

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: ) Docket No. CAA-05- 2005 0051  
)  
Carmeuse Lime, Inc. ) Proceeding to Assess a Civil  
Chicago, Illinois, ) Penalty under Section 113(d)  
) of the Clean Air Act,  
) 42 U.S.C. § 7413(d)  
Respondent. )  
\_\_\_\_\_ )

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. Respondent is Carmeuse Lime, Inc. ("Carmeuse" or "Respondent"), a corporation doing business in Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative

NRDC - SETF ATTACHMENT ONE

action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO).

40 C.F.R. § 22.13(b) (2004). The content of a complaint that commences an action shall include the requirements listed in the Consolidated Rules at 40 C.F.R. § 22.14(a)(1)-(8).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Carmeuse admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Carmeuse waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

**Statutory and Regulatory Background**

NSPS

9. Under Section 111 of the Act, the Administrator promulgated the New Source Performance Standards ("NSPS") for lime manufacturing plants at 40 C.F.R. Part 60, Subpart HH. 49 Fed. Reg. 18080 (April 26, 1984).

10. 40 C.F.R. § 60.340(c) states that each rotary lime kiln used in the manufacture of lime that commences construction or modification after May 3, 1977, is subject to the requirements of this subpart.

11. 40 C.F.R. § 60.11(d) provides that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

#### Title V

12. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the Act,

no source subject to Title V may operate except in compliance with a Title V permit.

13. 40 C.F.R. § 70.6(b) provides that a permittee must comply with all conditions in its Title V permit and that any noncompliance with permit conditions constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

14. On March 7, 1995, U.S. EPA gave Illinois' Clean Air Act Permit Program interim approval as a 40 C.F.R. Part 70 permit program. 60 Fed. Reg. 12478. The program was granted full approval effective November 30, 2001. 40 C.F.R. Part 70, App. A. Approval to Construct EPA-5-79-A-3

15. On March 15, 1979, U.S. EPA issued to Carmeuse an Approval to Construct EPA-5-79-A-3 for rotary lime Kiln 5. 44 Fed. Reg. 17215, (March 21, 1979). The approval to construct requires that "any gases from rotary lime kiln #5 which may be discharged into the atmosphere shall not exhibit an opacity of 10 percent or greater."

Title V and Illinois SIP (35 Ill. Admin. Code § 212.316)

16. On September 13, 1999, U.S. EPA approved 35 Ill. Admin. Code § 212.316, Emissions Limitations for Sources in Certain Areas, as part of the federally enforceable SIP for the State of Illinois. 64 Fed. Reg. 37851 (July 14, 1999).

17. 35 Ill. Admin. Code § 212.316(g)(1) requires owners and operators of any fugitive particulate matter emission unit to keep written records of the application of control measures and to submit these records to the Illinois Environmental Protection Agency ("Illinois EPA") in an annual report. See also Carmeuse's June 3, 2003, Title V Permit ("Title V Permit") Condition 7.6.9.

18. 35 Ill. Admin. Code § 212.316(g)(5) requires owners and operators of any fugitive particulate matter emission unit to submit quarterly reports pertaining to control measures. The quarterly reports are required to provide the dates any necessary control measures were not implemented, a listing of those control measures, the reasons that the control measures were not implemented, and any corrective actions taken.

19. 35 Ill. Admin. Code § 212.316(g)(4) requires that owners and operators keep and maintain records required under 35 Ill. Admin. Code Part 212 onsite for at least three years and be available for inspection. See also Title V Permit Condition 7.6.9(a)(iv).

Illinois SIP (35 Ill. Admin. Code § 201)

20. On May 31, 1972, U.S. EPA approved Illinois PCB Rule 102 (35 Ill. Admin. Code § 201.141), as part of the federally enforceable SIP for the State of Illinois. 37 Fed. Reg. 10842.

21. Illinois PCB Rule 102 states that no person shall cause or threaten or allow the discharge or emission of any contaminant

into the environment in any state so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois.

