

Special Order By Consent  
NORTH CAROLINA RENEWABLE POWER – LUMBERTON, LLC

BEFORE THE NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION

STATE OF NORTH CAROLINA	)	
	)	
COUNTY OF ROBESON	)	
	)	
IN THE MATTER OF:	)	SPECIAL ORDER BY CONSENT
NORTH CAROLINA RENEWABLE	)	
POWER – LUMBERTON, LLC	)	SOC 2017-001
	)	
LUMBERTON, ROBESON COUNTY,	)	
NORTH CAROLINA	)	
[SITE NUMBER 7800166]	)	

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 NORTH CAROLINA RENEWABLE POWER – LUMBERTON, LLC (hereafter 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 COMMISSION and the COMPANY do hereby stipulate and agree to the following:
  - A. The COMPANY operates a cogeneration power plant (hereafter referred to as the “FACILITY”) located at 1866 Hestertown Road in Lumberton, Robeson County, North Carolina. The FACILITY currently operates under Air Permit 05543T23, issued on March 28, 2016. The FACILITY is considered a “minor source” under the Prevention of Significant Deterioration (“PSD”) regulations because it has accepted enforceable, facility-wide emissions limits of 250 tons per year (“tpy”) for multiple PSD-regulated pollutants, including carbon monoxide (“CO”), nitrogen oxides (“NOx”) and sulfur dioxide (“SO<sub>2</sub>”).
  - B. “Affected sources” at the FACILITY include two steam and electric generating boilers (the “BOILERS”).
  - C. The COMPANY took ownership of the FACILITY in the first Calendar quarter of 2015 and obtained an ownership change on February 20, 2015 (Permit No. 05543T20).

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- D. On March 17, 2015, the COMPANY submitted an air permit application to the North Carolina Division of Air Quality (“DAQ”) to remove coal and tire-derived fuels from the FACILITY’s permit, leave non-commercial/industrial solid waste incinerator (“non-CISWI”) wood fuel in the permit, and add non-CISWI poultry litter as a permitted fuel. The COMPANY also requested the 250-tpy facility-wide emissions limitations for CO, NO<sub>x</sub> and SO<sub>2</sub> to establish the FACILITY as a minor source under the PSD regulations. DAQ issued the modified permit to the COMPANY on May 29, 2015 (Permit No. 05543T21).
- E. An administrative amendment (Permit No. 05543T22) was issued on June 12, 2015 to correct a clerical error to Permit No. 05543T21.
- F. The COMPANY began initial operation of the BOILERS by firing 100% non-CISWI wood for the first time following the addition of the 250-tpy PSD avoidance condition for the FACILITY on July 7, 2015. CO emissions from the BOILERS are monitored by a continuous emissions monitoring system (“CEMS”).
- G. Beginning October 16, 2015, the COMPANY began firing a mixture of non-CISWI wood with limited amounts of non-CISWI poultry litter.
- H. CO emissions from the BOILERS were higher than anticipated. Because the cumulative CO emissions approached the 250 tpy CO emissions limit, the COMPANY shut down the BOILERS on March 7, 2016.
- I. On August 1, 2016, the COMMISSION approved a Special Order By Consent (“First SOC”) that allowed the COMPANY to restart the BOILERS following the completion of boiler maintenance identified in the First SOC.
- J. The First SOC provided that the COMPANY would be required to submit a compliance plan that could include a control system, a PSD application, or another compliance alternative (“Compliance Plan”) within 30 days after any single month during which post-repair CO emissions from the BOILERS exceeded 40 tpm during any of the first eight calendar months after restarting the BOILERS.
- K. The First SOC also provided that, if the FACILITY was required to submit a Compliance Plan as detailed in Paragraph I.(J) above, implementation of the Compliance Plan would be subject to a compliance schedule to be prescribed in a

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new and separate Special Order By Consent (the “Order”) between the COMPANY and the COMMISSION and that the Order, acceptable to the COMPANY and the COMMISSION, must be signed by the COMPANY within 90 days of the submittal of the Compliance Plan.

