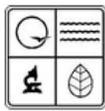




Appendix F  
Consent Agreement  
Between  
Missouri Department of Natural Resources  
And  
MEMC Electronic Materials, Inc.



## CONSENT AGREEMENT

The parties hereto, the Missouri Department of Natural Resources and MEMC Electronic Materials, Inc., having agreed that entry of this Consent Agreement (hereinafter "Agreement") is in the best interest of the parties and the public health and the environment, hereby represent and state as follows:

### JURISDICTION

1. The Missouri Department of Natural Resources (hereinafter "Department") is a duly authorized state agency created under Chapter 640 of the Revised Statutes of Missouri (as amended) to administer the programs assigned to it related to environmental control and the conservation and management of natural resources.
2. Chapter 643 of the Revised Statutes of Missouri (as amended) provides that the Director of the Department, on behalf of the Missouri Air Conservation Commission, administers the provisions of the Missouri Air Conservation Law.
3. MEMC Electronic Materials, Inc. (hereinafter "MEMC") is a Missouri corporation in good standing and registered to do business in Missouri in accordance with Missouri laws and is subject to the Missouri Air Conservation Law and the regulations adopted thereunder. MEMC is the legal and rightful owner of the MEMC Electronic Materials facility listed in paragraphs 12 and 13.
4. Pursuant to RSMo 643.060, the Director has authority and jurisdiction to issue this Agreement and to enforce the same. In any action by the Department to enforce the terms of this Agreement, MEMC agrees not to contest the authority or jurisdiction of the Director to issue this Agreement.
5. The terms of this Agreement shall be construed in accordance with the applicable laws of the state of Missouri and the United States.

### STATEMENT OF PURPOSE

6. In entering into this Agreement, it is the mutual objective of the Department and MEMC to reduce contributions of fine particulates (PM<sub>2.5</sub>) to the St. Louis Nonattainment Area, and to establish requirements by which MEMC will achieve regulatory compliance by the continued and proper use of the air pollution control devices described in paragraph 13. This Agreement establishes enforceable technology controls pursuant to the Department's requirements to comply with the Reasonably Available Control Technology (RACT) regulations identified in this Agreement at applicable emission sources. This Agreement is not the result of any enforcement action or alleged non-compliance with any law, regulation, permit, or order and will enable MEMC to timely comply with the EPA and the Department deadlines for RACT and other unforeseen consequences.

## **PARTIES BOUND**

7. This Agreement shall apply to and be binding upon the parties, their agents, successors, and assigns and upon all persons, contractors, and consultants acting under or for either the Department or MEMC or both.
8. The parties agree to undertake all actions required of them by the terms and conditions of this Agreement.
9. Notwithstanding the terms of any contract, MEMC is responsible for compliance with this Agreement and for insuring that its contractors and agents comply with this Agreement.
10. The activities conducted under this Agreement are subject to approval by the Department. MEMC shall make all reasonable efforts to provide all necessary information consistent with this Agreement requested by the Department.

## **LIABILITY**

11. Nothing in this Agreement shall be considered an admission of any fact or acknowledgement of any liability by any party, nor shall anything in this Agreement be considered an admission of any fact or acknowledgement of any violation of any law, regulation, permit or order but will enable MEMC to timely comply with established EPA and Department deadlines for compliance with the RACT regulations and other unforeseen requirements. Neither the State of Missouri nor any agency thereof shall be held out as a party of any contract entered into by MEMC in carrying out activities pursuant to this Agreement.

## **FINDINGS OF FACT**

12. The Department's Air Pollution Control Program has made the following findings regarding the State's obligation to develop RACT regulations as part of the oxides of nitrogen (NOx) precursor fine particle (PM2.5) planning efforts for the St. Louis Nonattainment Area:

The Department identified that MEMC plans to continue to operate the nitric acid etching stations with the current scrubbing systems collectively identified as Point 7/Point 7L, (Emission Unit 7 and 7L). In reviewing the information provided by MEMC, the Department has concluded that there are no additional cost effective control technologies for NOx because costs for these additional controls ranged from \$8,048 to \$13,078 per ton reduction.

## **AGREEMENT AND COMPLIANCE PLAN**

13. The Department has determined that the continued operation of the nitric acid etching stations small scrubbers identified by MEMC as Unit 7, N-120-2 for the first stage and N-120-3 and N-120-4 in parallel as the second stage, (so all three operate); and identified by MEMC as Unit 7L with K-45-1 (or K-45-2) as the first stage and K-45-3 (or K-45-4) as the second stage, (so both operate) meets the definition of RACT for the annual PM<sub>2.5</sub> effort at MEMC. If the nitric acid etching stations are shut down, the scrubbers are not required to be operated. This Department's consent agreement with MEMC will make this plan legally enforceable. The Department is going to include this agreement in Missouri's formal submittal to the U.S. Environmental Protection Agency (EPA) as part of Missouri's State Implementation Plan (SIP).

## **CONCLUSIONS OF LAW**

14. MEMC is a person within the meaning of section 643.020 of the Revised Statutes of Missouri (RSMo).
15. Section 643.060.4, RSMo, provides that the Director of the Department is responsible for administering and enforcing the Missouri Air Conservation Law, investigating complaints, issuing orders and taking all actions necessary to implement the Missouri Air Conservation Law. Section 643.060.2, RSMo. RSMo, provides that the Director is authorized to enter into contracts as he deems necessary for carrying out the provisions of the Missouri Air Conservation Law. In addition, the Missouri Air Conservation Commission is granted the legal authority under section 643.050, RSMo, to develop and implement regulations and enter into agreements to control air pollution.