22. On May 31, 1972, U.S. EPA approved Illinois PCB Rule 101 (35 Ill. Admin. Code § 201.102), as part of the federally enforceable SIP for the State of Illinois. 37 Fed. Reg. 10842.

23. Illinois PCB Rule 101 defines air pollution as the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

24. The Administrator may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for Title I, Title V, NSPS, NESHAP and SIP violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

25. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of

the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

26. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

#### Factual Allegations

27. Carmeuse owns and operates a lime manufacturing facility, located at 3245 East 103<sup>rd</sup> Street, Chicago, Illinois ("South Chicago facility"). The South Chicago facility is engaged in the manufacture of lime product by calcination of limestone, dolomite, shells or other calcareous substances.

28. On April 3, 2003 and March 31, 2004, U.S. EPA issued Notice of Violations/Finding of Violations based, in part, on the same factual allegations and violations at issue in this CAFO.

#### NSPS

29. Carmeuse's facility is subject to the requirements of NSPS Subparts A and HH because rotary lime Kiln 5 is used in the manufacture of lime and commenced construction after May 3, 1977.

30. U.S. EPA conducted an inspection of the Carmeuse South Chicago facility on March 5, 2003, during which, U.S. EPA observed poor operation and maintenance of the lime manufacturing equipment leading to fugitive dust and particulate matter being

emitted from the hatch door of Kiln 5 and the ductwork leading from Kiln 5 to Baghouse 5.

Approval to Construct EPA 5-79-A-3

31. Carmeuse's lime manufacturing process is subject to the 10% opacity limit in the Approval to Construct EPA 5-79-A-3 as published in 44 Fed. Reg. 17215-16.

32. In its November 5, 2002, Quarterly Summary Report for Third Quarter 2002, Carmeuse reported total excess opacity emissions over the 10% opacity limit for 22.4% of its monitored opacity readings from July 1, 2002, to September 30, 2002. In its July 31, 2003, Quarterly Summary Report for Second Quarter 2003, Carmeuse reported total excess opacity emissions over the 10% opacity limit for 4.86% of its monitored opacity readings from April 1, 2003, to June 31, 2003.

Title V and Illinois SIP (35 Ill. Admin. Code 212.316)

33. Title V Permit Condition 7.6.10.c requires Carmeuse to submit quarterly reports to the Illinois EPA regarding control measures and to maintain certain records for the affected fugitive emission sources.

34. Carmeuse did not submit quarterly reports 30 calendar days from the end of quarter to Illinois EPA as required by its Title V Permit and the Illinois SIP.

35. At the January 13, 2004, inspection, Carmeuse did not have complete records for application of control measures onsite.



Illinois SIP (35 Ill. Admin. Code § 201)

36. The City of Chicago Department of Environment has received numerous citizen complaints regarding air pollution from Carmeuse's South Chicago facility.

ViolationsNSPS

37. Carmeuse's poor operation and maintenance of the lime manufacturing equipment leading to fugitive dust and particulate matter being emitted from the hatch door of Kiln 5 and the ductwork leading from Kiln 5 to Baghouse 5 is a violation of 40 C.F.R. § 60.11(d).

Approval to Construct EPA 5-79-A-3

38. Carmeuse's exceedances of its South Chicago facility's opacity limit from July 1, 2002 to September 30, 2002 is a violation of the Approval to Construct EPA 5-79-A-3 (44 Fed. Reg. 17215).

Title V and Illinois SIP (35 Ill. Admin. Code 212.316)

39. Carmeuse failed to provide the Illinois EPA quarterly reports by July 30, 2003, October 30, 2003, and January 30, 2004, in violation of 35 Ill. Admin. Code 212.316(g)(5) and Title V Permit Condition 7.6.10(c).

