

STATE OF NORTH CAROLINA

ENVIRONMENTAL MANAGEMENT
COMMISSION

COUNTY OF ROWAN

IN THE MATTER OF:)	SPECIAL ORDER BY CONSENT
THE APPLICABILITY OF AIR TOXICS)	
REGULATIONS FOR BORAL BRICKS, INC.,)	SOC 2008-_____
SALISBURY, ROWAN COUNTY)	
)	
)	

This SPECIAL ORDER BY CONSENT (“ORDER”) is made and entered into pursuant to North Carolina General Statute 143-215-110, by and between Boral Bricks, Inc. (the “Company”) and the ENVIRONMENTAL MANAGEMENT COMMISSION, an agency of the State of North Carolina (the “Commission”);

W I T N E S S E T H:

- I. The Company and the Commission stipulate and agree to the following:
 - A. The Company operates a brick manufacturing facility in Salisbury, Rowan County, North Carolina (the “Facility”) pursuant to Air Permit No. 04034T18 (the “Permit”).
 - B. The Facility operates two brick tunnel kilns designated 5BK and 6BK in the Permit. Kiln 6BK was subject to maximum achievable control technology pursuant to 15A NCAC 2D .1111 and 40 CFR Part 63, Subpart JJJJJ (the “Brick MACT”) until March 13, 2007, when the Brick MACT rules were vacated by the D.C. Circuit Court of Appeals. On November 28, 2006 and in accordance with its extension to comply with the then-existing Brick MACT granted by the Division of Air Quality (“DAQ”) by letter dated February 6, 2006, the Company submitted an application for a permit modification to install a dry lime injection fabric filter

for Kiln 6BK designated DIFF-1 in the Permit. North Carolina regulations (15A NCAC 2Q .0705(b)) required the Company to demonstrate compliance with North Carolina's Control of Toxic Air Pollutants regulations of 15A NCAC 2D .1100 ("2D .1100") at the time of the permit application to comply with the last MACT; however, the Company failed to submit the required demonstration at the time of its permit modification application.

- C. On August 9, 2007, DAQ issued the Company a modified Permit that required, among other things, that the Company submit a demonstration of compliance with 2D .1100, in accordance with 15A NCAC 2Q .0705, within ninety days of the issuance of the Permit (Permit No. 04034T18, Part I, Section 2.2A.).
- D. The Company completed the required modeling for the Facility and submitted the modeling report to DAQ on November 7, 2007 ("Air Toxics Report"). However, the Air Toxics Report indicated that the Facility is unable to demonstrate facility-wide compliance for hydrofluoric acid (HF) and arsenic (As) under its current operating conditions.
- E. On December 19, 2007, representatives of the Company met with officials of DAQ to discuss the Company's non-compliance with 2D .1100. As a result of those discussions, the Company agreed to take certain steps, as necessary, to achieve compliance with 2D .1100 including i) re-evaluating the modeling performed and submitted on November 7, 2007; ii) developing a maximum feasible control technology review in accordance with 15A NCAC 2Q .0709; and iii) performing a risk assessment outside the Facility boundaries. DAQ acknowledges that the Company has submitted the reevaluation of the modeling

performed for the Air Toxics Report and that the results of the reevaluation indicate that the Facility is not in compliance with 2D .1100.

F. As a result of the D.C. Circuit Court of Appeals' vacature of the Brick MACT, EPA must develop new emissions standards for the brick and clay products industry, and the Facility no longer has to comply with the Brick MACT until EPA promulgates new emissions standards. Without a final Brick MACT rule, the Company has no ability to determine the final control devices or control techniques that will be required to demonstrate compliance with any newly developed Brick MACT and at the same time comply with 2D .1100.

II. The Commission agrees to allow the Company to demonstrate compliance with 2D .1100, and 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 review the Facility's compliance with 2D .1100 for technical infeasibility and economic hardship in accordance with 15A NCAC 2Q .0709(b) and submit a report documenting the results of the analysis by December 1, 2008.

B. If DAQ determines that the Facility qualifies for the maximum feasible control requirements of 15A NCAC 2Q .0709(b), the Company shall develop a Pollution Prevention Plan (PPP) in accordance with 15A NCAC 2Q .0709(c) and submit the PPP and an application for a permit modification within 120 days of receipt of the DAQ's written determination that the Facility qualifies for the maximum feasible control requirements.

