

**IN THE COURT OF COMMON PLEAS
HANCOCK COUNTY, OHIO**

STATE OF OHIO, ex rel.	:	CASE NO.
JIM PETRO	:	
ATTORNEY GENERAL OF OHIO	:	
	:	
Plaintiff,	:	(JUDGE)
	:	
v.	:	
	:	
NATIONAL LIME AND STONE COMPANY	:	<u>CONSENT ORDER AND</u>
	:	<u>FINAL JUDGEMENT ENTRY</u>
Defendant.	:	

Plaintiff, the State of Ohio, by its Attorney General Jim Petro, at the written request of Christopher Jones, the Director of Environmental Protection, having filed a Complaint seeking injunctive relief and civil penalties from Defendant National Lime and Stone Company, for violations of R.C. Chapter 3704 and the rules promulgated thereunder, and the parties having consented to the entry of this Order,

NOW, THEREFORE, without trial, admission, or determination of any issue of fact or law, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. DEFINITIONS

1. As used in this Order, the following terms are defined as follows:
 - a. "Facility" means the nonmetallic mineral processing plant located at 9860 County Road 313, Findlay, Hancock County, Ohio.
 - b. "Ohio EPA" means the Ohio Environmental Protection Agency.
 - c. "Director" means the Director of Environmental Protection.
 - d. "Air contaminant source" or "source" has the same meaning as set forth in R.C. 3704.01(C) and Ohio Administrative Code 3745-31-01(D) and 3745-35-01(B)(1).

- e. "Permit to Operate" or "PTO" has the same meaning as set forth in Ohio Adm. Code Chapter 3745-35.
- f. "Permit to Install" or "PTI" has the same meaning as set forth in Ohio Administrative Code Chapter 3745-31.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim for which relief can be granted pursuant to R.C. Chapter 3704. Venue is proper in this Court.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and, in accordance with Rule 65(D) of the Ohio Rules of Civil Procedure, their officers, agents, servants, employees, attorneys, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

4. The Plaintiff alleges in its Complaint that Defendant has owned and operated the Facility in such a manner as to result in permitting violations of the air pollution control laws and regulations of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of the Defendant to the Plaintiff for the claims alleged in the Plaintiff's Complaint.

5. This Consent Order shall not be construed to limit the authority of the Plaintiff to seek relief for violations not alleged in the Complaint, nor shall this Consent Order bar the State of Ohio from bringing any action against the Defendant for any violations which occur after the entry of this Order. Nothing in this Consent Order shall be construed to relieve the Defendant of

its obligations to comply with applicable federal, state or local statutes, regulations, or ordinances.

6. Nothing herein shall represent or be construed as an admission by the Defendant of any violations, claims or allegations contained in the Complaint or in this Consent Order.

V. INJUNCTIVE RELIEF

7. Defendant agrees and is hereby enjoined and ordered to comply with R.C. 3704 and the regulations adopted thereunder, including all terms and conditions of all existing and future Permits to Install and Permits to Operate issued to the Facility, and any subsequent renewals or modifications thereafter. Defendant agrees and is hereby enjoined from operating any air contaminant source at the Facility without first complying with the requirements of Ohio Adm. Code Chapters 3745-31 and 3745-35 as applicable.

8. Upon entry of this Consent Order, Defendant is ordered to complete and maintain the following:

- a. Install and maintain two speed bumps on paved roadways in such locations as to best minimize vehicle speed and the production of fugitive dust from such vehicles.
- b. Improve and maintain enforcement of posted speed limit signs on paved roads, including notifying customers of speed restrictions.
- c. Procure and maintain new vacuum sweeper truck with greater power and larger capacity.
- d. Install and maintain spray gun on water truck to facilitate watering of stockpiles, as needed.
- e. Install and maintain spray bar on dry sand pile.
- f. Install and maintain additional spray bars on production/crusher lines.
- g. Install and maintain sprinkler system on base pile.
- h. Increase and maintain available manpower on a seasonal basis for watching roads and storage piles and otherwise meeting environmental responsibilities.

The Defendant shall employ the above measures in order to ensure ongoing compliance with the requirements of its permits to install and operating permits.

9. If the measures outlined in paragraph 8 above are not effective at reducing or eliminating visible fugitive dust emissions from the paved roadways so as to prevent future violations of this Order or of any future permits issued to Defendant by Ohio EPA, the Ohio EPA retains the legal authority to require Defendant to evaluate and/or install a wheel wash at the Facility, even if Defendant concludes such a facility is not necessary. The evaluation and/or installation of a wheel wash facility will not be required as part of this Order.

