

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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

**COMPLAINT**

Plaintiff, the United States of America, by the authority of the Attorney General of the United States and through its undersigned attorneys, acting at the request of the United States Environmental Protection Agency (“EPA”), alleges:

**Nature of Action**

1. This is a civil action under Section 113(b) of the Clean Air Act, as amended (“CAA”), 42 U.S.C. § 7413(b), alleging that Defendant Carmeuse Lime, Inc. (“Defendant” or “Carmeuse”) violated applicable provisions of the CAA, as well as regulations and permits thereunder, including provisions of the federally approved State Implementation Plan for Illinois, and provisions of a Title V operating permit issued under the CAA, at its South Chicago Operation in Chicago, Illinois.

2. The United States seeks injunctive relief and the assessment of civil penalties for Defendant’s violations of emissions limits and reporting requirements for opacity and fugitive dust that are set forth in: Defendant’s Title V Operating Permit, issued pursuant to Title V of the CAA, 42 U.S.C. § 7661 *et seq.*; Defendant’s Approval to Construct Permit, issued pursuant to CAA

NRDC-SETF ATTACHMENT FIVE

regulations for the Prevention of Significant Deterioration of Air Quality (“PSD”), codified at 40 C.F.R. § 52.21; the New Source Performance Standards for Lime Manufacturing Plants (“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., Part 63, 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.

#### **Jurisdiction and Venue**

3. This Court has jurisdiction of the subject matter of this 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.

4. Venue is proper in this District pursuant to Sections 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because the violations that constitute the basis of this Complaint occurred in this District and Defendant resides and transacts business in this District.

#### **Notices**

5. In accordance with CAA Section 113(a)(1) and (b)(1), 42 U.S.C. § 7413(a)(1) and (b)(1), on March 20, 2008, EPA issued to Defendant a Notice and Finding of Violation for the violations alleged herein and provided a copy to the State of Illinois.

6. In accordance with CAA Section 113(b), 42 U.S.C. § 7413(b), the United States has provided notice of the commencement of this action to the Illinois Environmental Protection Agency (“IEPA”).

### **The Parties**

7. Plaintiff is the United States of America. Authority to bring this action is vested in the United States Attorney General by CAA Section 305, 42 U.S.C. § 7605, and pursuant to 28 U.S.C. §§ 516 and 519.

8. Defendant Carmeuse Lime, Inc. is a Delaware corporation with its headquarters in Pittsburgh, Pennsylvania. Carmeuse Lime, Inc. is a “person” as defined in CAA Section 302(e), 42 U.S.C. § 7602(e).

### **The Facility**

9. Carmeuse’s South Chicago Facility (“Facility”) is located at 3245 East 103rd Street, Chicago, Illinois, on the banks of the Calumet River in a mixed residential-industrial neighborhood. At the Facility, Carmeuse at relevant times has owned and operated two straight-type rotary lime kilns that are fueled by coal and petroleum coke. The Facility also includes at least 30 storage tanks, conveying and processing equipment, lime hydrating operations, truck and railcar loading areas and equipment, and large raw material storage piles.

10. The older of the two rotary lime kilns (known as “No. 4”) was constructed in 1964 and has a production capacity of approximately 550 tons of lime per day. The newer kiln (known as “No. 5”) was constructed in 1979 and has a production capacity of approximately 1600 tons of lime per day. Each kiln is equipped with a baghouse (also known as a fabric filter). The stack from the baghouse on the newer kiln (No. 5) is equipped with a Continuous Opacity Monitoring System (“COMS”).

11. The Facility was formerly known as and owned by Marblehead Lime. Carmeuse acquired the Facility in January 2002 and has owned the facility since that time. Carmeuse has not

produced lime at the Facility since November 2009, but the Facility remains operational and Carmeuse may resume production at any time.

12. When in operation, the Facility generates large quantities of lime dust associated with its processing of thousands of tons of lime each day. The lime dust generated by Defendant's operations is particulate matter that is regulated under the CAA as a pollutant.

