UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 23 2016

REPLY TO THE ATTENTION OF:

VIA E-MAIL:
RETURN RECEIPT REQUESTED

Celeste Levine, Associate General Counsel
Building Materials Manufacturing Corporation d/b/a GAF
500 N Roeske Avenue
Michigan City, Indiana, 46360

Dear Ms. Levine:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Building Materials Manufacturing d/b/a GAF, docket no. **CAA-05-2016-0042**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 23, 2016.

Pursuant to paragraph 37 of the CAFO, Building Materials Manufacturing d/b/a GAF must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Josh Zaharoff at 312-886-4460.

Sincerely,

Nathan Frank, Chief
Air Enforcement and Compliance Assurance Section (IN/IL)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Josh Zaharoff/C-14J
Phil Perry, Chief, Air Compliance Branch/PPERRY@idem.IN.gov

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CAA-05-2016-0042**
	)	
Building Materials Manufacturing Corporation d/b/a GAF Michigan City, Indiana	)	**Proceeding to Assess a Civil Penalty Under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)**
	)	
Respondent.	)	

REGIONAL HEARING CLERK
RECEIVED
SEP 23 2016
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Building Materials Manufacturing Corporation d/b/a GAF (GAF), a corporation doing business in Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Statutory and Regulatory Background

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. On August 18, 1995, EPA approved Indiana's Federally Enforceable State Operating Permit (FESOP) Program as part of the federally enforceable state implementation plan (SIP) for Indiana. 60 Fed. Reg. 43008 (August 18, 1995).

Jurisdiction and Waiver of Right to Hearing

10. The Indiana Department of Environmental Management (IDEM) issued a FESOP Significant Permit Revision to GAF, No. 091-32963-00051, on July 7, 2014 (2014 FESOP).

11. Condition D.1.1(a)(2) of the 2014 FESOP states, in part, that total hydrocarbon emissions to the coalescing filter shall be reduced by 95% on a mass basis.

12. Condition D.1.1(a)(3) of the 2014 FESOP states that volatile organic compound (VOC) emissions from the shingle machine shall not exceed 0.013 pounds of VOCs per ton of shingles produced (lbs VOC/ton).

13. IDEM issued a FESOP Administrative Amendment, No. 091-35556-00051, on March 26, 2015 (2015 FESOP).

14. Condition D.1.1(a)(2) of the 2015 FESOP states, in part, that total hydrocarbon emissions to the coalescing filter shall be reduced by 95% on a mass basis.

15. Condition D.1.1(a)(3) of the 2015 FESOP states that VOC emissions from the shingle machine shall not exceed 0.013 lbs VOC/ton.

16. The Administrator of EPA (the Administrator) may assess a civil penalty of up to $37,500 per day of violation up to a total of $320,000 for CAA violations that occurred after December 6, 2013 and $44,539 per day of violation with a maximum of $356,312 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

17. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

18. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

19. GAF owns and operates an asphalt shingle manufacturing plant at 505 North Roeske Avenue in Michigan City, Indiana.

20. In October 2014, GAF installed a coalescing filter unit, identified as CECO-1, to control emissions from the shingle machine, including the coater, self-seal, and laminate adhesive processes.

21. Following installation of CECO-1, GAF and IDEM started receiving odor complaints associated with Facility operations.

22. In March 2015, GAF conducted performance testing to determine the total hydrocarbon destruction efficiency at CECO-1 (2015 Performance Test).

23. The 2015 Performance Test reported an average total hydrocarbon destruction efficiency at CECO-1 of 39.1%.

24. The 2015 Performance Test reported an average shingle production rate of 80.7 tons of shingles per hour during the test.

25. From the 2015 Performance Test, the volatile organic compound (VOC) emission rate from the shingle machine was calculated to be 0.148 lbs VOC/ton.

26. By failing to reduce total hydrocarbon emissions by at least 95% at CECO-1, GAF violated Condition D.1.1(a)(2) of the 2014 FESOP.

27. By failing to reduce total hydrocarbon emissions by at least 95% at CECO-1, GAF violated Condition D.1.1(a)(2) of the 2015 FESOP.

28. By exceeding the VOC emission rate of 0.013 lbs VOC/ton at CECO-1, GAF violated Condition D.1.1(a)(3) of the 2014 FESOP.

29. By exceeding the VOC emission rate of 0.013 lbs VOC/ton at CECO-1, GAF violated Condition D.1.1(a)(3) of the 2015 FESOP.

30. Between October 2014 and November 2015, GAF operated its shingle machine with excess VOC emissions.

31. GAF reported to EPA that, after the 2015 Performance Test, the facility undertook immediate and substantial steps to determine if CECO-1 could be modified to achieve the desired level of control and minimize VOC emissions from CECO-1.

32. In November 2015, GAF installed a regenerative thermal oxidizer (RTO-1), equipped with coalescing pre-filter to control emissions from their shingle machine.

33. On December 18, 2015, GAF conducted a performance test (December Test) on RTO-1 to determine compliance with its permitted limits.

34. GAF reported that the December Test identified a VOC destruction efficiency of 97.3% at RTO-1, which demonstrates GAF's compliance with Condition D.1.1(a)(2) of the 2015 FESOP.

35. GAF reported that the December Test identified a VOC emission rate of 0.003366 lbs VOC/ton at RTO-1, which demonstrates GAF's compliance with Condition D.1.1(a)(3) of the 2015 FESOP.

Civil Penalty

36. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, GAF's prompt efforts to install control technology enabling the facility to return to compliance, and GAF's cooperation throughout the process, Complainant has determined that an appropriate civil penalty to settle this action is $221,458.

37. Within 30 days after the effective date of this CAFO, Respondent must pay a $221,458 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read: "D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

38. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

77 W. Jackson Boulevard
Chicago, Illinois 60604

Josh Zaharoff (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

39. This civil penalty is not deductible for federal tax purposes.

40. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

41. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

42. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: zaharoff.josh@epa.gov (for Complainant), and eboyd@thompsoncoburn.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

43. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

44. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

45. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 43, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

46. Respondent certifies that it is complying fully with the 2015 FESOP Conditions set forth in D.1.1(a) and with the requirements in the Indiana SIP at 326 IAC 8-1-6.

47. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

48. The terms of this CAFO bind Respondent, its successors and assigns.

49. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

50. Each party agrees to bear its own costs and attorney's fees in this action.

51. This CAFO constitutes the entire agreement between the parties.

Building Materials Manufacturing Corporation d/b/a GAF, Respondent

9-7-2016
Date

Celeste Levine, Associate General Counsel
Building Materials Manufacturing Corporation d/b/a GAF

United States Environmental Protection Agency, Complainant

9/19/16
Date

Edward Nam
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/21/16
Date

Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Building Materials Manufacturing Corporation d/b/a GAF
Docket Number: CAA-05-2016-0042

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number: CAA-05-2016-0042 which was filed on September 23, 2016 this day in the following manner to the addressees:

Copy by E-mail to Respondent:	Celeste Levine, Associate General Counsel clevine@gaf.com
Copy by E-mail to Attorney for Complainant:	Josh Zaharoff Zaharoff.josh@epa.gov
Copy by E-mail to Attorney for Respondent:	Eric Boyd eboyd@thompsoncoburn.com
Copy by E-mail to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

Dated: September 26, 2016 L Whitehead

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5