

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

<p>IN THE MATTER OF:</p> <p><b>UNITED STATES GYPSUM COMPANY</b></p> <p>Facility ID# 29-06-001 Des Moines County</p>	<p>ADMINISTRATIVE CONSENT ORDER NO. 2009-AQ- <b>25</b></p>
---	--

TO: United States Gypsum Company  
Mr. Kirk Hillman, Plant Manager  
13425 210<sup>th</sup> Street  
Mediapolis, Iowa 52637

CT Corporation System  
Registered Agent for United States Gypsum Company  
2222 Grand Avenue  
Des Moines, IA 50312

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and United States Gypsum Company (USG), for the purpose of resolving air quality violations at its Sperry plant. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Rcid Bernel, Air Quality Bureau  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-4918

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-6243

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: UNITED STATES GYPSUM COMPANY

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or to prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

**FACILITY DESCRIPTION**

1. USG's Sperry facility is located at 13425 210<sup>th</sup> Street, in Mediapolis, Iowa, just outside of Sperry. USG has two facilities in Iowa, and a total of twenty-five facilities with similar operations across North America. USG's Sperry facility has 190 employees engaged in mining and the manufacture of plaster and plaster board. Annual facility sales are estimated between \$50 million and \$99 million. Emission sources to the outside atmosphere at this site include drying kilns, mixers, grinders and saws. The Sperry facility is a Title V major source.

**CURRENT ENFORCEMENT HISTORY**

2. In June 2007, USG's Sperry facility brought Siloxane into full production after a period of product testing. Siloxane is a liquid which is added to dry wall slurry in order to make it mold and water resistant.

3. On September 27, 2007, USG's Sperry facility contacted DNR by letter requesting a meeting to discuss its use of Siloxane. USG wanted to determine if permit modifications were required for its Kiln #1 (Permit No. 81-A-072-S3) and Kiln #2 (Permit No. 88-A-190-S5). DNR responded verbally that more information would need to be submitted first. USG failed to submit the information. No meeting took place.

4. On December 26, 2007, DNR issued a variance to USG's Sperry facility to conduct a trial run on a new material known as glass matting which is a fiberglass product that adds strength to drywall slurry. USG did not disclose its use of Siloxane in its variance request.

5. On January 22, 2008, DNR issued a second variance to USG to conduct another trial run on glass matting. Once again, USG did not mention the use of Siloxane in its variance request.

6. On February 26-28, 2008, USG conducted stack tests on the two kilns that were using glass matting and Siloxane at its Sperry plant.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: UNITED STATES GYPSUM COMPANY

7. On March 17, 2008, DNR issued a third variance to USG to conduct yet another trial run on glass matting. For the third time, USG's variance request neglected to mention its use of Siloxane.

8. On April 16, 2008, DNR issued a letter notifying USG that its annual Title V compliance certification was completed incorrectly. USG resubmitted the correct report shortly thereafter. This report identified excess emissions of PM coming from the kilns.

9. On May 12, 2008, DNR received test reports from USG for the testing conducted on February 26-28, 2008. They indicated a failure to comply with Construction Permit Nos. 81-A-072-S3 and 88-A-190-S5. The Condition 10 emission limits for Kiln #1 and Kiln #2 for PM<sub>10</sub> were 3.36 lb/hr. and 1.78 lb/hr. respectively, but the stack tests showed a top emission rate of 12.23 lb/hr. and 16.13 lb/hr.

10. On May 15, 2008, DNR met with USG to discuss the emissions deviation caused by the Sperry kilns. This deviation was a direct result of the use of Siloxane.

11. On May 18, 2008, USG's Sperry facility stopped using Siloxane in production.

12. On June 13, 2008, USG submitted permit applications to DNR to allow for the use of both Siloxane and glass matting.

13. On August 5, 2008, DNR issued variances to USG's Sperry facility to allow the use of Siloxane and glass matting in full production until the permits would be issued.

14. On August 25, 2008, DNR issued a Notice of Violation to USG for failing compliance stack testing based on USG's report received on May 12, 2008. These tests were done while using Siloxane. USG was in violation of their PM<sub>10</sub> limits for Kiln #1 and Kiln #2.