40. Carmeuse failed to have complete records for application of control measures onsite in violation of

35 Ill. Admin. Code § 212.316(g)(1) and Title V Permit Condition 7.6.9(a).

Illinois SIP (35 Ill. Admin. Code § 201)

41. Carmeuse caused, threatened or allowed the discharge or emission of contaminants into the air which tended to cause air pollution in violation of 35 Ill. Admin. Code § 201.141 (Illinois PCB Rule 102).

**Civil Penalty**

42. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Carmeuse's cooperation and agreement to perform a supplemental environmental project, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$47,771.

43. Carmeuse must pay the \$47,771 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

44. Carmeuse must send the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

45. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on

the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Sabrina Argentieri, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

46. This civil penalty is not deductible for federal tax purposes.

47. If Carmeuse does not pay the civil penalty due under paragraph 42, above, within 30 days after the effective date of this CAFO, or any stipulated penalties due under paragraph 61, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

48. Interest will accrue on any overdue amount from the date payment was due at a rate established under

31 U.S.C. § 3717. Carmeuse will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Carmeuse will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act,

42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

**Supplemental Environmental Project**

49. Carmeuse must complete a supplemental environmental project (SEP) designed to protect the environment and public health by reducing fugitive emissions.

50. At its South Chicago facility, Carmeuse must complete the SEP as follows:

a. Install an Envirolime Take-Away System under the second and third dust chambers of Kiln 4. The Envirolime Take-Away System will be of similar design as the Envirolime Take-Away System currently installed and operating at Carmeuse's River Rouge, Michigan, facility.

b. Installation of the Envirolime Take-Away System will include the installation of: a rotary screw at the bottom of second and third dust chambers on Kiln 4; a rotary feeder; envirolime tank; and a telescoping spout.

c. Complete installation of the Envirolime Take-Away System by December 31, 2006.

51. Carmeuse must spend at least \$84,000 to purchase the Envirolime Take-Away System, \$4,020 for engineering costs to

customize the design of the Envirolime Take-Away System, and \$150,000 to operate the Envirolime Take-Away System for 5 years.

52. Carmeuse must continuously operate, except during kiln outages or when maintenance is required, the Envirolime Take-Away System for 5 years immediately following its installation.

53. Carmeuse certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Carmeuse further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

54. U.S. EPA may inspect the facility at any time to monitor Carmeuse's compliance with this CAFO's SEP requirements.

55. Carmeuse must submit a SEP completion report to U.S. EPA within 30 days of completing the SEP as required by paragraphs 50 through 52. This report must contain the following information:

- a. detailed description of the SEP as completed;
- b. description of any operating problems and the actions taken to correct the problems;
- c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or cancelled checks that specifically identify and itemize the individual costs of the goods and services;
- d. certification that Carmeuse has completed the SEP in compliance with this CAFO; and

e. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

56. Carmeuse must submit a SEP update report to U.S. EPA each year for five consecutive years immediately following Carmeuse's submission of the SEP completion report identified in paragraph 55 above. Carmeuse must submit the first SEP update report 364 days after it submitted the SEP completion report, then each of the following reports on the same date for the remaining four years. These reports must contain the following information:

- a. description of any operating problems, duration of problems, and the actions taken to correct the problems;
- b. itemized annual operation costs; and
- c. certification that Carmeuse is operating the Envirolime Take-Away System in compliance with this CAFO.

57. Carmeuse must submit all reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

58. In each report that Carmeuse submits as provided by this CAFO, it must certify that the report is true and complete

by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

59. Following receipt of the SEP completion report described in paragraph 55 above, U.S. EPA must notify Carmeuse in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Carmeuse 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 61.

60. If U.S. EPA exercises option b of paragraph 59, Carmeuse may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Carmeuse's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Carmeuse a written decision on its objection. Carmeuse will comply with any requirements that U.S. EPA imposes in its decision. If Carmeuse does not complete the SEP as required by

U.S. EPA's decision, Carmeuse will pay stipulated penalties to the United States under paragraph 61 below.

