

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2009-1635-AIR-E **TCEQ ID:** RN100552454 **CASE NO.:** 38493

**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> New Braunfels Lime Plant, 350 APG Lane, New Braunfels, Comal County</p> <p><b>TYPE OF OPERATION:</b> Lime production plant</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 March 15, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Trina Grieco, Enforcement Division, Enforcement Team 5, MC R-13, (210) 403-4006; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Robert Kerr, Plant Manager, Chemical Lime, Ltd., 350 APG Lane, New Braunfels, Texas 78132-5035  <b>Respondent's Attorney:</b> 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 type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" 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> July 15, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> September 16, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>AIR</b></p> <p>Failure to comply with permitted emissions limits. Specifically, during a stack test conducted on October 29, 2008 at the Kiln 3 Stack, emission point number ("EPN") 9KLN3STCK, the emission rate was 24.88 pounds per hour ("lbs/hr") of particulate matter ("PM"), and the permitted rate is 10.50 lbs/hr of PM. The results of the stack test were received by the Respondent on November 29, 2008, at which point a torn bag was replaced in an attempt to cease the event (Incident No. 117246). A new stack test was conducted on February 4, 2009 demonstrating the emission rate was 4.41 lbs/hr of PM. Since this event could have been avoided by a better inspection and maintenance program, the demonstrations for an affirmative defense in 30 TEX. ADMIN. CODE § 101.222 were not met [30 TEX. ADMIN. CODE §116.115(b)(2)(G) and (c), New Source Review Permit No. 7808, and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$5,400</p> <p><b>Total Deferred:</b> \$1,080  <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> \$4,320</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 implemented the following corrective measures at the Plant:</p> <p>a. Replaced the torn bag on the Kiln 3 Stack, EPN 9KLN3STCK, on November 29, 2008; and</p> <p>b. Conducted a new stack test on February 4, 2009 demonstrating that the emission rate was within permitted limits.</p>

Additional ID No(s): CS00200



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	21-Sep-2009	Screening	6-Oct-2009	EPA Due	13-Jun-2010
	PCW	2-Oct-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Chemical Lime, Ltd.		
Reg. Ent. Ref. No.	RN100552454		
Facility/Site Region	13-San Antonio	Major/Minor Source	Major

<b>CASE INFORMATION</b>			
Enf./Case ID No.	38493	No. of Violations	1
Docket No.	2009-1635-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Trina Grieco
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$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 6-Oct-2009

Docket No. 2009-1635-AIR-E

PCW

Respondent Chemical Lime, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 38493

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100552454

Media [Statute] Air

Enf. Coordinator Trina Grieco

**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)	1	5%
	Other written NOVs	4	8%
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)	0	0%
	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%

Please Enter Yes or No

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) 33%

>> 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

Penalty enhancement due to one NOV issued for a same or similar violation, four NOVs issued for unrelated violations, and one Agreed Order Issued that contained a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 33%

Screening Date 6-Oct-2009

Docket No. 2009-1635-AIR-E

PCW

Respondent Chemical Lime, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 38493

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100552454

Media [Statute] Air

Enf. Coordinator Trina Grieco

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §116.115(b)(2)(G) and (c), New Source Review Permit No. 7808, Special Condition 1, and Federal Operating Permit No. O-01122, Special Condition 8, and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to comply with permitted emissions limits. Specifically, during a stack test conducted on October 29, 2008 at the Klin 3 Stack, emission point number 9KLN3STCK, the emission rate was 24.88 pounds per hour ("lbs/hr") of particulate matter ("PM"), and the permitted rate is 10.50 lbs/hr of PM. The results of the stack test were received by the Respondent on November 29, 2008, at which point a torn bag was replaced in an attempt to cease the event (Incident No. 117246). A new stack test was conducted on February 4, 2009 demonstrating the emission rate was 4.41 lbs/hr of PM. Since this event could have been avoided by a better inspection and maintenance program, the demonstrations for an affirmative defense in 30 Tex. Admin. Code § 101.222 were not met.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2

98 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$5,000

Two quarterly events are recommended from the start of the event, October 29, 2008, to the compliance date, February 4, 2009.

