

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff)	
)	
v.)	Civil Action No.
)	
CARMEUSE LIME AND STONE, INC.)	
)	
Defendant.)	
_____)	

CONSENT DECREE

WHEREAS Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint initiating this action against Carmeuse Lime and Stone, Inc. (“Carmeuse” or “Defendant”) in the United States District Court for the Eastern District of Kentucky, requesting civil penalties;

WHEREAS the Complaint alleges that Carmeuse violated the Clean Air Act (the “Act”), 42 U.S.C. §§ 7401 *et seq.*, and the federally enforceable Kentucky State Implementation Plan (“SIP”) by violating the terms and conditions of its operating permit C-93-032 issued under the Act on August 12, 1993, pursuant to the requirements of Subchapter I, Part C, Subpart I of the Act pertaining to prevention of significant deterioration of air quality (“the PSD Permit”) at the Black River Plant owned and operated by Carmeuse, located in Butler, Pendleton County, Kentucky;

WHEREAS EPA issued Finding and Notice of Violation (“NOV”) with respect to these allegations on February 6, 2007;

WHEREAS the Kentucky Division of Air Quality ("KDAQ") issued to Defendant the PSD Permit containing numerous conditions applicable to kilns 4 and 5 at the Black River Plant, including General Condition 17, which states:

Dravo [Defendant's predecessor in interest] shall not burn coal as fuel with less than a minimum average heating value of 12,900 BTU/pound or more than an average sulfur content of 0.9% unless the nitrogen oxide, carbon monoxide, particulate and sulfur dioxide emissions limits listed in the conditions with the corresponding affected facilities are not exceeded. Dravo shall not burn coal with less than the minimum average heating value or more than the average sulfur content of that coal which is burned during any passing compliance demonstration;

WHEREAS EPA and Defendant agree that, pursuant to General Condition 17 of the PSD Permit, Defendant is authorized to burn coal having an average sulfur content of more than 0.9% as fuel for kilns 4 and 5 at the Black River Plant provided that the conditions set forth in General Condition 17 for the use of such coal are met;

WHEREAS Defendant conducted stack testing in 1995 and KDAQ determined that Defendant had demonstrated compliance with its pollutant emission limits using fuel that Defendant contends consisted of a coal-petcoke blend and that had an average sulfur content of more than 0.9% for kilns 4 and 5;

WHEREAS Defendant contends that the stack testing conducted in 1995 entitled Defendant to burn the fuel that was used for such stack testing, and Defendant did burn such fuel in Kilns 4 and 5 at the Black River Plant subsequent to the 1995 stack testing;

WHEREAS EPA contends that the coal-petcoke fuel used by Defendant for the stack testing conducted in 1995 was not authorized under the terms of the PSD Permit issued by KDAQ in 1993;

WHEREAS this Consent Decree does not constitute an admission of liability by

Carmeuse; and

WHEREAS the parties have agreed that settlement of the civil judicial claims as alleged in the Complaint is in the public interest and that entry of this Consent Decree without further litigation is the most appropriate way to resolve this action,

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND PARTIES BOUND

1. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c) and § 1395(a), and § 113(b) of the Act, 42 U.S.C. § 7413(b), because the violations that are the subject of the Complaint in this action took place in Pendleton County, Kentucky, and because the Defendant is doing business in this District. The Complaint states a claim upon which relief may be granted against Carmeuse pursuant to 42 U.S.C. § 7413(b). A notice of commencement of this action has been given to the Commonwealth of Kentucky in accordance with section 113(b) of the Act, 42 U.S.C. § 7413(b). Defendant shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter, enforce, modify or terminate this Consent Decree.

2. This Consent Decree shall apply to and be binding upon Defendant, its successors and assigns. It shall also apply to and be binding upon the United States on behalf of the EPA.

3. If Defendant merges with or is acquired by a third party, Defendant shall attach a copy of this Consent Decree to any merger or acquisition agreement and shall make performance of the obligations of Defendant under this Consent Decree an obligation of the new entity, in the

case of a merger, or the purchaser, in the case of an acquisition. Any such merger or acquisition will not relieve Defendant from the obligations of this Consent Decree. Nothing herein shall preclude Defendant from allowing its successors in interest to perform Defendant's obligations under this Consent Decree. However, Defendant is ultimately responsible for full compliance with the terms of this Consent Decree.

II. CIVIL PENALTY

4. Within thirty (30) days of the date of entry of this Consent Decree or within ten (10) days of receipt of the United States electronic funds transfer ("EFT") procedures as provided in the following paragraph, whichever is later, Carmeuse shall pay a civil penalty of ONE HUNDRED THOUSAND DOLLARS (\$100,000) to the United States, in accordance with the provisions of the following paragraph.

5. Carmeuse shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Carmeuse following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Kentucky, 260 West Vine Street, Suite 300, Lexington, Kentucky 40507, telephone (859) 233-2661. At the time of payment, Carmeuse shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Carmeuse Lime & Stone, Inc., and shall reference the civil action number and DOJ case number 90-5-2-1-08832, to the United States in accordance with Section IV of this Decree (Notification); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

III. STIPULATED PENALTIES

6. Carmeuse shall be liable for stipulated penalties for failure to pay the civil penalty as provided in Section II of this Consent Decree in the amount of one thousand dollars (\$1,000) per day that the civil penalty is not paid after the due date specified in Section II.

7. Stipulated penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the violation ceases. Any stipulated penalty accruing pursuant to this Section shall be payable on demand and due not later than thirty (30) days from EPA's written demand. Stipulated penalties shall be paid by EFT in the same manner as set forth in paragraph

5. A transmittal letter shall accompany the payment of stipulated penalties to refer to this case by name, civil action number, this Consent Decree (including date of entry), and DOJ File No. 90-5-2-1-08832.

