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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE

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David K. Paylor
Director

Michael D. Overstreet
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO Merillat LP Registration No. 11075

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1301, 1307, 1309, 1316 and 10.1 – 1184, between the State Air Pollution Control Board and the Merillat Corporation, predecessor to Merillat LP (herein after "Merillat"), for the purpose of resolving certain alleged violations of State Air Pollution Control Board Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings 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 collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "Company" means Merillat, State Route 686, Atkins, VA 24311.

SECTION C: Findings of Facts and Conclusions of Law

1. During the inspection conducted by DEQ of Merillat's facility on February 17, 2005 and subsequent records review the following potential non-compliant situations were noted:

   a. A fugitive leak was observed coming from the rotary air lock on one (1) of the two (2) baghouses; The facility was not meeting all requirements of 9 VAC 5-60-100 and 40 CFR Part 63, Subpart JJ; No work practice implementation nor formulation assessment plan was in-place. On March 17, 2006 DEQ, SWRO issued a Notice of Violation (NOV No. 03-01-SWRO-2006) to Merillat Corporation. In a letter from Merillat, dated April 11, 2006, was a copy of their work practice implementation plan and formulation assessment plan. They stated that the environmental contact at the facility was still learning the system and was unaware of the contents of the work instruction. In addition the facility has in place a baghouse inspection procedure whereby weekly visual inspections are made of the baghouse, associated dust handling equipment and its emissions. The leak was repaired on the weekend immediately following its observation. The March 17, 2006 NOV was satisfactorily addressed.

   b. Permit condition No.37.a and 37.g of Merillat's construct and operate permit dated January 5, 2004 states in part, "Initial compliance with the VHAP emissions limits shall be determined as follows: For finishing operations when averaging is being used to show initial compliance, the permittee shall submit the results of averaging calculation (Equation 1) for all finishing materials used for the entire month in which the compliance date (startup date) falls to show a value of E no greater than 0.8...For work practice standards, in Condition 42, the permittee shall submit an initial compliance status report stating that the work practice implementation plan has been developed and procedures have been established for implementing the provisions of the plan." (9 VAC 5-60-100 and 40 CFR 63.804. (f) & 40 CFR 63.804 (a)-(e)). 40 CFR §63.804 (f) states in part, "... shall submit the results of the averaging calculations (Equation 1) for the first month with the initial compliance status report required by §63.807(b)." The first month's averaging data was not submitted to DEQ within the 60 day period after the compliance date (which was startup). No initial compliance status report was submitted demonstrating that work practice plan had been developed and implemented. On April 27, 2006 DEQ, SWRO received an initial compliance status report and averaging calculations for the first month of operation.

   c. Permit condition No.45.b.i. of Merillat's construct and operate permit dated January 5, 2004 states in part, "The permittee when demonstrating continuous compliance when not using a control device shall submit a report covering the previous 6 months of wood furniture manufacturing operations: The time periods to be addressed are the calendar months in the 6-month period following the compliance date (date of startup) and the calendar months in the subsequent 6-month period. The reports shall be submitted 30 calendar days after the end of each 6-month period. (9 VAC 5-60-100 and 40 CFR 63.807 & 63.10(d))" No semiannual report was submitted by the required time period (30 days after end of first 6-month period of finishing operations). On April 27, 2006 DEQ, SWRO received a semiannual compliance report for the first six months of the facility's finishing operations.

d. Permit condition No.42.h.of Merillat's construct and operate permit dated January 5, 2004 states in part "The permittee shall use conventional air spray guns to apply finishing materials only under any of the following circumstances: (40 CFR 63.803 (h))" None of the special circumstances listed in Permit Condition 42.h.i through vi were met. 40 CFR 63.801 defines a conventional gun as one in which the coating is atomized by mixing it with compressed air and applied at an air pressure greater than 10 pounds per square inch (psi) at the point of atomization. A letter from Merillat dated 4-11-06 to DEQ states, "...Conventional spray guns are to be used only in the application of spray booth coatings, not in finishing..." The pressure observed on one of the spray guns being used at the time of inspection exceeded 10 psi at the cap when tested by Merillat's finishing room personnel. On April 27, 2006 DEQ, SWRO received a revised work practice implementation plan which provided specific instructions for use and testing of the air spray guns.

2. The following regulations may be applicable in part or whole to the above listed permit deficiencies : 9 VAC 5-170-160.A – (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part: "The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits".

9 VAC 5-50-260 – (Standard for Stationary Sources)
9 VAC 5-50-20 - (Compliance)
9 VAC 5-60-90 – (General)
9 VAC 5-60-100 – (Designated Emission Standards)
40 CFR 63.800 & 40 CFR Subpart A
40 CFR 63.804 (f)
40 CFR 63.803 (h)
9 VAC 5-50-50 – (Notification, Records and Reporting)
9 VAC 5-170-160.A (Conditions on Approvals)

3. On May 4, 2006, DEQ sent a Notice of Violation Letter (NOV No. 05-04-SWRO-2006) for the alleged violations noted in items 1.b-d and 2, above by Certified Mail-Return Receipt Requested, to Merillat Corporation, informing the Company that DEQ had reason to believe that a violation of Air Pollution Law and Regulations had occurred.

