department to reduce the frequency of such PM emissions testing at Kiln 1 and/or Kiln 2 of the Facility after eight (8) quarterly tests. The terms of this testing obligation apply to Kiln 1 and Kiln 2 independently, and shall include the PM emissions tests conducted in June 2016 and thereafter.

C. The Permittee agrees to pay to the Department a stipulated civil penalty in the amount of \$50,000.00 for each and any PM emissions test conducted at Kiln 1 or Kiln 2 of the Facility in accordance with Method 5 of 40 CFR 60, Appendix A that shows PM emissions in excess of the permitted limit (0.60 lb/tsf) for so long as the subject kiln is still required to be tested on a quarterly basis pursuant to Paragraph B above. The terms of this stipulated penalty obligation apply to Kiln 1 and Kiln 2 of the Facility independently, and shall include the PM emissions tests conducted in June 16 and thereafter.

D. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

E. The Permittee agrees to comply with all requirements of ADEM Administrative Code div. 335-3 and the Permit immediately upon the effective date of this Order and continuing every day thereafter.

F. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party

he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

G. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

H. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

I. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the

Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

J. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

K. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

L. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

M. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

N. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

O. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

P. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

LHOIST NORTH AMERICA OF
ALABAMA, LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

CRAG GORONIK
(Printed Name)

PLANT MANAGER
(Printed Title)

Lance R. LeFleur
Director

Date Signed: AUG 25th, 2016

Date Executed: _____

Attachment A

**Lhoist North America
of Alabama, LLC
Montevallo Plant
Shelby County**

Facility ID No. 411-0008

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Demonstrated noncompliance with PM emission limits	2	\$50,000	\$50,000	\$100,000	\$200,000.00
<i>TOTAL PER FACTOR</i>		<i>\$50,000.00</i>	<i>\$50,000.00</i>	<i>\$100,000</i>	<i>\$200,000.00</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	(\$70,000)
Total Adjustments (+/-)	(\$70,000)

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$200,000.00
Total Adjustments (+/-)	(\$70,000)
FINAL PENALTY	\$130,000.00

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.