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SEP 30 1993

ROBERT H. SHEMWELL, CLERK
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT, LOUISIANA

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

SEP 30 1993

UNITED STATES OF AMERICA,
Plaintiff,

v.

LOUISIANA-PACIFIC CORPORATION
and KIRBY FOREST INDUSTRIES, INC.,
Defendants

ROBERT H. SHEMWELL, CLERK
BY MS
DEPUTY

CIVIL ACTION NO. CV93-0869-L-0

Judge Doherty
Magistrate Judge Tynes

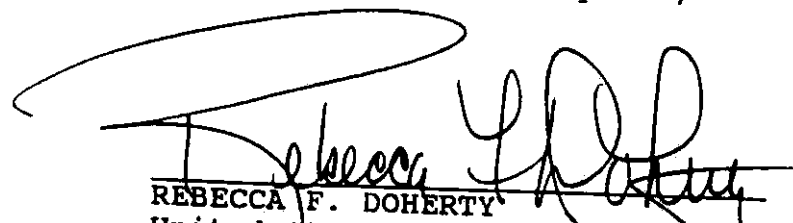
ORDER

This matter comes before the Court on the United States' Motion to Enter the Consent Decree in the above-captioned case, lodged with this Court on May 24, 1993. The Court has conducted a conference with counsel for all parties and concludes that there has been valid consent by all of the parties to the Decree. The Court further finds that the terms of the Consent Decree are fair, reasonable and equitable. Accordingly, the Court hereby approves and enters the Consent Decree as a final order of this Court.

In order to preclude the possibility of any confusion as to the effective date of the Consent Decree, the Court further orders that the date of entry appearing on the Consent Decree be conformed to the date of this Order.

Dated this 30th day of September, 1993, in Lafayette, Louisiana.

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REBECCA F. DOHERTY
United States District Judge

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ROBERT H. SHERWELL, CLERK
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT, LOUISIANA

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
MAY 25 1993
ROBERT H. SHERWELL, CLERK
BY *MSB* DEPUTY

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

SEP 30 1993

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

ROBERT H. SHERWELL, CLERK
BY *MSB* DEPUTY

UNITED STATES OF AMERICA,
Plaintiff,
v.

LOUISIANA PACIFIC CORPORATION
and KIRBY FOREST INDUSTRIES
INC.,
Defendants.

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CV 93-0869

CIVIL ACTION NO.
JUDGE

JUDGE DOHERTY

MAGISTRATE JUDGE TYNES

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CONSENT DECREE

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U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
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MAY 24 1993

ROBERT H. SHEM WELL, CLERK
BY RS DEPUTY

ROBERT H. SHEM WELL, CLERK
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT, LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

LOUISIANA-PACIFIC CORPORATION
and KIRBY FOREST INDUSTRIES, INC.,
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CV 93-0869

CIVIL ACTION NO.
JUDGE

JUDGE DOHERTY

MAGISTRATE JUDGE TYNES

L-0

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (herein, "EPA") filed a Complaint alleging that Defendants, Louisiana-Pacific Corporation (herein, "LP") and Kirby Forest Industries, Inc., (herein jointly referred to as "Defendants") either jointly or separately, commenced construction of major emitting facilities and major modifications of major emitting facilities in violation of the Prevention of Significant Deterioration ("PSD") requirements at Part C of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7470-7492, and the regulations promulgated thereunder at 40 C.F.R. § 52.21 (the "PSD Rules");

WHEREAS, Plaintiff further alleged that Defendants, either jointly or separately, operated one or more facilities in violation of permits issued pursuant to the Act and permits and regulations

incorporated in State Implementation Plans ("SIPs") approved pursuant to 42 U.S.C. § 7410;

WHEREAS, Plaintiff further alleged that Defendant failed to comply with 42 U.S.C. § 7411 and the New Source Performance Standards promulgated thereunder at 40 CFR Part 60, Subparts A and Dc at its Oroville, California facility;

WHEREAS, Plaintiff further alleged that Defendants, willfully or otherwise, failed to provide accurate information to state and Federal regulatory agencies concerning potential air emissions from Defendants' facilities;

WHEREAS, EPA issued Notices of Violation with respect to such allegations to one or both of the Defendants on February 22, 1991, June 6, 1991, July 16, 1991, August 26, 1991, March 5, 1992, July 31, 1992 and April 14, 1993 (the "NOVs");

WHEREAS, the Defendants have denied and continue to deny the violations alleged in the NOVs and the Complaint;

WHEREAS, the United States and the Defendants have agreed that settlement of this action is in the public interest and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter; and

WHEREAS, the United States and the Defendants have consented to entry of this Consent Decree without trial of any issues;

NOW, THEREFORE, it is hereby ORDERED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Complaint states a claim upon which relief can be granted against the Defendants under Sections 111, 113, 114 and 167 of the Act, 42 U.S.C. §§ 7411, 7413, 7414 and 7477, and 28 U.S.C. § 1355. This Court has jurisdiction of the subject matter herein and over the parties consenting hereto pursuant to 28 U.S.C. § 1345 and pursuant to Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477. The Defendants do not admit and reserve their rights to contest the jurisdiction of this Court over, and to award relief for, subject matters or activities not expressly covered or required by this Consent Decree. Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c). The Parties agree that nothing in this Consent Decree nor the fact that it is being entered into shall constitute any admission of fact or conclusion of law.

II. APPLICABILITY

2. The provisions of this Consent Decree shall apply to and be binding upon the United States and upon the Defendants as well as the Defendants' officers, employees, agents, successors and assigns. In the event either Defendant proposes to sell or transfer its real property or operations subject to this Consent Decree, it shall advise in writing such proposed purchaser or successor-in-interest of the existence of this Decree, and shall send a copy of such written notification by certified mail, return

receipt requested, to EPA before such sale or transfer, if possible, but no later than the closing date of such sale or transfer. The Defendants shall provide a copy of this Consent Decree to each contractor supplying a pollution control device or system required by or necessary to comply with this Consent Decree.

III. REGULATORY FRAMEWORK

A. PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY IN AREAS OF THE COUNTRY MEETING AMBIENT AIR QUALITY STANDARDS

3. The Act, 42 U.S.C. §§ 7401, et seq., establishes a statutory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. The Act required the Administrator to publish primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for certain "criteria air pollutants". Section 109 of the Act, 42 U.S.C. § 7409.

4. Part C of the Act, 42 U.S.C. §§ 7470-7492, sets forth provisions for the prevention of significant deterioration of air quality in those areas designated as attaining the ambient air quality standards in order to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and

after adequate procedural opportunities for informed public participation in the decisionmaking process.

5. The attainment areas are further divided into three classes: Class I for pristine areas (such as national parks) where little or no deterioration is permitted; Class II where moderate deterioration of air quality may occur and Class III where greater economic growth and air quality deterioration is permitted. 42 U.S.C. §§ 7472, 7474. Thus, under the PSD program, a permit for a new facility may allow the facility to contribute to air pollution only up to specified incremental amounts. 42 U.S.C. § 7473(b).

6. Sections 110 and 161 of the Act, 42 U.S.C. §§ 7410 and 7471, require each state to submit to the Administrator for approval or disapproval, a SIP containing emission limitations and other measures necessary for the prevention of significant deterioration of air quality in areas that have been classified by the Administrator as meeting the NAAQS ("attainment/unclassifiable areas"). If a state does not have an approved SIP for the prevention of significant deterioration of air quality, the Federal PSD rules (40 CFR 52.21, et seq.) are automatically incorporated into the SIP.

7. The PSD rules generally require that a person who wishes to construct or modify a major emitting facility in an attainment/unclassifiable area must demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient

air quality standard or any specified incremental amount. (40 C.F.R. 52.21(k)).

8. The PSD rules also require any new major source (or modification) in a nonattainment/unclassifiable area to employ the best available pollution control technology ("BACT") for control of each pollutant subject to regulation under the Act that would be emitted in significant amounts. (40 C.F.R. 52.21 (j))

9. The Administrator has designated the following locations, pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), and 40 C.F.R. § 81.336 as primary attainment/unclassifiable areas for oxides of nitrogen ("NOx), particulate matter ("PM"), carbon monoxide("CO") and ozone:

LaSalle Parish, Louisiana (40 C.F.R. 81.319);
Barbour County, Alabama (40 C.F.R. 81.301);
Jackson County, Georgia (40 C.F.R. 81.311);
Aroostook County, Maine (40 C.F.R. 81.320);
Sawyer County, Wisconsin (40 C.F.R. 81.350);
Lincoln County, Wisconsin (40 C.F.R. 81.350);
Lake County, Minnesota (40 C.F.R. 81.324);
Dickinson County, Michigan (40 C.F.R. 81.323);
Kootenai County, Idaho (40 C.F.R. 81.313);
Walker County and Polk County, Texas (40 C.F.R. 81.344);
Hardin County, Texas (except VOCs, after Nov. 15, 1990, 40 C.F.R. 81.344);
Butte County, California (except VOCs, 40 C.F.R. 81.350);
Missoula County, Montana (except portions of Missoula Co. for PM, 40 C.F.R. 81.327)

10. Part C of the Act, 42 U.S.C. § 7475, and the PSD regulations prohibit the construction of a major emitting facility in an attainment or unclassifiable area unless such construction complies with the Act and the PSD Rules.

11. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to issue an order or seek injunctive relief, "as necessary to prevent the construction or modification of a major emitting facility which does not conform to the requirements of this part [Part C of the Act, 42 U.S.C. §§ 7470- 7491]".

B. NEW SOURCE REVIEW REQUIREMENTS TO ASSURE REASONABLE FURTHER PROGRESS TOWARDS MEETING AMBIENT AIR QUALITY STANDARDS IN AREAS OF THE COUNTRY THAT DO NOT PRESENTLY MEET THOSE STANDARDS

12. Part D of the Act, 42 U.S.C. §§ 7501-7515, sets forth New Source Review provisions (NSR) which direct States to include in their SIPs permitting and other requirements to meet the ambient air quality standards in areas not meeting those standards (nonattainment areas").

13. Section 172(c)(5) of the Act, 42 U.S.C. § 7502(c)(5), provides that SIPs shall require permits for the construction and operation of new or modified major stationary sources in nonattainment areas in order to facilitate "reasonable further progress" towards attainment of the ambient air quality standards.

14. Section 173 of the Act, 42 U.S.C. § 7503, provides that such construction and operating permits may only be issued if:

(a) sufficient offsetting emission reductions have been obtained to reduce existing emissions to the point where "reasonable further progress" towards meeting the ambient air quality standards is maintained;

(b) the pollution controls to be employed will reduce emissions to the "lowest achievable emission rate" ("LAER");

(c) all of the operator's major sources in the state where the new facility will be constructed are in compliance (or on a schedule for compliance) with all applicable emission limitations; and

(d) an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

15. Prior to November 15, 1990, Hardin County, Texas had been classified as an attainment/unclassifiable area for all criteria pollutants. The 1990 Clean Air Act Amendments reclassified Hardin County as a nonattainment area for ozone, effective November 15, 1990. Section 107 of the Act, 42 U.S.C. § 7407. The Texas SIP includes approved provisions relating to permitting requirements in nonattainment areas. Texas Air Control Board ("TACB") Regulation VI.

16. The Administrator has designated Butte County, California as nonattainment for ozone (40 C.F.R. 81.305). The California SIP includes approved provisions relating to permitting requirements for the Butte County nonattainment area. Butte County Air Pollution Control District Rule 401.

17. The Administrator has designated portions of Missoula County, Montana as nonattainment for particulate matter (40 C.F.R. 81.327). The Montana SIP includes approved provisions relating to permitting requirements in nonattainment areas. Section 16.8, Administrative Rules of Montana.

18. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to issue an order or bring a civil action to enforce any requirement of a SIP or permit.

