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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE

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Secretary of Natural Resources

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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. 10830

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 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, Route 11, Atkins, VA 24311.

SECTION C: Findings of Facts and Conclusions of Law

1. On June 19, 2006, Merillat reported to the DEQ certain irregularities in recordkeeping and reporting requirements found during its routine review of environmental matters at its Plant #12 in Atkins, VA.
2. In response to Merillat's self-reporting, beginning on June 21, 2006 and continuing through August 10, 2006 the DEQ conducted air compliance reviews on the 2005 TV Annual Compliance Certification, 2nd half 2005 semi-annual deviation report, letters dated 6-19-06, 7-14-06, 7-19-06 (as amend 1/22/2007) and requested data submitted by Merillat – Plant #12 in Atkins, Virginia. The following potential non-compliant situations were noted:
 - a. Permit condition No.8 of Merillat's construct and operate permit dated August 12, 2004 states, "VOC emissions from the two topcoat booths shall be controlled by a regenerative thermal oxidizer (RTO). The RTO shall be provided with adequate access for inspection and shall be in operation when the topcoat booths are operating. (9 VAC 5-80-1180 and 9 VAC 5-50-260)" There were time periods when the topcoat booths were operating when the RTO was down. Response from source in letter dated 9-8-06: "The circumstances pertaining to this condition were self-identified and reported to the DEQ in a letter dated July 14, 2006, and noted in the corresponding Semi-Annual Monitoring Report."
 - b. Permit condition No.11 of Merillat's construct and operate permit dated August 12, 2004 states, "When the topcoat booths are in operation, the combustion temperature (3-hour average) in the RTO shall not be more than 50°F below the average temperature during the most recent emission test that demonstrated compliance. (9 VAC 5-50-260)." There were periods when the temperature strip chart was not functioning properly and therefore some records of the combustion temperature of the RTO are missing. Response from source in letter dated 9-8-06: "We dispute the allegation or inference that the RTO was operating below the required combustion temperature. While there have been periods of time when certain strip charts are not available, the RTO at the facility has been operated within the temperature parameters stated in the permit. Based on a mechanical alarm system implemented at the plant, the RTO can only be operational if it is operating within the temperature parameters. The alarm triggering temperature setting corresponds to that which was established during emission testing. Therefore, when the RTO is/was running, it is, and would have been, at the required combustion temperature, even if the temperature recording device is/was not functioning properly. If the temperature can not be maintained, the RTO is turned off and the downtime is tracked in a log. Permit Condition No. 11 does not require the retention of records, but rather the temperature parameters within which the RTO must operate. Even then, Merillat submitted a Failure to Monitor, Keep Records or Report as an attachment to the Semi-Annual Monitoring report, per request. As noted in this deviation report, "the RTO was operating in accordance with requirements and the appropriate temperature maintained". This fact was also communicated in our letter to the DEQ dated June 19, 2006."
 - c. Permit condition No.12 of Merillat's construct and operate permit dated August 12, 2004 states, "The RTO shall be equipped with a continuous temperature measuring and recording device. The monitoring device shall be installed,

maintained, calibrated and operated in accordance with approved procedures which shall include, as a minimum, the manufacturer's written requirements or recommendations. The monitoring device shall be provided with adequate access for inspection and shall be in operation when the topcoat booths and RTO are operating. The temperature records shall be available for inspection. (9 VAC 5-80-1180, 9 VAC 5-50-20 C, and 9 VAC 5-50-260)" There were periods when the temperature strip charts were not functioning. Response from source in letter dated 9-8-06: The circumstances pertaining to this condition were self-identified and reported to the DEQ in a letter dated July 19, 2006, and noted in the corresponding Semi-Annual Monitoring Report."

- d. Permit condition No.35 (k – l) of Merillat's construct and operate permit dated August 12, 2004 states in part, "The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Director, Southwest Regional Office. These records shall include, but are not limited to... Average combustion temperatures recorded in the RTO, calculated hourly as an average of the previous three hours of data. Monthly records of any three-hour periods during which the combustion temperature of the RTO was more than 50 degrees (°F) below the average temperature observed during the most recent emission test that demonstrated compliance. The company shall record causes for any excursion, and corrective actions taken. (9 VAC 5-50-50)" There were periods when the temperature strip chart was not functioning properly and therefore some records of the combustion temperature of the RTO are missing. Response from source in letter dated 9-8-06: "The circumstances pertaining to this condition were self-identified and reported to the DEQ in a letter dated July 19, 2006, and noted in the corresponding Semi-Annual Monitoring Report. In addition to those corrective actions identified in our June 19th letter, we have purchased the computer hardware and software necessary for the electronic recording of the combustion temperature of the RTO. This device will serve as a back-up to the strip chart already in place, and is scheduled for installation later this month."
- e. Permit condition No. 73(d)(i-iii) of Merillat's Virginia TV Operating Permit dated April 6, 2004 states in part, "For malfunctions that occurred for one hour or more, the permittee submitted to the Board a notice and written statement containing a description of the malfunction, any steps taken to requirements for submittal as follows: (i) The notice of the malfunction was submitted by facsimile transmission, telephone or telegraph as soon as practicable but no later than four daytime business hours of the time when the emission limitations were exceeded due to the malfunction. (ii) The written statement describing the malfunction was submitted no later than two weeks following the day the malfunction occurred. (iii) The notice fulfills the requirement of 9 VAC 5-80-110 F.b.2. to report promptly deviations from permit requirements. (9 VAC 5-80-250 & 9 VAC 5-20-180 C)" Malfunction reports were not submitted as required for RTO malfunction and malfunction of associated recording device. Response from source in letter dated 9-8-06: "We disagree with DEQ's position on Condition No. 73 of the facility's Title V Operating Permit, and maintain that we are in compliance with this condition...Condition No. 73 applies only in those circumstances where there is an actual event of noncompliance relating to excess emissions or malfunction. It does not mandate the submission of a

