

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 31-00010

LIS No. 14-072

CERTAINTEED GYPSUM MANUFACTURING, INC.
794 STATE HIGHWAY 369 NORTH
NASHVILLE, AR 71852

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) is issued pursuant to the authority delegated under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the federal regulations issued thereunder. In addition, this CAO is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (the Act), Ark. Code Ann. § 8-4-101 *et seq.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 7, APC&EC Regulation 8, APC&EC Regulation 18, APC&EC Regulation 19, and APC&EC Regulation 26.

The issues herein having been settled by agreement of CertainTeed Gypsum Manufacturing, Inc. (Respondent) and the Director of the Arkansas Department of Environmental Quality (ADEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. Respondent owns and operates a gypsum wallboard manufacturing facility located at 794 State Highway 369 North in Nashville, Howard County, Arkansas.
2. ADEQ issued Air Operating Permit 0598-AOP-R6 (Permit R6) to Respondent on September 26, 2014.

3. ADEQ issued Air Operating Permit 0598-AOP-R7 (Permit R7) to Respondent on May 26, 2015.

4. ADEQ issued Air Operating Permit 0598-AOP-R8 (Permit R8) to Respondent on July 15, 2016.

5. Ark. Code Ann. § 8-4-217(a)(3) provides:

(a) It shall be unlawful for any person to:

...

(3) Violate any provisions of this chapter or of any rule, regulation, or order adopted by the Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Arkansas Department of Environmental Quality.

6. Ark. Code Ann. § 8-4-103(c)(1) as referenced by Ark. Code Ann. §§ 8-4-304 and 8-4-311 authorizes ADEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any regulation or permit issued pursuant to the Act.

7. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 8-4-304, "Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment."

8. On February 16, 2016, ADEQ personnel conducted a compliance inspection of Respondent's facility. The inspection revealed that Respondent failed to conduct weekly observations of opacity at the Secondary Crusher (SN-19) for the week ending April 26, 2015, and the week ending May 10, 2015. Such failures violate Specific Condition 12 of Permit R6 and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

9. The inspection revealed that Respondent failed to conduct weekly observations of

opacity at the CP Mill and Flash Calciner (SN-39) for the week ending April 26, 2015, and the week ending May 10, 2015. Such failures violate Specific Condition 32 of Permit R6 and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

10. The inspection revealed that Respondent failed to conduct weekly observations of opacity at: 1) the CP Mill Buell System (SN-41); 2) the Stucco Bin Line #1 (SN-42); and 3) the Stucco Bin Line #2 (SN-42A) for the week ending April 26, 2015, and the week ending May 10, 2015. Such failures violate Specific Condition 42 of Permit R6 and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

11. An initial performance test for opacity at the Mobile Crushing Plant (SN-61) was to be completed within 180 days of its initial startup. In correspondence dated May 26, 2015, Respondent reported that the Mobile Crushing Plant was put into operation on May 22, 2015. Thus, initial performance testing for opacity at the Mobile Crushing Plant should have been conducted no later than November 18, 2015. The February 16, 2016, compliance inspection revealed that the initial performance testing for opacity at the Mobile Crushing Plant had not been performed. Such failure violates Specific Condition 84 and Plantwide Condition 3 of Permit R7 and therefore violates Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

12. On April 5, 2016, Respondent conducted initial performance tests for opacity at the Mobile Crushing Plant. The initial performance tests show that the results for opacity did not exceed the twelve (12) percent opacity limit of Permit R7.

13. The compliance inspection revealed that Respondent failed to record the monthly periodic inspections of the wet suppression system's water spray nozzles at SN-61, including the

date of each inspection and any corrective actions taken. At the time of the compliance inspection, monthly periodic inspections were not performed for the months of May 2015 through December 2015. Such failures violate Specific Condition 86 of Permit R7 and therefore violate Ark. Code Ann. § 8-4-217(a)(3) as referenced by Ark. Code Ann. § 8-4-304.

ORDER AND AGREEMENT

WHEREFORE, Respondent, neither admitting nor denying the factual and legal allegations contained in this CAO, and ADEQ do hereby agree and stipulate as follows:

1. To demonstrate compliance with Specific Condition 86 of Permit R8, Respondent shall submit copies to ADEQ of the monthly periodic inspections of the wet suppression system's water spray nozzles at SN-61 for the period of April 2016 through June 2016. Copies shall be submitted within thirty (30) calendar days of the effective date of this CAO. Submittal of said records shall be mailed to:

ADEQ, Office of Air Quality
-Enforcement Section
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317.

2. In compromise and full settlement for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **TWO THOUSAND SIX HUNDRED DOLLARS (\$2,600.00)**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to:

ADEQ, Fiscal Division
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317.

In the event that Respondent fails to pay the civil penalty within the prescribed time, ADEQ shall

be entitled to attorneys' fees and costs associated with collection.

3. All applicable submissions required by this CAO are subject to approval by ADEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by ADEQ, submit any additional information requested. Failure to adequately respond to the notice of deficiency within fifteen (15) calendar days constitutes a failure to meet a deadline and is subject to the civil penalties established in the following Paragraph.

4. Failure to meet the limits, requirements, or deadlines of this CAO or the applicable approved schedules provided for herein constitutes a violation of said CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent consents and agrees to pay, on demand, to ADEQ civil penalties according to the following schedule:

- | | |
|--|----------------|
| (a) First day through the fourteenth day: | \$100 per day |
| (b) Fifteenth day through the thirtieth day: | \$500 per day |
| (c) More than thirty days: | \$1000 per day |

Stipulated penalties shall be paid within thirty (30) calendar days of receipt of ADEQ's demand to Respondent for such penalties. These stipulated penalties may be imposed for delay in scheduled performance and shall be in addition to any other remedies or sanctions which may be available to ADEQ by reason of Respondent's failure to comply with the requirements of this CAO. ADEQ reserves its rights to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above.

5. If any event, including, but not limited to, an occurrence of nature, causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this CAO, Respondent shall notify ADEQ in writing as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates have passed. The

notification shall describe in detail the anticipated length of the delay, the precise cause of the delay, the measures being taken and to be taken to minimize the delay, and the timetable by which those measures will be implemented.

6. ADEQ may grant an extension of any provision of this CAO, provided that Respondent requests such an extension in writing and provided that the delay or anticipated delay has or will be caused by circumstances beyond the control of and without the fault of Respondent. The time for performance may be extended for a reasonable period, but in no event longer than the period of delay resulting from such circumstances. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify ADEQ promptly, as provided in the previous Paragraph of the ORDER AND AGREEMENT, shall be grounds for a denial of an extension.

7. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d), and therefore is not effective until thirty (30) calendar days after public notice of the CAO is given. ADEQ retains the right and discretion to rescind this CAO based on comments received within the thirty-day public comment period.

8. As provided by APC&EC Regulation 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this CAO is granted by the Commission.

9. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws, nor, except as specifically provided herein, shall this CAO be deemed in any way to relieve Respondent of responsibilities contained

in the permit.

10. Nothing in this CAO shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO does not exonerate Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve Respondent of the responsibilities for obtaining any necessary permits.

11. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 19th DAY OF September, 2016.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

CERTAINTED GYPSUM MANUFACTURING, INC.

BY: [Signature] (Signature)

Bryan Wilkiter (Typed or printed name)

TITLE: Plant Manager

DATE: 9-9-16