NEW SOURCE PERFORMANCE STANDARDS

19. Section 111(b) of the Act, 42 U.S.C. § 7411(b), requires the Administrator to publish a list of categories of sources that, in the Administrator's judgment, cause or contribute significantly to air pollution that may reasonably be anticipated to endanger the public health or welfare and to promulgate standards of performance for new stationary sources within those categories. These standards are known as the New Source Performance Standards ("NSPS").

20. The general provisions of the NSPS regulations for new sources are set forth at 40 C.F.R. §§ 60.1 - 60.18. Pursuant to 40 C.F.R. § 60.1, the NSPS regulations apply to

the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication . . . of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

21. The category-specific NSPS regulations for new small industrial-commercial-institutional steam-generating units ("new small boilers"), such as LP's Boiler #5 at its Oroville, California facility, whose construction, modification, or reconstruction commenced after June 9, 1989, are set forth at 40 C.F.R. §§ 60.40c - 60.48c (1991).

22. The owner or operator of a regulated new source is required to submit to the Administrator notice of the actual date of initial start-up of the source within 15 days of such date. 40 C.F.R. §§ 60.7(a)(3) and 60.48c(a).

23. The owner or operator of a regulated new source is required to conduct performance tests in accordance with the regulations applicable to its type of source and to submit the results of those tests to the Administrator within 60 days of achieving the maximum production rate at the source and in no event later than 180 days after the initial start-up of the source. 40 C.F.R. §§ 60.8(a) and 60.48c(b). At least thirty days prior to conducting the performance test, the source must provide EPA notice that the test is going to be performed. 40 C.F.R. 60.8(d).

24. Among other pollutants, the applicable regulations limit the emission of PM from new small boilers and require installation and operation of a monitoring system to continuously measure the PM emissions (opacity). 40 C.F.R. §§ 60.43c(b)(1), 60.47c.

25. The owner or operator must also submit a report for each quarter in which there are excess emissions from the source or, if there were no excess emissions during a calendar quarter, submit a report semiannually stating that there were no such excess emissions during the previous semiannual reporting period. 40 C.F.R. §§ 60.7(c), 60.48(c).

26. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits the owner or operator of any new source from operating such source

in violation of any NSPS regulation applicable to the source. Violations of Section 111(e) of the Act subject the violator to civil penalties and injunctive relief, pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b).

IV. FACTUAL BACKGROUND

27. Oriented Strand Board ("OSB") is an industry trade name for a type of reconstituted wood panel product. In manufacturing OSB, trees are sliced into small wafers, which are then dried at high temperature, coated with an adhesive and pressed into wood panels under conditions of high temperature and pressure. In the course of these activities significant quantities of PM, CO, Volatile Organic Compounds ("VOCs") and other pollutants may be generated. VOCs contribute to the formation of ozone.

28. Medium Density Fiberboard ("MDF") and Particleboard are industry trade names for other reconstituted wood products. In the manufacture of these products small wood fibers or particles (such as sawdust from milling operations) are pressed into wood panels or other shapes. In the course of these manufacturing activities significant quantities of PM, CO, VOCs and other pollutants may be generated.

29. Defendants own and operate OSB facilities in numerous locations throughout the United States, including:

Center, Jackson County, Georgia
Chilco, Kootenai County, Idaho;
Urania, LaSalle Parish, Louisiana;

Houlton, Aroostook County, Maine;
Sagola, Dickinson County, Michigan;
Two Harbors, Lake County, Minnesota;
New Waverly, Walker County, Texas;
Corrigan, Polk County, Texas;
Silsbee, Hardin County, Texas;
Tomahawk, Lincoln County, Wisconsin; and
Hayward, Sawyer County, Wisconsin.

30. Defendants own and operate medium density fiberboard ("MDF") facilities in the following locations:

Clayton, Barbour County, Alabama;
Oroville, Butte County, California; and
Urania, LaSalle Parish, Louisiana.

31. Defendants own and operate a particleboard facility in Missoula, Missoula County, Montana.

32. The United States has alleged that LP has failed to properly document and identify to the appropriate permitting authorities potential emission increases associated with construction activities at each of the facilities identified in the preceding three paragraphs.

33. The United States has alleged that construction or modification of each of the facilities identified in the preceding three paragraphs, except the Missoula, Montana; Oroville, California and Tomahawk, Wisconsin facilities, significantly increased potential emissions from that facility, thereby subjecting the facility to the preconstruction review requirements of the PSD program.

34. While various pollution control devices and pollution prevention schemes have been employed for control of PM throughout

the industry, no United States manufacturer has heretofore effectively controlled emissions of VOCs generated by the manufacture of OSB or MDF.

35. EPA has identified to Defendants at least one technology, Regenerative Thermal Oxidation ("RTO"), employed by other industries in this country, that appeared to be capable of significantly reducing VOCs, PM and CO. EPA is aware of at least two other technologies, based on chemical scrubbing and biological techniques, that may also be capable of significantly reducing the amount of VOC and other emissions associated with these manufacturing processes.

36. In cooperation with EPA, LP successfully conducted pilot tests for the RTO technology at its Urania, Louisiana plant in February and March, 1993.

V. COMPLIANCE PROGRAM

A. SUMMARY

37. Defendants shall install improved pollution control systems and enhanced monitoring devices at the OSB and MDF plants identified in Section V.C. (and, if applicable, Section VI.C.) herein. Defendants shall also apply for and obtain a PSD and/or NSR permit at each of the facilities identified in Section V.B. (and, if applicable, Section VI.C.) or demonstrate to EPA's satisfaction that, because of the increased pollution control efficiency of the pollution control systems required by this

Decree, such permits are no longer required. In addition, Defendants shall perform an environmental audit of their corporate management structure, practices and procedures, and all of their wood panel manufacturing plants identified in Paragraph 92 herein to evaluate overall compliance with the Act. Further, Defendants will have in their employ designated environmental managers at each of their wood panel manufacturing plants as well as a corporate environmental manager and will provide training at both the plant and corporate level to ensure compliance with the Act.

Finally, Defendants shall pay stipulated civil penalties for enumerated violations of this decree, including violations of operating conditions established herein or contained in current or subsequently issued state construction or operating permits or state administrative or judicial orders.

B. PERMITS

38. In accordance with the schedules and other requirements of this section Defendant(s) shall apply for and obtain new or modified PSD or New Source permits for the following plants, unless Defendants establish, pursuant to paragraphs 39-42 of this Section that such permits are not required:

PSD Permits

Corrigan, Texas OSB plant
New Waverly, Texas OSB plant
Urania, Louisiana OSB plant
Jackson County, Georgia OSB plant
Sagola, Michigan OSB plant
Two Harbors, Minnesota OSB plant
Clayton, Alabama MDF plant

Urania, Louisiana MDF plant
Chilco, Idaho, OSB plant

New Source permits

Silsbee, Texas OSB plant

39. By June 1, 1993, each Defendant shall identify to EPA which, if any, of the above-listed wood panel plants it believes will not require new or amended PSD or NSR permits because of the increased pollution control efficiency of pollution control systems required by this Decree.

40. For each plant identified pursuant to paragraph 39, above, by June 1, 1993, Defendant(s) shall provide to EPA all data necessary to evaluate whether a new or modified PSD or NSR permit is required (herein, "PSD/NSR applicability determination"), including, but not limited to:

- a. the basis for the claim that the increased pollution control efficiency of the pollution control devices required by this Decree is such that a new or modified PSD or NSR permit is not required; and
- b. documentation of actual pre-construction emissions and post-construction potential to emit for all criteria pollutants, including such documentation for any contemporaneous emission reductions for which credit is sought.

41. The documentation submitted to EPA shall be based to the greatest extent practicable on actual test data and production records. Estimates may be employed only where EPA agrees that such estimates are reliable and conservative. In the absence of sufficiently reliable information to the contrary it shall be

presumed that new or modified PSD or New Source permits are required at each of the plants identified in this section.

42. EPA will advise Defendant(s) of its PSD/NSR applicability determination for each plant identified pursuant to paragraph 39 within 60 days of receipt of the documentation required herein for that plant. This determination is for purposes of this Decree only and is not intended to supplant the authority of delegated state agencies to require PSD or NSR permits at plants encompassed by this Decree.

43. Except for plants identified pursuant to paragraph 39, each Defendant shall notify the state in which each of the wood panel plants listed in paragraph 38 is located of its intention to apply for and obtain a new or modified PSD or New Source permit for the plant by June 1, 1993.

44. Within 60 days of receipt of EPA's PSD/NSR applicability determination for a plant identified pursuant to paragraph 39 Defendant shall notify the state in which the plant is located of its intention to apply for such permit as EPA has determined is required by this Decree under the circumstances.

45. The notices required pursuant to paragraphs 43 or 44 shall each include an application for the appropriate permit for the plant which is substantially complete, both technically and administratively, except as to any air quality modelling or offset designations which may be required and the final specifications for

the pollution control system which will be installed at the plant pursuant to this Decree.

46. Within 30 days of EPA acceptance of the final specifications for the pollution control equipment to be installed at a plant pursuant to this Decree, Defendants shall incorporate such information into the permit application identified in this section.

47. Within 90 days of EPA acceptance of the final specifications for the pollution control equipment to be installed at a plant pursuant to this Decree Defendants shall: (1) complete any required air modelling and offset designation; (2) submit substantially complete (both technically and administratively) permit applications pursuant to the PSD requirements or Section 173 of the Act, as specified in this section; (3) take any other steps necessary to obtain the permits or amended permits specified in this section and (4) report to EPA whether all such permits specified in this section have been issued and, if not, the reasons why such permits have not been issued.

48. If either Defendant is notified by a properly delegated permitting agency that additional meteorological and/or air quality data are required before the air quality impact modelling can be performed, such Defendant shall advise EPA of this requirement and of the amount of time Defendant believes is necessary to acquire and evaluate the necessary data. Such Defendant shall be provided such additional time as EPA, the permitting agency and the

Defendant agree is necessary to meet the permitting agency's requirements. Any dispute between EPA and a Defendant respecting the amount of time that should be allotted to comply with a permitting agency's requirements shall be subject to the dispute resolution procedures of Section XII of this Decree.

C. INSTALLATION OF IMPROVED POLLUTION CONTROL SYSTEMS

i. Technical Description and Performance Requirements

49. The improved pollution control system shall be based on regenerative thermal oxidation ("RTO") technology and, when installed as a full scale system, shall achieve 95 per cent capture and control of total suspended particulate matter (herein, "TSP") and 90 per cent capture and control of VOC's from dryers (including all combustion devices ducted to dryers) and presses (including press vents and cooling stands), (herein, "improved pollution control system").

50. The capture and control efficiency for dryer emissions shall be determined by comparing the quantity of emissions from the effluent of the product separation cyclone with emissions from the RTO stack.

51. The pollution control system shall include, but not be limited to, partial exhaust gas recycling and low NOx burners (or equivalent low NOx technology, such as direct natural gas injection) features to minimize the generation or passthrough of pollutants.

52. The improved pollution control systems shall achieve the above specified capture and control efficiencies at a cost of less than \$10,000 per ton of VOC removed, based on permitted plant operating conditions and constant 1992 dollars. This cost includes the capital cost of the system, amortized over the expected life of the system (15 years), utilizing a discount rate based on LP's weighted average cost of capital for calendar years 1990 through 1992 and a future inflation rate equal to the average inflation for the same period. This cost also includes operating costs and maintenance costs for the system, but does not include the cost of inorganic particulate matter control units which may be required to meet the TSP capture and control efficiencies specified herein. The parties recognize that the first system to be installed may incur some costs of initial system engineering that should be amortized over all units to be installed in determining whether this specification has been met.

ii. Installation and Testing Of The First Improved Pollution Control System

53. By March 16, 1993, LP shall contract for the procurement and installation of the first of the improved pollution control systems as specified in this subsection. By May 30, 1993, LP shall submit to EPA for review and approval, the preliminary design for the proposed system. This system shall be designed for and installed at LP's Urania, Louisiana MDF plant.