## **BEST PROFESSIONAL JUDGMENT**

16. The requirements of this Agreement represent the best professional judgment of the Department based on information available as of the effective date of this Agreement. If circumstances change significantly so that data related to the commitments of this Agreement indicates an imminent threat of danger to the public health, safety or the environment or if the Department determines there is a significantly different threat other than the issues addressed herein, then the Department reserves the right to modify dates or requirements herein as it deems reasonably necessary to comply with the RACT regulations, provided that the Department gives MEMC at least 90 days notice and an opportunity to submit a compliance schedule after the 90 day notice period or submit written objections to the Department's determination of a significantly different threat. MEMC shall submit either a compliance schedule or written objections to the Department within 30 days of its receipt of the Department's notice. MEMC further reserves the right to appeal any such modifications or additional requirements in accordance with paragraph 30.

## FORCE MAJEURE, EXCUSABLE DELAY, MODIFICATION

17. The following shall constitute the governing terms for force majeure, excusable delay, and modification of the Agreement:
- A. MEMC shall perform the requirements under this Agreement within the time limits set forth herein unless the performance is prevented or delayed solely by events which constitute a force majeure. For purposes of this Agreement a force majeure is defined as any event beyond the control of MEMC which could not be overcome by due diligence and which delays or prevents performance by a date required by this Agreement. Such events do not include increased costs of performance. Any delay caused in whole or in part by action or inaction by municipal, state, or federal regulatory authorities or third parties unrelated to MEMC shall be considered a force majeure and shall not be deemed a violation of any obligation required by this Agreement.
  - B. MEMC shall have the burden of proving all claims of force majeure. Failure to comply by reason of force majeure shall not be construed as a violation of this Agreement.
  - C. MEMC shall notify the Department in writing within ten (10) days after becoming aware of an event which MEMC knew or reasonably should have known constituted force majeure. Such notice shall estimate the anticipated length of delay, its cause, measures to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this section may constitute a waiver of MEMC's right to assert a force majeure claim and may be grounds for the Department, at its sole discretion, to deny MEMC an extension of time for performance.
  - D. Within ten (10) days of the receipt of written notice from MEMC of a force majeure event, the Department shall notify MEMC of the extent to which modifications to this Agreement are necessary. In the event that the Department and MEMC cannot agree that a force majeure event has occurred or if there is no agreement on the length of the extension, the dispute shall be resolved as set forth in paragraph 18.
  - E. Any modifications to any provision of this Agreement shall not alter the schedule for performance or completion of other tasks required by this Agreement, unless specifically agreed to by the parties in writing and incorporated into this Agreement.
  - F. This Agreement may be amended by mutual agreement of the Department and MEMC. Such amendments shall be in writing, shall have as their effective date the date on which they are signed by both parties and shall be incorporated into this Agreement.

## **DISPUTE RESOLUTION**

18. The parties recognize that a dispute may arise between them regarding implementation of the action to be taken as herein set forth or other terms or provisions of this Agreement.
  - A. If such dispute arises, the parties will endeavor to settle it by informal negotiations between themselves. If the parties cannot resolve the issue informally within a reasonable period of time, either of the parties may notify the other in writing stating its position with regard to the dispute and the reasons therefore. A party receiving such a notice of dispute will respond in writing within ten (10) days stating its position. The Department or MEMC shall then have an additional ten (10) day period or such longer time as the parties agree to respond. If the parties are still unable to reach an agreement, the matter shall be referred to the Director of the Division of Environmental Quality, who shall decide the matter and provide a written statement of his decision which shall be incorporated into the Agreement
  - B. This dispute resolution procedure shall not preclude any party from having direct recourse to court if otherwise available under Missouri law.

## **OTHER CLAIMS AND PARTIES**

19. Nothing in this Agreement shall constitute or be construed as a release for any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to this Agreement.

## **EFFECTIVE DATE, TERMINATION**

20. This Agreement shall become effective when signed by the Director of the Department or his designee.
21. This Agreement will be terminated at such time that it is superseded by a future agreement, regulation, or other enforceable document that contains equivalent or more stringent emission limits. The Department will provide written notice to MEMC of said termination. Such notice shall not be unreasonably withheld. Nothing in this Agreement shall preclude MEMC from challenging the applicability of a future regulation or other enforceable document to which MEMC is not signatory.

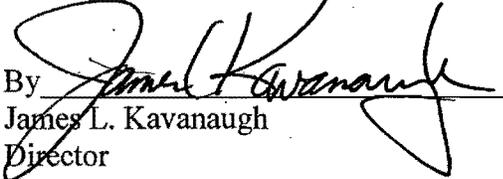
**VOID OR VOIDABLE PROVISIONS**

22. If a court of competent jurisdiction finds that any part of this Agreement is void, voidable, illegal or unenforceable, then that part shall be severed from this Agreement but shall not affect the continued operation of the rest of this Agreement, provided that the basic purposes of this Agreement and the benefits to the parties are not substantially impaired.

**AUTHORIZATION OF SIGNATORIES TO EXECUTE THE AGREEMENT AND BIND THE PARTIES**

23. The parties hereto have affixed their signatures on the dates inserted below to acknowledge their agreement to this Agreement. The signatories to this Agreement certify that they are authorized to execute and to legally bind the parties they represent to this Agreement.

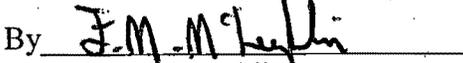
Missouri Department of Natural Resources  
Air Pollution Control Program  
1659 E. Elm Street  
Jefferson City, MO 65101

By   
James L. Kavanaugh  
Director

Date: 6-2-09

JLK: pmcs

MEMC Electronic Materials, Inc.  
501 Pearl Drive (City of O'Fallon)  
P.O. Box 8  
St. Peters, MO 63376-0008

By   
Frank M. McLaughlin  
St. Peters Site Manager

Date: 5-28-09

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