

LANCE R. LEFLEUR
DIRECTOR



BOB RILEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

December 29, 2010

CERTIFIED MAIL NO.: 91 7108 2133 3936 5817 8089
RETURN RECEIPT REQUESTED

Mr. Alan B. Cheney, Jr.
President and CEO
Cheney Lime and Cement Company
P.O. Box 2046
Alabaster, Alabama 35007

RE: CONSENT ORDER NO. 11-041-CAP
Cheney Lime and Cement Company
Landmark Plant
Alabaster, Shelby County, Alabama
Facility No. 411-0019

Dear Mr. Cheney:

Enclosed with this letter is ADEM Consent Order No. 11-041-CAP which requires Cheney Lime and Cement Company to take certain actions in regard to alleged violations of the Alabama Air Pollution Control Act. This Order has been issued with the consent of Chemical Lime Company, LLC, and the Department. Please refer to Order Item A., which requires that monetary penalties be paid within 45 days of the date of this Order.

If you have any questions concerning this matter, please contact Katrina Scanlan at (334) 270-5677 in Montgomery.

Sincerely,

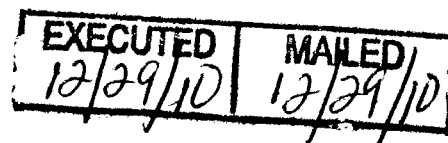
A handwritten signature in cursive script, appearing to read "Ron W. Gore".

Ronald W. Gore, Chief
Air Division

RWG/KHS:khs

Enclosure

cc: Thomas L. Johnston, Office of General Counsel



Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S. W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

<u>IN THE MATTER OF:</u>)	
)	
Cheney Lime and Cement Company)	CONSENT ORDER NO. 11-041-CAP
Landmark Plant)	
Alabaster, Shelby County, Alabama)	
<u>Air Facility ID No. 411-0019</u>)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" or "ADEM") and Cheney Lime and Cement Company (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. Permittee owns and operates the Landmark Plant (hereinafter, the "Facility"), which is an existing lime manufacturing facility (ADEM Air Facility ID No. 411-0019) located at 1152 Old Highway 31, in Alabaster, Shelby County, Alabama.
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 owns and operates two rotary lime kilns at the Facility, (hereinafter, "Kiln No. 1" and "Kiln No. 2") under the authority of Major Source Operating Permit No. 411-0019 (hereinafter, the "MSOP"), which was initially issued by the Department on January 4, 2000, and renewed on January 4, 2007.

5. The Permittee currently operates a Lime Hydrator System at the Facility under the authority of Air Permit No. 411-0019-X004, which was issued on May 15, 2008.

6. General Proviso No. 9 of the MSOP, Certification of Truth, Accuracy, and Completeness, states:

Any application form, report, test data, monitoring data, or compliance certification submitted pursuant to this permit shall contain certification by a responsible official of truth, accuracy, and completeness except as provided in Rule 335-3-16-.04(9)(b). This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

7. General Proviso No. 12(a)(1) through (a)(5) of the MSOP, Compliance Certification, states:

The compliance certification shall include the following: The identification of each term or condition of this permit that is the basis of the certification; the compliance status; The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with Rule 335-3-16-.05(3) (Monitoring and Recording Keeping Requirements); whether the method(s) or other means used to assure compliance provided continuous or intermittent data; and such other facts as the Department may require to determine the compliance status of the source.

8. General Proviso No. 16 of the MSOP, Operation of Capture and Control Devices, states:

All air pollution control devices and capture systems for which this permit is issued shall be maintained and operated at all times in a manner so as to minimize the emissions of air contaminants. Procedures for ensuring that the above equipment is properly operated and maintained so as to minimize the emission of air contaminants shall be established.

9. General Proviso No. 21(b) of the MSOP, Reporting Requirements, states:

Deviations from permit requirements shall be reported within 48 hours or 2 working days of such deviations, including those attributable to upset conditions as defined in the permit. The report will include the probable cause of said deviations, and any corrective actions or preventive measures that were taken.

10. ADEM Administrative Code r. 335-3-4-.01(4), Visible Emissions, states:

Except as otherwise exempt under subparagraphs (1)(c) or (1)(d) of this rule, no permittee shall discharge into the atmosphere from any source of emission, particulate of an opacity greater than that designated as twenty percent (20%) opacity, as determined by a six (6) minute average, except that during each calendar quarter, the permittee may discharge into the atmosphere from any emissions unit qualifying under paragraph (3) of this rule, particulate with an opacity exceeding 20% for not more than twenty-four (24), six (6) minute periods in any calendar day, if such periods do not exceed 2.0 percent of the source calendar quarter operating hours for which the opacity standard is applicable and for which the COMS is indicating valid data.