61. If Carmeuse violates any requirement of this CAFO relating to the SEP, Carmeuse must pay stipulated penalties to the United States as follows:

a. If Respondent spent less on the SEP than the amount set forth in paragraph 51, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 51.

b. If Respondent has completed the SEP but the SEP is not satisfactory, Respondent must pay \$73,598 in addition to any penalty required under subparagraph 42, above.

c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$91,998 in addition to any penalty required under subparagraph 42, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.

d. If Respondent fails to comply with the schedule in paragraph 50 and 52, above, for implementing and operating the SEP, fails to submit timely the SEP completion report required by paragraph 55, above, or fails to submit timely any other report required by paragraph 56, above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100 per day	1 <sup>st</sup> through 14 <sup>th</sup> day
\$200 per day	15 <sup>th</sup> through 30 <sup>th</sup> day
\$300 per day	31 <sup>st</sup> day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.



62. U.S. EPA's written determinations of whether Carmeuse satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind Carmeuse.

63. Carmeuse must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Carmeuse will use the method of payment specified in paragraphs 43 through 48, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

64. Any public statement that Carmeuse makes referring to the SEP must include the following language, "Carmeuse undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Carmeuse for violations of Carmeuse."

65. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Carmeuse must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Carmeuse's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Carmeuse must take all reasonable actions to avoid or minimize any delay. If Carmeuse fails to notify U.S. EPA according to this paragraph, Carmeuse will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Carmeuse caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of Carmeuse caused or may cause a delay in completing the SEP, U.S. EPA will notify Carmeuse in writing of its decision and any delays in completing the SEP will not be excused.

d. Carmeuse has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

**Final Statement**

66. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.

67. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

68. This CAFO does not affect Carmeuse's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 66, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

69. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Carmeuse's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

70. The terms of this CAFO bind Carmeuse, and its successors, and assigns.

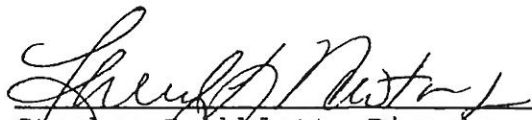
71. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

72. Each party agrees to bear its own costs and attorneys' fees in this action.

73. This CAFO constitutes the entire agreement between the parties.

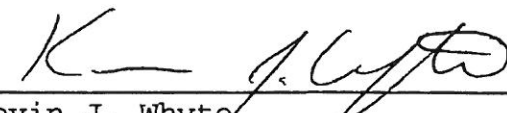
**U.S. Environmental Protection Agency, Complainant**

9/26/05  
Date

  
\_\_\_\_\_  
Stephen Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

**Carmeuse Lime, Inc., Respondent**

9/21/05  
Date

  
\_\_\_\_\_  
Kevin J. Whyte  
Vice President, General Counsel  
Carmeuse Lime, Inc.

**CONSENT AGREEMENT AND FINAL ORDER**

**Carmeuse Lime, Inc.**

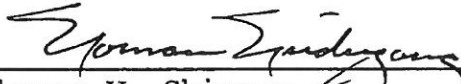
Docket No. ~~CAA-05-~~ 2005 0051

**Final Order**

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

9/27/05

~~CAA-05-~~ 2005 0051

  
\_\_\_\_\_  
for Thomas V. Skinner  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

In the Matter of Carmeuse North America, Chicago, Illinois  
Docket No: ~~CAA-05-~~ 2005 0051

CERTIFICATE OF SERVICE


I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05- 2005 0051 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Carmeuse North America's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Mr. Stephen Smith  
Associate Counsel  
Carmeuse North America  
11 Stanwix Street, 11<sup>th</sup> floor  
Pittsburgh, PA 15222

I also certify that copy of the CAFO was sent by  
First Class Mail to:

Julie Armitage, Acting Manager  
Compliance and Enforcement Section  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702

on the 28<sup>th</sup> day of September, 2005.

  
Betty Williams, APA  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 000602957850