

**Special Order By Consent
ATC Panels, Inc., Moncure Facility**

BEFORE THE NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION

STATE OF NORTH CAROLINA)
COUNTY OF CHATHAM)
)
ATC PANELS, INC.) SPECIAL ORDER BY CONSENT
MONCURE FACILITY)
MONCURE, CHATHAM COUNTY)
NORTH CAROLINA)
[SITE NUMBER 05/19/00015])

This SPECIAL ORDER BY CONSENT (hereinafter referred to as the “ORDER”) is made and entered into pursuant to North Carolina General Statute 143-215.110 by and between ATC Panels, Inc., – Moncure Facility (hereinafter referred to as ATC or the “COMPANY”) and the ENVIRONMENTAL MANAGEMENT COMMISSION, an agency of the State of North Carolina (hereinafter referred to as the “COMMISSION”).

WITNESSETH:

- I. The COMPANY and the COMMISSION do hereby stipulate and agree to the following:
 - A. The COMPANY has operated and is now operating a Particleboard and Medium Density Fiberboard (MDF) Manufacturing Facility (hereinafter referred to as the “Facility”) in Moncure, Chatham County, North Carolina. The Facility operates under Air Permit No. 03449T32 (“PERMIT”), which was issued on May 7, 2008 and expires on July 31, 2009.
 - B. The particleboard press and dryers (“PB Sources”), and the MDF Line, at the Facility are “affected units” for MACT requirements under 40 CFR Part 63 Subpart DDDD (“Subpart DDDD” or MACT), and are also subject to requirements under the State Toxic Air Pollutant (TAP) Program, 15A NCAC 2D .1100 and 2Q .0700.
 - C. On July 18, 2007, the COMPANY submitted, and subsequently received approval, for a one-year extension to October 1, 2008 for the Subpart DDDD compliance date pursuant to the provisions of 40 CFR 63.6(i)(3). The extension was requested by the COMPANY based on the June 19, 2007, U.S. Court of

Appeals for the District of Columbia Circuit decision that reversed portions of Subpart DDDD including the extended compliance date of October 1, 2008, which the Court reset to the original compliance deadline of October 1, 2007. Those portions of the rules were vacated by issuance of the Court's mandate on October 4, 2007.

- D. As previously discussed with the Division of Air Quality (hereinafter referred to as "DAQ") and included in the COMPANY'S recent air permit applications filed with DAQ, ATC was preparing a demonstration for the Moncure site to demonstrate compliance with Subpart DDDD under the "low-risk" subcategory of those standards for the PB Sources, as well as the other emission sources at the Facility. The court's action in eliminating that compliance option required ATC to begin anew its planning for compliance with Subpart DDDD, starting from issuance of the Court's mandate on October 4, 2007.
- E. ATC has been working diligently to prepare for and assure compliance with Subpart DDDD. To that end, ATC is investigating the use of two types of non-combustion systems: a water-based system with chemical injection and cold plasma technology for control of emissions from the particleboard dryers and press. Use of either of these non-combustion control technologies would be environmentally beneficial and preferable since the only other technically feasible control technology for the dryers is an oxidizer combustion system, most commonly a regenerative thermal oxidizer or RTO.
- F. Installation and operation of an RTO would create additional nitrogen oxides (NO_x) emissions from the natural gas fired in the RTO. As the COMPANY'S Facility is located in close proximity to the southern boundary of Wake County, in which air quality monitors currently show exceedances of the new ozone standard announced by EPA on March 12, 2008,¹ additional NO_x emissions would potentially have an adverse impact on that county and the entire Triangle area which is anticipated to be re-designated to nonattainment for ozone within the

¹ The new ozone standard, set at 75 ppb, was published in the *Federal Register* on March 27, 2008 (73 *Fed. Reg.* 16435, et seq.).

next two to three years. In addition, use of an RTO for the COMPANY'S Moncure Facility has been determined to be economically prohibitive in the re-evaluation of BACT requirements for the Facility, which was formalized in the revised Air Permit No. 03449T31 issued by DAQ on July 12, 2007.