- C. If DAQ determines that the Facility does not qualify for the maximum feasible control requirements of 15A NCAC 2Q .0709(b), the Company shall perform a risk assessment using the Human Exposure Model (HEM) outside the Facility boundaries and submit a report documenting the results of such risk assessment within 120 days after DAQ notifies the Company in writing that the Facility does not qualify for the maximum feasible control requirements.
- D. If (i) DAQ determines that the Facility does not qualify for the maximum feasible control requirements of 15A NCAC 2Q .0709(b) and (ii) DAQ determines that the HEM results demonstrate that there is an unacceptable risk to public health posed by the Company's non-compliance with 2D .1100, the Company shall develop a solution that either (x) qualifies as maximum feasible control, (y) results in compliance with 2D .1100 or (z) results in emissions that do not exceed emission rates that require a permit as specified in 15A NCAC 2Q .0711. If necessary, the Company shall submit an application for permit modification to achieve such solution. Boral shall comply with one of the above options within three years from the date that a new permit is issued or the January 1, 2013 termination date of this ORDER, whichever is earlier.
- E. If (i) DAQ determines that the Facility does not qualify for the maximum feasible control requirements of 15A NCAC 2Q .0709(b) and (ii) DAQ determines that the HEM results demonstrate that there is no unacceptable risk to public health posed by the Company's non-compliance with 2D .1100, the Company shall conduct a facility-wide demonstration of compliance for all toxic air pollutants regulated in accordance with 2D .1100 after the promulgation of any revised Brick MACT

developed by EPA. If a permit application is required to comply with such revised Brick MACT, submit a permit application to comply 2D .1100 in accordance with the timeframe required under such revised Brick MACT and 2D .1100.

F. If a permit application is not required to comply with any revised Brick MACT, submit a permit application to comply with 2D .1100 within six months of the promulgation of such revised Brick MACT.

III. In the event the Company fails to comply with any deadline in this ORDER, the Company agrees that, unless excused under Paragraph IV, the Company shall pay a stipulated penalty to the Commission according to the following schedule:

Deadline and Requirements	Stipulated Penalty
Failure to submit a report as required in Paragraphs II.A or II.C.	\$500 per day for the first five days and \$1000 per calendar day thereafter.
Failure to submit a permit application if required in Paragraphs II.B., II.D, II.E, or II.F.	\$500 per day for the first five days and \$1000 per calendar day thereafter.

Failure within thirty (30) days of receipt of the Director's written demand to pay the penalties in the schedule above will be grounds for a collection action, which the North Carolina 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 associated with the collection of delinquent stipulated penalties, including but not limited to attorneys' fees.

IV. 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 as determined by the Director of the Division of Air Quality (“Director”). If any such event occurs, the Company shall notify the Director 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 non-compliance 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. For the purposes of this ORDER, contractor delays and/or failure to obtain funding shall not be considered circumstances beyond the control of the Company. 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.

- V. This ORDER shall pertain to the requirements of 15A NCAC 2D .0700 *et seq.* and 2D .1100 *et seq.*. Any other violation of Air Quality Standards or other applicable requirements, resulting from these emission units or any other sources or equipment for which the Company is responsible, may subject the Company to appropriate enforcement action pursuant to North Carolina General Statutes, Subchapter 143-215.114.
- VI. The Company agrees to waive any rights it may have to seek judicial review, to challenge this ORDER, or to seek a stay of enforcement of this ORDER in connection with any judicial review of the State Implementation Plan. The Commission acknowledges that this waiver does not prohibit the Company from seeking modification of this ORDER if

any regulatory standards upon which this ORDER is based are changed subsequent to its execution or if the Company announces that ownership of the facility will be transferred to a successor. In such cases, the Company may petition that the ORDER be modified to reflect those changes.

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

Regional Air Quality Supervisor
NCDENR-Division of Air Quality
Mooresville Regional Office
610 East Center Avenue
Suite 301
Mooresville, North Carolina 28115

All payments required from the Company by this ORDER shall be mailed first class, postage prepaid, to the following address:

Enforcement Group - Payments
NCDENR – DAQ
1641 Mail Service Center
Raleigh, North Carolina 27699-1641

- VIII. This ORDER constitutes full and final settlement and satisfaction of all matters addressed herein and of any and all claims or prospective claims that the Commission has or may have for the events described in Paragraph I hereof, as of the date this ORDER is approved by the Commission. This ORDER shall not affect the Company's other obligations to comply with any Federal, State or local laws or regulations.

- IX. Final approval and entry of this ORDER is subject to the requirement that the Commission must give notice of proposed consent decrees to the public, and that the public shall have at least thirty (30) days in which to make any comments.

- X. 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.
- XI. Any modifications of this ORDER must be agreed to in writing, signed by both parties.
- 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. This ORDER shall terminate upon the Company completing the undertakings described herein but no later than January 1, 2013.

AGREED TO THIS _____ DAY OF _____, 2008.

ATTESTED:

Boral Bricks, Inc.

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AND ACCEPTED:

By: _____
Name: _____
Title: _____
Date: _____

Environmental Management Commission