54. By June 1, 1993, LP shall submit an application for a permit to install this pollution control system at its Urania MDF plant to the appropriate permitting authority. By this date LP shall provide EPA a copy of its application for a permit to install the pollution control system and final design information for the proposed system.

55. LP shall install this improved pollution control system at its Urania MDF plant by November 15, 1993.

56. By November 15, 1993, LP shall also submit to EPA for review and approval a proposed testing protocol to determine whether the pollution control efficiency and cost specifications set out in this section have been met and such information as is necessary to document the adequacy of the proposed testing protocol. The testing protocol shall reflect the maximum potential to emit for the plant pursuant to PSD regulations and LP's proposed maximum future production capacity for the plant.

57. EPA will complete its review of LP's proposed testing protocol and advise LP of its views with respect to the proposal within 30 days of receipt of the proposed protocol and the supporting documentation required herein.

58. LP shall complete shakedown and debugging of the first improved pollution control system, thereby rendering it fully operational, by December 15, 1993.

59. By February 15, 1994, LP shall provide to EPA documentation of the results of acceptance testing conducted in

accordance with the testing protocol approved by EPA and a statement of whether Defendant believes that the pollution control efficiency and cost criteria specified herein have been met.

60. EPA shall advise LP within 30 days of receipt of the acceptance test results whether it agrees with LP's view of the performance of the first improved pollution control system.

61. If the test results are inconclusive, or if they establish that the pollution control system, as designed, will not meet the pollution control efficiency or the cost criteria specified herein, LP shall be permitted such additional time as may be necessary to modify and retest the first system. If the parties cannot agree on the amount of additional time, if any, that should be provided for additional modification and/or testing of this system, the dispute resolution provisions of Section XII shall apply.

62. If, following additional testing and engineering, LP establishes that the first improved pollution control system cannot meet the pollution control system efficiency and the cost criteria specified herein, the parties shall meet and attempt to agree on the appropriate modifications of these criteria. If they fail to agree, the matter shall be submitted to the Court pursuant to the Dispute Resolution provisions of Section XII of this Decree.

iii. Installation Of EPA Approved Pollution Control Devices At Defendants' Plants

63. In accordance with the schedules and procedures set out herein and subject to the technical and cost criteria set forth in

Section V.C.i., Defendant(s) shall install either the improved pollution control system or, where authorized pursuant to Section V.C.iv. of this Decree, the alternate pollution control system, at each of the following plants:

Corrigan, Texas OSB plant
New Waverly, Texas OSB plant
Urania, Louisiana OSB plant
Sagola, Michigan OSB plant
Two Harbors, Minnesota OSB plant
Hayward, Wisconsin OSB plant
Chilco, Idaho OSB plant
Clayton, Alabama MDF plant
Houlton, Maine OSB plant
Silsbee, Texas OSB plant
Center, Georgia OSB plant

64. The schedule for procurement, installation and testing of improved pollution control systems meeting the requirements of section V.C.i. is as follows:

PHASE I

Defendant(s) submit preliminary design information for an improved pollution control system for not less than three plants identified in paragraph 63 (herein, "Phase I" plants) June 1, 1993

EPA to complete review of preliminary design for improved pollution control systems for Phase I plants July 1, 1993

Defendant(s) contract for installation of EPA approved improved pollution control systems at Phase I plants and submit applications for permits (or amended permits) to install such systems to the appropriate permitting agencies August 1, 1993, or 10 days after entry of the Decree, whichever occurs later

Defendant(s) submit final design information for improved pollution control systems for Phase I plants to EPA for review and approval October 1, 1993

EPA to complete review of final design for improved pollution control systems for Phase I plants November 1, 1993

Defendant(s) complete installation of improved pollution control systems at Phase I plants and submit to EPA for review and approval proposed acceptance testing protocols (and documentation) for determining compliance with the technical and performance requirements of this section May 1, 1994

Defendant(s) complete shakedown and debugging and commence full time operation of improved pollution control systems at Phase I plants in conformance with the performance requirements of Section V.C.i.. EPA to complete review of proposed testing protocols June 1, 1994

Defendant(s) submit to EPA the results of acceptance testing for improved pollution control systems installed at Phase I plants August 1, 1994

PHASE II

Defendant(s) submit preliminary design information for an improved pollution control system for all plants identified either in paragraph 63 or pursuant to Section VI.C. and that were not included in Phase I (herein, "Phase II" plants) March 1, 1994

EPA to complete review of preliminary design for improved pollution control systems for Phase II plants April 1, 1994

Defendant(s) contract for installation of EPA approved improved pollution control systems at Phase II plants and submit applications for permits (or amended permits) to install such systems to the appropriate permitting agencies. May 1, 1994

Defendant(s) submit final design information for improved pollution control systems for Phase II plants to EPA for review and approval July 1, 1994

EPA to complete review of final design for improved pollution control systems for August 1, 1994

Phase II plants

Defendant(s) complete installation of improved February 1, 1995
pollution control systems at Phase II plants
and submit to EPA for review and approval
proposed acceptance testing protocols (and
documentation) for determining compliance
with the technical and performance require-
ments of this Section

Defendant(s) complete shakedown and debugging March 1, 1995
and commence full time operation of improved
pollution control systems at Phase II plants
in conformance with the performance require-
ments of Section V.C.i.. EPA to complete review
of proposed testing protocols

Defendant(s) submit to EPA the results of June 1, 1995
acceptance testing for improved pollution
control systems installed at Phase II plants

65. EPA's review and approval of proposed preliminary and final designs for pollution control systems will be based, at least in part, on representations of Defendants and their contractors. Accordingly, while EPA's approval of such designs constitutes an agreement that installation of such approved systems may proceed, it does not affect Defendants' obligation to install pollution control systems that meet the performance requirements of Section V.C.i..

66. The testing protocols shall reflect the maximum potential to emit for the plant pursuant to PSD regulations and the Defendant's proposed maximum future production capacity for the plant.

67. EPA shall advise Defendants within 30 days of receipt of the acceptance test report for the improved pollution control

system at a plant whether it agrees with the Defendants' view of the performance of the system.

68. If the test results for the system installed at a plant are inconclusive, or if they establish that the pollution control system, as installed, will not meet the pollution control efficiency specified herein, Defendants shall be permitted such additional time as may be necessary to modify and retest the system. However, in no event shall such period for acceptance testing of the system be extended beyond six months from the notice to Defendant(s) of EPA's view of the results of the first acceptance test results without further order of this Court.

69. If, following additional testing and engineering, Defendants establish that the pollution control system installed at a plant cannot meet the pollution control system efficiency and the cost criteria specified herein, the parties shall meet and attempt to agree on the appropriate modifications of these criteria. If they fail to agree, the matter shall be submitted to the Court pursuant to the Dispute Resolution provisions of Section XII of this Decree.

iv. Option To Install An Alternate Pollution Control System

70. Subject to the requirements of this subsection, Defendants may elect to install an alternate pollution control system, in lieu of the RTO-based pollution control system specified

in Section V.C.i. of this Decree at any of the plants identified in Section V.C.iii. of this Decree (or, if applicable, in Section VI.C.), provided that they establish that the alternate pollution control system meets the performance requirements for the improved pollution control system set out in Section V.C.i and further that the alternate pollution control system is installed in accordance with the schedules set out in Section V.C.iii.

71. The alternate pollution control system shall achieve 95 per cent capture and control of TSP and 90 percent capture and control of VOCs from dryers (including all combustion devices ducted to dryers) and presses (including press vents and cooling stands).

72. The cost limitation in Section V.C.i. also shall be applicable to the alternate pollution control systems. However, this limitation shall not serve to justify a reduced performance standard for an alternative pollution control system where the improved pollution control system is capable of meeting the capture and control efficiencies of Section V.C.i. within the specified cost limitation.

73. If either Defendant decides to install the alternate pollution control system at a plant identified in Section V.C.iii. it shall advise the United States of its intent to do so not later than 60 days before it is required by section V.C.iii. to contract for the procurement of the improved pollution system. At this time such Defendant(s) shall provide to EPA preliminary design

information for the proposed system and data which demonstrate that the proposed system will meet the performance specification of this subsection within the cost limitation of Section V.C.i..

D. INSTALLATION OF ENHANCED MONITORING DEVICES

74. Within 6 months of installation of the approved pollution control system at a plant pursuant to this Decree, Defendants shall establish an EPA-approved enhanced monitoring program at that plant.

75. This program shall provide for continuous emission monitoring of emissions from the pollution control systems required by this Decree at the above-named plants for CO, PM (utilizing Opacity as the measured parameter) and VOCs. Such continuous emission monitors shall be properly functioning at least 95 per cent of the time that the plant is operating. Continuous monitor availability shall be computed on a daily basis.

76. Opacity monitoring of emissions from stacks shall be conducted using commercially available transmissometers in accordance with EPA Proposed Method 203 (40 C.F.R. Part 51, Appendix M, 57 Fed. Reg. 46114, October 7, 1992). The transmissometers shall be operated, maintained and calibrated in accordance with the methods and procedures specified in 40 C.F.R. Part 60, Appendix B, Performance Specification 1.

77. Opacity monitoring for fugitive emissions from presses and cooling stands shall be accomplished by first establishing the air flow needed to capture such emissions and then continuously

monitoring such air flow. Failure to maintain the specified air flow shall be considered an exceedance of the relevant fugitive emission limitation.

78. VOC emissions monitoring shall be conducted by establishing, through testing or otherwise, the parameters needed to be controlled in order to ensure proper operation of the improved pollution control system installed at a plant (e.g., temperature and air flow for an RTO device) and installing continuous monitors for those parameters in lieu of commercially available VOC monitors.

79. CO emission monitoring shall be conducted using commercially available continuous CO emission monitors. Such monitors shall meet the requirements of 40 C.F.R., Part 60, Appendix B, Performance Standards 2 and 4 and the Quality Assurance and Quality Procedures established in 40 C.F.R. Part 60, Appendix F.

80. If any emission monitor required by this subsection fails to meet the specified performance, it shall be repaired or replaced within seven days of the time when any employee of Defendant first learned of the deficiency. Defendants shall develop an operation and maintenance program (including stocking necessary spare parts) to ensure that the continuous monitors are available as required.

81. The enhanced monitoring requirements identified in this section are to ensure continuous compliance and to identify any periods of noncompliance of the source. The information and data

collected under this provision may also be used to determine compliance with opacity and other emission limitations applicable to the plant.

E. ENVIRONMENTAL MANAGERS

82. Not later than 90 days after entry of this Decree, each Defendant shall identify to the United States the plant environmental manager for each plant listed in Paragraph 92 herein. While these employees may be assigned other duties not inconsistent with their performance as plant environmental manager, the plant environmental manager shall report to and be supervised by a corporate environmental manager either directly or through a division environmental manager who reports to the corporate environmental manager. Such plant environmental managers shall have demonstrated competence in environmental compliance matters.

83. Not later than 90 days after entry of this Decree, each Defendant shall also identify to the United States one official of the company responsible for corporate environmental compliance (herein, "the corporate environmental manager").

84. Each plant environmental manager shall prepare a written monthly environmental compliance report (including recommendations for corrections of potential violations of applicable environmental statutes, regulations and permit requirements) to the plant manager, division manager, division environmental manager, and corporate environmental manager. In addition, the plant environmental manager shall immediately report to the plant

manager, division manager, division environmental manager, and corporate environmental manager all environmental compliance issues that require prompt attention.