11. ADEM Administrative Code r. 335-3-4-.01(5), Visible Emissions, states:

No permittee shall discharge into the atmosphere from any source of emission particulate of an opacity greater than 22% (excluding exempt periods allowed under subparagraphs (1)(c) and (1)(d) of this rule) averaged over each calendar day.

12. Recordkeeping and Reporting Proviso No. 2 of the Kiln No. 1 unit specific requirements of the MSOP states:

A written report of excess opacity, as determined by the COMS and defined below, will be submitted to the Department for each calendar quarter within the month immediately following the end of the quarter...

13. Emissions Standards Proviso No. 6 of the Kiln No. 2 unit specific requirements of the MSOP states that "the SO₂ emission rate from Kiln 2 [005] shall not exceed 42.42 lb/hr".

14. Emissions Standards Proviso No. 7 of the Kiln No. 2 unit specific requirements of the MSOP states that “the NO_x emission rate from Kiln 2 [005] shall not exceed 2.8 lb/ton of lime produced and 70.0 lb/hr”.

15. Emissions Standards Proviso No. 8 of the Kiln No. 2 unit specific requirements of the MSOP states that “the CO emission rate from Kiln 2 [005] shall not exceed 2.0 lb/ton of lime produced and 50.0 lb/hr”.

16. Emissions Monitoring Proviso No. 3 of the Kiln No. 2 unit specific requirements of the MSOP states:

CO and NO_x emissions tests are to be conducted for this source at least once per permit term. During these emissions tests, the maximum fuel firing rate [3-hour average] and minimum O₂ level [3-hr average] shall be recorded.

17. Emissions Monitoring Proviso No. 4 of the Kiln No. 2 unit specific requirements of the MSOP states:

The Permittee shall monitor the fuel firing rate [1-hour average] and the O₂ level [1-hour average] of this source during all time of kiln operation.

18. Emissions Monitoring Proviso No. 6 of the Kiln No. 2 unit specific requirements of the MSOP states:

If the O₂ level [hour average] of this source is measured at less than 75% of the lowest O₂ rate [1-hour average] as measured during the most recent CO and NO_x emissions test which demonstrated compliance with the applicable standards, the Permittee shall investigate the cause and initiate the appropriate corrective action within 2 hours.

19. Recordkeeping and Reporting Proviso No. 2 of the Kiln No. 2 unit specific requirements of the MSOP states:

A written report of excess opacity, as determined by the COMS and defined below, will be submitted to the Department for each calendar quarter within the month immediately following the end of the quarter...

20. Recordkeeping and Reporting Proviso No. 7 of the Kiln No. 2 unit specific requirements of the MSOP states:

Records shall be maintained which document the maximum fuel firing rate [1-hour average] and the minimum O₂ level [1-hour average] for each day Kiln 2 [005] operates.

21. Proviso No. 27 of Air Permit No. 411-0019-X004 states that “the pressure drop [ΔP] across the baghouse shall be monitored and recorded daily while the unit is in operation”.

22. Proviso No. 28 of Air Permit No. 411-0019-X004 states that “if the observed pressure drop [ΔP] is less than two and one-half [2.5] inches of water or greater than eleven [11] inches of water, corrective action shall be initiated within two [2] hours”.

23. On August 22, 2008, the Alabama Environmental Management Commission adopted revisions to ADEM Admin. Code r. 335-3-4-.01, which became effective on September 30, 2008.

DEPARTMENT’S CONTENTIONS

24. In a certified letter dated January 22, 2009, the Department notified the Permittee of the revisions to ADEM Admin. Code r. 335-3-4-.01. The letter also stated that Kiln No. 1 must be in compliance with the adopted revisions no later than April 15, 2009.

25. On November 2, 2009, the Department received the 3rd Quarter 2009 Excess Emissions Reports (hereinafter, “3QTR09 EER”) covering the reporting period between July 1, 2009, and September 30, 2009. A subsequent review of the report indicated that the report contained several errors.

26. On November 6, 2009, the Department sent an email to the Facility contact detailing errors with the submitted report.