10. Upon entry of this Consent Order, Defendant is ordered to conduct three (3) audits at its facility. Specifically, Defendant shall conduct the audits as follows:

a. Beginning September of 2003, Defendant is enjoined and ordered to perform three (3) compliance audits over a one-year time period. Specifically, the audits shall be by an independent contractor (auditor) as follows: the first audit shall be performed during the months of September, 2003 through March, 2004; the second audit shall be performed during the months of April, 2004 through July, 2004; and the third audit shall be performed during the months of July or August 2004.

b. Each audit referenced in paragraph 10.a. shall be conducted only if no rainfall has occurred during the 4 days immediately prior to the scheduled audit date. The Ohio EPA, Northwest District Office, shall be notified by the contractor in advance concerning the scheduled date of each audit; however, Defendant shall not be notified in advance by the contractor. If an audit is scheduled and must be cancelled due to rainfall or other weather conditions, the contractor shall immediately notify Ohio EPA, Northwest District Office, that the audit will not be conducted due to weather conditions not meeting the 4-day rainfall requirement. Further, the contractor shall inform Ohio EPA, Northwest District Office of a new date to perform the missed audit.

c. Each audit must review and report on Defendant's implementation of this Consent Order and any permits issued to Defendant for its facility. Specifically, the contractor shall carefully review the records kept by Defendant to evaluate whether or not the records indicate Defendant has been diligently implementing all applicable control measures necessary to minimize or eliminate the visible emissions of fugitive dust from the roadways and parking areas, storage piles, and mineral extraction operations in accordance with all current and future applicable rules and regulations. In addition, the contractor must be certified to take visible emission readings, and shall take the following visible emission readings during each audit:

- i) for unpaved roadways (during normal traffic conditions), 30-minute sets of visible emission readings using U.S. EPA Method 22 at three different locations selected by the contractor to reflect areas of high emission potential (one and a half hours total);
- ii) for paved roadways (during normal traffic conditions), 30-minute sets of visible emission readings using U.S. EPA Method 22 at two different locations selected by the contractor to reflect areas of high emission potential (one hour total);
- iii) for the storage piles (during normal load-in and load-out activities), 1-hour of visible emission readings using U.S. EPA Method 22; and
- iv) for material transfer operations (during normal operations), 1-hour of visible emission readings using U.S. EPA Method 9.

The contractor must submit a written report to Defendant and Ohio EPA, Northwest District Office within thirty (30) days after each audit is concluded. Each report shall include all of the information gathered during the audit, evaluate the effectiveness of the Defendant's implementation of the required control measures, summarize any possible violations of the terms and conditions of the permits, and recommend any appropriate corrective actions to be performed by the Defendant to achieve and/or ensure ongoing compliance.

VI. CIVIL PENALTY

11. Pursuant to R. C. 3704.06, Defendant shall pay to the State of Ohio a civil penalty

of Ten Thousand Dollars (\$10,000). The civil penalty shall be paid in cash by delivering a check for Ten Thousand Dollars (\$10,000), payable to the Order of "Treasurer, State of Ohio", c/o Jena Suhadolnik or her successor, Administrative Assistant, Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428 within thirty (30) days of the date of entry of this Consent Order.

VII. STIPULATED PENALTIES

12. In the event that Defendant violates the injunction set forth in paragraphs 7, 8 and 10 of this Consent Order, Defendant shall, immediately and automatically, be liable for, and shall pay, stipulated penalties in accordance with the following schedule: For each failure to meet a requirement, up to thirty (30) days, Five Hundred Dollars (\$500) per day for each requirement not met shall be paid. For each day of failure to meet a requirement from day thirty-one (31) to sixty (60) days, One Thousand Dollars (\$1,000) per day for each requirement not met shall be paid. For failure to meet a requirement over sixty-one (61) days, Two Thousand Dollars (\$2,000) per day for each requirement not met shall be paid.

13. Payment of all stipulated penalties shall be paid by the Defendant by its delivering to the Plaintiff, c/o Jena Suhadolnik, Administrative Assistant, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a check in that amount, payable to the Order of "Treasurer, State of Ohio," within thirty (30) days from the date of the failure to meet the requirement(s) of the Consent Order.

14. The imposition, payment and collection of stipulated penalties pursuant to violations of this Consent Order shall not prevent the State from pursuing additional remedies, civil, criminal or administrative, for violations of applicable laws.

