

# ADEM

## ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

POST OFFICE BOX 301463 36130-1463 ♦ 1400 COLISEUM BLVD. 36110-2059

MONTGOMERY, ALABAMA

WWW.ADEM.STATE.AL.US

(334) 271-7700

ONIS "TREY" GLENN, III, P.E.

DIRECTOR

November 2, 2006

BOB RILEY

GOVERNOR

Facsimiles: (334)

Administration: 271-7950

General Counsel: 394-4332

Communication: 394-4383

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Field Operations: 272-8131

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**CERTIFIED MAIL NO. 7005 1820 0003 1877 6236**  
**RETURN RECEIPT REQUESTED**

MR JUSTIN ANDREWS  
ENVIRONMENTAL MANAGER – ALABAMA OPERATIONS  
CHEMICAL LIME COMPANY  
7444 HIGHWAY 25 SOUTH  
CALERA AL 35040

RE: O'Neal Plant  
Facility No. 411-0039  
Consent Order 07-011-CAP



Dear Mr. Andrews:

Please find enclosed ADEM Consent Order No. 07-011-CAP which requires Chemical Lime 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 and the Department. Please refer to Order Item A., which requires the monetary penalties be paid within 45 days of the date of this Order.

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

Sincerely,

Ronald W. Gore, Chief  
Air Division



Enclosure

cc: Olivia Rowell, Office of General Counsel



**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

**Chemical Lime Company of** )  
**Alabama, Inc. (O'Neal Plant)** )  
Calera, Shelby County, Alabama )

Air Facility ID No. 411-0039 )

CONSENT ORDER NO. 07-011-CAP

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Chemical Lime Company of Alabama, Inc. - O'Neal Plant (hereinafter the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-16 (1997 Rplc. Vol. and 2006 Cum. Supp.), the Alabama Air Pollution Control Act, §§ 22-28-1 to 22-28-23, Ala. Code (1997 Rplc. Vol. and 2006 Cum. Supp.), as amended, and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. The Permittee operates a lime manufacturing facility (Air Facility ID No. 4110039) in Calera, Shelby County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (1997 Rplc. Vol. and 2006 Cum. Supp.).

3. Pursuant to Ala. Code § 22-22A-4(n) (1997 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, §§ 22-28-1 to 22-28-23, Ala. Code (1997 Rplc. Vol. and 2006 Cum. Supp.).

4. The Permittee operates a rotary lime kiln under the authority of Major Source Operating Permit No. 411-0039 (hereinafter "the Permit").

5. The Permit was issued subject to certain terms, conditions, and limitations, including the following monitoring and recordkeeping requirements:

- Carbon Monoxide (hereinafter "CO") and Nitrogen Oxide (hereinafter "NO<sub>x</sub>"), emissions tests are to be conducted for the lime kiln (CA-3) associated with this source at least at Permit renewal. During these emissions tests, the maximum fuel firing rate (3-hour averaging period) and minimum oxygen (hereinafter "O<sub>2</sub>" (3-hour averaging period) level shall be recorded.
- If the fuel firing rate (3-hour averaging period) of the lime kiln (CA-3) associated with this source exceeds 110% of the fuel firing rate (3-hour averaging period) as measured during the most recent CO and NO<sub>x</sub> emissions tests which demonstrated compliance with the applicable CO and NO<sub>x</sub> emission standards, the fuel firing rate shall be lowered and the Permittee shall conduct an additional CO and NO<sub>x</sub> emissions test at the higher fuel firing rate.
- If the O<sub>2</sub> (3-hour averaging period) level of the lime kiln (CA-3) associated with this source is measured as less than 75% of the lowest O<sub>2</sub> (3-hour averaging period) rate as measured during the most recent CO and NO<sub>x</sub> emissions test which demonstrated compliance with the applicable CO and NO<sub>x</sub> emission standards, the owner or operator of the source

permitted under this unit shall investigate the cause and take corrective action.

- The following sources shall not exceed sixteen (16) hours of operation per day each: lime roll crusher (PH-4), two screens/ one bin (PH-6), lime screen/ 4 bins (PH-5), #7 kiln dust bin (PH-10), return lime hopper (PH-7), return lime bin (PH-8), lime product conveyors (PH-13).
- Deviations from Permit requirements shall be reported within 24 hours or 1 working day 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.

