

BEFORE THE NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION

STATE OF NORTH CAROLINA)	
)	
COUNTY OF BRUNSWICK)	SPECIAL ORDER BY CONSENT
)	
IN THE MATTER OF:)	SOC 2020-_____
CPI USA NORTH CAROLINA LLC)	
)	
)	

This SPECIAL ORDER BY CONSENT (“ORDER”) is made and entered into pursuant to North Carolina General Statute 143-215.110 by and between CPI USA NORTH CAROLINA LLC (the “COMPANY”) and the ENVIRONMENTAL MANAGEMENT COMMISSION, an agency of the State of North Carolina (the “COMMISSION”).

WITNESSETH:

- I. The COMPANY and the COMMISSION do hereby stipulate and agree to the following:
 - A. The COMPANY operates an electric power generating facility (the “Facility”) (SIC code 4911) at 1281 Powerhouse Drive SE, Southport, Brunswick County, North Carolina. The Facility operates six (6) steam generating boilers. Emissions from three of the boilers (ES-1-1A, ES-1-1B, and ES-1-1C) are emitted through a common stack, and the boilers and stack are collectively referred to as Unit 1 or ES-1. Emissions from the other three boilers (ES-2-1A, ES-2-1B, and ES-2-1C) are emitted through a common stack, and the boilers and stack are collectively referred to as Unit 2 or ES-2.
 - B. On March 31, 2009, the North Carolina Department of Environmental Quality (“DEPARTMENT”), Division of Air Quality (“DAQ”) issued the

Facility Air Permit No. 05884T08 for a 2008 project titled, “Retrofit of Six Boilers with SO₂ and NO_x Controls and Increased Wood/Biomass Firing at the Southport Plant” (“2008 Project”). Among other things, the 2008 Project allowed the Facility to increase the firing rate of the Tire Derived Fuel (“TDF”) component of its fuel from 35% up to and including 50% on a BTU basis.

- C. The COMPANY began construction of the 2008 Boiler Retrofit Project in April 2009 and concluded construction on March 15, 2011. Post-construction operations also began on March 15, 2011.
- D. Pursuant to 15A NCAC 02D .0530(u), the COMPANY relied upon projected actual emissions to demonstrate that the 2008 Project would not increase emissions to trigger the requirement for submittal of a Prevention of Significant Deterioration (“PSD”) permit application.
- E. On February 26, 2016, DAQ’s Wilmington Regional Office received the Facility’s first annual actual v. projected actual emissions report. The report indicated that actual emissions of sulfur dioxide (“SO₂”), carbon monoxide (“CO”), and particulate matter (“PM”) were significantly higher than projected actual emissions contained in the permit application for the 2008 Project and triggered the obligation on the part of the Facility to obtain a PSD permit.
- F. On January 24, 2017 (with addendums on July 12, 2018 and October 22, 2019), DAQ issued a Notice of Violation/Notice of Recommendation (“NOV/NRE”) to the COMPANY for the failure to obtain a PSD permit prior to commencing construction of the 2008 Project pursuant to 40 CFR 51.166 and 15A NCAC 02D .0530.
- G. In its second addendum dated October 22, 2019, DAQ determined that Best Available Control Technology (“BACT”) for SO₂ emissions associated with the 2008 Project would have required installation and use of SO₂

emission control technology at the Facility. BACT for CO and PM emissions would not have required any add-on control technology.

- H. On December 20, 2019, DAQ issued the COMPANY a Civil Penalty Assessment for failure to obtain a PSD permit prior to commencing construction on the 2008 Project and for failure to operate the appropriate SO₂ BACT controls in the amount of \$473,320.00 and \$667.00 investigative costs for a total of \$473,987.00 (the “Civil Penalty Assessment”).
- I. The COMPANY maintains that the 2008 Project did not trigger the requirement to obtain a PSD permit due to increases in SO₂ emissions. The COMPANY further maintains that it has remained in compliance with state and federal PSD regulations in connection with the 2008 Project at all times.
- J. On January 29, 2020, the COMPANY filed a Petition for Contested Case Hearing in the Office of Administrative Hearings challenging DAQ’s issuance of the December 20, 2019 Civil Penalty Assessment.
- K. In a letter dated February 19, 2020, DAQ informed the COMPANY that the payment of the Civil Penalty Assessment would resolve the past violations cited in the Civil Penalty Assessment. Further, DAQ informed the COMPANY that it was DAQ’s intention that ongoing noncompliance with the requirement to obtain a PSD permit and implement BACT for SO₂ emissions from the Facility will be resolved through issuance of a PSD permit and the Facility's compliance with that permit. DAQ further confirmed that it anticipated that the PSD permit would require use of the Facility’s existing limestone furnace injection system as BACT for SO₂ emissions provided that the Facility committed to ceasing all boiler operations by March 31, 2021. DAQ, however, clarified that a final determination regarding BACT for SO₂ emissions could only be made through completion of the permitting process.
- L. On February 20, 2020, CPI paid the Civil Penalty Assessment.

