



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Taylor Murphy, Jr.  
Secretary of Natural Resources

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Robert G. Burnley  
Director

Steven A. Dietrich  
Regional Director

### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO MODULAR WOOD SYSTEMS

#### SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and Modular Wood Systems, for the purpose of resolving certain violations of State Air Pollution Control Laws and regulations.

#### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Modular Wood Systems" means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Facility" means the structure at 1805 Red Bank School Road located in Claudville, Virginia.
8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means the Stationary Source Permit to Construct and Operate, dated October 16, 1998.
10. "O&M" means operations and maintenance.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Modular Wood Systems owns and operates a facility in Claudville, Virginia. This facility has a stationary source permit, which allows the operation of a wood fixture manufacturing facility.
2. On February 7, 2005, DEQ staff conducted a site inspection at the Modular Wood Systems facility. Based on observations made during this inspection, DEQ alleges that construction had been completed on three routers and a new baghouse. DEQ further alleges that the three routers and new baghouse are not included in the facility's current air permit dated October 16, 1998. DEQ further alleges that the facility constructed this equipment without first obtaining a New Source Operating Permit from the Virginia State Air Pollution Control Board.
3. On February 22, 2005, DEQ issued a Notice of Violation to Modular Wood Systems for alleged violations of the Virginia Air Pollution Control Board Laws and Regulations. The observations above are cited under the following regulation:

Failure to comply with Section 9 VAC 5-80-1120 A. of the State Air Pollution Control Board Regulations, which states that no owner or other person shall begin actual construction, reconstruction, or modification of any stationary source, without first obtaining from the Board a permit to construct and operate or to modify and operate such source.

### **SECTION D: Agreement and Order**

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, orders Modular Wood Systems, and Modular Wood Systems agrees to pay a civil charge of **\$2,215.08** in settlement of the violations cited in this Order.

1. **\$2,215.08** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Modular Wood Systems, for good cause shown by Modular Wood Systems, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters alleged in the Notice of Violation issued to Modular Wood Systems by DEQ on February 22, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Modular Wood Systems admits the jurisdictional allegations, but does not admit the factual allegations or legal conclusions of law contained herein. DEQ and Modular Wood Systems agree that the actions undertaken by Modular Wood Systems in accordance with this Consent Order do not constitute an admission of liability by Modular Wood Systems. Modular Wood Systems does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the Findings of Facts and Conclusions of Law contained in Section C of this Order.
4. Modular Wood Systems consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Modular Wood Systems declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Modular Wood Systems to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional

orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Modular Wood Systems shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Modular Wood Systems shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Modular Wood Systems shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Modular Wood Systems.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Modular Wood Systems. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Modular Wood Systems from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signatures below, Modular Wood Systems agree to the issuance of this Order.

And it is so ORDERED this 21<sup>ST</sup> day of MARCH, 2005.

Stevens A. Dietrich  
FOR Robert G. Burnley, Director  
Department of Environmental Quality

Modular Wood Systems agrees to the issuance of this Order.

By: [Signature]  
Date: 3-18-05

North Carolina  
Commonwealth of Virginia  
City/County of Surry

The foregoing document was signed and acknowledged before me this 18<sup>th</sup> day of  
March, 2005, by Alvin Eckhardt, who is  
(name)

President of Modular Wood Systems, on behalf of the Corporation.  
(title)

Anna B Pruitt  
Notary Public

My commission expires: 03/09/2010

