

IN THE COURT OF COMMON PLEAS

WYANDOT COUNTY, OHIO

STATE OF OHIO, ex rel. ) Case No. 80-CV-74-18727  
WILLIAM J. BROWN )  
ATTORNEY GENERAL )  
30 East Broad Street ) JOURNAL ENTRY OF FINAL  
Columbus, Ohio 43215, ) JUDGMENT

Plaintiff )

vs. )

NATIONAL LIME AND STONE )  
COMPANY )  
Carey, Ohio, )

Defendant. )  
)

CLERKS OFFICE  
WYANDOT CO., OHIO  
FILED

DEC 11 10 55 AM 1980

WAYNE B. TRAXLER  
CLERK

This cause came on to be heard on the Complaint of the State of Ohio, on relation of its Attorney General, William J. Brown, and at the request of the Director of the Ohio Environmental Protection Agency; on the Answer of defendant National Lime and Stone Company; and on the representations of counsel for the parties that all matters in controversy herein, arising upon said Complaint and Answer, have been settled.

Pursuant to said settlement, and with the consent of each of the parties, the Court makes and enters the following findings and judgment:

1. Defendant National Lime and Stone Company, an Ohio corporation ("National Lime"), produces limestone and lime products at a plant located in Carey, Wyandot County, Ohio (the "Carey plant").

2. As part of its Carey plant operations National Lime owns and operates certain equipment described and designated as follows:

- Calcimatic kiln #1
- Lime hydrators, ##1 and 2
- shaft kilns, ##4, 5, 6, 7 and 8

Calcimatic Kiln

3. Calcimatic Kiln #1 is the subject of a currently valid Permit to Operate (No. 0388000004-P 003), issued to National Lime by the Ohio Environmental Protection Agency effective May 5, 1978 to expire May 5, 1981. At some time subsequent to the issuance of said Permit to Operate, National Lime installed on Calcimatic Kiln #1, upstream of the preheater, an exhaust stack with counterweighted cap. National Lime did not obtain a permit to install said exhaust stack which, according to National Lime, was installed for the purpose of permitting maintenance work to be done on the Kiln's air pollution control equipment while the Kiln was out of operation and in a "standby" condition.

4. The State of Ohio contends that a permit to install said exhaust stack was required by Condition 2 of the aforesaid Permit to Operate. Condition 2 provides:

"Prior to any physical change in, or change in the method of operation of, this air contaminant source which increases the amount of any air pollutant emitted, or results in the emission of any air pollutant not previously emitted, a permit to install must be granted by the Ohio Environmental Protection Agency."

5. National Lime contends that, as operated for its intended purpose, said exhaust stack did not increase the amount of any air pollutant emitted, did not result in emission of any air pollutant not previously emitted, and therefore did not meet criteria of the aforesaid Condition 2 for requiring a Permit to Install.

6. National Lime is now about to make substantial changes in its overall method of operating Calcimatic Kiln #1, which will cause the exhaust stack here in question no longer to be used, or useful.

7. It is, accordingly, ORDERED, that National Lime act forthwith to seal said exhaust stack, certifying completion of such action to the Ohio Environmental Protection Agency, all within ten (10) days from the date of filing of this Journal Entry, provided, however, that National Lime may thereafter use the said exhaust stack for ventilation and for purposes of access, when the kiln is not being operated and is in a cold condition.

The aforesaid order is without prejudice to National Lime's right, if it should desire to resume operation of said exhaust stack at any future time, to apply for and obtain permits to install and to operate, pursuant and subject to then applicable laws and regulations. The Court does not here decide whether any such permit was, or will be required.

Lime Hydrators

8. National Lime has two lime hydrators at the Carey plant. Lime Hydrator #1 is the subject of a currently valid Permit to Operate, No. 038800004-P 007), issued September 15, 1978 after all required emissions testing was performed and test

results, indicating compliance, were accepted. The State's allegation in Count Two of its Complaint that National Lime had failed to perform required testing is, as to Lime Hydrator #1, without merit.

9. Lime Hydrator #2 is basically the same as Lime Hydrator #1 and has the same emissions control equipment. Lime Hydrator #2 is the subject of a currently valid Permit to Install, No. 03-672, which requires the conduct of performance testing. National Lime has not met such requirement.

10. It is, accordingly ORDERED that National Lime cause the performance testing required by Permit to Install No. 03-672 to be conducted within ninety (90) days from the date of filing of this Journal Entry.

Shaft Kilns - Operating Permit

11. National Lime originally had eight shaft kilns at its Carey plant, of similar size, capacity and design. For clarity, said shaft kilns may be designated by numbering them, 1 through 8.

12. Some years ago, to comply with applicable pollution control regulations, National Lime equipped four of its shaft kilns, Nos. 5 through 8, with individually attached venturi scrubbers, and retired kilns 1 through 4 from service. Subsequently, in order to maintain productivity during periods when one of the kilns 5 through 8 was temporarily out of service for maintenance or repair, but such kiln's attached scrubber was operable, National Lime caused the scrubbers on kilns Nos. 5 through 8 to be interconnected with kiln No. 4. Kiln No. 4 may thus be brought into operation, in a controlled manner, in substitution for any one of kilns 5 through 8.

13. The parties are in disagreement as to whether such substituted operation of kiln #4 requires an additional Permit to Operate, or is authorized or governed by the existing Permit to Operate including Condition 2 thereof. National Lime is concerned as to whether, if it should apply for an additional Permit to Operate, it would be required to conduct additional, costly stack testing.

14. It is, accordingly, ORDERED that within twenty (20) days after the filing of this Journal Entry National Lime submit to the Ohio Environmental Protection Agency an application for a Permit to Operate for kiln #4, covering said kiln's substituted operation as described above. If, upon considering such application, the Ohio Environmental Protection Agency should seek to require stack testing or to impose other conditions or requirements objectionable to National Lime, the Court will then determine the matter upon further hearing; and jurisdiction for such purpose is hereby reserved.

It is further ORDERED that, until the aforesaid Permit to Operate is granted, National Lime shall not operate any more than four of the five shaft kilns, ##4, 5, 6, 7 and 8, at any one time.

Shaft Kilns - Claimed Emissions Violation

15. The State alleges, in Count Three of its Complaint, that National Lime's Carey plant shaft kilns were operated in violation of Ohio's air pollution particulate emission regulation, Ohio Administrative Code §3745-17-11. National Lime denies this allegation, and maintains that its shaft kilns are operated in full compliance with said regulation.

16. The Court is informed that, after filing of this action, the parties reviewed in detail the manner in which National Lime was claimed to have violated Ohio Administrative Code §3745-17-11, and the data relied on by the State and the data relied on by National Lime in connection with such claim. Said review indicates good cause for discontinuing prosecution of Count Three of the Complaint. The Attorney General reserves the right to bring future enforcement action if warranted by any subsequently discovered evidence.

17. It is, accordingly, ORDERED that the cause of action alleged in Count Three of the Complaint be, and is hereby, dismissed without prejudice.

18. Costs herein shall be paid as first advanced and incurred by the parties respectively.

/S/ JOHN G. HUNTER  
Judge

APPROVED:

WILLIAM J. BROWN  
ATTORNEY GENERAL

By Robert J. Stydhar  
Assistant

DONALD F. MELHORN, JR.  
THOMAS W. PALMER

By \_\_\_\_\_  
Attorneys for Defendant  
National Lime and Stone Company