6. On March 2, 2006, the Permittee contacted the Department via telephone to report deviations of the fuel firing rate and minimum O<sub>2</sub> monitoring requirements, dating back to November 2005. On March 7, 2006, the Permittee provided the Department with a written follow-up report offering the details of the deviations. The Department was not notified of these deviations within the required timeframe as specified in the Permit.

7. On March 22, 2005, the Department issued a Notice of Violation ("NOV") to the Permittee for failure to properly establish and monitor monitoring parameters as well as for failure to report the deviations within the timeframe established by the Permit.

8. On April 27, 2006, the Department received the Permittee's response to the NOV.

9. On July 20, 2006, the Permittee contacted the Department via telephone to report deviations for operating hour exceedances for the lime roll crusher (PH-4), lime screen/ 4 bins (PH-5), and two screens/ one bin (PH-6) that occurred on June 12, 2006, and June 18, 2006. On July 25, 2006, the Permittee provided the Department with a

written follow-up report offering the details of the deviations. The Department was not notified of these deviations within the required timeframe as specified in the Permit.

10. On August 15, 2006, the Permittee contacted the Department via telephone to report deviations of the minimum O<sub>2</sub> monitoring requirement, which occurred on August 9 and 11, 2006. On August 17, 2006, the Permittee provided the Department with a written follow-up report offering the details of the deviations. The Department was not notified of these deviations within the required timeframe as specified in the Permit.

11. On August 18, 2006, the Permittee submitted a letter to the Department, which contained more details regarding the July 25, 2006 written report for operating hour exceedances.

12. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

### ***CONTENTIONS***

13. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Cum. Supp.), 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.

14. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: There was a violation of the Permit condition which requires establishing and maintaining the maximum fuel firing rate to the kiln and the minimum O<sub>2</sub> level in the kiln for the purposes of indicating compliance with the applicable NO<sub>x</sub>, and CO emissions standards. There was also a violation of the Permit condition which requires the Permittee to operate the lime roll crusher (PH-4), lime screen/ 4 bins (PH-5), and two screens/ one bin (PH-6) less than sixteen (16) hours per day each. The permittee is also required to report such deviations to the Department within 24 hours or one working day of the deviations. The Department is unaware of any evidence of irreparable harm caused to human health or the environment as a result of the aforementioned violations.

B. THE STANDARD OF CARE: The Permittee could have exhibited a higher standard of care by adhering to Permit requirements and by following plant procedures to notify the appropriate plant management as well as the Department in the timeframe prescribed in the Permit.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is unaware of any economic benefit that could have been achieved by the Permittee as a result of the above-listed violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Subsequent emissions testing has been

completed to establish new monitoring parameters. The emissions testing was completed at a higher fuel firing rate and lower oxygen percentage. There were no violations of the NO<sub>x</sub> and CO emissions standards during the test. New Standard Operating Procedures have been implemented to ensure the proper corrective actions are taken and the subsequent reporting requirements are followed.

E. HISTORY OF PREVIOUS VIOLATIONS: Departments records indicate that two (2) Notices of Violation have previously been issued to the Permittee. Both NOV's were issued for similar monitoring and reporting violations.

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.

### ***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. (2006 Cum. Supp.), 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 ORDER with the following terms and conditions:

A. The Permittee consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

B. The Permittee agrees to pay to the Department a civil penalty in the amount of \$25,000.00 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.

C. 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

D. The Permittee agrees to abide by all conditions of the Major Source Operating Permit issued by the Department each and every day hereafter until the expiration of said permit.

E. 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.



F. This Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution of the violations which are cited in this Consent Order.

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

H. 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.

I. 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.

J. 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.

K. 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.

L. 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 30 days within which to comment on the Order.

M. 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.

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

O. 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.

CHEMICAL LIME COMPANY  
OF ALABAMA, INC.

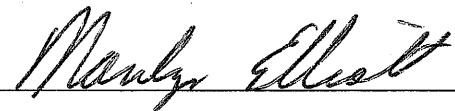
ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

  
(Signature of Authorized Representative)

JURGEN LAHER  
(Printed Name)

PLANT MANAGER  
(Printed Title)

10/19/06  
(Date)

  
(Signature of Authorized Representative)

Onis "Trey" Glenn, III

Director

11-1-06  
(Date)