

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

FILED
2015 APR 30 AM 9:57
REGIONAL OFFICE
EPA REGION VI

IN THE MATTER OF:

**UNITED STATES GYPSUM
COMPANY
Dallas, Texas**

RESPONDENT

§
§
§
§
§
§

**Consent Agreement and Final Order
Docket No. RCRA-06-2015-0916**

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is entered into by the United States Environmental Protection Agency, Region 6 (“EPA”) and Respondent, United States Gypsum Company (“USG”), and concerns the facility located at 255 Regal Row, Dallas, Texas 75247 (the “Facility”).

2. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a)(2).

3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.

4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, and waives all defenses that have been raised or could have been raised to the claims set forth in the CAFO.

5. The CAFO resolves only those violations that are alleged herein.

6. The Respondent consents to the issuance of the CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO, and consents to the specific stated compliance order.

II. JURISDICTION

7. This CAFO is issued by the EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), as amended by the Hazardous and Solid Waste Amendments of 1984 (“HSWA”) and is simultaneously commenced and concluded through the issuance of this CAFO under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by the EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is a corporation established under the laws of the State of Delaware and authorized to do business in the State of Texas, and owns and operates the Facility located at 255 Regal Row, Dallas, Texas 75247.

10. Respondent is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 Tex. Admin. Code § 3.2(25), [40 C.F.R. § 260.10].

11. Respondent’s Registered Agent for service in this matter is CT Corporation, 1999 Bryan Street, Dallas TX 75201-3136.

12. Respondent owns and operates a Facility and conducts the primary business of gypsum wallboard manufacturing.

13. During the period of December 5, 2014 through December 18, 2014, EPA conducted a RCRA investigation and record review (“Investigation”) of Respondent’s performance as a generator of hazardous waste.

14. During the Investigation, EPA discovered that USG, at a minimum, generated acutely hazardous waste P205, Zinc bis(dimethylcarbamodithioato-S,S’), which is also known by the trade name Ziram.

15. The waste stream identified in Paragraph 14 is an acutely hazardous waste as defined in 30 Tex. Admin. Code § 335.1(69), [40 C.F.R. § 261.33].

16. From the investigation, EPA determined that during the calendar years 2010, 2012, and 2013, USG generated and offered for transport and treatment the acutely hazardous waste stream identified in Paragraph 14 in quantities that exceed the threshold amount of 1 kilogram (kg) of acutely hazardous waste per month, which qualifies USG for the large quantity generator status as established under 30 Tex. Admin. Code, Chapter 335, Subchapter C, [40 C.F.R. § 262]:

- i. 2010 – Two shipments, June 24, 2010 and October 26, 2010;
- ii. 2012 – Two shipments, February 15, 2012 and September 21, 2012; and
- iii. 2013 – Two shipments, July 1, 2013 and December 13, 2013.

17. The Facility is a “solid waste management facility” within the meaning of Section 1004(29) of RCRA, 42 U.S.C. § 6903(29); a “facility” within the meaning of 30 Tex. Admin. Code § 335.1(59), [40 C.F.R. §260.10]; and a “hazardous waste management unit” within the meaning of 30 Tex. Admin. Code § 335.1(72), [40 C.F.R. § 260.10].

18. USG is a “generator” of “hazardous wastes” at the Facility, as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), and 30 Tex. Admin. Code §§ 335.1(65) & (69), [40 C.F.R. § 260.10].

19. As a generator of hazardous waste, USG is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 Tex. Admin. Code, Chapter 335, Subchapters C and F, [40 C.F.R. §§ 262 and/or 270].

Claim 1: Notification Requirements

20. The allegations in Paragraphs 1-19 are realleged and incorporated herein by reference.

21. Within the meaning of 30 Tex. Admin. Code § 335.1 and 40 C.F.R. § 260.10, USG is a “generator” and has been engaged in the “treatment”, “storage”, and/or “disposal” of hazardous waste.

22. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed waste shall file with the Administrator or authorized State a notification stating that the location and general description of such activity and the identified or listed hazardous wastes handled by such person.

23. At the time of the Investigation, USG had not filed with the Administrator or with the authorized State an adequate notification of hazardous waste activities in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim 2: Failure to Operate within Its Stated Generator Status

24. The allegations in Paragraphs 1-23 are realleged and incorporated herein by reference.

25. During the Investigation, EPA determined that USG declared its generator status as Conditionally Exempt Small Quantity Generator (“CESQG”).

26. Pursuant to 30 Tex. Admin. Code § 335.78(b), [40 C.F.R. § 261.5(b)] and except for those wastes identified in 30 Tex. Admin. Code § 335.78(e) - (g) and (j), [40 C.F.R. § 261.5(e) - (g) and (j)], as long as a CESQG complies with the applicable requirements under 30 Tex. Admin. Code § 335.78(f), (g) and (j), [40 C.F.R. § 261.5(f), (g) and (j)] then the generator’s

hazardous waste is not subject to regulations under 30 Tex. Admin. Code, Chapters 335, Subchapters C-H and O [40 C.F.R. Parts 262 through 268; Parts 270 and 124; and the requirements of Section 3010 of RCRA, 42 U.S.C. § 6930].