27. On January 22, 2010, the Department received a revised 3QTR09 EER.
28. According to the 3QTR09 EER, the following events, as determined by the Kiln No. 1 Continuous Opacity Monitoring System (hereinafter, "COMS"), occurred during the reporting period:
- (a) Six-minute average opacity in excess of 20% percent occurred more than twenty-four times during any calendar day on four occasions.
 - (b) Excess emissions were recorded during 2.2% of the monitored period.
 - (c) Average daily opacity exceeded twenty-two (22%) percent on four occasions.
29. On February 2, 2010, the Department received the 4th Quarter 2009 Excess Emissions Report (hereinafter, the "4QTR09 EER") covering the reporting period between October 1, 2009, and December 31, 2009. The report was postmarked February 1, 2010. Subsequent review of the report indicated that the report contained several errors.
30. On December 22, 2009, the Permittee conducted an SO₂ and CO emissions test on Kiln No. 2 in accordance with Methods 6C and 10, respectively, of 40 CFR 60, Appendix A.
31. On February 16, 2010, the Department received a report summarizing the results of the December 22, 2009, emissions test. Measured average SO₂ emissions were 67.74 lb/hr. Measured average CO emissions were 49.22 lb/hr and 2.55 lb/ton.
32. On March 4, 2010, the Department received a revised 4QTR09 EER. In addition, the Department received the Annual Compliance Certification (hereinafter, "ACC") covering the reporting period between January 4, 2009, and January 3, 2010.

33. According to the 4QTR09 EER, the following events, as determined by the Kiln No. 1 COMS, occurred during the reporting period:

- (a) Six-minute average opacity in excess of 20% percent occurred more than twenty-four times during any calendar day on six occasions.
- (b) Excess emissions were recorded during 4.5% of the monitored period.
- (c) Average daily opacity exceeded twenty-two (22%) percent on four occasions.

34. According to the submitted ACC, the Permittee certified that it was “in compliance” with each emissions monitoring and recordkeeping and reporting requirement associated with Kiln No. 2.

35. On May 5, 2010, the Department issued a Notice of Violation (hereinafter, “NOV”) for the following:

- (a) Failure to report deviations from permit requirements within 48 hours or 2 working days of such deviations as required by General Permit Proviso No. 21(b) of the MSOP.
- (b) Original submissions of the 3QTR09 EER and 4QTR09 EER each contained several errors requiring resubmission.
- (c) Excess emissions were recorded during 2.2% of the monitored period. Reported excess emissions from Kiln No. 1, as determined by the COMS, exceeded the allowable 2.0 percent threshold set forth in ADEM Admin. Code r. 335-3-4-.01(4) during 3QTR09 and 4QTR09.

- (d) Reported six-minute average opacity from Kiln No. 1, as determined by the COMS, exceeded the allowable six-minute average of twenty (20%) percent set forth in ADEM Admin. Code r. 335-3-4-.01(4) during 3QTR09 and 4QTR09.
- (e) Reported average daily opacity from Kiln No. 1, as determined by the COMS, exceeded the allowable average of twenty-two (22%) percent set forth in ADEM Admin. Code r. 335-3-4-.01(5) during 3QTR09 and 4QTR09.
- (f) Failure to submit the 4QTR09 EER by the date stated in Proviso No. 2 of the Recordkeeping and Reporting Requirements sections of the MSOP for Kilns No. 1 and No. 2.
- (g) Measured CO and SO₂ emissions from Lime Kiln No. 2 exceeded the allowable emission rates outlined in the Provisos No. 6 and No. 8 of the Emissions Standards section of the MSOP for Kiln No. 2.

36. On May 24, 2010, the Department received a response to the NOV from the Permittee. The Permittee asserted the following in its response:

- (a) Acknowledged that a breach in communication between the Permittee and the Department resulted in the lack of notification of excessive opacity violations recorded during the during 3QTR09 and 4QTR09;
- (b) Implemented a reporting protocol to ensure that the Department is notified of any future opacity violations within the required time frame outlined in the MSOP;

- (c) Acknowledged an erroneous interpretation of the quarterly excess emissions report due date;
- (d) Stated that future reports would be submitted in a timely manner as required by the MSOP;
- (e) Contended that the COMS software incorrectly determined operating hours in during 3QTR09 and 4QTR09, resulting in erroneous reports;
- (f) Implemented new data review and reporting protocols to ensure that each report contains accurate information;
- (g) Contended that excess emissions during 3QTR09 were caused by faulty air locks and level probes on the Kiln No. 1 baghouse.
- (h) Contended that excess emissions during 4QTR09 were caused by damaged bags and the failure of two air locks on the Kiln No. 1 baghouse.
- (i) Contended that measured CO and SO₂ emissions from Kiln No. 2 in excess of the allowable emissions outlined in the MSOP were caused by an “out-of-calibration O₂ monitor at the time of testing” which compromised test data.
- (j) Installed a new sample probe and hired an in-house monitor technician.

