

Page 1 of 2

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2010-1628-AIR-E **TCEQ ID:** RN100212281 **CASE NO.:** 40476  
**RESPONDENT NAME:** United States Gypsum Company

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> United States Gypsum, located at 1201 Mayo Shell Road, Galena Park, Harris County</p> <p><b>TYPE OF OPERATION:</b> Wallboard manufacturing plant</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on March 7, 2011. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Nadia Hameed, Enforcement Division, Enforcement Team 5, MC R-12, (713) 767-3629; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Vance A. Newcomer, Plant Manager, United States Gypsum Company, 1201 Mayo Shell Road, Galena Park, Texas 77547  Mr. Robert Granger, Technical Manager, United States Gypsum Company, 1201 Mayo Shell Road, Galena Park, Texas 77547  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> August 9, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> September 8, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a records review.</p> <p><b>AIR</b></p> <p>1) Failed to comply with the permitted emission rate for carbon monoxide ("CO") of 2.73 lbs/hr. Specifically, during the reference method stack test conducted on September 10, 2008, it was determined that the CO emission rate from the Kettle Common Stack, EPN E-3, was 5.270 lbs/hr which exceeded the maximum allowable emission rate by 2.54 lbs/hr, resulting in the release of approximately 7,000 lbs over the 12-month period [30 TEX. ADMIN. CODE § 116.115(c), Air Permit No. 24990, Special Condition No. 1 and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failed to submit results of the initial demonstration of compliance required under 30 TEX. ADMIN. CODE § 117.335(a)(1) and (4) for the Kettle Common Stack, EPN E-3, by the deadline of March 31, 2007. The test was conducted on September 10, 2008, and the results were received on December 2, 2008, one year, eight months and two days late [30 TEX. ADMIN. CODE § 117.9020(2)(C)(i) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$17,375</p> <p><b>Total Deferred:</b> \$3,475  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$13,900</p> <p><b>Compliance History Classifications:</b>            Person/CN - Average            Site/RN - Average</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:</p> <p>a. On December 2, 2008, submitted the initial demonstration of compliance test report for the Kettle Common Stack, Emission Point Number ("EPN") E-3; and</p> <p>b. On August 3, 2009, obtained a permit amendment for Air Permit No. 24990 to increase the allowable hourly and annual emission rates to 8 pounds per hour ("lbs/hr") and 35 tons per year for CO for Kettle Common Stack EPN E-3.</p>

Additional ID No(s): Air Account HGO762F



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	10-Sep-2010
	<b>PCW</b>	7-Dec-2010
	<b>Screening</b>	27-Sep-2010
	<b>EPA Due</b>	5-Jun-2011

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	United States Gypsum Company		
<b>Reg. Ent. Ref. No.</b>	RN100212281		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	40476	<b>No. of Violations</b>	2
<b>Docket No.</b>	2010-1628-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Nadia Hameed
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$12,500**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **64.0%** Enhancement **Subtotals 2, 3, & 7** **\$8,000**

Notes: Enhancement for 32 dissimilar NOVs.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$3,125**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**

Total EB Amounts: \$266  
Approx. Cost of Compliance: \$5,500

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$17,375**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$17,375**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$17,375**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$3,475**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$13,900**

Screening Date 27-Sep-2010

Docket No. 2010-1628-AIR-E

PCW

Respondent United States Gypsum Company

Policy Revision 2 (September 2002)

Case ID No. 40476

PCW Revision October 30 2003

Reg. Ent. Reference No. RN100212281

Media [Statute] Air

Enf. Coordinator Nadia Hameed

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	32	64%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 64%

#### >> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

#### >> Compliance History Person Classification (Subtotal 7)

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

#### >> Compliance History Summary

Compliance History Notes

Enhancement for 32 dissimilar NOVs.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 64%

Screening Date 27-Sep-2010

Docket No. 2010-1628-AIR-E

PCW

Respondent United States Gypsum Company

Policy Revision 2 (September 2002)

Case ID No. 40476

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100212281

Media [Statute] Air

Enf. Coordinator Nadia Hameed

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 116.115(c), Air Permit No. 24990, Special Condition No. 1 and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to comply with the permitted emission rate for carbon monoxide ("CO") of 2.73 pounds per hour ("lbs/hr"). Specifically, during the reference method stack test conducted on September 10, 2008, it was determined that the CO emission rate from the Kettle Common Stack, Emission Point Number ("EPN") E-3, was 5.270 lbs/hr which exceeded the maximum allowable emission rate by 2.54 lbs/hr, resulting in the release of approximately 7,000 lbs over the 12-month period.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 4

327 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$10,000

Four quarterly events are recommended based on the September 10, 2008 test date to the August 3, 2009 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$2,500

	Before NOV	NOV to EDPRP/Settlement Offer
	Extraordinary	
Ordinary	X	
N/A		(mark with x)

Notes

The Respondent completed the corrective actions on August 3, 2009, prior to the September 8, 2010, NOE.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$224

Violation Final Penalty Total \$13,900

This violation Final Assessed Penalty (adjusted for limits) \$13,900

# Economic Benefit Worksheet

**Respondent** United States Gypsum Company  
**Case ID No.** 40476  
**Reg. Ent. Reference No.** RN100212281  
**Media** Air  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$5,000	10-Sep-2008	3-Aug-2009	0.90	\$224	n/a	\$224
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for obtaining a permit amendment. The date required is based on the date of the failed test. The final date is the date the permit amendment was obtained.