85. On a quarterly basis, the corporate environmental manager shall coordinate a joint report of the plant environmental managers to the Chairman and President ("Chairman") and the Board of Directors of the corporation outlining the progress of environmental compliance addressed under this Decree and any unresolved environmental compliance measures under this Decree. This report shall also include a section by the corporate environmental manager on the status of environmental compliance and activities under the Act to the Chairman and Board of Directors. These reports shall be retained by the Defendants for at least five years from the date of the reports.

86. The corporate environmental manager shall advise the Chairman and the Board of Directors of environmental compliance issues under the Act that will not be corrected within three months of the determination that correction is needed, that require approvals from the Board of Directors, or that exceed the authority of the Division Managers (for LP) or the President (for Kirby Forest Industries) to correct.

87. At least once per year, the corporate environmental manager will brief the Chairman and the Board of Directors on past and anticipated environmental compliance issues under this Decree. The corporate environmental manager shall also discuss proposals

for resolving such issues. Minutes of such meetings shall be kept and retained by the Defendants for not less than five years.

88. All reports of plant or corporate environmental managers required by this Decree shall be retained by Defendants for not less than five years.

89. If an environmental manager (either plant, division or corporate) is unable to perform his or her duties for a period in excess of 30 days, within 10 days of learning of such absence, Defendant shall designate in writing an interim environmental manager for a period of up to 90 days. In the event an environmental manager resigns, is dismissed, is reassigned or otherwise is unable to perform his or her duties for a period in excess of 90 days, Defendant shall advise EPA of the relevant facts and shall designate, by means of a notice to EPA, a replacement environmental manager as soon as practicable, but in any event within 90 days of learning of such absence.

F. ENVIRONMENTAL AUDITS

i. Scope of Work

90. The purpose of the environmental audit required by this Decree is to provide a review of the Clean Air Act compliance status, programs and practices of the Defendants' management and its wood panel plants identified in Paragraph 92 after implementation of the management, pollution control, and testing requirements of this Decree.

91. The audit shall include an evaluation of the recordkeeping practices, operating practices, pollution control strategies and technology and the management procedures of the Defendants as they relate to compliance with the Act at the plants identified in Paragraph 92 below.

92. In addition to an audit of the management structure and practices and procedures utilized by corporate personnel located at headquarters operations in Portland, Oregon, the audit shall encompass activities and operations at all of Defendants' wood panel plants in operation in the United States as of the date of the audit, and procedures applicable to any new domestic wood panel plants that Defendants may contemplate at any time prior to preparation of the final Audit Report. The existing wood panel plants subject to the audit are as follows:

Oriented Strand Board Mills

Hayward, Wisconsin
Tomahawk, Wisconsin
Houlton, Maine
Newberry, Michigan
Sagola, Michigan
Two Harbors, Minnesota
Chilco, Idaho
Montrose, Colorado
Dungannon, Virginia
Corrigan, Texas
New Waverly, Texas
Silsbee, Texas
Urania, Louisiana
Hanceville, Alabama
Jackson County, Georgia

Medium Density Fiberboard/Hardboard Mills

Clayton, Alabama
Urania, Louisiana
Oroville, California

Particleboard Mills

Arcata, California
Silsbee, Texas
Missoula, Montana

Plywood Mills

Bon Weir, Texas
Cleveland, Texas
Jasper, Texas
Lufkin, Texas
New Waverly, Texas
Urania, Louisiana
Logansport, Louisiana

93. This audit shall be conducted by an independent environmental auditing firm retained by the Defendants and approved by EPA. The audit firm shall conduct its independent audit and prepare a report of its findings and recommendations.

94. To conduct this review, the audit firm must become familiar with at least the following:

1. general facility layout and plant operations;
2. plant production capacities;
3. the effect of any modifications to the plant since 1977 on actual and potential air emissions;
4. emission monitoring, recordkeeping and reporting procedures;
5. applicable permit terms and conditions;
6. past compliance history at each plant;
7. technical issues that affect the ability of the plant to comply with all applicable requirements of the Act, including state and Federal regulations and permit terms and conditions issued pursuant to the Act; and
8. corporate and plant management practices and procedures to assure compliance with Act requirements.

ii. Selection Of Audit Firm(s)

95. Not later than sixty (60) days after the scheduled date for the startup of the last pollution control device required by Section V.C. or VI.C. of this Consent Decree, the Defendant shall submit the name(s) of a proposed audit firm or firms to EPA for approval.

96. The audit firm(s) shall be expert in environmental auditing, environmental management systems, and compliance with environmental regulations. The audit firm(s) shall have a detailed understanding of all applicable Act programs, including, but not limited to, the SIP, NSR, and PSD programs, as well as new programs required by the Clean Air Act Amendments of 1990.

97. The audit firm must be capable of exercising the same independent judgment that a Certified Public Accounting firm would be expected to exercise in auditing a publicly held corporation. In addition, the Defendant shall require the proposed audit firm(s) to describe the following:

(1) any stock ownership in Defendants, any parent, subsidiary, or affiliated corporation; and

(2) all contractual agreements the audit firm has had with either of the Defendants within the past ten years.

This information shall be included in the proposal submitted to EPA.

98. EPA shall have thirty (30) days to accept or reject the Defendants' proposed audit firm(s). If EPA does not respond within

thirty (30) days, then Defendants proposed audit firm(s) shall be deemed accepted by EPA. If EPA rejects the proposed audit firm(s), then the Defendants shall submit the name(s) of an alternate audit firm or firms for EPA's approval not later than thirty (30) days after receipt of notice of EPA's determination.

iii. Preparation Of An Audit Work Plan

99. Not later than thirty (30) days after approval of the audit firm(s) (the "Audit Firm") the Defendants shall submit a proposed Audit Work Plan to EPA for approval. The proposed Audit Work Plan shall include auditing protocols, procedures, and specific tasks for the audit, but shall not restrict the Audit Firm from conducting such inquiries as may be necessary to accomplish the purposes of the Audit.

100. The proposed Audit Work Plan shall also include a schedule for conducting the audit, a schedule for the completion of all tasks set forth in the Scope of Work for the audit, and the names and resumes of those Audit Firm employees who will be primarily responsible for performance of the tasks set forth in the Scope of Work.

101. EPA shall have sixty (60) days from the date of receipt of the Audit Work Plan by Defendants to approve or reject the Audit Work Plan. If EPA comments on the Audit Work Plan, then the Defendant shall submit a revised Audit Work Plan to EPA not later than fifteen (15) days after receiving comments on the proposed Audit Work Plan by EPA. Any dispute concerning the Audit Work Plan

shall be resolved in accordance with the Dispute Resolution Procedures of this Decree.

iv. Audit Procedures

102. The Audit Firm shall have access to and may review any records (except privileged materials such as attorney-client communications and work product prepared in litigation and in anticipation of litigation) which will assist it in determining Defendants' current compliance with applicable regulatory requirements of the Act. The Audit Firm shall focus on determining compliance with applicable regulations under the Act as of the date of the audit. However, the Audit Firm shall also conduct such review of Defendants' records, including state permitting records and historical records, as may be necessary to determine the Defendants' current compliance status. Portions of reports written (in draft or final form) shall be protected under 40 C.F.R. Part 2 to the extent that they contain or would reveal confidential business information.

103. Where necessary to determine the current compliance status of a particular plant, the Audit Firm may be obliged to review publicly available records in state permitting files.

104. The Audit Firm shall have access to all units, areas, equipment, and structures at the Defendants' wood panel plants and shall perform an onsite inspection of each listed plant.

105. The Audit Firm shall observe and review actual operation and maintenance procedures for the Defendants' wood panel plants

and may request such stack tests and other procedures as needed to determine present compliance with the Act and its implementing regulations. Defendants shall arrange for the requested stack test and procedures to be conducted, and the Audit Firm shall be given the opportunity to observe and review such tests and procedures. If Defendants believe that the Audit Firm's request is unreasonable, Defendants shall refer the matter to EPA pursuant to the dispute resolute provisions herein.

v. Audit Report

106. The final Audit Report shall be submitted to the Defendants and to EPA not later than 270 days after EPA's approval of the Audit Work Plan. Two copies of the final Audit Report, shall be provided to EPA.

107. The Audit Report shall describe in detail the pertinent results of the audit, including but not limited to the following:

1. the procedures followed during the audit, including any deviations from the approved work plan;
2. a description of each of the audited plants, including, where necessary to evaluate current compliance, the regulatory history of the plant(s);
3. the current compliance status of each plant, including any potential compliance issues;
4. observed and reported corporate and plant management practices and procedures for assuring compliance with the Act;
5. any observed deviations from Defendants' written operating procedures, including identification of any untimely response to malfunctioning pollution control devices or exceedances of applicable permit limits;

6. recommendations for potential improvements or modifications that should be made to Defendants' environmental compliance management program or operating procedures to achieve and/or maintain compliance with all applicable Act requirements;
7. any other information, which in the judgment of the Audit Firm, merits review by EPA or the Defendants.

VI. ADDITIONAL PROVISIONS

A. SPECIFIC PROVISIONS RELATING TO BOILERS NO. 4 AND 5 AT LP'S OROVILLE, CALIFORNIA FACILITY

108. LP shall comply with the requirements of 40 C.F.R. Part 60, Subparts A and Dc with respect to the construction and operation of Boiler No. 5 at its Oroville, California MDF facility (herein, "Boiler No.5") in accordance with the schedules and other requirements established in this section.

109. Not later than 60 days after entry of this Decree, LP shall:

- a. install and operate an opacity monitor on the stack of Boiler No.5;
- b. install and operate a nitrogen oxides (herein "NO_x") continuous emissions monitor on the stack of Boiler No. 4;
- c. install and operate an oxygen or carbon dioxide diluent continuous emissions monitor on the stack of Boiler No. 4;

- d. submit to EPA for review and approval maintenance and quality assurance plans for the opacity and NO_x and diluent monitors required herein;
- e. submit to EPA for review and approval testing protocols, which comply with the requirements of 40 C.F.R. Part 60, Subpart Dc, for testing particulate emissions from Boiler No. 5.
- f. submit to EPA for review and approval testing protocols for testing carbon monoxide, NO_x, VOCs and particulate emissions from Boiler No. 4.

110. LP shall thereafter maintain and operate such monitors in good working order and shall take all appropriate measures, including, but not limited to, maintaining on-site a sufficient supply of spare parts and scheduling regular maintenance, to minimize the possibility of these monitors being out of service while the boilers are operating.

111. Not later than 120 days after entry of the Decree LP shall complete such testing as may be necessary to demonstrate that operation of Boiler No.4 at its Oroville, California MDF facility (herein, "Boiler No. 4") fully conforms to all emission limitations in construction and/or operating permits issued by the Butte County Air Pollution Control District.

112. Not later than 120 days after entry of this Decree, LP shall conduct the performance test set forth at 40 C.F.R. Part 60,

Appendix B, Performance Specification Test 1 (herein, "opacity monitor performance test") on the opacity monitor specified herein and the performance test set out at 40 C.F.R. Part 60, Appendix B, Performance Specification Test 2 (herein, "NO_x monitor performance test") on the NO_x monitor specified herein, and the performance test set out at 40 C.F.R. Part 60, Appendix B, Performance Specification Test 3 (herein, "diluent monitor performance test") on the diluent monitor specified herein.

113. If the NO_x monitor, the opacity monitor, or the diluent monitor fails to pass the performance test required above, LP shall replace such monitor(s) not later than 30 days after the date of the test. In such event, LP shall again conduct the appropriate monitor performance test(s) on the replacement monitor(s) not later than 30 days after the failure of the original monitor(s). LP shall provide the results of any such retesting to EPA and Butte County not later than 30 days after the date of the test.

114. Upon EPA approval of the proposed maintenance and quality assurance plans LP shall thereafter implement such plans.

115. Not later than 60 days after the date of EPA approval of each of the test protocols identified above, LP shall conduct the testing specified therein and shall thereafter provide to EPA and Butte County the results of such test not later than 60 days after the date of the test.

