

BEFORE THE NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION

STATE OF NORTH CAROLINA)	
)	
COUNTY OF SURRY)	SPECIAL ORDER BY CONSENT
)	2008 -
)	
BY WEYERHAEUSER COMPANY –)	
ELKIN PLANT)	
)	

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 Weyerhaeuser Company – Elkin Plant (hereinafter referred to as 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 owns, has operated and is now operating an oriented strand board (OSB) manufacturing facility in Elkin, Surry County, North Carolina, subject to the requirements of Air Permit No. 05678T32.
 - B. The COMPANY is subject to the Plywood and Composite Wood Products (“PCWP”) NESHAP (also referred to herein as the PCWP MACT standard), 40 CFR Part 63, Subpart DDDD.
 - C. On June 19, 2007, the US Court of Appeals for the District of Columbia Circuit vacated the low-risk compliance option of the PCWP MACT and returned the compliance date for the MACT to October 1, 2007.
 - D. On July 11, 2007, the COMPANY requested a compliance extension for the PCWP MACT for one year until October 1, 2008. On August 20, 2007, the North Carolina Division of Air Quality (DAQ) granted the extension.
 - E. On February 12, 2008, the COMPANY submitted a Title V permit application to construct and operate a bio-reaction biofilter at the Elkin OSB manufacturing

facility. The COMPANY plans to install the bio-reaction biofilter to control air emissions from the OSB Press to comply with the PCWP MACT.

- F. On February 25, 2008, the COMPANY submitted a “Notice of Intent to Construct” the bio-reaction biofilter at the Elkin OSB manufacturing facility. On March 7, 2008, the DAQ granted the COMPANY permission to construct the bio-reaction biofilter prior to receipt of an air permit. The consent to construct was granted based on information in the COMPANY’s “Notice of Intent to Construct” and in accordance with N.C.G.S. 143-215.108A(c).
- G. A bio-reaction biofilter is a new air emissions control technology for OSB presses in North Carolina. Therefore, the COMPANY wishes to obtain additional information regarding best management practices for biofilter operation to ensure continuous compliance with the PCWP MACT standard. Because of the additional information needed, the COMPANY will not be in compliance with the PCWP MACT by the extended compliance date of October 1, 2008.

II. COMMISSION and the COMPANY, desiring to resolve and settle the issues identified above, have agreed to enter into this ORDER with the following terms and conditions.

- A. 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:

<u>TASK</u>	<u>DEADLINE DATE</u>
1. Submit biofilter reliability evaluation plan to NCDAQ for approval	July 1, 2008
2. Begin biofilter operation	On date permit to operate is issued or by September 1, 2008, which ever is later.
3. Begin biofilter reliability study	On date permit to operate is issued or by September 1, 2008, which ever is later.

<u>TASK</u>	<u>DEADLINE DATE</u>
4. End biofilter reliability study	Eight months after beginning biofilter reliability study or by May 1, 2009, which ever is later.
5. Report results biofilter reliability study to the NCDAQ	One month after end of biofilter reliability study or by June 1, 2009, which ever is later.
6. Implement best management practices	One month after reporting results of reliability study or by July 1, 2009, which ever is later.
7. Full MACT Compliance	One month after reporting results of reliability study or by July 1, 2009, which ever is later.
8. Submit compliance test report and compliance certification	Three months after achieving full MACT compliance or by October 1, 2009, which ever is later.

III. The COMPANY shall submit no later than fourteen (14) days after the deadline for completing each increment required in Paragraph II written certification to the Air Quality Regional Supervisor, Winston-Salem Regional Office, Division of Air Quality, whether such increment has been performed.

IV. 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 VI, the COMPANY will pay the COMMISSION according to the following schedule:

<u>DEADLINES AND REQUIREMENTS</u>	<u>STIPULATED PENALTIES</u>
1. Failure to submit plans and reports to the NCDAQ as required by Paragraphs II.A.1., II.A.5., and II.A.8	\$500 per day for the first five days and \$1,000 per day thereafter
2. Failure to operate new control equipment	\$500 per day for the first five days

<u>DEADLINES AND REQUIREMENTS</u>	<u>STIPULATED PENALTIES</u>
in accordance with Paragraphs II.A.2.	and \$1,000 per day thereafter
3. Failure to initiate and complete biofilter reliability study as required by Paragraphs II.A.3. and II.A.4.	\$500 per day for the first five days and \$1,000 per day thereafter
4. Failure to implement best management practices as required by Paragraph II.A.6.	\$500 per day for the first five days and \$1,000 per day thereafter
5. Failure to demonstrate compliance with the PCWP MACT standard, as required by with Paragraph II.A.7.	\$1,000 per day for the first five days and \$5,000 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.

- V. In the event of termination of operations and closure of the Elkin OSB facility, the COMPANY shall notify the COMMISSION in writing within five (5) business days of the earlier of (i) the date of any Workers Adjustment and Retraining Notification Act (“WARN”) notification, or (ii) facility closure. Receipt of said notification from the COMPANY by the COMMISSION shall terminate any continuing obligations of the COMPANY pursuant to this ORDER, including those pertaining to stipulated penalties, and this ORDER shall become null and void. 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 COMMISSION of notification of a facility closure required by this Paragraph.
- VI. 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 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 Division of Air Quality (hereinafter referred to as “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 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. 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.

- VII. This ORDER shall pertain only to the emissions from the OSB Press and compliance with the Plywood and Composite Wood Products (“PCWP”) MACT standard, 40 CFR Part 63, Subpart DDDD. Any violation of Air Quality Standards resulting from other sources or equipment for which the COMPANY is responsible, shall subject the COMPANY to appropriate enforcement action pursuant to North Carolina General Statute 143-215.114A.
- VIII. 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. In such cases, the COMPANY may petition that the ORDER be modified to reflect those regulatory changes.
- IX. In the event the COMMISSION or the DAQ find that reports, plans, specifications, or permit applications required by Paragraph II 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

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

Margaret Love, P.E., Regional Air Quality Supervisor
N.C. Dept. of Environment and Natural Resources
585 Waughtown Street
Winston-Salem, North Carolina 27107

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
Mail Service Center 1641
Raleigh, North Carolina 27699-1641

- XI. 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.
- XII. 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.
- XIII. 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.
- XIV. Any modifications of this ORDER must be agreed to in writing signed by both parties.
- XV. 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

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not be construed to waive or relieve the COMPANY of its obligations to comply in the future with any permit.

XVI. This Special Order by Consent shall expire on January 2, 2010.

This the _____ day of _____, 2008.

ATTESTED:

Weyerhaeuser Company – Elkin Plant

BY:

Jeffrey Fickett, Unit General Manager
Post Office Box 590
Elkin, NC 28621

APPROVED AND ACCEPTED:

BY:

Environmental Management Commission

DATE: _____