37. On July 8, 2010, the Department sent an email to the Permittee requesting additional information regarding the O₂ monitor.

38. On July 29, 2010, the Department performed an unannounced annual inspection of the facility. During the inspection, the Department was informed that the Permittee had not been performing O₂ monitoring and recordkeeping on Kiln No. 2 as required by the MSOP. In

addition, it was noted that several lime hydrator baghouse pressure drop observation records were missing.

39. On July 30, 2010, the Department received email from the Permittee in response to the July 8, 2010, request for additional information. The Permittee confirmed that the O₂ monitor (hereinafter, "Monitor") referenced in the May 24, 2010, NOV response is used to monitor the combustion profile within Kiln No. 2. The Permittee contended the following:

- (a) An out-of-calibration Monitor would cause the kiln operator to introduce incorrect volumes of combustion air into the kiln system
- (b) The Monitor was last calibrated on December 15, 2009;
- (c) The Monitor calibration is checked twice per day;
- (d) The Permittee was unaware of that the Monitor was out-of-calibration during the stack test performed on December 22, 2009.

40. On August 17, 2010, a meeting was conducted between the Department and Permittee. During the meeting, the Permittee disclosed the following:

- (a) Moved the Monitor from the Kiln No. 2 baghouse duct to the transfer chute in July 2008;
- (b) Discontinued Monitor strip charts and implemented a computerized system in November 2009;
- (c) Hired a full-time monitor technician in May 2010;
- (d) Discovered deficient Monitor records in July 2010.

41. On August 18, 2010, the Department received an email from the Permittee verifying that the lime hydrator baghouse pressure drop observation records for the following

dates could not be located: February 18, 2010, April 6, 2010, April 29, 2010, May 17, 2010, May 24, 2010, and July 19, 2010.

42. On August 24, 2010, the Department received a letter outlining corrective actions the Permittee was implementing to assure compliance with permit requirements.

43. Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), 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 be less than \$100.00 or 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 VIOLATIONS: Although the Permittee's emissions were determined to be in excess of Permitted limits, the Department is not aware of any irreparable harm to the environment resulting from the above-referenced violations.

B. THE STANDARD OF CARE: The Permittee did not exhibit a standard of care commensurate with applicable regulatory requirements. Specifically, the Permittee failed to

comply with ADEM Admin. Code div. 335-3, MSOP, and Air Permit No. 411-0019-X004, which require it to operate and maintain control equipment in a manner so as to minimize emissions.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:

The Department is not aware of any economic benefit that the Permittee derived from these violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Permittee has agreed to additional SO₂ and CO testing on Kiln No. 2. In addition, the Permittee is implementing measures to begin monitoring and recording O₂ levels in Kiln No. 2.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has a history of enforcement actions with the Department, including: six Warning Letters nine Notices of Violation, and two Consent Orders. Of these actions, four Notices of Violations and one Warning Letter were issued for to the Permittee for failure to report violations in accordance with permit requirements.

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 it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

44. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), 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 and consistent with the historical penalty range imposed by the Department for similar violations (see Attachment A, which is made a part of Department's contentions).

45. 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

46. 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. As such, this Consent Order shall not be deemed or construed at any time for any purpose by anyone (including but not limited to other parties who bring claims in any legal, administrative or other proceeding) as an admission by Permittee of liability.

ORDER

THEREFORE, the Permittee, along with the Department, desire 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. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes 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 \$25,000 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 shall commence semi-annual SO₂ and CO emissions testing on Kiln No. 2 according to the following requirements:

- i. Emissions tests shall be conducted every six (6) months for two consecutive six-month periods;
- ii. Each SO₂ emissions test shall be conducted in accordance with EPA Reference Method 6C of 40 CFR 60, Appendix A;
- iii. Each CO emissions test shall be conducted in accordance with EPA Reference Method 10 of 40 CFR 60, Appendix A;
- iv. Emissions testing shall commence no sooner than October 1, 2010; and no later than sixty (60) calendar days following the execution date of this order, and;
- v. Emissions tests shall be conducted no less than 160 calendar days and no more than 190 calendar days from the date of the previous emissions test.