8. If Carmeuse fails to pay stipulated penalties owed pursuant to this Consent Decree within thirty (30) days of EPA's written demand, it shall pay interest on the late payment for each day of late payment after the initial thirty (30) day time period. The rate of interest shall be the most recent interest rate determined pursuant to 28 U.S.C. § 1961.

IV. NOTIFICATION

9. Except as otherwise specifically stated, all notices and submissions required from Defendant under the terms of this Consent Decree shall be sent by certified mail, express mail, or similar overnight mail delivery service with return receipt requested, or delivered in person, not

later than the day that such notification or submission is required by this Consent Decree, and addressed to:

Shanieka Pennamon
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, Georgia 30303

and to

Chief, Environmental Enforcement Section
U.S. Department of Justice, Environment and Natural Resources Division
601 D Street NW
Washington, D.C. 20005

If the due date for a submission falls on a weekend day or federal or State of Kentucky holiday, the submission shall be due on the next working day. All submissions shall refer to this Consent Decree and the date of entry of the Consent Decree, and shall cite the case name, the case number, and DOJ File No. 90-5-2-1-08832.

10. All submissions required by this Consent Decree shall be signed and affirmed by a responsible official of the Defendant using the following certification statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on inquiry of those individuals immediately responsible for obtaining the information, I certify that the information is true, accurate, and complete to the best of my knowledge, information, and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

11. Notices to Defendant as required by this Consent Decree shall be submitted to:

Kevin J. Whyte
Vice President, General Counsel
Carmeuse Lime & Stone
11 Stanwix St. - 11th Floor
Pittsburgh, PA 15222

V. MISCELLANEOUS

12. Entry of this Consent Decree and compliance with the requirements herein shall be in full settlement and satisfaction of the civil judicial claims of the United States against Defendant as alleged in the Complaint filed in this action and in the NOV dated February 6, 2007. This Consent Decree resolves only those matters specifically alleged in the Complaint filed in this action and in the NOV dated February 6, 2007 through the date of lodging of this Consent Decree.

13. Except as specifically provided herein, the United States does not waive any rights or remedies available to it for violation by Defendant of federal or state laws or regulations. The United States reserves all legal and equitable remedies to enforce the provisions of this Consent Decree. This Consent Decree shall in no way affect the United States' ability to bring future actions for any matters not specifically alleged in the Complaint filed in this action and in the NOV dated February 6, 2007 through the date of lodging of this Consent Decree, and settled by this Consent Decree. Nothing in this Consent Decree is intended to nor shall be construed to operate in any way to resolve any criminal liability of Defendant.

14. This Consent Decree in no way affects Defendant's responsibilities to comply with all federal, state, or local laws and regulations.

15. If Carmeuse fails to pay on a timely basis the full amount of any penalty or interest, it shall be liable for the United States' enforcement and collection expenses, including, but not limited to, attorney fees and costs incurred by the United States for collection proceedings.

16. The United States shall be deemed a judgment creditor for the purposes of collecting any penalties due under this Consent Decree.

17. Defendant shall not deduct the civil penalty paid under this Section in calculating its federal income taxes.

18. Each party shall bear its own costs and attorneys' fees in this action, except as otherwise provided herein.

19. This Consent Decree contains the entire agreement between the parties. This Consent Decree shall not be enlarged, modified, or altered unless such modifications are made in writing and approved by all parties and the Court.

20. This Consent Decree shall terminate according to the procedure provided in this paragraph. After Defendant has complied with the requirements of Sections II and III of this Consent Decree, as applicable, Defendant shall provide notice stating that Defendant has satisfied all obligations of the Consent Decree and believes the Consent Decree can be terminated. Defendant's notice shall refer to this paragraph 20. If the United States determines that the Consent Decree may be terminated, the United States shall file a motion with the Court seeking termination.

21. The Court shall retain jurisdiction to resolve any disputes that arise under this Consent Decree.

22. Defendant agrees and acknowledges that final approval of this Consent Decree by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, opportunity for public comment for at least thirty (30) days, and consideration by the United States of any comments prior to entry of the Consent Decree by the Court. The United States reserves its right to withdraw consent to this Consent Decree based on comments received during the public notice period. Defendant consents to entry of this Consent Decree without further notice to the Court.

VI. EFFECTIVE DATE

23. The effective date of this Consent Decree is the date of entry of the Consent Decree by the Clerk of the United States District Court for the Eastern District of Kentucky.

VII. FINAL JUDGMENT

24. Upon entry by this Court, this Consent Decree shall constitute a final judgment for purposes of Fed. R. Civ. P. 54 and 58.

IT IS SO ORDERED.

For the Plaintiff United States of America:

Dated: 4/25/08

RONALD J. TENPAS
Assistant Attorney General
Environment & Natural Resources Division

Dated: 5/1/08

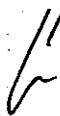
STEVEN A. KELLER
Litigation Attorney
Environmental Enforcement Section

JAMES A ZERHUSEN
Acting United States Attorney
Eastern District of Kentucky

Dated: 5.6.08

ANDREW SPARKS
Assistant United States Attorney
Eastern District of Kentucky

Dated: 4/25/08



MARY J. WILKES
Regional Counsel and Director
Office of Environmental Accountability
U.S. EPA Region 4

Dated: 4/14/08

ELIZABETH O'SULLIVAN
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4

For Defendant Carmeuse Lime and Stone, Inc.:

Dated: April 10, 2008

By

KEVIN J. WHYTE
VP, GENERAL COUNSEL
" "

Dated: April 10, 2008

By

STEPHEN C SMITH
DEPUTY GENERAL COUNSEL