116. All reports, notifications and documents required to be filed pursuant to 40 C.F.R. Part 60 with respect to Boilers 4 and 5 at LP's Oroville, CA, facility shall be mailed to:

Director, Air & Toxics Division
United States Environmental Protection Agency
75 Hawthorne Street, A-3-3
San Francisco, California 94105

Copies of such documents shall be mailed to the Butte County Air Pollution Control District.

B. Additional Provisions Relating To Interim Control of CO Emissions From Konus Units At LP's Chilco, Idaho Facility

117. Not later than 30 days after entry of the Consent Decree, LP shall submit to EPA for review and approval proposed operation and maintenance procedures to minimize emission of CO from Konus units at LP's Chilco, Idaho facility. Such procedures shall be based on a determination and evaluation of those operating factors that currently contribute to excess CO emissions from those units and shall include monitoring of CO levels and of significant contributing factors to CO emission (e.g., excess air, furnish moisture content). Such procedures shall also include sufficient maintenance, recordkeeping and spare part stocking procedures to minimize excess CO emissions attributable to those factors

118. EPA shall review LP's proposed procedures within 30 days of submission.

119. LP shall commence complete utilization of its proposed procedures as soon as practicable.

120. LP shall commence complete utilization of the EPA-approved procedures as soon as practicable, but in any event no later than 60 days after notice of EPA approval of such procedures.

C. Additional Provisions Relating To PSD And New Source Review At LP's Tomahawk, WI, Missoula, MN and Oroville, CA Facilities

121. Not later than 90 days after entry of the Decree, LP shall submit a testing and evaluation protocol sufficient to determine whether any prior construction activities at its Tomahawk, Wisconsin; Oroville, California or Missoula, Montana facilities were subject to the review and permitting provisions of the PSD or New Source review programs for any of the regulated pollutants. If testing is needed to determine whether such requirements were applicable to any of LP's prior construction activities at the plant, such testing shall be conducted at maximum plant capacity considering applicable Federally-enforceable permit limits.

122. If such testing is necessary, it shall be conducted by LP within 60 days of LP's receipt of EPA's written approval of the testing and evaluation protocol and the test results provided to EPA not later than 60 days after completion of the testing.

123. In the event that it is determined by either LP or EPA that one or more construction activities at any of these facilities were subject to PSD or NSR review and/or permitting requirements at the time such construction was commenced, LP shall submit to the

state, not later than 60 days after such determination, an application for the necessary permit that is substantially complete (both administratively and technically) except for the required air pollution modelling and the detailed description of the pollution control devices proposed by LP for the facility.

124. If it is determined that one or more prior construction activities at any of these facilities were subject to PSD or NSR review or permitting requirements at the time such construction was commenced, and that significance levels for VOCs were exceeded, the provisions of Section V shall apply to each such affected facility, including but not limited to, the provisions relating to:

a) which emission points must be controlled(i.e., dryers, (including all combustion devices ducted to dryers) and presses (including press vents and cooling stands));

b) the cost limitation (\$10,000 per ton of VOC's removed, excluding the cost of particulate control devices incorporated into the system) and the capture and control efficiencies (95 per cent for TSP and 90 per cent for VOCs);

c) measuring, testing and dispute resolution procedures; and

d) enhanced monitoring requirements.

125. The permitting, notice and PSD/NSR applicability review requirements and schedules set out in Section V.B. of this Decree apply to any construction activities at these facilities that are determined to have been subject to PSD or New Source review requirements, except that the requirements of Paragraphs 39 and 43 shall be met with respect to each facility not later than 60 days

after the determination by either EPA or LP that prior construction activity at that facility was subject to PSD or New Source Review in lieu of the dates set out in those paragraphs.

126. The schedule for Phase II plants set out in Section V.C.iii shall apply where installation of improved pollution control devices at one or more of the three plants identified above is required pursuant to this subsection.

D. Additional Specific Provisions Relating to LP's Missoula, Montana, Particleboard Plant.

127. Not later than 3 months after the date of entry of the Consent Decree, LP shall submit to EPA and the State of Montana for review and approval final plans for a program designed to minimize fugitive emissions from the wood furnish pile at its Missoula, Montana particleboard facility ("wood furnish pile"). Such program shall include a combination of wind screens or berms, maintaining a cover of large diameter materials in areas of the pile not in active use, and, as appropriate, wetting the pile and other operational measures.

128. EPA will complete its review of the plans for minimizing fugitive emissions from the wood furnish pile within 60 days of receipt of such plans.

129. As soon as practicable, but in any event not later than 6 months after EPA and State approval of a fugitive emission minimization program for the wood furnish pile, LP shall fully

implement the approved program and shall cease outside storage of wood furnish at the Missoula, Montana particleboard facility, except in accordance with the approved fugitive minimization program.

E. Additional Specific Provisions Relating to Operating Restrictions At Facilities That Do Not Currently Have Such Restrictions In State Permits

130. LP shall comply with the following operating limitations until such limits are superceded in federally enforceable permits issued by the appropriate permitting authority, or state administrative or judicial orders pending issuance of a federally enforceable permit:

Urania, LA (MDF)
maximum dryer throughput - 15,500 pounds of dry furnish per hour

Urania, LA (OSB)
maximum dryer throughput - 16,800 pounds of dry furnish per hour

Chilco, ID (OSB)
maximum press production - 79,000 TFP per year
maximum dryer throughput - 20,700 pounds of dry furnish per hour

Clayton, AL (MDF)
maximum dryer throughput - 15,500 pounds of dry furnish per hour

VII. REPORTING AND RECORDKEEPING

131. Beginning with the Defendants' first full fiscal quarter after entry of this Consent Decree, the Defendants shall submit a quarterly progress report to EPA within thirty (30) days after the end of Defendants' fiscal quarter. This report shall contain the following:

- a. daily production at each plant identified in Section V.C. for the quarterly period (in pounds based on average panel density and in square feet on a 3/8" basis for OSB, 3/4" basis for MDF and particle board and 1/8" for hardboard);
- b. a summary of the enhanced monitoring data required by the Decree for the quarter;
- c. progress report on the implementation of the requirements under Sections V and VI; and
- d. a description of any problems anticipated with respect to meeting the compliance program requirements.

Defendants shall provide the United States with a copy of their Fiscal Calendar for the forthcoming fiscal year by January 15 of each year during the pendency of this Decree.

132. The quarterly report shall be certified by the corporate environmental manager as follows:

I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to assure qualified personnel properly gather and evaluate the information submitted. Based on my directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

133. Within thirty (30) days of the scheduled date for completion of each of the requirements under Section V or VI or in the first quarterly report after completion of a requirement of Section V or VI, whichever occurs first, Defendant(s) shall submit a written report to EPA advising that such requirement was completed.

VIII. CIVIL PENALTY

134. Within thirty (30) calendar days of entry of this Decree, the Defendants shall pay to the United States a civil penalty pursuant to Section 113 of the Act, 42 U.S.C. § 7413 in the amount of eleven million and one hundred thousand dollars (\$11,100,000.00). Payment of this civil penalty and performance of the other terms of this Decree shall be in full satisfaction of the United States' claims as alleged in the Complaint and the Notices of Violation referenced herein. The civil penalty shall be paid by cashier's check or certified check in the sum stated above made payable to the "Treasurer, United States of America," and sent to

United States Attorney
Suite 1000
600 Jefferson Street
Lafayette, Louisiana 70501

135. A photocopy of the check shall be sent to the United States as set out in the Notice provision of Section XIII of this Decree.

IX. STIPULATED PENALTIES

136. The Defendants shall pay stipulated penalties to the United States for each failure by the Defendants to comply with the terms of this Consent Decree as follows:

(a) for failure to contract for installation of the first improved pollution control system at its Urania MDF plant by March

16, 1993, as specified in Section V.C.i. of this Decree - \$25,000 per day;

(b) for failure to complete construction of the improved pollution control system specified in Section V.C.i. and V.C.ii. of this Decree at its Urania, MDF plant by November 15, 1993, per day;

1st through 30th day after deadline	\$10,000
31st through 60th day after deadline	\$15,000
Beyond 60th day	\$25,000

note: since debugging and shakedown occur after November 15, 1993, this penalty only applies to a failure to complete construction of the pollution control system set out in the plans and specifications approved by EPA pursuant to paragraphs 53 and 54 of this Decree;

(c) for each failure to apply for PSD or NSR permits as required by Sections V.B., V.C.ii, or VI.C. of this Decree, per day per plant;

1st through 30th day after deadline	\$2,500
31st through 60th day after deadline	\$5,000
Beyond 60th day	\$7,500

(d) for each exceedance after the date of entry of this decree of the daily production and dryer inlet temperature limits for certain plants, as specified in Section VI.E. of this Decree or in the current operating permits for plants listed in Attachment A, or in applicable permit modifications or state administrative or judicial orders subsequent to execution of this Decree by

Defendants which supersede limits in effect for such plants as of the date of execution of this Decree by Defendants, \$2,500 per day for each such plant at which there is an exceedance on that day. Temperature excursions caused by upset conditions qualifying as an excusable upset under the applicable SIP shall not be subject to the stipulated penalty; .

(e) for each failure after the date of entry of the decree to comply with special conditions "m" and "n" relating to PM in Maine DEP License No. A-327-72-A-R, dated April 7, 1988, at LP's Houlton, Maine facility, \$2,500 per day for each such day on which there is one or more exceedance.

(f) for each failure to comply with the schedule for installing pollution controls, as specified in Sections V.C. and VI.C. of this Decree, per day per plant:

1st through 30th day after deadline	\$2,500
31st through 60th day after deadline	\$5,000
Beyond 60th day	\$7,500

(g) for each failure to comply with the schedule for conducting testing or for installing enhanced monitoring devices, as specified in Sections V.D. and VI.C. of this Decree, per day per

plant:	1st through 30th day after deadline	\$1,000
	31st through 60th day after deadline	\$3,000
	Beyond 60th day	\$5,000

(h) for each failure to designate plant and corporate environmental managers, as specified in section V.E. of this Decree, per day per manager:

1st through 30th day after deadline	\$2,500
31st through 60th day after deadline	\$5,000
Beyond 60th day	\$7,500

(i) for failure to perform the environmental audit of its wood panel plants, as specified in Section V.F. of this decree:

1st through 30th day after deadline	\$1,000
31st through 60th day after deadline	\$3,000
Beyond 60th day	\$7,500

(j) for each failure to submit reports, as specified in Sections V.C., V.E and VI of this Decree, per day per report:

1st through 30th day after deadline	\$ 250
31st through 60th day after deadline	\$ 500
Beyond 60th day	\$1,000

(k) for failure to pay the civil penalty, as specified in Section VIII of this Decree, \$25,000 per day plus interest on the amount overdue at the rate specified in 31 U.S.C. § 3717.

(l) for failure to pay or escrow stipulated penalties, as specified in this section, \$2,500 per day per penalty demand.

137. Defendants shall pay stipulated penalties upon written demand by the United States no later than thirty (30) days after Defendants receive such demand. Stipulated penalties shall be paid

to the United States in the manner set forth in Section VIII of this Decree.

138. Should either Defendant dispute its obligation to pay part or all of a stipulated penalty, it may avoid the imposition of the stipulated penalty for failure to pay a penalty due to the United States by placing the disputed amount demanded by the United States in a commercial escrow account pending resolution of the matter and by invoking the Dispute Resolution provisions of Section XII within the time provided in this Section for payment of stipulated penalties. If the dispute is thereafter resolved entirely in Defendant's favor, the escrowed amount plus accrued interest shall be returned to the Defendant establishing the account, otherwise the United States shall be entitled to the escrowed amount that was determined to be due plus the interest that has accrued on such amount, with the balance, if any, returned to the Defendant.

