

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2009-0223-AIR-E TCEQ ID: RN100219856 CASE NO.: 37171**

**RESPONDENT NAME: Chemical Lime, Ltd.**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Clifton Lime Plant, 2861 Farm-to-Market Road 2602, Clifton, Bosque County</p> <p><b>TYPE OF OPERATION:</b> Regenerative lime kiln</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on September 7, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>                  TCEQ Attorney/SEP Coordinator: None                  TCEQ Enforcement Coordinator: Mr. Kirk Schoppe, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-0489; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387                  Respondent: Mr. Sam Wells, Plant Manager, Chemical Lime, Ltd., 2861 Farm-to-Market Road 2602, Clifton, Texas 76634                  Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> January 23, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> February 3, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>AIR</b></p> <p>Failure to comply with permitted emissions limits. Specifically, during a stack test conducted on August 27, 2008 at Lime Kiln No. 3, the emission rate was 64.76 pounds per hour ("lbs/hr") of carbon monoxide ("CO"), and the permitted rate is 50.00 lbs/hr of CO [30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F) and (c) and 101.20(3), TEX. HEALTH &amp; SAFETY CODE § 382.085(b), and New Source Review ("NSR") Permit No. 8434/PSD-TX-441, Special Condition 1].</p>	<p><b>Total Assessed:</b> \$6,000</p> <p><b>Total Deferred:</b> \$1,200  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$4,800</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has submitted a permit amendment application on December 23, 2008.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit amendment application within 30 days after the date of such requests, or by any other deadline specified in writing; and</p> <p>b. Within 240 days after the effective date of this Agreed Order, submit written certification that the permit amendment has been obtained or that the unauthorized emissions have ceased from Kiln No. 3 until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance.</p>

Additional ID No(s): BJ0001T



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	9-Feb-2009	<b>Screening</b>	18-Feb-2009	<b>EPA Due</b>	31-Oct-2009
	<b>PCW</b>	11-Feb-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Chemical Lime, Ltd.
<b>Reg. Ent. Ref. No.</b>	RN100219856
<b>Facility/Site Region</b>	9-Waco
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	37171	<b>No. of Violations</b>	1
<b>Docket No.</b>	2009-0223-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Kirk Schoppe
		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

**Notes**

**Culpability**   Enhancement **Subtotal 4**

**Notes**

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts   
 Approx. Cost of Compliance  \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes**

**PAYABLE PENALTY**

**Screening Date** 18-Feb-2009

**Docket No.** 2009-0223-AIR-E

**PCW**

**Respondent** Chemical Lime, Ltd.

Policy Revision 2 (September 2002)

**Case ID No.** 37171

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN100219856

**Media [Statute]** Air

**Enf. Coordinator** Kirk Schoppe

**Compliance History Worksheet**

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	2	-2%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 20%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

The penalty was enhanced due to one NOV for dissimilar violations and one 1660 style order. The penalty was reduced due to two NOAs.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 20%

<b>Screening Date</b> 18-Feb-2009	<b>Docket No.</b> 2009-0223-AIR-E	<b>PCW</b>			
<b>Respondent</b> Chemical Lime, Ltd.	Policy Revision 2 (September 2002) PCW Revision October 30, 2008				
<b>Case ID No.</b> 37171					
<b>Reg. Ent. Reference No.</b> RN100219856					
<b>Media [Statute]</b> Air					
<b>Enf. Coordinator</b> Kirk Schoppe					
<b>Violation Number</b> 1					
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 116.115(b)(2)(F) and (c) and 101.20(3), Tex. Health & Safety Code § 382.085(b), and New Source Review ("NSR") Permit No. 8434/PSD-TX-441, Special Condition 1				
<b>Violation Description</b>	Failed to comply with permitted emissions limits, as documented during an investigation conducted on January 23, 2009. Specifically, during a stack test conducted on August 27, 2008 at Lime Kiln No. 3, the emission rate was 64.76 pounds per hour ("lbs/hr") of carbon monoxide ("CO"), and the permitted rate is 50.00 lbs/hr of CO.				
<b>Base Penalty</b>		\$10,000			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input checked="" type="checkbox"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	25%
<b>&gt;&gt; Programmatic Matrix</b>					
	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	0%
<b>Matrix Notes</b>	The stack test resulted in the release of an insignificant amount of pollutants which did not exceed levels protective of human health and/or the environment.				
<b>Adjustment</b>					\$7,500
					\$2,500
<b>Violation Events</b>					
Number of Violation Events		2	Number of violation days		176
mark only one with an x	daily	<input type="text"/>			
	weekly	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input checked="" type="checkbox"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
Violation Base Penalty					\$5,000
Two quarterly events are recommended from the failed stack test on August 27, 2008 to the screening date of February 18, 2009.					
<b>Good Faith Efforts to Comply</b>					
		0.0%	Reduction		\$0
		Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="text"/>				
Ordinary	<input type="text"/>				
N/A	<input checked="" type="checkbox"/>	(mark with x)			
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.				
Violation Subtotal					\$5,000
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>		
Estimated EB Amount		\$377	Violation Final Penalty Total		\$6,000
This violation Final Assessed Penalty (adjusted for limits)					\$6,000

## Economic Benefit Worksheet

**Respondent** Chemical Lime, Ltd.  
**Case ID No.** 37171  
**Reg. Ent. Reference No.** RN100219856  
**Media** Air  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<i>No commas or \$</i>							
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$7,000	27-Aug-2008	24-Sep-2009	1.08	\$377	n/a	\$377

**Notes for DELAYED costs**  
 Estimated cost for adjustments to the kiln system and performing an additional stack test. Date Required is based on the date of the stack test and the Final Date is the expected date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)</b>							
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance \$7,000 TOTAL \$377