- G. As a part of the re-evaluation of BACT requirements for the Facility, the COMPANY submitted to DAQ modeling results that demonstrated that emissions for the Facility fully satisfied the low-risk criteria for Subpart DDDD and the applicable TAP requirements under 15A NCAC 2D .1100 and 2Q .0700, i.e., that the risks posed were less than one in a million.
- H. The COMPANY'S efforts to meet the compliance date of October 1, 2008, encountered difficulties with testing and evaluating, ordering and scheduling of control equipment, and other necessary steps, due in significant part to the large number of facilities subject to Subpart DDDD working to achieve compliance with those requirements in the very limited time since the issuance of the Court's mandate on October, 4, 2007.
- I. To comply with Subpart DDDD requirements in the most environmentally beneficial manner and cost-effective manner, based on non-combustion technology and processes, ATC requires sufficient time for a full set of testing and evaluations of the process systems and equipment appropriate to comply with Subpart DDDD requirements. Once the testing and evaluations are completed and appropriate control systems selected, additional time may be necessary to order and install materials and equipment, and test and evaluate their performance in order to assure compliance with Subpart DDDD.
- J. Consequently, ATC requests a further extension of time beyond the current October 1, 2008, compliance date as specified below.

THEREFORE, the COMMISSION and the COMPANY, desiring to resolve and settle the compliance issues between them, have agreed to enter into this ORDER with the following terms and conditions:

- II. The COMPANY, desiring to operate in a safe and environmentally sound manner in accordance with the rules and regulations of the COMMISSION, does hereby agree to perform the following activities:
- A. The COMPANY shall undertake and complete its evaluations of appropriate control systems and process options, including, but not limited to, a water-based system with chemical injection, cold plasma technology, and bio-filter systems according to the schedule included in Appendix A. Progress reports shall be submitted semi-annually, with the initial report to be submitted by October 1, 2008, to the DAQ Supervisor, Raleigh Regional Office. Subsequent semi-annual reports will be submitted by the COMPANY on April 1 and October 1 of each year for the duration of this ORDER.
 - B. In conjunction with the testing and evaluation of control systems and process options, as described in the preceding paragraph, the COMPANY and DAQ will consider and evaluate any and all regulatory options for compliance with the requirements of Section 112 of the Clean Air Act through demonstration of the low risks posed by emissions from the Facility, including, but not limited to, DAQ's authority under subsections 112 (g) and 112 (j), as well as the North Carolina TAP program. Evaluation of such regulatory options will proceed along with the testing and evaluation process specified in Appendix A and will not alter that schedule, or tasks thereunder, unless or until a regulatory option is identified under this paragraph that eliminates or reduces the need for control systems or process changes in order to demonstrate compliance. In the event that such a regulatory option is identified, the COMPANY may suspend the tasks otherwise remaining under Appendix A, as approved by DAQ. In order to formalize any such appropriate regulatory option, the COMPANY shall submit any necessary Title V modification application to DAQ for compliance with applicable Section 112 requirements, as well as any necessary facility-wide risk assessment to assure compliance with Subpart DDDD and the North Carolina TAP program.
 - C. DAQ will evaluate any permit modification request and determine whether or not it meets the applicable regulatory requirements for the Facility. In making this

determination, DAQ shall consider all applicable and appropriate regulatory options under Clean Air Act Section 112. Within 60 days after a final decision on the applicable Section 112 requirements, including any appeal or further actions as provided by law, the COMPANY shall submit a compliance schedule for installation of any processes or equipment necessary for compliance with those applicable requirements.

- D. In anticipation that the Facility will not comply with Subpart DDDD on October 1, 2008, the COMPANY shall pay a civil penalty of seven thousand five hundred dollars (\$7,500.00). This amount shall be paid in a lump sum payment due within thirty (30) days of October 1, 2008. The payment shall be made by check payable to the “North Carolina Department of Environment and Natural Resources” or to “DENR” at the following address:

Enforcement Group – Payment
Technical Services Section
Division of Air Quality, DENR
1641 Mail Service Center
Raleigh, NC 27699-1641

- E. This ORDER will remain in effect until the compliance requirements for the Moncure Facility are fully in place, including any modifications to the PERMIT necessary to effectuate the compliance requirements, but in no case later than January 1, 2012. In the event that either a regulatory option is selected and approved under Paragraph II.C or a control systems and process option under Appendix A that results in a compliance time earlier than January 1, 2012, this ORDER shall terminate upon approval by DAQ of a compliance demonstration for the Facility.