**Avoided Costs**

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

**TOTAL**

\$224

**Screening Date** 27-Sep-2010  
**Respondent** United States Gypsum Company  
**Case ID No.** 40476

**Docket No.** 2010-1628-AIR-E

**PCW**

*Policy Revision 2 (September 2002)  
 PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN100212281

**Media [Statute]** Air

**Enf. Coordinator** Nadia Hameed

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code § 117.9020(2)(C)(i) and Tex. Health & Safety Code § 382.085(b)

**Violation Description**

Failed to submit results of the initial demonstration of compliance test required under 30 Tex. Admin. Code § 117.335(a)(1) and (4) for the Kettle Common Stack, EPN E-3, by the deadline of March 31, 2007. The test was conducted on September 10, 2008, and the results were received on December 2, 2008, one year, eight months and two days late.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
	x			25%

Matrix Notes

100 percent of the rule requirement was not met.

**Adjustment** \$7,500

\$2,500

**Violation Events**

Number of Violation Events 1 613 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

**Violation Base Penalty** \$2,500

One single event is recommended for the late test report.

**Good Faith Efforts to Comply**

25.0% Reduction

\$625

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent completed the corrective actions on December 2, 2008, prior to the September 8, 2010, NOE.

**Violation Subtotal** \$1,875

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

Estimated EB Amount \$42

**Violation Final Penalty Total** \$3,475

**This violation Final Assessed Penalty (adjusted for limits)** \$3,475

# Economic Benefit Worksheet

**Respondent** United States Gypsum Company  
**Case ID No.** 40476  
**Reg. Ent. Reference No.** RN100212281  
**Media** Air  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	31-Mar-2007	2-Dec-2008	1.68	\$42	n/a	\$42

**Notes for DELAYED costs**

Estimated cost for submitting the report. The date required is based on the date the report was due. The final date is the date the corrective action was completed.

**Avoided Costs**

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$500

**TOTAL**

\$42

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600124218 United States Gypsum Company Classification: AVERAGE Rating: 29.70  
 Regulated Entity: RN100212281 UNITED STATES GYPSUM Classification: AVERAGE Site Rating: 1.50

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	HG0762F
	AIR OPERATING PERMITS	PERMIT	3129
	WASTEWATER	PERMIT	WQ0000353000
	WASTEWATER	EPA ID	TX0007056
	INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXD981609498
	INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION # (SWR)	30297
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	41678
	AIR NEW SOURCE PERMITS	REGISTRATION	16156
	AIR NEW SOURCE PERMITS	PERMIT	24990
	AIR NEW SOURCE PERMITS	REGISTRATION	47512
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HG0762F
	AIR NEW SOURCE PERMITS	REGISTRATION	56492
	AIR NEW SOURCE PERMITS	AFS NUM	4820100054
	STORMWATER	PERMIT	TXR05T942
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	HG0762F

Location: 1201 MAYO SHELL RD, GALENA PARK, TX, 77547

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: September 27, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 27, 2005 to September 27, 2010

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Nadia Hameed Phone: 713-767-3629

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	09/28/2005	(440968)
2	10/27/2005	(468662)
3	11/28/2005	(468663)
4	12/30/2005	(468664)
5	02/16/2006	(468660)
6	03/24/2006	(468661)
7	04/20/2006	(498356)
8	05/22/2006	(498357)
9	06/13/2006	(498355)
10	06/13/2006	(498358)
11	06/13/2006	(498359)
12	06/13/2006	(498361)
13	06/28/2006	(498360)
14	07/17/2006	(520365)
15	08/22/2006	(520366)
16	09/27/2006	(520367)
17	11/20/2006	(544705)
18	12/27/2006	(544706)
19	01/22/2007	(575617)
20	02/12/2007	(535015)
21	02/22/2007	(575613)
22	04/24/2007	(575614)
23	05/25/2007	(575615)
24	06/25/2007	(575616)
25	07/23/2007	(601708)
26	08/28/2007	(601709)
27	09/27/2007	(601710)
28	11/19/2007	(619639)
29	11/27/2007	(619637)
30	11/27/2007	(619638)
31	12/20/2007	(619640)
32	01/29/2008	(672165)
33	02/25/2008	(672164)
34	03/26/2008	(690073)
35	06/05/2008	(710858)
36	06/19/2008	(710859)
37	07/24/2008	(710860)
38	08/25/2008	(710861)
39	08/31/2008	(727568)
40	10/01/2008	(727569)
41	10/24/2008	(727570)
42	11/25/2008	(727571)
43	01/13/2009	(750380)
44	01/22/2009	(727567)
45	01/28/2009	(750381)
46	02/26/2009	(750379)
47	03/19/2009	(725755)
48	03/25/2009	(768440)
49	04/24/2009	(768441)
50	05/22/2009	(768442)
51	06/12/2009	(743807)
52	06/23/2009	(804932)
53	07/20/2009	(804933)
54	08/24/2009	(804934)
55	09/25/2009	(804935)
56	10/28/2009	(804936)
57	12/02/2009	(804937)
58	12/28/2009	(804938)
59	01/29/2010	(804939)
60	03/03/2010	(804931)

