

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

<p>IN THE MATTER OF:</p> <p><b>CERTAINTEED GYPSUM, INC.</b></p> <p>Facility ID# 94-01-002 Webster, IA</p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER NO. 2009-AQ-02</p>
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TO: CertainTeed Gypsum, Inc.  
CT Corporation, Registered Agent  
2222 Grand Ave  
Des Moines, IA 50312

CertainTeed Gypsum, Inc  
Attn: Kent Womack, Manager  
2109 Quail Avenue  
Fort Dodge, Iowa 50501

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and CertainTeed Gypsum, Inc. (CertainTeed) for the purpose of resolving air quality violations at its gypsum plant in Fort Dodge, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bryan Bunton, Environmental Specialist  
Air Quality Division  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-0363

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
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

**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 prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative

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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**

1. CertainTeed is a leading North American manufacturer of building materials including roofing, siding, insulation, windows and patio doors, fence, decking, railing, foundations, and pipe. The company is headquartered in Valley Forge, Pennsylvania, and has approximately 70 manufacturing facilities throughout the United States. CertainTeed operates 13 gypsum board plants in North America, including CertainTeed in Fort Dodge, Iowa. This facility employs 60 people and develops gypsum board products, high performance sheathing products and finishing product. The primary emission sources at this facility include hammermills, conveyors, storage bins, dryers, and mixers.

2. On June, 21, 1999, DNR issued Title V Operation Permit 99-TV-028 to CertainTeed. Issuance of this permit triggered the various reporting and fee paying requirements associated with the Title V Program.

3. September 30, 1999 was the deadline for the submittal of the Semi-Annual Monitoring Report for January 1 to June 30, 1999. DNR did not receive the Semi-Annual Monitoring Report until October 4, 1999.

4. March 31, 2000, was the deadline for the submittal of the Semi-Annual Monitoring Report for the July to December 31, 1999, time period and the Annual Compliance Certification for the 1999 year. DNR did not receive the 1999 Annual Compliance Certification until April 26, 2000.

5. September 30, 2001, was the deadline for the submittal of the Semi-Annual Monitoring Report for January 1 to June 30, 2001. DNR did not receive the Report until November 7, 2001.

6. On October 30, 2001, DNR issued an Notice of Violation (NOV) Letter for failure to submit the Semi-Annual Monitoring Report by the September 30, 2001 deadline.

7. March 31, 2002, was the deadline for the submittal of the Semi-Annual Monitoring Report for July 1 to December 31, 2002 and the Annual Compliance Certification for the 2001 year. DNR did not receive the 2001 Annual Compliance Certification until April 2, 2002.

8. March 31, 2003, was the deadline for the submittal of the Semi-Annual Monitoring Report for July 1 to December 31, 2002, and the Annual Compliance Certification for the 2002 year. March 31, 2003, was also the deadline for the submittal of the Title V Emissions Inventory for the year 2002. DNR did not receive the 2002 Annual Compliance Certification until April 4, 2003. DNR did not receive the 2002 Title V Emissions Inventory until April 7, 2003.

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9. On May 15, 2003, DNR issued a NOV Letter for failure to submit the Title V Emissions Inventory by the March 31, 2003 deadline.

10. July 1, 2003, was the deadline for the submittal of Title V Fees for the 2002 year. DNR did not receive the Title V Fees for 2002 until July 7, 2003.

11. On July 24, 2003, DNR issued an NOV Letter for failure to submit the Title V Fees by the July 1, 2003 deadline.

12. December 20, 2003 was the deadline for the submittal of the Title V Renewal Application for Title V Permit 99-TV-98. DNR did not receive the Title V Renewal Application until February 3, 2004.

13. On January 8, 2004, DNR issued a NOV Letter for failure to submit the Title V Renewal Application by the December 20, 2003, deadline.

14. On December 1, 2006, DNR issued Title V Operation Permit 99-TV-028-R1 to CertainTeed. Issuance of this permit continues the various reporting and fee paying requirements associated with the Title V program.

15. March 31, 2006, was the deadline for submittal of the Semi-Annual Monitoring Report for July 1 to December 31, 2005, and the Annual Compliance Certification. DNR Field Office 2 did not receive the 2005 Annual Certification until April 3, 2006.

16. On January 18, 2007, DNR Field Office 2 issued an NOV Letter for failure to submit the Annual Compliance Certification by the March 31, 2006, deadline.

17. July 1, 2007, was the deadline for submittal of the Title V Fees for the year 2006. DNR did not receive the Title V Fees until July 9, 2007.

18. On July 16, 2007, DNR issued an NOV Letter for failure to submit the Title V Fees by the July 1, 2007, deadline.

19. March 31, 2008, was the deadline for submittal of the Semi-Annual Monitoring Report for July 1 to December 31, 2007, and the Annual Compliance Certification for the 2007 year.

20. On April 25, 2008, DNR issued an NOV Letter for failure to submit the Annual Compliance Certification by the March 31, 2008, deadline. DNR received the Annual Compliance Certification on June 27, 2008.

21. March 31, 2008 was the deadline for submittal of the Title V Emissions Inventory for the year 2007. On April 25, 2008, DNR issued an NOV Letter for failure to

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submit the Title V Emission Inventory by the March 31, 2008, due date. Following issuance of the NOV letter, DNR has received the Title V Emission Inventory.