- III. This ORDER shall pertain to the equipment, sources, and operations described in Paragraph I of this ORDER. Any violation of Air Quality Standards resulting from other sources or equipment for which the COMPANY is responsible, may subject the COMPANY to appropriate enforcement action pursuant to North Carolina General Statute 143-215.114.

- IV. In the event of changed circumstances, the COMPANY may request that the Director modify the ORDER, as appropriate. If the Director finds that the COMPANY has established good cause for its request, the DAQ and the COMPANY shall jointly stipulate and agree to a written modification of this ORDER.
- V. In the event the COMMISSION or the DAQ find that reports, plans, specifications, or permit applications required under this ORDER are in any respect deficient or if additional information is necessary to comply with the requirements of North Carolina General Statutes 143-215.107 *et seq.*, any regulations promulgated thereunder, or any other applicable laws or regulations, the COMPANY shall be notified by the DAQ as soon as possible. The COMPANY shall be afforded an opportunity to modify, amend or supplement its submissions to make such submissions complete and appropriate.
- VI. In the event that the COMPANY fails to comply with any deadline as set out in this ORDER or fails to achieve final compliance with any applicable requirement in this ORDER, the COMPANY agrees that, unless excused under Paragraph VII, the COMPANY will pay the COMMISSION according to the following schedule:

DEADLINES AND REPORTS

Failure to submit reports or otherwise meet any deadline as required by Paragraph II.A and Appendix A.

STIPULATED PENALTIES

\$500 per day for the first five days and \$1,000 per day thereafter.

STIPULATED PENALTY:

Failure within thirty (30) days of receipt of the Director's written demand to pay the penalties will be grounds for a collection action, which the Attorney General is hereby authorized to initiate. By entering into this ORDER, the COMPANY waives any and all defenses and agrees that the sole issue in such an action will be whether thirty (30) days has elapsed. The COMPANY shall pay all costs, including agency and attorney fees, associated with the collection of a delinquent stipulated penalty.

- VII. The COMPANY'S obligation to comply with the requirements set forth in this ORDER for which a stipulated penalty may be assessed, may be delayed or excused only to the extent that noncompliance is caused by circumstances beyond control of the COMPANY,

Special Order By Consent
ATC Panels, Inc., Moncure Facility
Page 7 of 10

as determined by the Division of Air Quality Director (hereinafter referred to as the "DIRECTOR"). Contractor delays or failure to obtain funding will not be considered events beyond the Company's control. If any such delaying event occurs, the COMPANY shall notify the DAQ in writing within ten (10) days of encountering or discovering the delaying event, describing in detail the event or delay, the precise cause(s) of the event or delay, the measure(s) taken and to be taken by the COMPANY to prevent or minimize the event or delay, and the schedule by which those measures will be implemented. If the Director determines that noncompliance with this ORDER was caused by circumstances beyond the control of the COMPANY, the COMMISSION and the COMPANY jointly may stipulate and agree to a written modification of this ORDER. Extension of any compliance date pursuant to this Paragraph shall not extend any subsequent deadlines established in the ORDER unless the subsequent deadline necessarily is dependent upon completion of the earlier deadline.

- VIII. All notices and reports required from the COMPANY by this ORDER shall be mailed, first class postage prepaid to:

Patrick Butler, Regional Air Quality Supervisor
Raleigh Regional Office
N.C. Dept. of Environment and Natural Resources
3800 Barrett Drive, Suite 101
Raleigh, North Carolina 27609

- IX. This ORDER constitutes full and final settlement and satisfaction of all matters addressed herein and any and all claims or prospective claims that the COMMISSION has or may have for violations of regulations described in Paragraph I. hereof, as of the date this ORDER is approved by the COMMISSION. This ORDER shall not affect the COMPANY'S obligation to comply with any Federal, State, or local laws or regulations.
- X. Final approval and entry into this ORDER are subject to the requirements that the COMMISSION give notice of proposed consent decrees to the public, and that the public have at least thirty (30) days within which to comment on the ORDER.