27. During the years 2010, 2012, and 2013, USG exceeded its declared CESQG status on several occasions by exceeding the limits for generation of acutely hazardous waste, and therefore, operated as a large quantity generator in violation of the regulations set forth at 30 Tex. Admin. Code, Chapter 335, Subchapters C and/or F [40 C.F.R. Parts 262 and/or 270].

Claim 3: Failure to File Biennial Reports

28. The allegations in Paragraphs 1-27 are realleged and incorporated herein by reference.

29. Pursuant to 30 Tex. Admin. Code § 335.71 [40 C.F.R. § 262.41], a generator who ships any hazardous waste off-site for treatment, storage and/or disposal, must prepare and submit a Biennial Report to EPA's Regional Administrator.

30. At all times relevant to this CAFO, EPA did not receive the requisite number of, or adequate Biennial Reports that USG was required to file in violation of 30 Tex. Admin. Code § 335.71, [40 C.F.R. § 262.41].

IV. COMPLIANCE ORDER

31. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within ninety (90) calendar days of the effective date of this CAFO, Respondent shall provide in writing the following:

- A. Respondent shall certify that it has assessed all its solid waste streams to determine the accurate waste codes and has developed and implemented Standard Operating Procedures ("SOP") to ensure that USG is operating in compliance

limited to, procedures for: (i) making hazardous waste determinations; (ii) managing hazardous wastes; and (c) reporting, transporting, and disposing of hazardous waste;

- B. Respondent shall certify that it has accurately and adequately complied with its Notification pursuant to RCRA § 3010, 42 U.S.C. § 6930; and
- C. Respondent shall provide, with its certification, a copy of Respondent's SOPs as described in subparagraph A above.

32. In all instances in which this CAFO requires written submission to EPA, the submittal made by Respondent shall be signed by an owner or officer of USG and shall include the following certification:

"I certify under the penalty of law that this document and all its attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Copies of all documents required by the CAFO shall be sent to the following:

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Hazardous Waste Enforcement Branch
Compliance Enforcement Section (6EN-HC)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Bill Mansfield

V. TERMS OF SETTLEMENT

A. Penalty Provisions

33. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and

V. TERMS OF SETTLEMENT

A. Penalty Provisions

33. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of sixty-five thousand four hundred dollars (\$65,400).

34. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to Treasurer, United States of America.

35. The following are Respondent's options for transmitting the penalties:
Checks sent via U.S. Postal Mail (including certified mail) or U.S. Postal Service Express Mail should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Checks sent via Overnight Mail (non-U.S. Postal Service) should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
SI-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfers should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

The case name and docket number (In the Matter of United States Gypsum Company, Docket No. RCRA-06-2015-0916) shall be documented on or within your chosen method of payment to ensure proper credit.

36. The Respondent shall send a simultaneous notice of such payment to the following:

Lorena S. Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Mark Potts, Associate Director
Hazardous Waste Enforcement Branch (6EN-II)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Bill Mansfield

Your adherence to this request will ensure proper credit is given when penalties are received by EPA.

37. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 1311, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United

States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt that remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 40 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

38. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

C. Termination and Satisfaction

39. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall so certify this in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 32. Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

D. Effective Date of Settlement

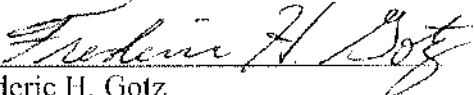
40. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT

AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

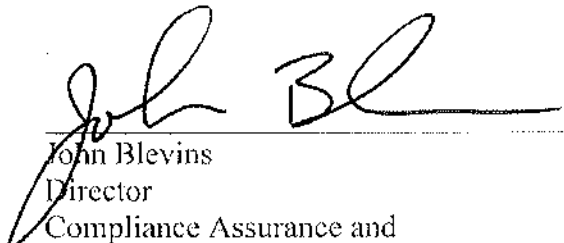
Date: 4/22/15



Frederic H. Gotz
Dallas Plant Manager
United States Gypsum Company

FOR THE COMPLAINANT:

Date: APR 28 2015

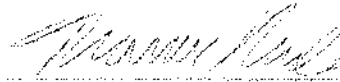


John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: **APR 30 2015**



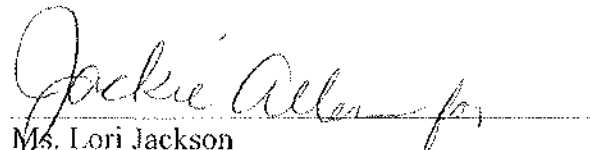
Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 30 day of April, 2015, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method below:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED 70010360 000 3166 757797

Mr. Frederic H. Gotz
United States Gypsum Company
Dallas Plant
255 Regal Row
Dallas, TX 75247


Ms. Lori Jackson
Paralegal