**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 20-34 relating to air quality.

2. 567 IAC 22.105(1) requires that each source applying for a Title V permit shall submit an application at least 6 months but not more than 18 months prior to the date of permit expiration if the application is for a permit renewal. Under these requirements, CertainTeed was required to submit an application for renewal by December 20, 2003. The application was not received until February 3, 2004.

3. 567 IAC 22.106(3)(a) requires that Title V Fees be submitted annually by July 1. Under these requirements, CertainTeed failed to submit the required fees by the due date on two separate occasions.

4. 567 IAC 22.106(3)(b) requires that forms be submitted annually by March 31 documenting actual emissions for the previous calendar year. Under these requirements, CertainTeed failed to submit the required documentation by the due date on two separate occasions.

5. 567 IAC 22.108(5) and IAC 567 22.108 (15) require Title V reports to be submitted in a timely manner. 567 IAC 22.108(5) requires the submittal of reports of any required monitoring at least every six months. Permits shall include the frequency of submission of compliance certification, which shall not be less than annually. Under these requirements, CertainTeed failed to submit the required reports by the due date on seven separate occasions.

6. 567 IAC 22.3(3) gives the Director authority to issue permits subject to conditions that are specified in writing. The permit holder must comply with all of these written permit conditions and all other applicable requirements. CertainTeed failed to meeting the following permit conditions:

General Condition G4 of Title V Permit 99-TV-028-R1 states that by March 31 of each year, the permittee shall submit compliance certification for the previous calendar year. Under these requirements, CertainTeed failed to submit the required reports by the due date on five separate occasions.

General Condition G5 of Title V Permit 99-TV-028-R1 states that by March 31 and September 30 of each year, the permittee shall submit a report of any monitoring required under this permit for the 6 month periods of July 1 to December

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31 and January 1 to June 20. Under these requirements, CertainTeed failed to submit the required reports by the due date on seven separate occasions.

General Condition G2 of Title V Permit 99-TV-028-R1 states that the expiration of this permit terminates the permittee's right to operate unless a timely and complete application has been submitted for renewal. To be considered timely, the owner must submit a permit application at least 6 months but not more than 18 months prior to the date of permit expiration. Under these requirements, CertainTeed was required to submit an application for renewal by December 20, 2003. The application was not received until February 3, 2004.

General Condition G6 of Title V Permit 99-TV-028-R1 states that the permittee is required to pay an annual fee based on the total tons of actual emission of each regulated air pollutant. Beginning July 1, 1996, Title V operated permit fees will be paid on July 1 of each year. The fee shall be based on emission from the previous calendar year. Under these requirements, CertainTeed failed to submit the required fees by the due date on two separate occasions.

General Condition G6 of Title V Permit 99-TV-028-R1 states that forms shall be submitted annually by March 31 documenting actual emission for the previous calendar year. Under these requirements, CertainTeed failed to submit the required documentation by the due date on two separate occasions.

**V. ORDER**

TIHEREFORE, the DNR orders and CertainTeed agrees to do the following:

1. In the future, timely submit to the Department all reports required by the Title V program, and;
2. Pay a penalty of 5,900.00 within 60 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. 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.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of

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an administrative consent order with an administrative penalty of \$5,900.00. The administrative penalty is determined as follows:

Economic Benefit- CertainTeed received an economic benefit over other Title V facilities that comply with the due dates for the Title V Annual Compliance Certification, Semi-Annual Monitoring Reports, Emission Inventories, Fees and Renewals. Based on the above considerations, a monetary penalty of \$500.00 is assessed for this factor.

Gravity – Failing to submit monitoring reports in a timely manner prevents the DNR, as well as the public, from promptly being informed on the facility’s compliance status with regard to Iowa’s air quality rules. In addition, Title V fees are required to administer the air programs required under the Clean Air Act. CertainTeed’s failure to comply with the various reporting and fee paying requirements associated with the Title V program has forced the DNR to spend additional time and resources in an effort to obtain required reports, fees, and permit applications. As a result, these violations threaten the integrity of the DNR’s air program. Based on the above considerations, \$4,400.00 is assessed for this factor

Culpability- CertainTeed is well aware of the Title V reporting and fee paying requirements, having been issued its initial Title V permit in 1999. In addition, CertainTeed has been issued numerous Notice of Violation letters for late submittal in previous years. These violations threaten the integrity of the DNR’s air quality program. Based on the above considerations, \$1,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

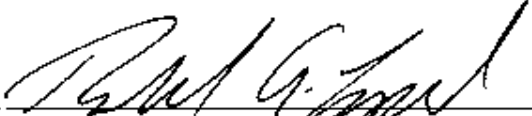
This administrative consent order is entered into knowingly and with the consent of CertainTeed. For that reason CertainTeed waives its right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further 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

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constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 10 day of  
Febr, 2009.

  
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AUTHORIZED AGENT  
CertainFeed Gypsum, Inc.

Dated this 6th day of  
February, 2009.

94-02-004; Anne Preziosi; Bryan Bunton; EPA; VII.B.2.a.