15. On September 2, 2008, DNR sent a letter to USG stating its intention to pursue further action in response to USG's use of Siloxane before receiving a permit modification.

16. On September 8, 2008, DNR issued modified permits to USG for Kiln #1 (Permit No. 81-A-072-S4) and Kiln #2 (Permit No. 88-A-190) for the use of Siloxane and glass matting.

#### **PAST ENFORCEMENT HISTORY**

17. On August 4, 2000, DNR issued a Notice of Violation letter to USG's Sperry facility for neglecting to obtain construction permits before installing and operating its #1 Landplaster Receiver and #2 Stucco Mixer.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: UNITED STATES GYPSUM COMPANY

18. On September 4, 2002, DNR issued a Notice of Violation to USG's Fort Dodge facility for installing and operating a secondary crusher without a permit. USG also had not completed stack testing as required by the New Source Performance Standards, 40 CFR 60 Subpart 000.

19. On March 20, 2003, DNR issued a Notice of Violation to USG's Fort Dodge facility for installing a primary crusher and belt conveyor without first obtaining the required construction permit.

20. On April 25, 2005, DNR issued a Notice of Violation to USG's Sperry facility for failing to follow the monitoring requirements specified in Title V Permit 03-TV-012.

21. On July 6, 2006, DNR issued Administrative Consent Order No. 2006-AQ-22 to USG's Fort Dodge facility for exceeding permitted limits of PM and/or PM<sub>10</sub> for seven different Emission Points. This order included a \$10,000.00 penalty.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. Pursuant to Iowa Code sections 455B.133 and 455B.134(3)(a), 567 IAC 22.1(1) requires that a person who constructs, installs, reconstructs or alters equipment or control equipment must first obtain an air quality construction permit from the DNR, unless an exemption applies. No exemption applies to the units mentioned above. The above facts indicate a violation of these provisions in that USG introduced Siloxane into a process without first obtaining a modified construction permit.

3. Pursuant to Iowa Code section 455B.133, 567 IAC 22.3(3) authorizes permits to be issued subject to written conditions. The above facts indicate violations of USG's air quality permit provisions in that USG exceeded permitted limits.

**V. ORDER**

THEREFORE, the DNR orders and USG agrees to do the following:

1. Comply with all permit conditions at all times;
2. Obtain construction permits before installing, modifying, or relocating emission equipment; and
3. Pay a penalty of \$6,000.00 within 30 days of the date the Director signs this administrative consent order.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: UNITED STATES GYPSUM COMPANY

**VI. PENALTY**

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this chapter, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty of \$6,000.00. The administrative penalty assessed by this order is determined as follows:

Economic Benefit USG's economic benefit as a result of these violations is minimal. Therefore, no economic benefit amount is assessed.

Gravity of the Violation – USG's failure to obtain modified construction permits prior to introducing Siloxane into production prevented DNR from evaluating the potential emissions and ambient air impacts from two emission sources. Stack test results showed that USG was in violation of PM<sub>10</sub> emission limits by a substantial margin. Finally, USG's unpermitted modification or construction of emission sources, prior to obtaining the required permits, threatens the integrity of Iowa's permitting and air pollution control programs. Therefore, \$3,000.00 is assessed for this factor.

Culpability – USG has a duty to remain knowledgeable concerning DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. USG also has a duty to comply with the terms of its permits. USG is fully aware of the requirement to have a construction permit issued prior to initiating new construction or changing a permitted unit, since it has obtained permits in the past for its two Iowa facilities. USG operated with Siloxane for nearly a year without a permit. USG has been cited for numerous past air quality violations and was subject to a previous administrative consent order. Therefore, \$3,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of USG. For this reason, USG waives its rights to appeal this order or any part thereof.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: UNITED STATES GYPSUM COMPANY

**VIII. NONCOMPLIANCE**

Failure to comply with this administrative consent order may result in the imposition of administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this order.

  
\_\_\_\_\_  
RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 18 day of  
Sept., 2009.

  
\_\_\_\_\_  
For United States Gypsum Company

Dated this 24<sup>th</sup> day of  
AUGUST, 2009.

Facility # 29-06-001; Anne Preziosi; Reid Berncl; FO No 6; EPA VII.A.2, VII.B.2.c (1)