#### **Applicable Statutes and Regulations**

13. Congress enacted the Clean Air Act, to protect and enhance the quality of the nation's air and thereby promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

14. Section 109 of the CAA, 42 U.S.C. § 7409, requires EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS") for certain criteria air pollutants. The primary NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

15. Particulate matter ("PM") is an "air pollutant" within the meaning of CAA Sections 108 and 302, 42 U.S.C. §§ 7408 and 7602.

16. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan ("SIP") that provides for the implementation, maintenance, and enforcement of the NAAQS. Section 110(a)(2)(A) of the Act, 42 U.S.C. § 7410(a)(2)(A), requires that each SIP include enforceable emission limitations to assure attainment of applicable NAAQS.

17. After such enforceable state emission limitations are approved by U.S. EPA, these provisions constitute the state's "applicable implementation plan," within the meaning of CAA Sections 113 and 302(q), 42 U.S.C. §§ 7413 and 7602(q), are considered that state's "SIP Rules," and are federally enforceable under CAA Section 113(a) and (b), 42 U.S.C. § 7413(a) and (b).

#### **Illinois SIP**

18. Illinois has established a SIP that contains, *inter alia*, rules designed to bring Southeast Chicago, Illinois, into attainment with the NAAQS for particulate matter. See 37 Fed. Reg. 10862.

19. Pertinent here, the Illinois SIP at 35 IAC § 201.141 mandates that no person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of Chapter 35 of the Illinois Administrative Code, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

20. The Illinois SIP defines air pollution as the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property. 35 IAC 211.390.

21. The Illinois SIP, 35 IAC 212.309, requires Carmeuse to operate the Facility in accordance with an approved operating program that is designed to significantly reduce fugitive particulate matter emissions.

22. Carmeuse is a “person” within the meaning of the Illinois SIP and is subject to the rules in the SIP. 35 IAC 201.102.

**Lime NSPS**

23. Pursuant to Section 111 of the CAA, on April 26, 1984, EPA promulgated the New Source Performance Standards for Lime Manufacturing Plants (“Lime NSPS”). 49 Fed. Reg. 18080 (April 26, 1984). These regulations, codified at 40 C.F.R. Part 60, Subpart HH, §§ 60.340 - 60.344, apply to all rotary lime kilns constructed after May 3, 1977.

24. Kiln No. 5 is subject to the Lime NSPS because it is a rotary lime kiln that was constructed after 1977

25. The Lime NSPS sets a 15 percent opacity limit on emissions from regulated kilns. 40 C.F.R. § 60.342(a)(2).

26. The Lime NSPS requires that owners and operators install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the opacity of a representative portion of the gases discharged into the atmosphere from regulated kilns. 40 C.F.R. § 60.343(a).

27. The Lime NSPS also provides that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner that is consistent with good air pollution control practices for minimizing emissions. 40 C.F.R. § 60.11(d).

**Lime NESHAP**

28. Pursuant to Section 112(d) of the CAA, on January 5, 2004, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants (“Lime

NESHAP”). 69 Fed. Reg. 394 (January 5, 1990). These regulations are codified at 40 C.F.R. Part 63, Subpart AAAAA, §§ 63.7080 - 63.7143.

29. The Lime NESHAP applies to owners or operators of, among other sources, lime manufacturing plants that are “major sources” of hazardous air pollutant (“HAP”) emissions. A major source of HAPs is a plant site that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAPs at a rate of 22.68 megagrams (25 tons) or more per year from all emission sources at the plant site. 40 C.F.R. § 63.7081.

30. Constituents of lime dust include arsenic, chromium, nickel, beryllium, cadmium, and lead, all of which are designated HAPs under the CAA. Carmeuse’s Facility is subject to the Lime NESHAP because it has the potential to emit HAPs in excess of the regulatory threshold.

31. The Lime NESHAP limits the average opacity of emissions from lime kilns equipped with a fabric filter to not more than 15 percent for any 6-minute block period. 40 C.F.R. Part 63, Subpart AAAAA, Table 5(4)(a). The Lime NESHAP also requires that Carmeuse use a COMS to monitor the emissions from Kiln No. 5. 40 C.F.R. § 63.7113(a).

