



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

REPLY TO THE ATTENTION OF:
C-14J

VIA FEDERAL EXPRESS

May 23, 2007

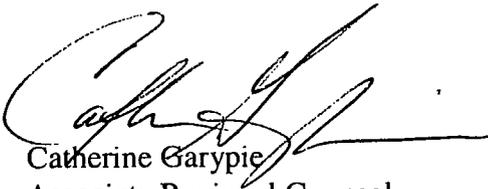
Lauren Alterman, Esq.
Associate General Counsel
Saint-Gobain Corporation
750 East Swedesford Road
Valley Forge, PA 19482

RE: In the Matter of CertainTeed Corporation, Docket No. CAA-05-2006-0028

Dear Ms. Alterman:

Please find enclosed a copy of a Consent Agreement and Final Order, filed today, in the above-captioned matter. This document settles the United States Environmental Protection Agency's claim for civil penalties for the violations alleged in the Complaint. When making the payment required by this settlement, please reference Billing Document Number 2750703A011.

Sincerely yours,


Catherine Garypie
Associate Regional Counsel

Enclosure



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

REPLY TO THE ATTENTION OF:
C-14J

VIA FEDERAL EXPRESS

May 23, 2007

The Honorable Barbara A. Gunning
Office of United States Administrative Law Judges
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Franklin Court, Suite 350
1099 14th Street, NW
Washington, D.C. 20005.

RE: In the Matter of CertainTeed Corporation, Docket No. CAA-05-2006-0028

Dear Judge Gunning:

Please find enclosed a copy of a Consent Agreement and Final Order, filed today, in the above-captioned matter. This document settles the United States Environmental Protection Agency's claim for civil penalties for the violations alleged in the Complaint.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Catherine Garypie", written over a horizontal line.

Catherine Garypie
Associate Regional Counsel

Enclosure

cc: Lauren Alterman, Esq.
Associate General Counsel
Saint-Gobain Corporation
750 East Swedesford Road
Valley Forge, PA 19482

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	Docket No. CAA-05-2006-0028
CertainTeed Corporation)	Proceeding to Assess a Civil
Shakopee, Minnesota)	Penalty under Section 113(d)
)	of the Clean Air Act,
Respondent.)	42 U.S.C. § 7413(d)
_____)	

2007 MAY 23 AM 11:55
REGION 5 OFFICE
MINNAPOLIS

Consent Agreement and Final Order

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The violations of the Act at Respondent's Facility which are the subject of this consent agreement and final order (CAFO) were voluntarily disclosed by Respondent to U.S. EPA by letters dated March 25, 2004 and December 14, 2004, pursuant to the "Final Policy Statement on Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations" (Self-Disclosure Policy), 65 Fed. Reg. 19618 (April 11, 2000).

3. On August 29, 2006, U.S. EPA filed the complaint in this action against Respondent CertainTeed Corporation (CertainTeed). The complaint alleges that CertainTeed violated Section 110 of the Act, 42 U.S.C. § 7410, and Chapters 7007 and 7011 as part of the federally enforceable State Implementation Plan for Minnesota, 70 Fed. Reg. 8930, at its facility in Shakopee, Minnesota. Specifically, the complaint alleges the following violations:

Count I: Failure to obtain an emission permit for Line 1 Filler Heater, Minn. Rule 7007.150, Subpart 1.

Count II: Failing to complete total enclosure around Line 3 Surfacing Section, Minn. Rule 7007.150, Subpart 1 and Minn. Rule 7011.0070.

Count III: Failure to obtain an emission permit for Line 3 Nail Guide Paint Application, Minn. Rule 7007.150, Subpart 1 and Minn. Rule 7007.0500, Subpart 2.C.(4).

4. CertainTeed filed an answer and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

Stipulations

5. CertainTeed admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint.

6. CertainTeed waives any right to contest the allegations in the complaint and its right to appeal this CAFO.

7. CertainTeed certifies that it is complying fully with the Minnesota SIP regulations found at 40 C.F.R. Part 52, Subpart Y, except as the facility may have reported in its Annual Compliance Certification and Semi-Annual Deviation Reports filed with the Minnesota Pollution Control Agency.

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

9. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

10. U.S. EPA calculated an initial gravity-based proposed penalty of \$272,140 for the alleged violations described above in Section V of this CAFO.

11. Based upon Respondent's letters of March 25, 2004 and December 14, 2004, invoking the Self-Disclosure Policy, and subsequent written and verbal communication, U.S. EPA has determined that Respondent has satisfied eight of the nine Self-Disclosure Policy criteria. Therefore, in accordance with the terms of this CAFO, a seventy-five (75) percent reduction of the gravity portion of the civil penalty to be assessed in this matter is appropriate under the Self-Disclosure Policy. Furthermore, U.S. EPA has determined that there was no economic benefit associated with the alleged violations.

12. In consideration of the Self-Policing Policy, the seriousness of the violation, and CertainTeed's good faith efforts to comply, U.S. EPA agrees to mitigate the proposed penalty of \$272,140 to \$13,750, plus performance of a supplemental environmental project pursuant to paragraphs 19-32.

13. CertainTeed must pay the \$13,750 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

14. CertainTeed must send the check to:

A. For Check Remittances:

U.S. Environmental Protection Agency
Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

B. For Wire Transfer (also called Electronic Fund Transfer, or EFT):

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

15. A transmittal letter, stating the Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Sonja Brooks-Woodard
Legal Technician/RHC (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Catherine Garypie (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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

17. If CertainTeed does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of

the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

18. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. CertainTeed will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. CertainTeed will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

Supplemental Environmental Project

19. CertainTeed must complete a supplemental environmental project (SEP) designed to protect the environment and public health by purchasing and permanently retiring SO₂ emission credits or NO_x emission credits.