- L. The First SOC also provided that, if the FACILITY exceeded the permitted PSD avoidance limit of 250 tpy CO after restarting the BOILERS, then among other things:
  - 1. DAQ would issue a Notice of Violation / Notice of Recommendation of Enforcement to the FACILITY and a stipulated penalty would be assessed per Section III of the First SOC; and,
  - 2. The COMPANY would be required to be in compliance with the PSD avoidance limit for CO at the FACILITY no later than 8 months after the re-start of one or more of the BOILERS, unless the COMPANY submitted a Compliance Plan and entered into an Order.
- M. The FACILITY restarted the BOILERS on August 13, 2016 after conducting maintenance on the BOILERS pursuant to the First SOC. During the month of August 2016, CO emissions from the BOILERS totaled 10.3 tpm. Rolling 12-month CO emissions from the FACILITY totaled 248.2 tpy.
- N. During the month of September 2016, CO emissions from the BOILERS totaled 46.2 tpm, which triggered the requirement to: (1) prepare a Compliance Plan within thirty (30) days as described in Paragraph I.(J) above; and (2) enter into an Order as described in Paragraph I.(K) above.
- O. The COMPANY timely submitted a Compliance Plan to DAQ on October 28, 2016 indicating that it intended to submit a PSD permit application for the FACILITY.
- P. The entry of this ORDER satisfies the requirement in the First SOC that the COMPANY enter into a second Order.
- Q. During the month of September 2016, CO emissions from the FACILITY also totaled 263.7 tpy, in excess of the PSD avoidance limitation for CO, which triggered the requirement to pay stipulated penalties as outlined in Section III of the First SOC.
- R. Operation of the BOILERS under the First SOC has resulted in:

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1. The exceedance of the PSD avoidance limitation for CO pursuant to Section 2.2(A)(2)(a) of Permit No. 05543T23; and
  2. The exceedance of Section 2.2(A)(2)(a) of Permit No. 05543T23, limiting CO emissions from the BOILERS to 0.45 lb/mmBtu when firing non-CISWI wood.
- S. The violations identified in Paragraph I.(R) above is in addition to violations identified in Paragraph I.(M) of the First SOC, as follows:
1. Failure to conduct the initial performance test for particulate matter (“PM”) emissions within 180 days after initial firing of poultry litter in the BOILERS, as required in Section 2.1.A.3.d. of Permit No. 05543T23;
  2. One exceedance of the PM2.5 limit (0.011 lb/mmBTU, stack test: 3-run average), exceedances of the SO2 limit (0.025 lb/mmBTU, 30-day rolling average) and exceedances of the NOx limit (0.125 lb/mmBTU, 30 day rolling average); and
  3. Approximately 43% downtime of the COMS monitor on Combined Stack 1 (SC1) during the third quarter of 2015.

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 during the period of this ORDER and thereafter in accordance with the rules and regulations of the COMMISSION does hereby agree to perform the following activities:
- A. The COMPANY shall have 30 days from the effective date of the ORDER to submit a PSD permit application for the FACILITY.
  - B. The COMPANY shall pay the stipulated penalty of \$2,000.00 as outlined in Section III of the First SOC for the exceedance of the PSD avoidance limitation for CO during September 2016, and an additional \$2,000.00 for any other months for which CO emission from the FACILITY exceeded the PSD avoidance limitation for CO between October 2016 and the effective date of the ORDER. This sum is due and payable on a semiannual basis and shall be paid with submittal of the FACILITY’s semiannual Title V reports by January 30th and July 30th each calendar year.