139. Stipulated penalties are not the United States' exclusive remedy for Defendants' violation of this consent Decree. The United States reserves the right to pursue any other remedies to which it is entitled, including, but not limited to, additional injunctive relief for Defendants' violations of the Decree or the Act.

X. RIGHT OF ENTRY

140. Any authorized representative of the EPA, including independent contractors, upon presentation of credentials, shall

have a right of entry upon the premises of Defendants' plants identified herein at any reasonable time for the purpose of monitoring compliance with the provisions of this Consent Decree, including inspecting plant equipment, and inspecting and copying all records maintained by Defendants required by the Consent Decree. Defendants shall retain such records for a period of five (5) years after termination of the Consent Decree. Nothing in this Decree shall limit the authority of EPA to conduct tests and inspections under Section 114 of the Act, 42 U.S.C. § 7414.

XI. FORCE MAJEURE

141. If any event occurs which causes or may cause a delay in the compliance with any provision of this Consent Decree, Defendants shall notify the Plaintiff in writing as soon as practicable, but in any event within twenty-one (21) days of when Defendants first knew of the event or should have known of the event by the exercise of due diligence. In this notice Defendants shall specifically reference this Section of the Consent Decree and describe the anticipated length of time the delay may persist, the cause or causes of the delay, and the measures taken or to be taken by Defendants to prevent or minimize the delay and the schedule by which those measures will be implemented. Defendants shall adopt all reasonable measures to avoid and minimize such delays.

142. Failure by Defendants to comply with the notice requirements of this section as specified above shall render this

Section voidable by the United States as to the specific event for which one of the Defendants has failed to comply with such notice requirement, and, if voided, is of no effect as to the particular event involved.

143. The United States shall notify the appropriate Defendant in writing of its agreement or disagreement with such Defendant's claim of a delay or impediment to performance within thirty (30) days of receipt of the Force Majeure notice provided under this Section. If United States agrees that the violation has been or will be caused by circumstances beyond the control of the Defendants or any entity controlled by either Defendant, including their contractors, and that the Defendants could not have reasonably foreseen and prevented such delay by the exercise of due diligence, the parties shall stipulate to an extension of the particular compliance requirement(s) affected by the delay by a period not exceeding the delay actually caused by such circumstances. Such stipulation shall be filed as a modification to this Consent Decree pursuant to the modification procedures established in this Consent Decree. The Defendants shall not be liable for stipulated penalties for the period of any such delay.

144. If the United States does not agree with the Defendant(s)' claim of a delay or impediment to performance, either party may submit the matter to the Court for resolution pursuant to the dispute resolution procedures established in this Consent Decree. If either Defendant submits the matter to the Court for

resolution and the Court determines that the violation has been or will be caused by circumstances beyond the control of the Defendants' or any entity controlled by the Defendants, including its contractors, and that the Defendants could not have reasonably foreseen and prevented such delay by the exercise of due diligence, such Defendant shall be excused as to that violation and delay (including stipulated penalties), but only for the period of time the delay continues due to such circumstances.

145. The Defendants shall bear the burden of proving that any delay of any requirement of this Consent Decree was caused by or will be caused by circumstances beyond their control or the control of any entity controlled by either of them, including their contractors, and that the Defendants could not have reasonably foreseen and prevented such delay by the exercise of due diligence. The Defendants shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates.

146. Unanticipated or increased costs or expenses associated with the performance of the Defendants obligations under this Consent Decree shall not constitute circumstances beyond the control of the Defendants, or serve as a basis for an extension of time under this Section. However, failure of a permitting authority to issue a necessary permit in a timely fashion may be a

Force Majeure where the failure of the permitting authority to act is beyond the control of the Defendants and Defendants have taken all steps available to them to obtain the necessary permit including, but not limited to:

- a. submitting a complete permit application;
- b. responding to requests for additional information by the permitting authority in a timely fashion;
- c. accepting lawful permit terms and conditions; and
- d. prosecuting appeals of any unlawful terms and conditions imposed by the permitting authority in an expeditious fashion.

XII. DISPUTE RESOLUTION

147. The dispute resolution procedure provided by this section shall be available to resolve all disputes arising under this Consent Decree, provided that the party making such application has made a good faith attempt to resolve the matter with the other party.

148. The dispute resolution procedure required herein is invoked upon written notice by one of the parties to this Decree to another advising of a disputes pursuant to this Section. The notice shall describe the nature of the dispute, and shall state the noticing party's position with regard to such dispute. The party receiving such a notice shall acknowledge receipt of the notice and the parties shall expeditiously schedule a meeting to discuss the dispute informally in accordance with paragraph 149 of

this Section not later than fourteen (14) days from the receipt of such notice.

149. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting between representatives of the United States and one of the Defendants, unless the parties' representatives agree to extend this period.

150. In the event that the parties are unable to reach agreement during the informal negotiation period, the United States shall provide the Defendants with a written summary of its position regarding the dispute. The position advanced by the United States shall be considered binding unless within thirty (30) calendar days of the Defendants' receipt of the written summary of the United States position, the Defendants file with this Court a petition which describes the nature of the dispute. The United States shall respond to the petition within forty-five (45) calendar days of filing.

151. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this section may be shortened upon motion of one of the parties to the dispute.

152. Notwithstanding any other provision of this Consent Decree, in dispute resolution, this Court shall not draw any

inferences nor establish any presumptions adverse to either party as a result of invocation of dispute resolution or the parties' inability to reach agreement.

153. As part of the resolution of any dispute submitted to dispute resolution, the parties, by agreement, or this Court, by order, may, in appropriate circumstances, extend or modify, the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of dispute resolution. Defendants shall be liable for stipulated penalties for their failure thereafter to complete the work in accordance with the extended or modified schedule.

XIII. GENERAL PROVISIONS

154. Effect of Settlement. This Decree is not a permit, compliance with its terms does not guarantee compliance with all applicable Federal, State and Local laws and regulations. The pollution control system efficiencies specified in Section V of this Decree are not intended to and shall not operate to require the adoption of any particular emission limit or condition in final state or Federal permits for the affected plants.

155. Satisfaction of all of the requirements of this Consent Decree constitutes full settlement of, and shall resolve all civil liability of the Defendants to the United States for the claims alleged either in the Complaint filed in this action or in the Notices of Violation referenced herein.

156. The parties recognize that it may not be possible for Defendants to comply with VOC emission limits for dryers and press vents contained in operating permits at plants listed in Section V.C.ii. and V.C.iii. In consideration of the agreement by Defendants, contained herein, to vigorously pursue in good faith improved VOC control systems for dryers and press vents at such facilities, the United States agrees not to seek additional civil penalties or other civil remedies available to it for future exceedances of such VOC emission limits prior to the scheduled date for installation of improved VOC pollution control systems pursuant to this Decree, provided that Defendants fully comply with this Decree and all operational restrictions (e.g., hours of operation, dryer inlet temperatures, and production rates) applicable to such facilities under then current permits or more recent applicable state administrative or judicial orders.

157. Defendants have indicated their intention to proceed expeditiously to satisfy the requirements of the Act and of this Decree and will likely have taken certain measures, such as submitting test results, filing permit applications and procuring pollution control systems, prior to the date of entry of this Decree. Nothing herein is intended that such actions be repeated after entry of the Decree, provided that such measures fully comply with the requirements of this Decree.

158. Other Laws. Except as specifically provided by this Decree, nothing in the Decree shall relieve Defendants of their

obligation to comply with all applicable Federal, State and Local laws and regulations, and nothing contained in this Consent Decree shall be construed to prevent or limit the United States' rights to obtain penalties or injunctive relief under the Act or other federal, state or local statutes or regulations, including but not limited to, Section 303 of the Act, 42 U.S.C. § 7603.

159. Third Parties. This Consent Decree does not limit, enlarge or affect the rights of any party to the Decree as against any third parties.

160. Costs. Each party to this action shall bear its own costs and attorneys fees.

161. Public Documents. All information and documents submitted by the Defendants to the United States pursuant to this Consent Decree shall be subject to public inspection, unless subject to legal privileges or protection or identified and supported as business confidential by the Defendants in accordance with 40 C.F.R. Part 2.

162. Public Comments. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments.

163. Notice. Unless otherwise provided herein, notifications to or communications with the United States, or the Defendants

shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested. Except as otherwise provided herein, when written notification to or communication with the United States, EPA, or the Defendants is required by the terms of this Consent Decree, it shall be addressed as follows:

As to the United States:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044

United States Attorney
Suite 1000
600 Jefferson Street
Lafayette, Louisiana 70501

Assistant Administrator for Enforcement
Environmental Protection Agency
401 M. Street, S.W.
Washington, DC 20460

As to the U.S. EPA:

Director, Stationary Source Compliance Division, and
Director, Office of Civil Enforcement
Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

and
the EPA Regional Administrator for the region in which
the facility is located

As to Louisiana Pacific Inc.:

Anton C. Kirchhof
General Counsel & Secretary

Louisiana-Pacific Corporation
111 S.W. Fifth Avenue
Portland, Oregon 97204

Elizabeth Smith
Corporate Environmental Manager
Louisiana-Pacific Corporation
111 S.W. Fifth Avenue
Portland, Oregon 97204

As to Kirby Forest Industries, Inc.

Ronald L. Paul
President
Kirby Forest Industries, Inc.
100 I-45
Conroe, Texas 77301

James T. Boswell
Director of Environmental Control
100 I-45
Conroe, Texas 77301

164. Any party may change the address for providing notices to it by serving all other parties with a notice setting forth such new address.

165. Modification. There shall be no modification of this Consent Decree without written approval by both parties to this Consent Decree and the Court, or by Order of the Court.

166. Continuing Jurisdiction. The Court retains jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, or modification. During the term of this Consent Decree, any party may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XIV. TERMINATION

167. This Decree shall be subject to termination upon motion by either party one year after the Defendants satisfy all requirements of this Consent Decree, including payment of all penalties that may be due to the United States under this decree, installation of pollution control equipment as specified herein, and the receipt of all permits specified herein. At such time, if the Defendants believe that they have maintained compliance with the sections of the Act which are the subject of the Complaint filed by EPA, with the requirements of this Consent Decree and with State air permits applicable to the facilities identified herein, and have paid the civil penalty and any stipulated penalties required by this Consent Decree, then the Defendants shall so certify to the United States. If the United States agrees with the Defendants' certification, then the parties shall jointly petition the Court for termination of this Consent Decree. If the parties cannot agree on either Defendant's certification, then the disputing parties shall submit this matter to the Court for resolution. In such case, the Defendant(s) shall bear the burden of proving that the Decree should be terminated.

FOR PLAINTIFF, UNITED STATES OF AMERICA,

Myles E. Flint
Myles E. Flint
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, DC 20530

Dated: 5/21/93

Bruce C. Buckheit
Bruce C. Buckheit
Senior Counsel
Environment and Natural Resources Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, DC 20005

Dated: 5/20/93

Richard A. Willis for
William J. Flanagan
Interim United States Attorney

Dated: 5-22-93

Richard A. Willis
Richard A. Willis
Assistant U.S. Attorney
600 Jefferson Street
Lafayette, Louisiana 70501

Dated: 5-22-93

Scott C. Fulton

Scott C. Fulton
Acting Assistant Administrator for
Enforcement
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Dated: 5/20/93

Julie Domike

Julie Domike
Assistant Enforcement Counsel
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Dated: 5-19-93

FOR DEFENDANT, LOUISIANA PACIFIC CORPORATION

James Eisses
James Eisses
Vice President
Louisiana-Pacific Corporation
N. 13455 Government Way
Hayden Lake, Idaho 83835

Dated: 5/17/93

FOR DEFENDANT, KIRBY FOREST INDUSTRIES, INC.