- M. On February 21, 2020, CPI filed a Notice of Dismissal of Petition for Contested Case Hearing.
- N. The Facility currently operates under Air Quality Permit No. 05884T21 (the “Permit”) which was issued by DAQ on September 9, 2016. Sections 2.1.A.4.b, aa, and cc of the Permit establish a pre-2008 Project SO₂ emissions limit for PSD purposes of 1.47 pounds per million Btu heat input for each source (ES-1-1A, ES-1-1B, ES-1-1C, ES-2-1A, ES-2-1B and ES-2-1C) on a 24 hour block average (the “Emission Limit”).
- O. On June 24, 2016, the COMPANY and DAQ entered into a Special Order by Consent to address issues with the National Ambient Air Quality Standard (“NAAQS”) for SO₂ emissions (“SOC 2016-001”). SOC 2016-001 requires the COMPANY to demonstrate compliance with the NAAQS through monitoring or modeling. Based on preliminary modeling, SOC 2016-001 allows the COMPANY to exceed the SO₂ emission limit of 453.6 lbs/hr/Unit (1-hour average) specified in Section 2.1.A.3.b.ii of the Permit and to skip the excess emissions notification requirement specified in Section 2.1.A.3.dd.ii of the Permit after the first occurrence, provided that compliance with the 1-hour SO₂ NAAQS is maintained. To monitor ambient SO₂ emissions at the Facility, DAQ has installed an ambient monitor (“Ambient Monitor”). Compliance with the 1-hour NAAQS for SO₂ of 75 ppb is determined by measuring the 99th percentile (equivalent to the fourth highest value) of 1-hour daily SO₂ maximum concentrations each year and averaging those values over three consecutive years. The Southport DAQ ambient monitor was temporarily removed from service in 2018 due to Hurricane Florence. DAQ determined that this event resulted in insufficient data from CY 2018 for use in 2017-2019 three-year NAAQS compliance evaluation. The DAQ has therefore determined that the consecutive three-year period to be used to assess compliance with the 1-hour SO₂ NAAQS at the Southport ambient monitoring location will be

2019-2021. The 4th highest calendar year daily maximum value for 2019 and 2020 has remained below 75 ppb as measured by the Ambient Monitor.

- P. The Facility is equipped with a Furnace Sorbent Injection (“FSI”) Unit, which is capable of reducing the Facility’s SO₂ emissions.
- Q. The COMPANY plans to shut down the Facility and, therefore, eliminate all sources of emissions from the Facility, by no later than March 31, 2021.
- R. DAQ has determined that due to the COMPANY’s commitment to eliminating all sources of emissions from the Facility by no later than March 31, 2021, and the limited time available to process the PSD permit application now pending before the agency, this ORDER is a necessary and appropriate mechanism to ensure reductions in SO₂ emissions from the Facility until the Facility shuts down emissions sources in March of 2021.
- S. The COMMISSION and the COMPANY agree that, for purposes of this ORDER, the Parties intend to resolve the dispute over the applicability of PSD permitting requirements to the 2008 Project by (1) the Facility adhering to a more stringent SO₂ emissions limit reflecting operation of the FSI Unit until the earlier of ceasing operation of all emissions sources or March 31, 2021; (2) compliance with the NAAQS 1-hour ambient standard for SO₂ as defined in Paragraph I.O.; and (3) the Facility requesting rescission of its permit and ceasing operation of all emissions sources by March 31, 2021.

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 adhere to the following conditions to reduce emissions of SO₂:

- A. The COMPANY shall adhere to a Revised Emission Limit of 1.1 pounds per million Btu/Unit (24-Hour Block Average).¹
- B. The COMPANY will operate the Facility in a manner that complies with the 1-hour NAAQS for SO₂ as defined in Paragraph I.O.
- C. By no later than March 31, 2021, the COMPANY shall cease operation of all emissions sources at the Facility and request that DAQ rescind the Permit.