Special Order By Consent
ATC Panels, Inc., Moncure Facility
Page 8 of 10

- XI. Should any provision of this ORDER be declared by a court of competent jurisdiction to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.
- XII. Except as otherwise set forth herein, this ORDER is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the COMPANY of its obligations to comply in the future with any permit.
- XIII. In the event of termination of operations and closure of the Facility, the COMPANY shall notify the DIRECTOR in writing, within five (5) business days of the earlier of (i) the date any Workers Adjustment and Retraining Notification Act (WARN), notification, or (ii) Facility closure. Receipt of said notification from the COMPANY by the DIRECTOR shall terminate any obligations of the COMPANY pursuant to this ORDER, including those pertaining to stipulated penalties, and this ORDER shall become null and void in its applicability to the COMPANY. The COMPANY acknowledges its responsibilities pursuant to this ORDER from the date of final approval and entry of this ORDER, through the date of receipt by the DIRECTOR of notification of closure required by this paragraph.
- XIV. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this agreement on behalf of the parties hereto. The parties acknowledge and agree that this Special Order by Consent is transferable to successor entities of the COMPANY (by purchase or otherwise) upon written modification of the Order agreed to by the parties.
- XV. This Special Order by Consent shall expire not later than January 1, 2012 or upon completion of the requirements included in this ORDER, whichever occurs first.

[SIGNATURES ON NEXT PAGE]

Special Order By Consent
ATC Panels, Inc., Moncure Facility
Page 9 of 10

FOR ATC PANELS, INC.

FOR THE ENVIRONMENTAL
MANAGEMENT COMMISSION

By: _____
Ricardo Hillman, Plant Manager

By: _____
B. Keith Overcash, DAQ Director

Date: _____

Date: _____

APPENDIX A

SCHEDULES FOR TESTING, EVALUATION AND INSTALLATION
OF CONTROL SYSTEMS AND EQUIPMENT

<u>TASK</u>	<u>COMPLETION DATE</u>
EVALUATION AND TESTING OF WATER-BASED SYSTEM WITH CHEMICAL INJECTION FOR DRYERS	FEBRUARY 28, 2009
EVALUATION AND TESTING OF WATER-BASED SYSTEM WITH CHEMICAL INJECTION FOR PRESS	AUGUST 31, 2009
DESIGN, PURCHASE & INSTALLATION OF WATER-BASED SYSTEM & TREATMENT SYSTEM FOR WASTEWATER	AUGUST 31, 2010
SHAKEDOWN & COMPLIANCE TESTING	FEBRUARY 28, 2011
<hr/>	
IF WATER-BASED SYSTEM IS NOT FEASIBLE, BEGIN EVALUATION OF COLD PLASMA SYSTEM NOT LATER THAN AUGUST 31, 2009:	
TESTING & EVALUATION OF COLD PLASMA TECHNOLOGY FOR PRESS	NOVEMBER 30, 2009
TESTING & EVALUATION OF COLD PLASMA TECHNOLOGY FOR PLANT	MAY 31, 2010
DESIGN, PURCHASE & INSTALLATION OF COLD PLASMA SYSTEM	MAY 31, 2011
SHAKEDOWN & COMPLIANCE TESTING	NOVEMBER 30, 2011
<hr/>	
IF NEITHER OF THE TWO NON-COMBUSTION SYSTEMS ARE FEASIBLE, COMMENCE EVALUATION OF BIOFILTER AND/OR RTO NOT LATER THAN MAY 31, 2010:	
EVALUATION, DESIGN, PURCHASE & INSTALLATION OF BIOFILTER & RTO	JULY 1, 2011
SHAKEDOWN & COMPLIANCE TESTING	JANUARY 1, 2012