Ronald L. Paul
Ronald L. Paul
President
Kirby Forest Industries, Inc.
100 I-45
Conroe, Texas 77301

Dated: 5/12/1993

So entered in accordance with the foregoing this ³⁰~~27~~ day of May, 1993.
September

Rebecca F. DeLoach
United States District Court Judge
for the Western District of Louisiana

COPY SENT
DATE 9-30-93
BY JMS
TO: Willis
Flint
Buckhet
Rodford
Eisses
Boullion
Devinis
Paul

COPY SENT
DATE 5-25-93
BY WLB
TO: Willis
Flint
Buckhet

ATTACHMENT A

Production And Temperature Restrictions In State Permits As Of April 13, 1993

Sagola, MI (OSB)

maximum press production - 591 Tons of Finished Product ("TFP") per day; 1 million square feet ("mm FT²") per day

Two Harbors, MN (OSB)

maximum press production - 276 TFP per day

Silsbee, TX (OSB)

maximum dryer inlet temperature - 820° F
maximum dryer throughput - 12,550 +/- 500 lb./hr. of dry furnish
maximum press production - 280 mmFT²/yr.

New Waverly, TX (OSB)

maximum dryer inlet temperature - 820° F
maximum dryer throughput - 12,550 +/- 500 lb./hr. of dry furnish
maximum press production - 98 mmFT²/yr.

Corrigan, TX (OSB)

maximum dryer inlet temperature - 600° F (1 hr. avg.)
maximum press production - 135 mmFT²/yr.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

135
95

LAFAYETTE-OPELOUSAS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

**LOUISIANA-PACIFIC CORPORATION
and KIRBY FOREST INDUSTRIES
INC.,**

Defendants.

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**CIVIL ACTION NO. CV93-0869
JUDGE DOHERTY
MAGISTRATE JUDGE TYNES**

FIRST AMENDMENT TO CONSENT DECREE

WHEREAS, Plaintiff, the United States of America (the "United States"), on behalf of the United States Environmental Protection Agency ("EPA"), and Defendants, Louisiana-Pacific Corporation ("LP") and Kirby Forest Industries, Inc. ("KFI"), executed a Consent Decree in this matter in May 1993 ("the Consent Decree" or "the Decree") and, after public review and comment in accordance with 28 C.F.R. § 50.7, this Court entered the Consent Decree on September 30, 1993;

WHEREAS, the wood panel manufacturing plants of KFI that are subject to the Consent Decree were transferred to LP in 1994 and KFI ceased doing business on December 31, 1994 and is in the process of being dissolved;

WHEREAS, the EPA issued Notices of Violation on June 17, 1993 and on August 31, 1993 to LP for alleged Clean Air Act (the "Act"), 42 U.S.C. §§ 7401 et seq., violations at LP's Dunganon, Virginia oriented strand board ("OSB") plant;

WHEREAS, the United States has asserted that LP violated Paragraph 130 of the Consent Decree respecting production limits at its Clayton, Alabama medium density fiberboard ("MDF") plant;

WHEREAS, the Defendants have filed a motion with the Court, pursuant to Rule 60(b)(1) of the Federal Rules of Civil Procedure asserting that the production limits contained in Paragraph 130 for the Clayton MDF plant are the result of an erroneous figure mistakenly submitted to the United States by LP during settlement negotiations;

WHEREAS, the Defendants have denied and continued to deny any violations alleged in the June 17, 1993 and in the August 31, 1993, Notices of Violation or any violations of the Consent Decree;

WHEREAS, LP asserts that at two of the facilities (New Waverly, TX, and Two Harbors, MN) the cost of installing the enhanced pollution control devices on presses exceeds the \$10,000 per ton figure set in paragraph 52 of the Decree and that therefore it is not obligated under the Decree to install the enhanced pollution controls on the presses at these facilities;

WHEREAS, LP asserts that since the Corrigan, TX facility is a minor source under the Act with enhanced pollution control devices installed on the dryers alone, it should not also be required to install such devices on the presses at that facility;

WHEREAS, the United States does not agree that, under the terms of the Decree LP is entitled to the relief it seeks, but, to avoid unnecessary and protracted litigation on the issue, both parties have agreed to modifications to the Decree which are consistent with the overall objectives of the Decree and the Clean Air Act;

WHEREAS, the United States and LP have obtained significant information and experience in the design, construction, and operation of improved pollution control systems, and particularly regenerative thermal oxidizers ("RTOs"), for wood panel manufacturing plants;

WHEREAS, the United States and LP have met and agreed to resolve these issues without litigation and to make a number of mid-course alterations to the Consent Decree to more accurately reflect the actual performance of the enhanced pollution control devices required by the Decree and to reflect permitting and other developments since entry of the Decree; and

WHEREAS, the proposed amendments to the Consent Decree have been made available for comment by the public, have been considered by the Court and have been found to be fair, equitable and in the public interest;

NOW, THEREFORE, it is hereby **ORDERED, ADJUDGED, and DECREED**, that the Consent Decree entered in this matter by this Court on September 30, 1993 is modified as follows:

1. Paragraph 2 is modified to add the following at the end of the paragraph:

"Defendant, LP, agrees to assume all obligations imposed on Kirby Forest Industries, Inc. by this Decree. All references to "Defendants" in the Decree shall, after the date of entry of the First Amendment To Consent Decree, mean LP."

2. Paragraph 9 is modified to add "Scott County, Virginia (40 C.F.R. 81.347) at the end of the paragraph.

3. Paragraph 29 is modified to add "Dungannon, Scott County, Virginia" at the end of the paragraph.

4. Paragraph 37 is amended to add ", plywood" after "OSB" in line 2 of the paragraph.

5. Paragraph 38 is modified to add Oroville, California MDF plant to the list of facilities required to apply for and obtain a PSD permit.

6. Paragraph 49 of the Consent Decree is modified to read as follows:

"49A. The improved pollution control systems shall, when installed as a full scale system on wood panel manufacturing plants, achieve at least 95 percent capture and control of volatile organic compounds ("VOCs") from OSB, MDF, and particle board dryers (including all combustion devices ducted to dryers) and from the hot zone vents of plywood veneer dryers at LP's Cleveland, TX plywood plant. The presses (including press vents and cooling stands) at all OSB and MDF plants required to control press emissions by this Decree shall be totally enclosed using an EPA-approved enclosure system, and the exhaust from the enclosure shall be ducted to the improved pollution control system. When installed on such presses, the improved pollution control system shall destroy or remove not less than 95 percent of the VOCs entering the system. If the VOC concentration from gases exiting the presses and entering the pollution control device is so low that the improved pollution control system cannot achieve this

control efficiency, the defendant shall document this fact to EPA and seek EPA approval of an alternate control efficiency. In addition, Defendant shall develop and submit to EPA for review and approval, operation and maintenance practices to minimize leaks from the plywood veneer dryer doors at its Cleveland, Texas, plywood plant.

49B. The improved pollution control systems shall not employ excess air flow for dilution and shall not emit more than 0.015 grains per dry standard cubic foot ("gr/dscf") of particulate matter ("PM") from the following plants:

Center, GA
Urania, LA
New Waverly, TX
Corrigan, TX
Silabee, TX
Clayton, AL
Oroville, CA
Cleveland, TX

49C. The improved pollution control systems to control PM at the following plants shall consist of Wet Electrostatic Precipitators (WESPs) or Dynawave scrubbers, or EPA approved equivalent PM control devices in series with RTOs, and shall be designed to emit no more than 0.015 gr/dscf of PM:

Chico, ID
Houlton, ME
Sagola, MI
Two Harbors, MN
Hayward, WI
Dungannon, VA
Montrose, CO

However, if any RTO at any of these facilities is dedicated to controlling only press emissions (as distinguished from RTO's controlling combined dryer and press emissions), that RTO does not necessarily have to be in series with an additional PM control device, but emissions from that RTO shall not exceed 0.015 gr/dscf of PM.

49D. Within 90 days after commencing full-time operation of the required pollution control systems controlling dryer or dryer and press emissions at each of the plants listed in Paragraph 49C., above, LP shall conduct emissions tests to determine the emission rate of PM (in gr/dscf) achievable at each facility and submit the test results to EPA. Within 120 days after commencing full-time operation of the improved pollution control

systems controlling dryer or dryer and press emissions at the plants listed immediately above, LP shall submit to EPA for approval proposed hourly and annual PM mass emission limits for incorporation into a federally enforceable permit. When approved by EPA, LP shall request that the appropriate permitting authority include the approved hourly and annual PM mass emission limits in federally enforceable permits.

49E. This Consent Decree is not intended, nor does it serve, to limit the discretion of state permitting officials to determine whether the dryers and presses may operate during periods of routine maintenance of pollution control devices, including "bakeout" of RTOs. The emission performance requirements set out in this paragraph shall be met at all times when the dryers and/or presses are operating, except as may be authorized in federally enforceable permits for the facility or as specifically approved in writing by the state permitting authority in accordance with the provisions contained in the federally enforceable State Implementation Plan."

7. Paragraph 63 of the Consent Decree is modified to delete "and cost criteria" from the first sentence of paragraph 63, delete "New Waverly, Texas OSB plant" and "Two Harbors, Minnesota OSB plant" from the list of plants in paragraph 63, add "Oroville, California MDF plant", "Dungannon, VA OSB plant" and "Montrose, Colorado OSB plant" and add a Paragraph "63A." as follows:

"63A. In accordance with the schedules and procedures set out herein and subject to the technical criteria set forth in Section V.C.1., Defendant shall install the improved pollution control system on the dryer(s) emission stack(s) at its New Waverly, Texas and Two Harbors, Minnesota plants, and on the hot zone vents of the three veneer dryers at its Cleveland, Texas plywood plant. The deletion of the requirement to install enhanced pollution control devices to control press emissions at the New Waverly and Two Harbors plants is not intended to and does not operate to restrict permitting authorities from exercising whatever authority they may have to require control of such emissions."

8. Paragraph 64 is revised to add a new section "(b)" within the Phase II schedules as follows:

"(b)

Corrigan, TX OSB Plant

Advise EPA of preliminary technical decision as to how the controls required by the Decree will be achieved.

September 20, 1995

Advise EPA of final technical decision.

October 18, 1995

Contract for installation of improved pollution control systems.

November 20, 1995

Begin construction of improved pollution control systems.

April 17, 1996

Complete installation of improved pollution control systems on presses and submit to EPA for review and approval proposed acceptance testing protocol.

August 22, 1996

Complete shakedown and debugging and commence full time operation of improved pollution control system on presses. EPA to complete review and approval of testing protocol.

September 23, 1996

Submit results of acceptance testing to EPA.

December 23, 1996

Clayton, Alabama MDF Plant, Center, Georgia OSB Plant, Urania, Louisiana OSB Plant, and New Waverly, Texas OSB Plants

EPA complete review and approval of submitted testing protocols

April 17, 1995

Submit to EPA the results of acceptance testing for the completed improved pollution control systems

August 21, 1995

Oroville, California MDF Plant

Submit to EPA information necessary to complete PSD permit application including a complete BACT analysis and a monitoring and modelling plan for PM10 emissions.

November 15, 1995

Begin construction of improved pollution control system. LP shall obtain all necessary construction permits from the Butte County Air Pollution Control District prior to commencing construction.

April 1, 1996

Complete installation of improved pollution control systems and submit to EPA for review and approval proposed acceptance testing protocol.

July 1, 1996

Complete shakedown and debugging and commence full time operation of improved pollution control system. EPA to complete review and approval of testing protocol.

August 1, 1996

Submit results of acceptance testing to EPA.

November 1, 1996

Houlton, Maine OSB Plant

Begin construction of improved pollution control system on dryers.