20. CertainTeed must complete the SEP as follows:

a. Within sixty (60) days of filing this CAFO with the Regional Hearing Clerk, CertainTeed will purchase and permanently retire SO₂ emission credits or NO_x emission credits.

21. CertainTeed must spend at least \$41,250 to purchase and permanently retire SO₂ emission credits or NO_x emission credits.

22. CertainTeed certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. CertainTeed further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

23. U.S. EPA may inspect CertainTeed records at any time to monitor CertainTeed's compliance with this CAFO's SEP requirements.

24. CertainTeed must submit a SEP completion report to U.S. EPA within 120 days of the date this CAFO is filed with the Regional Hearing Clerk. This report must contain the following information:

- a. detailed description of the SEP as completed;
- b. description of any implementation problems and the actions taken to correct the problems;
- c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. certification that CertainTeed has completed the SEP in compliance with this CAFO, including a certification that the SO₂ emission credits or NO_x emission credits have been permanently retired; and
- e. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

25. CertainTeed must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

26. In each report that CertainTeed submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the

information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

27. Following receipt of the SEP completion report described in paragraph 24 above, U.S. EPA must notify CertainTeed in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give CertainTeed 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 29.

28. If U.S. EPA exercises option b. above, CertainTeed may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of CertainTeed's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give CertainTeed a written decision on its objection. CertainTeed will comply with any requirements that U.S. EPA imposes in its decision. If CertainTeed does not complete the SEP as required by U.S. EPA's decision, CertainTeed will pay stipulated penalties to the United States under paragraph 29 below.

29. If CertainTeed violates any requirement of this CAFO relating to the SEP, CertainTeed must pay stipulated penalties to the United States as follows:

- a. If Respondent spent less than the amount set forth in paragraph 21, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 21.
- b. If Respondent has completed the SEP but the SEP is not satisfactory, Respondent must pay \$50,000 in addition to any penalty required under subparagraph 29.a, above.

c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$50,000 in addition to any penalty required under subparagraph 29.a, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.

d. If Respondent fails to comply with the schedule in paragraph 20, above, for implementing the SEP, fails to submit timely the SEP completion report required by paragraph 24, above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$2,000	1 st through 14 th day
\$4,000	15 th through 30 th day
\$6,000	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

30. U.S. EPA's determinations of whether CertainTeed satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind CertainTeed.

31. CertainTeed must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. CertainTeed will use the method of payment specified in paragraphs 13-18, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

32. Any public statement that CertainTeed makes referring to the SEP must include the following language, "CertainTeed undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against CertainTeed for violations of the Clean Air Act."

General Provisions

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

34. Complainant is basing the settlement figure in part on the information provided by Respondent both verbally and in writing between March 2004 and December 2006. Respondent hereby attests that the information provided to Complainant during that time period is true and accurate. If the information provided by Respondent during that time period is later determined to be misleading, Respondent will be required to pay to Complainant the full amount of the proposed penalty (\$272,140) in the Complaint within thirty (30) days of receipt of a demand letter from Complainant.

35. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

36. This CAFO does not affect CertainTeed's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 33 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

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

38. The terms of this CAFO bind CertainTeed, and its successors, and assigns.

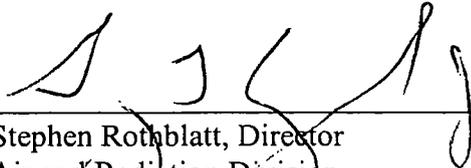
39. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

40. Each party agrees to bear its own costs and attorneys' fees in this action.

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

U.S. Environmental Protection Agency, Complainant

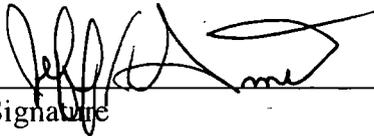
5/18/07
Date



Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

CertainTeed Corporation, Respondent

5/11/07
Date



Signature

Jeff D. Smith

Print Name

Vice President, Operations-- Roofing

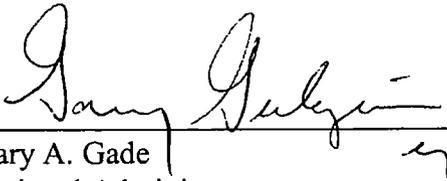
Title

CONSENT AGREEMENT AND FINAL ORDER
CertainTeed Corporation
Docket No. CAA-05-2006-0028

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

5/18/2007
Date



Mary A. Gade
Regional Administrator
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

In the Matter of CertainTeed Corporation
Docket No. CAA-05-2006-0028

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5

CERTIFICATE OF SERVICE

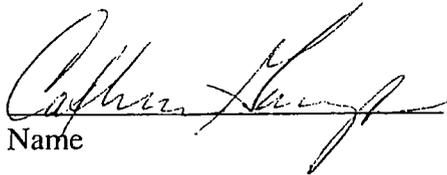
I, Catherine Garrypié, certify that I filed the original and one copy of the Consent Agreement and Final Order with the U.S. EPA Region 5 Regional Hearing Clerk on May 23, 2007, I delivered a true and accurate copy, in the following manner to the addresses listed below:

Federal Express:

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20005
(202) 564-6281

Federal Express:

Lauren Alterman, Esq.
Associate General Counsel
Saint-Gobain Corporation
750 East Swedesford Road
Valley Forge, PA 19482


Name

ASSOCIATE REGIONAL COUNSEL
Title

5/23/07
Date

2007 MAY 23 AM 11:55
REGIONAL HEARING CLERK
EPA REGION 5