III. In the event that the COMPANY fails to comply with the Revised Emission Limit or the 1-hour SO₂ NAAQS limits set forth in the table below, the COMPANY agrees that, unless excused under Paragraph V, the COMPANY will pay the COMMISSION stipulated penalties according to the following schedule:

<u>Deadlines and Requirements as of the Effective Date of this SOC</u>	<u>Stipulated Penalties</u>
Failure to meet the Revised Emission Limit established in Paragraph II.A.	\$5,000 per day for the first 10 violations; \$10,000 per day for violations 11-20; \$25,000 per day for each violation after 20 violations.
Failure to limit the number of exceedances of 75 ppb at the Ambient Monitor per calendar year.	\$25,000 for the fourth and each subsequent daily maximum 1-hour SO ₂ value exceeding 75 ppb at the Ambient Monitor per calendar year.

The COMPANY shall notify DAQ in writing of any violation of the Revised Emission Limit within ten (10) days of each occurrence. Failure within thirty (30) days of receipt of the DAQ Director's written demand to pay the penalties will be grounds for a collection

¹ For the purposes of this Order, the 24-hour block average emission limit is calculated by averaging twenty-four one-hour averages from 12:00 am to 11:59 pm each day as reported by certified continuous emission monitor ("CEM") data acquisition system.

action, which the Attorney General is hereby authorized to initiate. The only issue in such an action will be whether thirty (30) days has elapsed.

IV. The DAQ Director may terminate this Order if any of the following events occur: (1) the COMPANY exceeds the Revised Emission Limit in Paragraph II.A for an aggregate period of greater than thirty (30) days during the SOC period, (2) the COMPANY exceeds the Emission Limit in Paragraph I.N, (3) the second highest daily maximum 1-hour SO₂ value in any calendar year as measured at the Ambient Monitor exceeds 109 ppb, or (4) the COMPANY fails to comply with Paragraph II.C. Such termination shall be effective immediately upon notice in writing to the COMPANY. In addition, in the event that the COMPANY does not comply with Paragraph II.C, the DAQ Director may terminate or revoke the Permit pursuant to 15A NCAC 02Q .0519. The COMPANY acknowledges and agrees that such termination or revocation shall take effect immediately upon notice in writing to the COMPANY and that, to the extent any additional notice is required prior to the termination or revocation of the Facility's permit, this Order shall serve as providing such notice to the COMPANY and is otherwise waived.

V. 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 DAQ 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 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.

VI. This ORDER constitutes full and final settlement and satisfaction of any and all claims or prospective claims that the COMMISSION has or may have for violations described in Paragraph I hereof, as of the date this ORDER is approved by the

COMMISSION. The COMMISSION agrees that, except as authorized pursuant to Paragraph II, it shall not issue a Notice of Violation or pursue any enforcement action against the COMPANY related to the Revised Emission Limit, the violations specified in Paragraph I, violation of the SO₂ emissions limit set forth in Section 2.1.A.3.b.ii of the Permit, or violation of the excess emissions notification requirement in Section 2.1.A.3.dd.ii of the Permit during the term of this ORDER. This ORDER shall not affect the COMPANY'S obligation to comply with any Federal, State, or local laws or regulations. Any violations not resolved by this Order shall subject the COMPANY to appropriate enforcement action pursuant to North Carolina General Statute §§ 143-215.114A, 143-215.114B, or 143-215.114C.

VII. The COMMISSION acknowledges that nothing prohibits 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.

VIII. All notices and reports required from the COMPANY by this ORDER shall be delivered to:

Brad Newland, Wilmington Regional Air Quality Supervisor
N.C. Dept. of Environmental Quality
127 Cardinal Drive Ext.
Wilmington, North Carolina 28405

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

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

IX. SOC 2016-001 shall terminate on the date that this ORDER becomes effective.

X. By entering into this ORDER the COMPANY makes no admission of liability, violation, or wrongdoing whatsoever, by itself, any of its affiliated companies, or any of

its or their present or former officers, directors, employees, or agents, and this ORDER may not be offered into evidence in any action or proceeding for any purpose other than as may be expressly provided in this ORDER.

XI. Final approval and entry into this ORDER are subject to the requirements that the COMMISSION give notice of proposed consent order to the public, and that the public have at least thirty (30) days within which to comment on the ORDER.

XII. 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.

XIII. The Parties may jointly stipulate and agree to modify this Order at any time subject to the requirements of 15A NCAC 02D .2203. Any modifications of this ORDER must be agreed to in writing and signed by both parties.

XIV. 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.

XV. Unless terminated at an earlier date pursuant to Paragraph IV, this Special Order by Consent shall expire on May 31, 2021.

ATTESTED:

CPI USA NORTH CAROLINA LLC

BY: 

Christopher L. Kopecky
Vice President

DATE: October 1, 2020

APPROVED AND ACCEPTED:

BY: _____
For the Environmental Management Commission

DATE: _____