ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	
Lhoist North America of Alabama, LLC	)	
Calera, Shelby County, Alabama	)	CONSENT ORDER NO.
	)	
ADEM Air Facility ID No. 411-0008	)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("the Department" and/or "ADEM") and Lhoist North America of Alabama, LLC (the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, *as amended*, the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, *as amended*, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates the Montevallo Plant, a lime manufacturing facility (the "Facility") 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-17, *as amended.*

3. Pursuant to Ala. Code § 22-22A-4(n), *as amended*, 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, *as amended.*

4. The Permittee operates four rotary lime kilns ("Kiln No. 1", "Kiln No. 2", "Kiln No. 3", and "Kiln No. 4") at the Facility under the authority of Major Source Operating Permit No. 411-0008 (the "Permit"). The Permit was initially issued by the Department on January 18, 2001 and most recently renewed on August 14, 2017.

5. Emissions Standards Proviso No. 5 in the Calcining Process section of the Permit 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 No. 1 of Subpart AAAAA. Table No. 1 of Subpart AAAAA, "Emissions Limits", is provided in Appendix A [of the Permit]. [Regulation] 40 CFR Part 63 Subpart LLL: §63.7090(a)". For lime kilns that have a wet scrubber installed and operated before January 5, 2004, Table 1 in Appendix A of the Permit states "PM [Particulate Matter] emissions must not exceed 0.60 lb/tsf."

DEPARTMENT'S CONTENTIONS

6. On December 17, 2021, the Permittee conducted a stack test for particulate matter (PM) on Kiln No. 2 in accordance with Method 5 of 40 CFR Part 60, Appendix A. Additional PM testing was conducted on Kiln No. 2 on December 20 and 21, 2021.

7. On January 27, 2022, the Department received a stack test report from the Permittee summarizing the results of the performance tests. Results from the report indicated PM emissions of 0.64 lb/tsf and 0.98 lb/tsf for the December 17 and 20, 2021, performance tests, respectively, both of which exceeded the emissions limit of the Permit.

Results from the report indicated PM emissions of 0.37 lb/tsf for the December 21, 2021, performance test, which was within the emissions limit of the Permit.

8. 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 the Permittee's failure to demonstrate compliance with an emissions limit to be a serious violation. However, the Department is not aware of any irreparable harm to the environment resulting from this violation.

B. THE STANDARD OF CARE: The Permittee failed to exhibit a sufficient standard of care by failing to demonstrate compliance with an emissions limit required by the Permit.

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 Department is aware of and considered the fact that the Permittee shut down its operations and initiated corrective action after the December 17th performance testing. The Department is not aware of any additional efforts by the Permittee to minimize or mitigate the effects of these violations on the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department's records indicate that there are other similar violations or enforcement actions taken by the Department against the Permittee, including the issuance of Consent Order No. 17-007-CAP on October 16, 2016, for noncompliance with the PM limit for Kiln No. 1 and Kiln No. 2.

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.

9. 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 hereby made a part of the Department's Contentions).

10. 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

11. On December 17, 2021, the Permittee conducted four test runs on Kiln No. 2 in accordance with Method 5 of 40 CFR Part 60 to measure PM emissions. Three consecutive stack test runs constitute a compliance test. The average PM emission rate as measured by the first three runs was over the applicable limit while the average PM emission rate as measured by the last three runs was less than the applicable limit and demonstrated compliance. Accordingly, to the extent that this testing indicates any deviation, such deviation was fleeting and resolved itself.

12. As part of normal maintenance activities, the Permittee had inspected and cleaned the scrubber, which provides control of particulate emissions for Kiln No. 2, on December 15, 2021. Nonetheless, on December 18, 2021, the Permittee shut down Kiln No. 2 in order to investigate the performance of its scrubber.

13. The inspection on December 18 revealed unusual plugging of one of the water supply pipes for the scrubber. The Permittee is not aware of any such similar

plugging, and because no flow or pressure sensor was designed for this line, such plugging was not anticipated by industry standards.

14. After cleaning the supply line and confirming proper operations had been restored, the Permittee arranged for additional stack testing to confirm compliance with the applicable PM limit, as had already been established by the later set of three test runs on December 17, 2021.

15. Testing was attempted on December 20, but those results were discarded due to fouling of the test material. Testing under the same conditions was then completed on December 21, 2021. This testing showed that Kiln No.2 was comfortably complying at 62% of the applicable limit.

16. In light of these efforts and results, the December 17 deviation should not be considered serious and does not indicate any lack of care on the part of the Permittee. The Permittee maintained and operated its scrubber in accordance with industry standards and design. Moreover, the Permittee took immediate steps to minimize and mitigate any potential violation by shutting its process down and investigating the performance of the control device.

17. The Permittee neither admits nor denies the Department's Contentions. The 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 $40,000.00 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 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

C. 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.

D. 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.

E. 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.

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

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. The Department and the Permittee agree that any modifications of this 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 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

(Signature of Authorized Representative)

CRAIG GORDINIER
(Printed Name)

PLANT MANAGER
(Printed Title)

Date Signed: 5/26/22

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Lance R. LeFleur
Director

Date Executed: _____

Attachment A

Lhoist North America of Alabama, LLC
Calera, Shelby County

ADEM Air Facility ID No. 411-0008

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Failure to meet MACT/NESHAP emissions limit	2	$20,000.00	$20,000.00	$10,000.00	$50,000.00
TOTAL PER FACTOR		***$20,000.00***	***$20,000.00***	***$10,000.00***	***$50,000.00***

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	-$10,000.00
Total Adjustments (+/-)	-$10,000.00

Economic Benefit (+)	
Amount of Initial Penalty	$50,000.00
Total Adjustments (+/-)	-$10,000.00
FINAL PENALTY	$40,000.00

Footnotes

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