4. Merillat has submitted all required reports and notifications for compliance with the Code of Federal Regulations, 40 CFR Part 63, Subpart JJ, 63.800-63.819 and their construct and operate permit dated January 5, 2004.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code §§ 10.1 – 1309 and 10.1-1316 and upon consideration of Va. Code § 10.1 – 1186.2, the Board orders Merillat, and Merillat agrees, to perform the actions described below and in Appendix A of this Order. In addition, the Board orders Merillat, and Merillat voluntarily agrees, to a civil charge of $6,400.00 in settlement of the violations cited in this Order, to be paid as follows:

1. Merillat shall pay $1,600.00 of the civil charge 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

   The payment shall include Merillat's Federal ID number and shall identify that payment is being made as a result of this Order.

2. Merillat shall satisfy $4,800.00 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP described in Appendix A) of this Order.

3. The net project cost of the SEP to Merillat shall not be less than the amount set forth in Paragraph D.2. If it is, Merillat shall pay the remaining amount in accordance with Paragraph D. 1. (with respect to payment type, address for payment and identification of payment) of this Order, unless otherwise agreed to by the Department. "Net project costs" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g. tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contract, or grants shall be deducted.

4. By signing this Order Merillat certifies that is has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.

5. Merillat acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Merillat to a third party, shall not relieve Merillat of its responsibility to complete the SEP as described in this Order.

6. In the event it publicizes the SEP or the SEP results, Merillat shall state in a prominent manner that the project is part of a settlement for an enforcement action.

7. The Department has the sole discretion to:

   a. Authorize any alternate SEP proposed by the Facility; and

   b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

8. Should the Department determine that Merillat has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Merillat in writing. Within 30 days of being notified, Merillat shall pay the amount specified in Paragraph D. 2., above, as provided in Paragraph D. 1. (with respect to payment type, address for payment and identification of payment), above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Merillat for good cause shown by the Company, or on its own motion after notice and opportunity to be heard.

2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the Company's Virginia Stationary Source Permit to Operate dated January 5, 2004 (as modified and dated March 27, 2006).

3. This Order addresses only those alleged violations specifically identified herein. This Order shall not preclude the Board or 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; and/or (2) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, or local regulatory authority, whether or not arising out of the same or similar facts.

4. By entering into this Order, Merillat admits the jurisdictional allegations, but does not admit factual findings, or conclusions of law contained herein. For purposes of this Order and subsequent actions with respect to this Order, Merillat agrees not to challenge the jurisdictional allegations.

5. Merillat consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

6. Merillat declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 *et seq.*, and the State 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 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 or Director to enforce this Order.

7. Failure by Merillat to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waiver 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.

8. 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.

9. Merillat 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 act of God, war, strike, or such other occurrence. Merillat must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Merillat shall notify the Director, Southwest Regional Office of DEQ within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;
   b. the projected duration of 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 Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Company intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.

11. This Order shall become effective upon execution by both the Director or his designee and Merillat. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date, which precedes the effective date of this Order.

12. This Order shall continue in effect until the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to Merillat. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Merillat from its obligation imposed in this Order, shall not operate to relieve Merillat from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. By its signature below, Merillat voluntarily agrees to the issuance of this Order.

And it is ORDERED this 1st day of December, 2006

Michael D. Overstreet, Regional Director
Department of Environmental Quality

Merillat Corporation voluntarily agrees to the issuance of this Order.

Mr. Jeffrey Uecker
Plant Manager
Merillat LP

Date: 11/28/06

Commonwealth of Virginia

City/County of Smyth

The foregoing document was signed and acknowledged before me this 28th day of November, 2006 by Jeffrey Uecker on behalf of Merillat LP

Date: 11-28-2006

Notary Public

My commission expires: June 30, 2009

APPENDIX A

Merillat shall perform the Supplemental Environmental Project (SEP) identified below in a manner specified in this Appendix.

1. The SEP to be performed by Merillat is to restore and install a solvent recovery still to reclaim belt cleaning material and solvents. The Cefla finishing line belt cleaning system creates approximately 20 gallons per day of hazardous waste. The hazardous waste material is to be processed in the solvent recycler. The reclaimed belt cleaner can then be added back into the virgin material and reused.

2. The SEP shall be completed by February 15, 2007.

3. Merillat shall submit progress reports on the SEP on a monthly basis, due the 10th day of each month.

4. Merillat shall verify its completion of the SEP in writing, either in the form of a certification from a Certified Public Accountant or a certification from a responsible corporate officer or owner that the SEP has been completed in accordance with the terms of this Order. Merillat shall submit the verification to the Department within 90 days from the effective date of the Order.

5. If the SEP has not or cannot be completed as described in the Order, Merillat shall notify DEQ in writing no later than December 15, 2006 such notification shall include:
   a. an alternate SEP proposal, or
   b. payment of the amount specified in paragraph D.2. as described in paragraph (with respect to payment type, address for payment and identification of payment) D. 1..

6. Merillat hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.

7. Merillat shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of invoices and proof of payment and a certified statement itemizing costs within 30 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from Merillat's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

8. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

   Crystal C. Bazyk
   Air Compliance Manager
   DEQ-SWRO
   PO Box 1688
   Abingdon VA 24212-1688

9. Merillat shall operate equipment installed under the SEP for at least a period of five years. In the event that Merillat opts to remove the equipment prior to the five year period they must obtain written approval from DEQ.