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- C. A CO emission report, detailing the operation of the BOILERS, fuel combusted, heat input calculations, peak rate of CO emissions (lb/mmbtu and lb/hr) as well as the total CO tonnage emissions, shall be reported within 14 days of the end of each calendar month.
  - D. PM compliance tests shall be conducted within 60 days of the date that the percentage of poultry litter firing exceeds 30%, 50%, 70% and 90% of total heat input. If a test failure occurs a violation will be issued and a re-test is required within 30 days. Compliance must be demonstrated with all applicable PM limits (PM/PM10/PM2.5). A standing protocol for the testing shall be submitted within thirty days of the effective date of this order. Results of the source test are to be submitted to the DAQ Fayetteville Regional Office within 30 days of the test.
- III. In addition payment of the penalties described in Paragraph II.(B) above, the COMPANY shall pay the following civil penalties:
- A. The COMPANY agrees to pay the COMMISSION a civil penalty in the amount of \$15,000. This amount shall be due and payable within 30 days of the effective date of this ORDER.
  - B. The COMPANY agrees to pay the COMMISSION a stipulated penalty of \$2,000.00 per month for each month that the FACILITY's 12-month total PSD avoidance limit is exceeded while this ORDER is in effect. This sum is due and payable on a semiannual basis and shall be paid with submittal of the FACILITY's semiannual Title V reports by January 30th and July 30th each calendar year.
  - C. The COMPANY agrees to pay the COMMISSION a stipulated penalty of \$4,000 for each failed source test required under paragraph II.D. This sum is due and payable on a semiannual basis and shall be paid with submittal of the FACILITY's semiannual Title V reports by January 30th and July 30th each calendar year.
- 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 V, the COMPANY will pay the COMMISSION according to the following schedule:

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<u>Deadlines and Requirements</u>	<u>Stipulated Penalties</u>
Failure to comply with any requirement or deadline in Paragraph II and/or Paragraph III	\$500.00 per day for the first 5 days and \$1,000.00 per day thereafter.

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

- 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 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. 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.
- VI. This ORDER shall pertain only to that equipment, sources, and operations described in Paragraph I.(B) of this ORDER. Any violation of Air Quality Standards resulting from these emission units or any 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.
- VII. 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

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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.

VIII. In the event the COMMISSION or 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 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.

IX. All notices and reports required by this ORDER shall be delivered to:

Steven Vozzo, Regional Air Quality Supervisor  
N.C. Dept. of Environmental Quality  
225 Green Street, Suite 714  
Fayetteville, North Carolina 28301-5095

All payments required from the COMPANY by this ORDER shall be delivered to:

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

X. 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 (A through S) hereof, as of the date this ORDER is approved by the COMMISSION and continuing until this Order terminates as provided in Paragraph XVI. The First SOC shall terminate upon the effective date of this ORDER, except to the extent that any unpaid stipulated penalties incurred under the First SOC, as described in Paragraph II.(B) above, shall be paid with the submittal of the FACILITY's next semiannual Title V report. This ORDER shall not affect the COMPANY's obligation to comply with any Federal, State, or local laws or regulations.

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- XI. 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.
- 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. Any modifications of this ORDER must be agreed to in writing 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. While this SOC does not contemplate termination of operation of the BOILERS, 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 (WARN) Act, 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.
- XVI. This ORDER is effective on execution by the Environmental Management Commission and shall expire upon: (1) the issuance of a PSD permit to the FACILITY (except to the extent that unpaid stipulated penalties accrued while this ORDER is in effect pursuant to Paragraph II.(D) above (if any) shall be paid with the submittal of the FACILITY's next semiannual Title V report); and (2) the PSD permit becomes final and enforceable after all periods to appeal the issuance of the permit have expired.



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ATTESTED: NORTH CAROLINA RENEWABLE POWER –  
LUMBERTON, LLC

BY: 

Steven Ingle  
Vice President of Engineering  
North Carolina Renewable Power –  
Lumberton, LLC

DATE: 1-25-17

APPROVED AND ACCEPTED:

BY: 

Environmental Management Commission

DATE: 2/27/17