Good Faith Efforts to Comply

25.0% Reduction

\$1,250

Before NOV NOV to EDRP/Settlement Offer

Extraordinary	
Ordinary	x
N/A	(mark with x)

Notes

The Respondent completed corrective actions on February 4, 2009, prior to the September 16, 2009 NOE.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$68

Violation Final Penalty Total \$5,400

This violation Final Assessed Penalty (adjusted for limits) \$5,400

# Economic Benefit Worksheet

**Respondent** Chemical Lime, Ltd.  
**Case ID No.** 38493  
**Reg. Ent. Reference No.** RN100652454  
**Media** Air  
**Violation No.** 1

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

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Item Description:</b>	No commas or \$.						

**Delayed Costs**

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
Other (as needed)	\$100	29-Oct-2008	29-Nov-2008	0.08	\$0	n/a	\$0
Other (as needed)	\$5,000	29-Oct-2008	4-Feb-2009	0.27	\$67	n/a	\$67

Notes for DELAYED costs

Estimated cost to replace torn bag (\$100) and to conduct a new stack test (\$5,000). The date required is the date the release began and the final date is the date the torn bag was replaced (November 29, 2008) and the date corrective actions were completed (February 4, 2009).

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

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

\$5,100

**TOTAL:**

\$68

# Compliance History Report Pending

Customer/Respondent/Owner-Operator: CN600130470 Chemical Lime, Ltd. Classification: AVERAGE Rating: 3.08  
Regulated Entity: RN100552454 NEW BRAUNFELS LIME PLANT Classification: AVERAGE Site Rating: 1.79  
ID Number(s):

AIR OPERATING PERMITS	ACCOUNT NUMBER	CS00200
AIR OPERATING PERMITS	PERMIT	1122
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXP490139224
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	20367
WASTEWATER	PERMIT	WQ0001554000
WASTEWATER	PERMIT	TX0068721
AIR NEW SOURCE PERMITS	PERMIT	5640A
AIR NEW SOURCE PERMITS	PERMIT	7808
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	CS00200
AIR NEW SOURCE PERMITS	EPA ID	PSDTX256M2
AIR NEW SOURCE PERMITS	REGISTRATION	55685
AIR NEW SOURCE PERMITS	AFS NUM	4809100002
AIR NEW SOURCE PERMITS	REGISTRATION	70768
AIR NEW SOURCE PERMITS	PERMIT	71403
AIR NEW SOURCE PERMITS	REGISTRATION	71162
AIR NEW SOURCE PERMITS	EPA ID	PSDTX256M3
AIR NEW SOURCE PERMITS	REGISTRATION	54180
AIR NEW SOURCE PERMITS	REGISTRATION	53995
AIR NEW SOURCE PERMITS	REGISTRATION	30070
AIR NEW SOURCE PERMITS	REGISTRATION	34954
AIR NEW SOURCE PERMITS	EPA ID	PSDTX256M4
AIR NEW SOURCE PERMITS	REGISTRATION	82590
AIR NEW SOURCE PERMITS	REGISTRATION	84191
AIR NEW SOURCE PERMITS	EPA ID	PSDTX256
AIR NEW SOURCE PERMITS	REGISTRATION	47100
AIR NEW SOURCE PERMITS	REGISTRATION	74103
PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	0460130
PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	51054
EDWARDS AQUIFER	REGISTRATION	13-06051801
EDWARDS AQUIFER	REGISTRATION	13-06051801A
IHW CORRECTIVE ACTION	SOLID WASTE REGISTRATION # (SWR)	20367
AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	CS00200

Location: 350 APG LN, NEW BRAUNFELS, TX, 78132  
TCEQ Region: REGION 13 - SAN ANTONIO  
Date Compliance History Prepared: September 29, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: September 29, 2004 to September 29, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Trina Grieco Phone: (210) 403-4006

### 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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 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: 07/09/2009

ADMINORDER 2008-1122-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)

30 TAC Chapter 122, SubChapter B 122.145(2)(C)

5C THSC Chapter 382 382.085(b)

Rqmt Prov: FOP No. O-01122, General Terms and Cond. OP

Description: Failed to submit the Title V deviation report within 30 days after the end of the April 28, 2007 to October 28, 2007 reporting period. Specifically, the report was due November 27, 2007, but was not submitted until June 23, 2008.

- 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.)

