



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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Austin Caperton, Cabinet Secretary
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Certainteed Gypsum West Virginia, Inc.
Attn: Greg Kibert, Plant Manager
9622 Energy Road
Proctor, WV 26055

DATE: April 12, 2018

ORDER NO.: 8811

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter “Director”), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Certainteed Gypsum West Virginia, Inc. (hereinafter “Certainteed”).

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Certainteed operates a 0.003 MGD sewage treatment package plant along with a collection system and required appurtenances, located near Moundsville, Marshall County, West Virginia. Certainteed was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG551408, on March 2, 2011. The WV/NPDES permit was administratively extended until March 31, 2016, but was not reissued until April 19, 2017.
2. On November 30, 2017, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and the WV/NPDES permit were observed and documented:
 - a. Section A.1 - Certainteed exceeded its permitted discharge limitations.
 - b. Appendix A.II.1 - Certainteed failed to properly operate and maintain the facility. Specifically:

- i. A crust was on the surface of the sludge in the sludge holding tank, and the tank was not being aerated.
 - ii. The clarifier supernatant was cloudy and exhibited less than six inches (6") of clarity when tested with a Secchi disc. Additionally, there was excessive solids buildup between the effluent weir and the clarifier wall due to insufficient scum removal. This buildup of solids was preventing the weir from functioning as designed.
 - iii. Excessive solids were present in the chlorine contact chamber.
 - iv. Post aeration was not being supplied to the plant effluent prior to discharge.
 - v. Solid material and vegetation were in the concrete trough between the outlet pipe and the receiving stream.
- c. 47CSR2 Section 3.2.b - Certaineed caused conditions not allowable in waters of the State by creating sludge banks on the bottom of Fish Creek.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W17-25-014-SMC was issued to Certaineed.

3. On February 25, 2018, WVDEP personnel conducted a review of facility records from the time period of January 1, 2016 through December 31, 2017. During this review, the following violations of the terms and conditions of Certaineed's WV/NPDES permit were observed:
 - a. Section A.1 – Thirteen (13) exceedances of Certaineed's permit parameters were observed and documented during the time period when the WV/NPDES permit was valid (Table 1). These exceedances can be further defined as:
 - i. Minor violations-five (5)
 - ii. Moderate violations-five (5)
 - iii. Major violations-three (3)
4. On April 5, 2018, WVDEP personnel met with representatives of Certaineed to discuss the terms and conditions of the Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Certaineed shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, Certaineed shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Certaineed will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0103110, Registration No. WVG551408, and Order No. 8811. The plan of corrective action shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of Certainteed's Legislative Rule and permit violations, Certainteed shall be assessed a civil administrative penalty of nine thousand thirty dollars (\$9,030) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

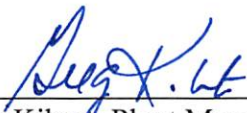
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Certainteed hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Certainteed agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Certainteed does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Certainteed other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Certainteed shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Certainteed becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Certainteed shall, within ten (10) working days of initial

notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Certainteed intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Certainteed (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Certainteed of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Certainteed to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Certainteed, its successors and assigns.
7. This Order shall terminate upon Certainteed's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Greg Kiber, Plant Manager
Certainteed Gypsum West Virginia, Inc.



Date

Public Notice begin:

Date

Public Notice end:

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

Table One: Certainteed Gypsum West Virginia, Inc. DMR Exceedance Summary

WVG551408 Outlet 001 DMR Exceedances - AVG. MONTHLY - January 2016 through December 2017						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
3/31/16	BOD-5	mg/L	30	32.6	9%	X	-	-
3/31/16	TSS	mg/L	30	80	167%	-	X	-
9/30/17	TSS	mg/L	30	80	167%	-	X	-
12/31/17	TSS	mg/L	30	78	160%	-	X	-
3/31/16	Fecal Coliform	Cnts	200	720	260%	-	X	-
9/30/17	Fecal Coliform	Cnts	200	1100	450%	-	-	X
12/31/17	Fecal Coliform	Cnts	200	11000	5400%	-	-	X

WVG551408 Outlet 001 DMR Exceedances - MAX. DAILY - January 2016 through December 2017						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
3/31/16	TSS	mg/L	60	80	33%	X	-	-
9/30/17	TSS	mg/L	60	80	33%	X	-	-
12/31/17	TSS	mg/L	60	78	30%	X	-	-
3/31/16	Fecal Coliform	Cnts.	400	720	80%	X	-	-
9/30/17	Fecal Coliform	Cnts.	400	1100	175%	-	X	-
12/31/17	Fecal Coliform	Cnts.	400	11000	2650%	-	-	X

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		5	5	3

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Certainteed Gypsum West Virginia, Inc. Receiving Stream:

Treatment System Design Maximum Flow: 0.003 MGD

Treatment System Actual Average Flow: 0.0015 MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#														
			2b	2c	3ai	3aii	3aiii										
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1										
d)	Length of Time	1 to 3	1	1	1	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1										
Average Potential for Harm Factor			1	1	1	1	1	No	No	No	No	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range															
	Degree of Non-Compliance	1 to 3	3	3	1	2	3										

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly , >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$2,250
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)		50	(\$11,250)
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$2,250)
6.2.b.3 - Cooperation with the Secretary		10	(\$2,250)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$13,470)
Penalty =			\$9,030

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$0
Comments: No economic benefit warranted.	