61 04/01/2010 (830982)  
62 04/28/2010 (830983)  
63 04/30/2010 (798865)  
64 05/24/2010 (830984)  
65 06/24/2010 (846301)  
66 09/08/2010 (843677)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/30/2006 (498357) CN600124218  
Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)  
Description: Failure to meet the limit for one or more permit parameter

Date: 11/30/2006 (544706) CN600124218  
Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)  
Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2007 (575615) CN600124218  
Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)  
Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2007 (575616) CN600124218  
Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)  
Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2007 (601709) CN600124218  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2007 (601710) CN600124218  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2007 (672165) CN600124218  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2008 (672164) CN600124218  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 03/31/2008 (727567) CN600124218  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2008 (710858) Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2008 (710859) CN600124218 Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2008 (710860) CN600124218 Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2008 (710861) Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 08/01/2008 (727568) CN600124218 Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2008 (727569) Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/2008 (727570) CN600124218 Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 10/31/2008 (727571) Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 11/30/2008 (750380) CN600124218 Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2008 (750381) Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2009 (750379) Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 02/28/2009 (768440) CN600124218 Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 03/18/2009 (725755) CN600124218 Classification: Moderate  
Self Report? NO  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
TX0007056/WQ0000353000 PERMIT  
Description: Failure to maintain compliance with the permitted effluent limits for fecal coliform.  
Self Report? NO Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
TX0007056/WQ0000353000 PERMIT  
Description: Failure to maintain compliance with the permitted effluent limits for fecal coliform.

Date: 03/31/2009 (768441) Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2009 (768442) CN600124218 Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2009 (804932) Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/2009 (804936) CN600124218 Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 10/31/2009 (804937) Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 11/30/2009 (804938) CN600124218 Classification: Moderate  
Self Report? YES  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2009 (804939) Classification: Moderate  
Self Report? YES

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2010 (804931)  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 02/28/2010 (830982) CN600124218  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 03/31/2010 (830983) CN600124218  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	
<b>UNITED STATES GYPSUM</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>COMPANY</b>	<b>§</b>	
<b>RN100212281</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**AGREED ORDER**  
**DOCKET NO. 2010-1628-AIR-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding United States Gypsum Company ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wallboard manufacturing plant at 1201 Mayo Shell Road in Galena Park, Harris County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 13, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Seventeen Thousand Three Hundred Seventy-Five Dollars (\$17,375) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Thirteen Thousand Nine Hundred Dollars (\$13,900) of the administrative penalty and Three Thousand Four Hundred Seventy-Five Dollars (\$3,475) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:
  - a. On December 2, 2008, submitted the initial demonstration of compliance test report for the Kettle Common Stack, Emission Point Number ("EPN") E-3; and
  - b. On August 3, 2009, obtained a permit amendment for Air Permit No. 24990 to increase the allowable hourly and annual emission rates to 8 pounds per hour ("lbs/hr") and 35 tons per year for carbon monoxide ("CO") for Kettle Common Stack EPN E-3.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Plant, the Respondent is alleged to have:

1. Failed to comply with the permitted emission rate for CO of 2.73 lbs/hr, in violation of 30 TEX. ADMIN. CODE § 116.115(c), Air Permit No. 24990, Special Condition No. 1 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on August 9, 2010. Specifically, during the reference method stack test

conducted on September 10, 2008, it was determined that the CO emission rate from the Kettle Common Stack, EPN E-3, was 5.270 lbs/hr which exceeded the maximum allowable emission rate by 2.54 lbs/hr, resulting in the release of approximately 7,000 lbs over the 12-month period.

2. Failed to submit results of the initial demonstration of compliance required under 30 TEX. ADMIN. CODE § 117.335(a)(1) and (4) for the Kettle Common Stack, EPN E-3, by the deadline of March 31, 2007, in violation of 30 TEX. ADMIN. CODE § 117.9020(2)(C)(i) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on August 9, 2010. The test was conducted on September 10, 2008, and the results were received on December 2, 2008, one year, eight months and two days late.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: United States Gypsum Company, Docket No. 2010-1628-AIR-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission,

including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*John Szolter*  
For the Executive Director

2/7/2011  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*[Signature]*  
Signature

12/14/10  
Date

Vance A Newcomer  
Name (Printed or typed)  
Authorized Representative of  
United States Gypsum Company

Plant Manager  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.