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600130470 Chemical Lime, Ltd. Classification: AVERAGE Rating: 2.19  
 Regulated Entity: RN100219856 CLIFTON LIME PLANT Classification: AVERAGE Site Rating: 4.47

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	BJ0001T
	AIR OPERATING PERMITS	PERMIT	1108
	WASTEWATER	PERMIT	WQ0003041000
	AIR NEW SOURCE PERMITS	PERMIT	4335A
	AIR NEW SOURCE PERMITS	PERMIT	8434
	AIR NEW SOURCE PERMITS	PERMIT	21110
	AIR NEW SOURCE PERMITS	PERMIT	39647
	AIR NEW SOURCE PERMITS	PERMIT	41327
	AIR NEW SOURCE PERMITS	PERMIT	41157
	AIR NEW SOURCE PERMITS	PERMIT	45175
	AIR NEW SOURCE PERMITS	PERMIT	45195
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	BJ0001T
	AIR NEW SOURCE PERMITS	PERMIT	55651
	AIR NEW SOURCE PERMITS	AFS NUM	4803500001
	AIR NEW SOURCE PERMITS	EPA ID	PSDTX441
	AIR NEW SOURCE PERMITS	PERMIT	56745
	AIR NEW SOURCE PERMITS	EPA ID	PSDTX441M1
	AIR NEW SOURCE PERMITS	REGISTRATION	84945
	AIR NEW SOURCE PERMITS	EPA ID	PSDTX441M2
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	40459
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	38197
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXR000010868

Location: 2861 FM 2602, CLIFTON, TX, 76634

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: February 10, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 10, 2004 to February 10, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Kirk Schoppe Phone: 239 - 0489

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |

5. When did the change(s) in ownership occur?

N/A

6. Rating Date: 9/1/2008 Repeat Violator: NO

**Components (Multimedia) for the Site :**

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 11/26/2004

ADMINORDER 2004-0457-AIR-E

N/A

Classification: Major

Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)(B)

30 TAC Chapter 122, SubChapter B 122.146(2)

5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failed to submit the Title V Compliance Cert. for FOP No. O-01108, and associated deviation reports, in a timely manner. Specifically, the cert. for the annual reporting period ending 08/15/03 was not submitted to the TCEQ or to the EPA, and the cert. for the annual reporting period ending 08/15/02 was

not sub. to EPA.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

N/A	1	03/10/2004	(262691)
	2	07/15/2004	(282409)
	3	02/04/2005	(349309)
	4	03/02/2005	(372337)
	5	07/29/2005	(401726)
	6	08/05/2005	(403768)
	7	02/23/2006	(456752)
	8	05/11/2006	(465766)
	9	05/19/2006	(466394)
	10	07/19/2006	(487350)
	11	02/09/2007	(539582)
	12	03/05/2007	(542721)
	13	07/17/2007	(567715)
	14	08/31/2007	(574286)
	15	02/13/2008	(614597)
	16	02/13/2008	(618445)
	17	03/13/2008	(619005)
	18	02/03/2009	(725201)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 03/04/2008 (619005)

CN600130470

N/A Self Report? NO

Classification: Moderate

Citation: MSGP III.A.5.(h) OP  
MSGP Part III.A.5(e) OP  
TWC Chapter 26 26.121(a)  
TWC Chapter 26 26.121(e)

Description: Failure to prevent the unauthorized discharge of industrial wastes into waters in the state.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to prevent discharges from the No-Discharge wastewater ponds.

F. Environmental audits.

Notice of Intent Date: 04/11/2008 (654958)

No DOV Associated

Notice of Intent Date: 09/18/2008 (707519)

No DOV Associated

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CHEMICAL LIME, LTD.  
RN100219856

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-0223-AIR-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Chemical Lime, Ltd. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a regenerative lime kiln at 2861 Farm-to-Market Road 2602 in Clifton, Bosque County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about February 8, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Six Thousand Dollars (\$6,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand Eight Hundred Dollars (\$4,800) of the administrative penalty and One Thousand Two Hundred Dollars (\$1,200) is deferred contingent upon the Respondent's timely

- and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
  8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
  9. The Executive Director recognizes that the Respondent has submitted a permit amendment application on December 23, 2008.
  10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
  11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
  12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have failed to comply with permitted emissions limits, in violation of 30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F) and (c) and 101.20(3), TEX. HEALTH & SAFETY CODE § 382.085(b), and New Source Review ("NSR") Permit No. 8434/PSD-TX-441, Special Condition 1, as documented during an investigation conducted on January 23, 2009. Specifically, during a stack test conducted on August 27, 2008 at Lime Kiln No. 3, the emission rate was 64.76 pounds per hour ("lbs/hr") of carbon monoxide ("CO"), and the permitted rate is 50.00 lbs/hr of CO.

## III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Chemical Lime, Ltd., Docket No. 2009-0223-AIR-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit amendment application within 30 days after the date of such requests, or by any other deadline specified in writing; and
  - b. Within 240 days after the effective date of this Agreed Order, submit written certification that the permit amendment has been obtained or that the unauthorized emissions have ceased from Kiln No. 3 until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public, and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Air Section, Manager  
Waco Regional Office  
Texas Commission on Environmental Quality  
6801 Sanger Avenue, Suite 2500  
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*John S. ...*  
For the Executive Director

8/19/2009  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*Sam Wells*  
Signature

6/12/2009  
Date

Sam Wells  
Name (Printed or typed)  
Authorized Representative of  
Chemical Lime, Ltd.

Plant Manager  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Section at the address in Section IV, Paragraph 1 of this Agreed Order.