### **Permits**

#### **Construction Permit**

32. Emissions from Carmeuse’s larger kiln — No. 5 — are subject to opacity limitations in a construction permit that EPA issued to Marblehead Lime in March 1979 pursuant to Title I of the CAA, 42 U.S.C. § 7401 *et seq.* 40 C.F.R. § 52.21. *See* 44 Fed. Reg. 17215-16. The limitations in this permit became applicable to Carmeuse when it acquired the Facility in 2002.

33. The construction permit requires that any gases from Kiln No. 5 which may be discharged into the atmosphere shall not exhibit an opacity of 10 percent or greater.

#### **Operating Permit**

34. The Facility is subject to a Title V operating permit issued by IEPA to Carmeuse on June 3, 2003. IEPA issued the permit under Title V of the CAA, 42 U.S.C. §§ 7661-7661f, which establishes an operating permit program applicable to certain stationary sources of air pollutants. 42 U.S.C. § 7661a(a). EPA approved Illinois's Title V program on March 7, 1995. (66 Fed. Reg. 62946, Nov. 30, 2001).

35. Pursuant to Title V, Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b), Carmeuse is prohibited from operating its Facility except in compliance with its Title V permit.

36. As approved by IEPA in November 2005, Carmeuse's Title V permit incorporates a Fugitive Dust Operating Program ("FDOP") designed to control fugitive emissions of lime dust from the Facility. Carmeuse's Title V permit and the Illinois SIP, 35 IAC 212.309, require Carmeuse to operate the Facility in accordance with the FDOP.

37. Carmeuse's FDOP required, *inter alia*, the following dust control measures:

- daily removal of spilled material;
- quarterly removal of dust build-up;
- daily inspections to ensure clean environment;
- quarterly inspections for holes or cracks in buildings;
- monthly interior vacuuming;
- plastic flaps on open doors to buildings where dust is generated;
- removal of excess material from overloaded trucks;
- plastic flaps or doors to reduce wind flow to load out areas;
- telescoping spouts and dust collection systems on truck load-outs;
- washing of loaded lime trucks exiting the facility;
- daily washing and sweeping of paved and unpaved roads;
- watering of storage piles;



- removal of waste lime material within 14 days;
- daily inspection of dust collectors and collections systems;
- expeditious repair of problems noted in inspections; and
- documentation to show compliance with the above.

#### **Enforcement Provisions**

38. Sections 113(a)(1) and (a)(3) of the CAA, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of: (1) the SIP of any State or any permit issued thereunder; and (2) any other requirement or prohibition of CAA Subchapter I, including Sections 111 and 112 of the Act, 42 U.S.C. §§ 7411 and 7412, or any rule promulgated or permit issued thereunder.

39. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$32,500 per day for each violation occurring on or after March 15, 2004, and \$37,500 per day for each such violation occurring on or after January 13, 2009.

#### **First Claim for Relief Fugitive Dust—Air Pollution**

40. The allegations of paragraphs 1 to 39, above, are incorporated herein by reference.

41. During the period September 2005 until at least November 2009, Carmeuse released large quantities of lime dust into the ambient air as a result of its lime processing operation at the Facility. Although Defendant is not currently operating the Facility, Defendant may recommence operations of the Facility at any time, and further operation of the Facility will result in the release of large quantities of lime dust to the ambient air.

42. The lime dust was blown to and accumulated on the residential properties that surround the Facility. The dust accumulated on automobiles and on houses, including on entry-ways, windows, and roofs.

43. The large quantities of lime dust constitute air pollution within the meaning of 35 IAC 211.390 because they have threatened the health of human, plant and animal life in the area surrounding the Facility and have unreasonably interfered with the enjoyment of life and property.

44. The releases of lime dust violated the Illinois SIP, 35 IAC § 201.141, which provides that no person shall cause or threaten or allow the discharge or emission of any contaminant into the environment to cause or tend to cause air pollution in Illinois.