malfunction report unless to demonstrate an affirmative defense of malfunction and related excess emissions. This is not the case in Merillat's situation as there were no excess emissions. According to condition No. 42 of our permit to construct and operate dated August 12, 2004, notifications shall be made to the DEQ of malfunctions or air pollution control equipment that may cause excess emissions for more than one hour. In our submittal dated July 19, 2006, we demonstrated that at no time did the VOC emissions from the facility exceed either the pound per hour or tons per year permit limitation. Therefore, there were no excess emissions and the requirement to submit a malfunction report was not triggered."

3. 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 5-20-180 C	General Provisions – Air Quality Programs – Facility and control equipment maintenance and malfunction
9 VAC 5-50-20 C	New and Modified Stationary Sources – Special Provisions – Compliance
9 VAC 5-50-50	New and Modified Stationary Sources – Special Provisions – Notification, records and reporting
9 VAC 5-50-260	Emission Standards - Standards of Performance for Stationary Sources – Standard for Stationary Sources
9 VAC 5-80-110 F b 2	Permits for Stationary Sources – Permit Procedures – Federal Operating Permits for Stationary Sources – Permit Content
9 VAC 5-80-250	Permits for Stationary Sources – Permit Procedures – Federal Operating Permits for Stationary Sources – Malfunction
9 VAC 5-80-1180	Permits for Stationary Sources – Permit Procedures – Permits for New and Modified Stationary Sources - Standards and conditions for granting permits

4. On August 23, 2006, DEQ sent a Notice of Violation Letter (NOV No. 08-07-SWRO-2006) for the alleged violations noted in items 2.a-e and 3 above by Certified Mail-Return Receipt Requested, to Merillat, informing the Company that DEQ had reason to believe that a violation of Air Pollution Law and Regulations had occurred.
5. Company submitted letter dated, September 8, 2006, in response to the Notice of Violation letter issued August 23, 2006. The issues noted in this letter are noted in Conditions C. 2. a-e of this Order. The source has installed computer hardware and software necessary for the electronic recording of the combustion temperature of the RTO. This device will serve as a back-up to the strip chart already in place.

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 \$24,907 in settlement of the violations cited in this Order, to be paid as follows:

1. Merillat LP shall pay \$6,227 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 1104
Richmond, Virginia 23218

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 LP shall satisfy \$18,680 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 it 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 August 12, 2004 (as modified and dated March 27, 2006) and TV Operating Permit effective date June 30, 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.

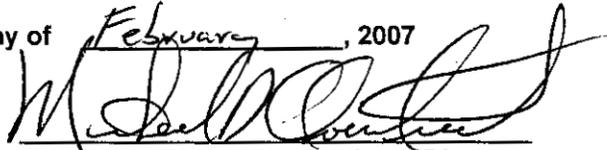
7. **Failure by Merillat to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of violations not related to the violations settled hereunder. Nothing herein shall affect appropriate enforcement actions by any other federal, 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.

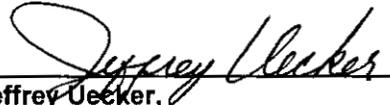
10. **This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.**
11. **This Order shall become effective upon execution by both the Director or his designee and Merillat. Notwithstanding the foregoing, the Company agrees to be bound by 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 LP voluntarily agrees to the issuance of this Order.

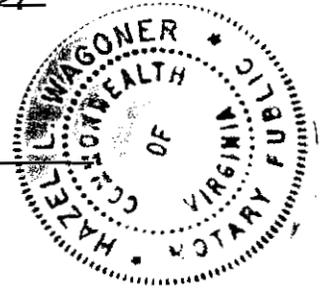
And it is ORDERED this 22 day of February, 2007


Michael D. Overstreet, Regional Director
Department of Environmental Quality

Merillat LP voluntarily agrees to the issuance of this Order.


Mr. Jeffrey Uecker,
Plant Manager
Merillat LP

Date: 2/21/07



Commonwealth of Virginia

City/County of Smyth

The foregoing document was signed and acknowledged before me this 21 day of

February, 2007 by Jeffrey Uecker on behalf of Merillat LP

Date: 2/21/07


Notary Public

My commission expires: 8-31-2010

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 install a new solvent recovery still to reclaim solvent from hazardous waste from the three stain booths. The three stain booths create approximately 22 gallons per day of hazardous waste. The hazardous waste material is to be processed in the solvent recycler. The reclaimed solvent can be used as a flush material for changing colors.
2. The SEP shall be completed by May 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 April 1, 2007, such notification shall include:
 - a. an alternate SEP proposal, or
 - b. payment of the amount specified in paragraph D.2., paid as to payment method, address and identification of payment as described in paragraph 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.