

BEFORE THE NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION

STATE OF NORTH CAROLINA)	
)	
COUNTY OF PERSON)	SPECIAL ORDER BY CONSENT
)	
IN THE MATTER OF:)	SOC 2020- <u>001</u>
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 331 Allie Clay Road, Roxboro, Person County, North Carolina. The Facility operates three 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.
 - B. On March 31, 2009, the North Carolina Department of Environmental Quality (“DEPARTMENT”), Division of Air Quality (“DAQ”) issued the Facility Air Permit No. 05856T10 for the 2008 NOx/SO2 Boiler Control Retrofit and Increased Wood/Biomass Firing Project (“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 mix up to and including 50% on a BTU basis.

- C. The COMPANY began construction of the 2008 Project in April of 2009 and concluded construction in 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 18, 2016, DAQ’s Raleigh Regional Office received the Facility’s first annual actual v. projected actual emissions report. The report indicated that actual emissions of sulfur dioxide (“SO₂”) 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, 2018 (with an addendum on July 13, 2018), 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. On August 15, 2019, DAQ issued the COMPANY a Civil Penalty Assessment in the amount of \$5,524 for failure to obtain a PSD Permit prior to commencing construction of the 2008 Project.
- H. Subsequent to issuance of the August 15, 2019 Civil Penalty Assessment, 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.

- I. On October 22, 2019, DAQ issued the COMPANY an NOV/NRE for failure to operate the appropriate SO₂ BACT controls with respect to the 2008 Project.
- J. On December 20, 2019, DAQ issued the COMPANY a Civil Penalty Assessment for failure to operate the appropriate SO₂ BACT controls in the amount of \$388,720.00 and \$524.00 investigative costs for a total of \$389,244.00.
- K. 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.
- L. 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.
- M. The Facility currently operates under Air Quality Permit No. 05856T20 (the "Permit") which was issued by DAQ on September 9, 2016. Section 2.1A.4.b of the Permit establishes an SO₂ emissions limit of 1.51 pounds per million Btu heat input for ES-1 on a 24 hour block average (the "Emission Limit").
- N. The Facility is equipped with a Furnace Sorbent Injection ("FSI") Unit which is capable of reducing the facility's SO₂ emissions by approximately 15%. However, the Company has not operated the FSI Unit because operation of the FSI Unit is not necessary to achieve compliance with the Facility's current SO₂ emissions limit.
- O. 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.
- P. 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 for the remaining life of the Facility; (2) the Facility requesting rescission of its permit and ceasing operation of all emissions sources by March 31, 2021; and (3) the Facility's payment of the full amount of the Civil Penalty Assessment.

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 Revised Emission Limit of 0.95 pound per million Btu (24-Hour Block Average).¹
- B. 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, the COMPANY agrees that, unless excused under Paragraph VI, the COMPANY will pay the COMMISSION stipulated penalties according to the following schedule:

<u>Deadlines and Requirements</u>	<u>Stipulated Penalties</u>
Failure to meet the Revised Emission Limit established in Paragraph II.	\$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.

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.

The COMPANY shall notify DAQ in writing of any violation of the Revised Emission Limit within ten (10) days of discovering such violation. Failure within thirty (30) days of receipt of the DAQ Director's written demand to pay the penalties will be grounds for a collection 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. In the event that the COMPANY exceeds the Revised Emissions Limit in Paragraph II.A for an aggregate period of greater than thirty (30) days during the SOC period, in the event the Company exceeds the Emissions Limit in Paragraph I.M, or in the event that the COMPANY fails to comply with Paragraph II.B, the DAQ Director may terminate this Order. 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.B, 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 agrees to pay to the DEPARTMENT \$388,720.00 plus \$524.00 in investigative costs, an amount totaling \$389,244.00 (the "Penalty"), in full settlement of all violations described in the Civil Penalty Assessment. The Penalty shall be made in a lump sum payment due within thirty (30) calendar days of the execution of this ORDER. The payment shall be made by check and made payable to the North Carolina Department of Environmental Quality and delivered to the following address:

Enforcement Group – Payment
Department of Environmental Quality
Division of Air Quality
1641 Mail Service Center
Raleigh, NC 27699-1641

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 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.

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 or the violations specified in Paragraph I 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:

T. Ray Stewart , Raleigh Regional Air Quality Supervisor
N.C. Dept. of Environmental Quality
3800 Barrett Drive
Raleigh, North Carolina 27609

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

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

XII. 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.

XIV. 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.

XV. 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.

XVI. 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.

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

This the 12th day of May, 2020.

ATTESTED:

CPI USA NORTH CAROLINA LLC

BY: Christopher L. Kopecky

Christopher L. Kopecky
Vice President

APPROVED AND ACCEPTED:

BY: Michael A. Wong
Environmental Management Commission

DATE: 5/12/20