VIII. TERMINATION CLAUSE

15. The provisions contained in paragraph 8 of this Consent Order shall terminate upon the Director's issuance, as a final action, of permits to install that incorporate the same or similar requirements as set forth in paragraph 8 and upon verification of compliance by Ohio EPA Northwest District Office with the audit procedures set forth under paragraph 10. Regardless of whether any part of the Consent Order is terminated pursuant to the terms of the preceding sentence, no earlier than two (2) years after Defendant has complied with the provisions contained in paragraphs 7, 8, 10 and 11 of this Consent Order, Defendant may move the Court, pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure or other applicable authority, to terminate this Consent Order. Termination of this Consent Order shall only be effected by order of the Court upon a showing by Defendant that (1) it has been in continuous compliance with all the requirements of paragraphs 7, 8, 10, and 11 of this Consent Order for such two-year period; and (2) it has paid all penalties required by this Consent Order. Plaintiff takes no position with regard to such motion at this time, and reserves any rights it may have to oppose the motion. Such an order may also be granted upon joint motion of the parties.

IX. FORCE MAJEURE

16. If any event occurs which causes or may cause a delay or interruption in meeting any requirement of this Consent Order, Defendant shall notify the Ohio EPA, Northwest District office, in writing within ten (10) days of the event, describing in detail the anticipated length of the delay or interruptions, the precise cause or causes of the delay or interruption, the measure

taken and to be taken by Defendant to prevent or minimize the delay or interruption, and the timetable by which measure will be implemented. Defendant will take all reasonable measures to minimize or avoid such delay.

17. Upon receipt of the notice referenced in the preceding paragraph, Plaintiff may agree to waive or defer one or more requirements herein or the enforcement thereof. Plaintiff will inform Defendant in writing of its decision to waive or defer one or more requirements herein or the enforcement thereof. Plaintiff is not bound by oral representations of Ohio EPA personnel concerning the validity of Defendant's reason for delay or interruption. A decision by Plaintiff to waive or defer any requirement of this Consent Order shall not be a bar to any enforcement action for Defendant's failure to meet the requirement as deferred. Any deferred requirement shall be considered enforceable in place of the specified requirement and shall be subject to the same stipulated penalty provisions as the original requirement. A decision by Plaintiff to defer enforcement or any requirement or stipulated penalties set forth in the Consent Order shall not constitute a waiver of enforcement action with regard to the terms of this Consent Order, unless the Plaintiff expressly so agrees.

18. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that they are entitled to a defense that their conduct was caused by reasons entirely beyond their control such as, by way of example and not limitation, acts of God, strikes, acts of war, civil disturbances and order or actions of any court or regulatory agency. While the Plaintiff does not agree that such a defense exists, it is agreed between the parties that it is premature at this time to raise or adjudicate the existence of such defense and that the appropriate point at which to adjudicate the existence of such defense is at the time the action to enforce the terms and conditions of this Consent Order, if any is commenced by Plaintiff. At

that time, the burden of proving that any delay or interruption was or will be caused by circumstances entirely beyond the control of Defendant shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order shall not constitute circumstances entirely beyond the control of Defendant or serve as basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order on such incident. An extension of one compliance date based on a particular incident does not mean the Defendant qualifies for an extension of a subsequent compliance date. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order with this Force Majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

X. RESERVATION OF RIGHTS

19. Defendant does not waive any rights or remedies it has under federal or state laws or regulations to comment on, contest or seek any change in federal or state laws, rules or permit regulations, to seek modification of its PTI(s) and PTO(s) or any laws or rules, or to challenge any terms, conditions, emission limitations or control requirements in subsequently issued PTI(s) or PTO(s) or findings and orders. Defendant reserves and does not waive any and all legal and equitable rights, remedies and defenses that may be available for violation or enforcement of this Consent Order.

XI. RETENTION OF JURISDICTION

20. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order.

XII. COURT COSTS

21. The Defendant is hereby ordered to pay all court costs of this action.

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

22. Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is directed to serve upon all parties, notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

XIV. AUTHORITY TO ENTER INTO CONSENT ORDER

23. Each signatory for the Defendant represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

IT IS SO ORDERED

DATE

**JUDGE, COURT OF COMMON PLEAS,
HANCOCK COUNTY**

APPROVED:

**JIM PETRO
OHIO ATTORNEY GENERAL**

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