1	10/14/2004	(335694)
2	10/14/2004	(335697)
3	11/23/2004	(342233)
4	12/30/2004	(344176)
5	12/30/2004	(344189)
6	12/30/2004	(344195)
7	01/07/2005	(345907)
8	01/27/2005	(348067)
9	02/21/2005	(371267)
10	07/15/2005	(377703)
11	07/26/2005	(401427)
12	08/30/2005	(405874)
13	09/07/2005	(405579)
14	02/28/2006	(455442)
15	03/15/2006	(457994)
16	03/20/2006	(457970)
17	03/20/2006	(459393)
18	04/07/2006	(462033)
19	07/12/2006	(482976)
20	11/15/2006	(519096)
21	12/06/2006	(517281)
22	12/13/2006	(533929)
23	01/09/2007	(534180)
24	01/09/2007	(535213)
25	03/30/2007	(554184)
26	05/18/2007	(560521)
27	09/05/2007	(567574)

28 09/12/2007 (573088)  
 29 02/01/2008 (816781)  
 30 04/29/2008 (654518)  
 31 07/03/2008 (684170)  
 32 02/09/2009 (724048)  
 33 08/26/2009 (762062)  
 34 09/16/2009 (762177)  
 35 09/17/2009 (767464)

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

Date: 04/04/2005 (374898)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
 Description: Failed to comply with SP # 7 of Permit # 7808 by failing to pave a section of haul road.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
 Description: Failure to clean haul roads as required in Permit No. 7808.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
 Description: Failed to comply with SP # 9 of Permit # 7808.

Date: 03/03/2006 (455442)  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
 Description: Failing to comply with a Special Condition of a Permit.

Date: 03/08/2006 (462033)  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
 Description: Failing to comply with a Special Condition of a Permit.

Date: 07/03/2008 (684170)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)  
 Description: Company exceeded the opacity limit of Kiln No. 3 of 15 %.

Date: 09/15/2009 (762177) CN600130470  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)  
 Description: Company failed to include a particulate event that occurred October 29, 2008 to November 29, 2008 in the May 29, 2009 Compliance Certification and Deviation Report.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)  
 30 TAC Chapter 116, SubChapter B 116.115(c)  
 Description: Company did not submit the required opacity monitor data in the Excess Emissions Report dated May 29, 2009.

F. Environmental audits.

N/A

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.  
RN100552454

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2009-1635-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 lime production plant at 350 APG Lane in New Braunfels, Comal 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 September 21, 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 Five Thousand Four Hundred Dollars (\$5,400) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand Three Hundred Twenty Dollars (\$4,320) of the administrative penalty and One Thousand Eighty Dollars (\$1,080) 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 implemented the following corrective measures at the Plant:
    - a. Replaced the torn bag on the Kiln 3 Stack, emission point number ("EPN") 9KLN3STCK, on November 29, 2008; and
    - b. Conducted a new stack test on February 4, 2009 demonstrating that the emission rate was within permitted limits.
  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)(G) and (c), New Source Review Permit No. 7808 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on July 15, 2009. Specifically, during a stack test conducted on October 29, 2008 at the Kiln 3 Stack, emission point number 9KLN3STCK, the emission rate was 24.88 pounds per hour ("lbs/hr") of particulate matter ("PM"), and the permitted rate is 10.50 lbs/hr of PM. The results of the stack test were received by the Respondent on November 29, 2008, at which point a torn bag was replaced in an attempt to cease the event (Incident No. 117246). A new stack test was conducted on February 4, 2009 demonstrating the emission rate was 4.41 lbs/hr of PM. Since this event could have been avoided by a better inspection and maintenance program, the demonstrations for an affirmative defense in 30 TEX. ADMIN. CODE § 101.222 were not met.

### III. DENIALS

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

### IV. ORDERING PROVISIONS

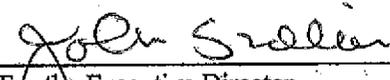
1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations 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. 2009-1635-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. 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.
3. 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.
4. 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.
5. 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

  
\_\_\_\_\_  
For the Executive Director

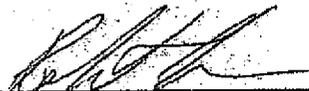
2/24/2010  
Date

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.

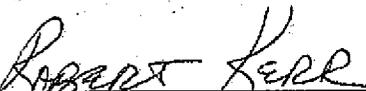
I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- 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.

  
\_\_\_\_\_  
Signature

12-15-09  
Date

  
\_\_\_\_\_  
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, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.