45. As a result of its violations of the CAA, as set forth in this Claim for Relief, Defendant is subject to civil penalties of up to \$32,500 per day for each violation occurring on or after March 15, 2004, through January 12, 2009, and of up to \$37,500 per day for each such violation occurring on or after January 13, 2009. Unless enjoined to implement adequate emission control measures, any resumption of operation of the Facility will result in further violations of the CAA.

**Second Claim for Relief**  
**Fugitive Dust—Failure to Comply with FDOP**

46. The allegations of paragraphs 1 to 39, above, are incorporated herein by reference.

47. From September 28, 2005 until at least November of 2009, Carmeuse failed to comply with the requirements of its FDOP set forth in paragraph 37, above. Although Defendant is not currently operating the Facility, Defendant may recommence operations of the Facility at any time.

48. As a result, large quantities of lime dust were released into the ambient air. The lime dust was blown to and accumulated on the residential properties that surround the Facility. The dust accumulated on automobiles and on houses, including on entry-ways, windows, and roofs.

49. Carmeuse's failure to comply with its FDOP violated 35 IAC §§ 212.309 and Section 7.6 of its Title V permit.

50. As a result of the violations of the CAA as set forth in this Claim for Relief, Defendant is subject to civil penalties of up to \$32,500 per day for each violation occurring on or after March 15, 2004, through January 12, 2009, and of up to \$37,500 per day for each such violation occurring on or after January 13, 2009. Unless Defendant is enjoined to implement adequate emission control measures, any resumption of operation of the Facility will result in further violations of the CAA.

### **Third Claim for Relief—Opacity and COMS Downtime**

51. The allegations of paragraphs 1 to 39, above, are incorporated herein by reference.

52. Carmeuse reported in its Continuous Emission Monitoring System Quarterly Summary Reports (also known as "Excess Emissions Report" or "EER"), that the Facility exceeded its permitted 10 percent opacity limit for at least 7,321 minutes from 2004 through 2007.

53. Furthermore, Carmeuse reported in its EERs that Kiln #5 COMS experienced a combined downtime of 5,406 minutes for the fourth quarters of 2004, 2006, and 2007.

54. The exceedances of the opacity limit and the excessive COMS downtime are violations of the Lime NESHAP, the Lime NSPS, and the construction permit for Kiln No. 5.

55. As a result of the violations of the CAA as set forth in this Claim for Relief, Defendant is subject to civil penalties of up to \$32,500 per day for each violation occurring on or

after March 15, 2004, through January 12, 2009, and of up to \$37,500 per day for each such violation occurring on or after January 13, 2009. Unless enjoined to implement adequate emission control measures and improved monitoring measures, Defendant will continue to violate the CAA in the event of any resumption of operation of the Facility.


**Prayer for Relief**

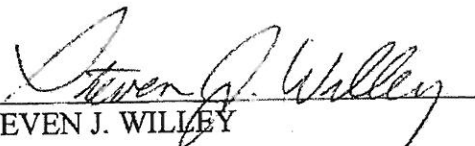
WHEREFORE, based upon all the allegations above, the United States of America requests that this court:

1. Permanently enjoin Defendant from operating its Facility except in compliance with the Clean Air Act, applicable regulations thereunder, including the Lime NSPS, the Lime NESHAP and the Illinois SIP, and permits issued pursuant to the Clean Air Act;
2. Assess a civil penalty against Defendant of up to \$32,500 per day for each violation taking place after March 15, 2004 through January 12, 2009, and up to \$37,500 per day for each violation taking place thereafter;
3. Award the United States its costs of this action; and
4. Grant such other relief as the Court deems just and proper.

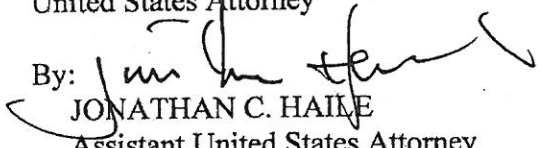
Respectfully submitted,

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