June 12, 1995

Complete installation of improved pollution control systems on dryers and submit to EPA for review and approval proposed acceptance testing protocol.

May 1, 1996

Complete shakedown and debugging and commence full time operation of improved pollution control system on dryers. EPA to complete review and approval of testing protocol.

June 3, 1996

Submit results of acceptance testing to EPA.

September 2, 1996

Sagola, Michigan OSB Plant

Begin construction of improved pollution control system on dryers.

June 5, 1995

Complete installation of improved pollution control systems on dryers and submit to EPA for review and approval proposed acceptance testing protocol.

May 15, 1996

Complete shakedown and debugging and commence full time operation of improved pollution control system on dryers. EPA to complete review and approval of testing protocol.

June 17, 1996

Submit results of acceptance testing to EPA.

September 16, 1996

Two Harbors, Minnesota OSB Plant

Begin construction of improved pollution control system on dryers.

June 15, 1995

Complete installation of improved pollution control systems on dryers and submit to EPA for review and approval proposed acceptance testing protocol.

March 15, 1996

Complete shakedown and debugging and commence full time operation of improved pollution control system on dryers. EPA to complete review and approval of testing protocol.

April 15, 1996

Submit results of acceptance testing to EPA.

July 15, 1996

Hayward, Wisconsin OSB Plant

Line No. 1 Dryer

Complete installation of improved pollution control systems on dryers and submit to EPA for review and approval proposed acceptance testing protocol.

December 1, 1995

Complete shakedown and debugging and commence full time operation of improved pollution control system on dryers. EPA to complete review and approval of testing protocol.

January 1, 1996

Submit results of acceptance testing to EPA.

April 1, 1996

Line No. 2 Dryer

Complete installation of improved pollution control systems on dryers and submit to EPA for review and approval proposed acceptance testing protocol.

January 1, 1996

Complete shakedown and debugging and commence full time operation of improved pollution control system on dryers. EPA to complete review and approval of testing protocol.

February 1, 1996

Submit results of acceptance testing to EPA.

May 1, 1996

Silsbee, Texas OSB Plant

Complete shakedown and testing and commence full time operation of improved pollution control systems.

June 30, 1995

Submit to EPA the results of acceptance testing for the improved pollution control systems.

September 29, 1995

Dungannon, Virginia OSB Plant

Submit to EPA for review and approval proposed acceptance testing protocol.

August 7, 1995

EPA to complete review and approval of testing protocols.

August 14, 1995

Submit to EPA the results of acceptance testing for the improved pollution control system.

November 1, 1995

Montrose, Colorado OSB Plant and Cleveland, Texas Plywood Plant

Begin construction of improved pollution control system. (Presses and dryers at Montrose; dryers only at Cleveland)

Not later than 90 days after entry of First Amendment To Consent Decree.

Complete installation of improved pollution control systems and submit to EPA for review and approval proposed acceptance testing protocol.

Not later than 360 days after entry of First Amendment To Consent Decree.

Complete shakedown and debugging and commence full time operation of improved pollution control system. EPA to complete review and approval of testing protocol.

Not later than 390 days after entry of First Amendment To Consent Decree.

Submit to EPA the results of acceptance testing for the improved pollution control systems."

Not later than 480 days after entry of First Amendment To Consent Decree.

9. Paragraph 71 of the Decree is revised to read:

"71. The alternate pollution control systems shall, when installed as a full scale system on wood panel manufacturing plants, achieve at least 95 percent capture and control of volatile organic compounds ("VOCs") from OSB, MDF, and particle board dryers (including all combustion devices ducted to dryers) and from the hot zone vents of plywood veneer dryers at LP's Cleveland, TX plywood plant. Any alternate approved pollution control system proposed for MDF and OSB plants required by this Decree to control press emissions must include EPA approved enclosures for the presses (including press vents and cooling stands) and with the exhaust from the enclosure ducted to the alternate pollution control system. Any alternate pollution control system must meet the emission limits and performance standards established by the Decree and by this First Amendment To Consent Decree for the improved pollution control systems. Additionally, any alternate pollution control system proposed for the plywood veneer dryers at Cleveland must include EPA approved operation and maintenance practices to minimize leaks from the dryer doors.

10. Paragraph 74 of the Consent Decree is revised to read:

"74. Beginning on the date of entry of the First Amendment To Consent Decree, LP shall conduct a six-month study using the continuous emission monitors installed on the improved pollution control systems at the following LP facilities:

Urania, LA MDF plant
Silasbee, TX OSB plant
Chilco, ID OSB plant
Hayward, WI OSB plant

At its discretion, LP may include additional wood panel plants with continuous emission monitors in the study. The study shall attempt to correlate with emissions each operational parameter that LP believes can serve to predict emissions in lieu of direct measurement of emissions. If these studies demonstrate a correlation between one or more operational parameters and measured emissions, LP shall submit to EPA for its review and approval, within 60 days of the completion of the six month test period, LP's proposal for measuring and utilizing operating parameters in lieu of direct measurement of

emissions at the facilities where improved pollution control systems are required by this Decree. LP's proposal may include periodic monitoring to provide sufficient compliance assurance. LP may also utilize these procedures to attempt to develop a correlation between air flow and operating parameters.

Where EPA agrees that a sufficient correlation between measured emissions and those predicted based on measurements of operating parameters exists, LP may substitute continuous parametric monitoring, and where approved by EPA, periodic monitoring for part or all of the continuous emissions monitoring required by this Decree, provided that the local permitting authority agrees that parametric monitoring in conjunction with periodic emissions monitoring may be substituted for continuous emissions monitoring and provided LP obtains federally-enforceable restrictions on the operating parameters it seeks to utilize to predict emissions.

Similarly, where EPA agrees that a correlation between measured air flow and air flow predicted based on measurements of operating parameters exists, LP may substitute continuous parametric monitoring for the continuous measurement of air flow required by this Decree, provided that the local permitting authority agrees that parametric monitoring may be substituted for monitoring of actual flow and provided that LP obtains federally-enforceable restrictions on the operating parameters it seeks to utilize to predict air flow.

Within 6 months of EPA approval of the monitoring program for an improved pollution control system at a plant, LP shall have the necessary equipment for the enhanced monitoring program installed and operating at that plant."

11. Paragraph 75 of the Consent Decree is modified to read as follows:

"75. The enhanced monitoring program shall provide for continuous emission monitoring of emissions from the pollution control systems required by this Decree at the above-named plants for PM, CO, and VOCs, or continuous monitoring of emission control or process system parameters, supplemented where required by EPA with periodic monitoring meeting the requirements of 40 C.F.R. § 70.6(a)(3)(1994). Any required continuous emission or continuous parameter monitors shall be properly functioning at least 85 percent of the time the affected process equipment is operating. Continuous monitor availability shall be determined on a weekly basis. [If EPA-approved emission control or process system parameters are used to demonstrate compliance, operations outside the limits of those system parameters will be considered to be a violation of the relevant control requirement established by this Decree."]

12. Paragraph 76 is amended by inserting "Unless monitoring of operating parameter(s) is authorized as a substitute for monitoring opacity..." at the beginning of the first sentence.

13. Paragraph 77 of the Consent Decree is modified by adding the following sentence to the end of the Paragraph:

"LP shall install continuous air flow monitoring devices (or substitutes approved pursuant to Section V.D.) where improved pollution control systems are required for presses and cooling stands by this Decree."

14. Paragraph 95 of the Consent Decree is modified to read as follows:

"95. Not later than May 1, 1995, LP shall submit the name(s) of a proposed audit firm or firms to EPA for approval."

15. Paragraph 100 of the Consent Decree is modified by adding the following sentence at the end of the Paragraph:

"To the extent possible while yet complying with Paragraph 106, the schedule for auditing facilities shall provide for not auditing a plant until the improved pollution control systems required by this Decree are tested and any related state or EPA permitting actions are completed."

16. The first sentence of Paragraph 106 of the Consent Decree is modified to read as follows:

"106. The final Audit Report shall be submitted to LP and EPA not later than 365 days after EPA's approval of the Audit Work Plan."

17. Paragraph 130 of the Consent Decree is modified to read as follows:

"130. LP shall comply with the following operating limitations until such limits are superseded in federally enforceable permits issued by the appropriate permitting authority, or state administrative or judicial orders pending issuance of a federally enforceable permit:

Urania, LA (MDF)

Maximum press production - 235,200 square feet per day on a 3/4-inch basis

Urania, LA (OSB)

Maximum press production - 450,000 square feet per day on a 3/8-inch basis

Chlico, ID (OSB)

Maximum press production - 500,000 square feet per day and 182.5 million square feet per year on a 3/8-inch basis

Clayton, AL (MDF)

Line No. 1 - maximum press production - 340,800 square feet per day on a 3/4-inch basis

Line No. 2 - maximum press production - 210,600 square feet per day on a 3/4-inch basis"

18. After Paragraph 134 of the Consent Decree the following new Paragraph 134A is added:

"134A. Within thirty (30) calendar days of entry of the First Amendment To Consent Decree, LP shall pay to the United States a civil penalty pursuant to Section 113 of the Act, 42 U.S.C. § 7413, and Section IX of this Decree in the amount of fifty thousand dollars (\$50,000). Payment of this civil penalty and performance of the other terms of this Decree as modified herein shall be in full satisfaction of the United States' claims as alleged in the Notices of Violation referenced herein and any stipulated penalties for which the Defendants may be liable for violations of the Decree alleged by the United States and including potential noncompliances that are the subject of Force Majeure claims by LP, through the date of the United States' execution of this First Amendment To Consent Decree. The civil penalty shall be paid as specified in Paragraphs 134 and 135."

19. In Paragraph 163 of the Consent Decree, the address for Kirby Forest Industries, Inc. is deleted and the address for the U.S. EPA is modified as follows:

As to the U.S. EPA:

Director, Air Enforcement Division

U.S. EPA

Arial Rios Building, Room 1119

Mail Code 2242A

12th Street and Pennsylvania Ave., N.W.

Washington, D. C. 20004

and

the EPA Regional Administrator for the region in which the facility is located.

20. Attachment A of the Consent Decree is modified as follows:

ATTACHMENT A

**Production and Temperature Restrictions
in State Permits as of August 1, 1995**

Sagola, MI (OSB)

maximum press production -591 tons of finished product per day

Two Harbors, MN (OSB)

maximum press production -276 tons of finished product per day

Silsbee, TX (OSB)

maximum press production -54,860 square feet per hour, 1,316,640 square feet per day, and 350 million square feet per year on a 3/8-inch basis

New Waverly, TX (OSB)

maximum press production - 13,920 square feet per hour, 334,080 square feet per day and 98 million square feet per year on a 3/8-inch basis

Corrigan, TX (OSB)

maximum press production - 32,000 square feet per hour, 768,000 square feet per day, and 155 million square feet per year on a 3/8-inch basis

WE HEREBY CONSENT to the entry of this Amendment to Consent Decree.

FOR PLAINTIFF, UNITED STATES OF AMERICA,

Howard C. Parker for Lois J. Schiffer Dated: 10/6/95

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Dated: 9/20/95

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Dated: 10/6/95

Steven A. Herman

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Dated: 9/27/95

Julie R. Domeke

JULIE R. DOMIKE
Chief, Air Toxics, New Source Review and Permits Branch
Air Enforcement Division
U.S. Environmental Protection Agency
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(202) 564-2285

Dated: 9-19-95

FOR DEFENDANT, LOUISIANA-PACIFIC CORPORATION



Dated: 9/15/95

DONALD R. KAYSER
Chairman and Chief Executive Officer
Louisiana-Pacific Corporation
111 S.W. Fifth Avenue
Portland, Oregon 97204
(503) 221-0800

So ordered in accordance with the foregoing this day of , 1995.

REBECCA J. DOHERTY
United States District Judge
for the Western District of Louisiana