C. Upon completion of each emissions test, the Permittee shall report the following information to the Department:

- i. The maximum fuel firing rate, which shall be equal to the average of each fuel firing rate recorded during three one-hour test periods.
- ii. The lowest O₂ level, which shall be equal to the lowest O₂ level recorded during three one-hour test periods.

D. If measured SO₂ or CO emissions from Kiln No. 2 exceed any applicable emissions limit set forth in the MSOP, the Permittee agrees to propose additional corrective actions to the Department within sixty (60) days of receiving the emissions test results.

E. 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

F. The Permittee agrees to comply with all requirements of ADEM Administrative Code div. 335-3, the MSOP, and Air Permit No. 411-0019-X004 immediately upon the effective date of this Consent Order and continuing each and every day thereafter.

G. 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.

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 Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

The Department and the Permittee agree that final approval and entry into this Consent 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 Consent Order.

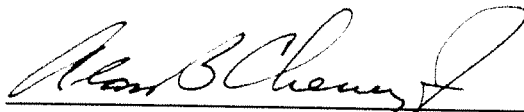
M. The Department and the Permittee agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain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

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

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Consent 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.

CHENEY LIME AND CEMENT COMPANY

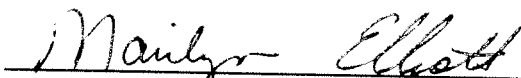

(Signature of Authorized Representative)

Alan B. Cheney, Jr.
(Printed Name)

President & CEO
(Printed Title)

Date Signed: 11/11/10

ALABAMA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT


Lance R. LeFleur
Director

Date Executed: 12/29/10

Attachment A

Penalty Calculation Worksheet

Cheney Lime & Cement Company
Landmark Plant
Alabaster, Shelby County, Alabama
Facility No. 411-0019

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Measured SO2 emissions that exceeded the allowable SO2 emission limit for Kiln 2	1	\$ 3,000.00		
Measured CO emissions that exceeded the allowable CO emission limit for Kiln 2	1	\$ 1,000.00		
Failure to monitor the O2 levels for Kiln 2	1	\$ 3,500.00	\$ 1,000.00	\$ 500.00
Failure to maintain the records of the O2 levels for Kiln 2	1	\$ 1,000.00	\$ 500.00	
Failure to correctly certify the compliance status of Kiln 2 on the Title V Annual Compliance Certification	1	\$ 7,500.00	\$ 5,000.00	\$ 1,000.00
Kiln 1 exceeded the opacity limits under the Alabama 2% rule	20	\$ 2,000.00		
Failure to report a violation of the Permit within 24 hours as required by General Proviso 15(b)	20	\$ 2,000.00		\$ 500.00
Failure to monitor the pressure drop across the Lime Hydrator Baghouse	6	\$ 600.00	\$ 300.00	\$ 300.00
Failure to report a Deviation of the Permit within 2 working days as required by General Proviso 21(b)	6	\$ 600.00	\$ 300.00	\$ 150.00
TOTAL	57	\$ 21,200.00	\$ 7,100.00	\$ 2,450.00

Economic Benefit \$ -

Mitigating Factors \$ -

Ability to Pay \$ -

Other Factors \$ (5,750.00)

CIVIL PENALTY \$ 25,000.00

Footnotes

* See the "Findings" of the Order for a detailed description of each violation and penalty factors

Scanlan, Katrina M

From: Missildine, Ena
Sent: Tuesday, December 28, 2010 8:24 AM
To: Scanlan, Katrina M
Subject: RE: Proposed Consent Order for Cheney Lime (Facility No. 411-0019)

No comments

Ena B. Missildine

Permits & Services Division
Alabama Department of
Environmental Management
(334) 271-7714

From: Scanlan, Katrina M
Sent: Monday, December 27, 2010 4:09 PM
To: Missildine, Ena
Subject: Proposed Consent Order for Cheney Lime (Facility No. 411-0019)

Ena:

On December 24, 2010, the proposed consent order referenced above completed its 30-day notice. When you have a moment, would you please verify that no comments have been received?

Thank you,

Katrina H. Scanlan, P.E.

Industrial Minerals Section

Cheney Branch

Alabama

Phone: (334) 270-5677

FAX: (334) 279-3044

ADEM