



ENCLOSURE 1

COMMONWEALTH of VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road

Glen Allen, Virginia 23060

(804) 527-5020

Fax (804) 527-5106

<http://www.deq.state.va.us>

**CONSENT AGREEMENT**

George Allen  
Governor

Becky Norton Dunlop  
Secretary of Natural Resources

Thomas L. Hopkins  
Director

Gerard Seeley, Jr.  
Piedmont Regional Director

**WITH**

Philip Morris Incorporated  
T/A Philip Morris USA  
Park 500 Facility  
4100 Bermuda Hundred Road  
Chesterfield, Virginia 23831

Registration No. 50722

**SECTION A: Purpose**

This Agreement establishes a Reasonably Available Control Technology (RACT) standard for the Philip Morris USA Park 500 Facility, for the control of volatile organic compound (VOC) emissions in the Richmond ozone nonattainment area as required by the 1985 State Implementation Plan (SIP) and 9 VAC 5-40-300 of the State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution. This RACT standard shall be the basis for VOC emissions control for this plant.

**SECTION B: References**

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

"Agreement" means this Consent Agreement.

"Board" or "SAPCB" means the State Air Pollution Control Board, a collegiate body of the Commonwealth of Virginia

described in §10.1-1301 of the Code. Particular powers and duties of the Board are referred to in Section C of this document.

"Code" means the Code of Virginia.

"DEQ" means the Department of Environmental Quality, an agency of the Commonwealth described in §10.1-1183 of the Code.

"Director" means the Director of the Department of Environmental Quality. Particular powers and duties of the Director are described in Section C of this document.

"EPA" means the United States Environmental Protection Agency.

"Major Stationary Source" means any stationary source with a theoretical potential to emit 100 tons or more per year of any criteria pollutant.

"New Source Review Program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§110 (a) (2) (C), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act.

"Non-CTG" means a source type for which the EPA has not issued a Control Technique Guideline (CTG), and thus has not established RACT for that source type.

"Philip Morris" or "affected facility" means Philip Morris Incorporated, T/A Philip Morris USA, Park 500 Facility, located at 4100 Bermuda Hundred Road, Chesterfield, Virginia.

"Piedmont Regional Office" refers to the staff of the office of the Department of Environmental Quality, 4949-A Cox Road, Glen Allen, Virginia.

"Reasonably Available Control Technology" or "RACT" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

"Regional Director" means the Director of the Piedmont Regional Office.

"SAPCB Regulations" means the State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution.

"SIP" means the State Implementation Plan.

"Theoretical potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. It is based on emissions at design capacity or maximum production and maximum operating hours (8,760 hours per year) before add-on controls, unless the source is subject to state and federally enforceable permit conditions which limit production rates or hours of operation.

"VOC" means volatile organic compounds as defined by 9 VAC 5-10-20 of the SAPCB Regulations.

#### SECTION C: Authority

1. Chapter 13 of Title 10.1 of the Code creates the Board and vests in it the authority to supervise and control various aspects of air pollution in the Commonwealth. Among the Board's powers is the authority to promulgate regulations "abating, controlling and prohibiting" air pollution, found in §10.1-1308 of the Code.
2. Pursuant to its authority, the Board has promulgated the SAPCB Regulations, which first took effect March 17, 1972, and have been periodically amended.
3. Pursuant to §10.1-1307.D of the Code, the Board has the authority to issue orders to diminish or abate the causes of air pollution and to enforce its rules and

regulations. Orders of the Board are enforceable pursuant to §§10.1-1316 and 10.1-1320 of the Code.

4. The Director is the executive officer of the Board. Under §10.1-1307.2 A of the Code, the Director is to perform those duties required of him by the Board. Additionally, under §10.1-1307.3 of the Code, the Director has such powers to supervise, administer, and enforce the provisions of Chapter 13 of Title 10.1 of the Code, as well as the regulations and orders of the Board, as are conferred upon him by the Board. The powers and duties conferred and imposed upon the Director under §§10.1-1307.2 and 10.1-1307.3 of the Code are continued under §10.1-1185 of the Code.
5. Under §10.1-1307.2 B of the Code, the Director may be vested with the authority of the Board when it is not in session, subject to such regulations or delegation as may be prescribed by the Board. Appendix F of the SAPCB Regulations contains the Delegation of Authority from the Board to the Director. In Section II A of Appendix F the Director is given the authority, with some exceptions, to act for the Board when it is not in session and to issue consent orders and emergency special orders.

SECTION D: Findings

1. Philip Morris operates a tobacco processing facility located at 4100 Bermuda Hundred Road in Chesterfield, Virginia. The tobacco processing facility consists of two separate, distinct facilities which are co-located on adjoining property: the Reconstituted Leaf (R/L) Plant and the Bermuda Hundred Facility.
2. 9 VAC 5-40-300 of the SAPCB Regulations, which became effective on July 1, 1991, requires RACT for all non-CTG major stationary sources of VOC emissions in the Richmond Ozone Nonattainment Area, which includes the Cities of Richmond, Hopewell, and Colonial Heights; and the Counties of Henrico, Hanover, Chesterfield, and Charles City.

3. Philip Morris was determined to be a non-CTG major stationary source of VOC emissions in the Richmond Ozone Nonattainment Area.
4. Philip Morris has performed a RACT analysis, which was submitted to the DEQ on October 16, 1996.
5. Based on potential throughputs, the uncontrolled stack VOC emissions from the R/L Facility are estimated to be 143.0 tons per year. All VOC emissions are generated primarily from the tobacco drying processes and from the raw materials blending area at the R/L facility.
6. Based on permitted levels, the potential uncontrolled stack VOC emissions from the Bermuda Hundred Facility are limited to 93.4 tons per year. All VOC emissions are generated primarily from the tobacco drying processes and from the application of final flavoring to the tobacco at the facility.
7. The potential uncontrolled stack VOC emissions from the entire Park 500 facility (R/L Facility + Bermuda Hundred Facility) is estimated to be 236.4 tons per year.
8. Since it is not economically feasible to control VOC emissions from any of the tobacco processing operations at the affected facility, RACT for the entire facility is determined to be no control.
9. Based on the RACT proposed above, total VOC emissions from the affected facility after RACT has been applied are estimated to be 236.4 tons per year.

**SECTION E: Agreement**

Accordingly, the Board and Philip Morris agree that:

1. VOC emissions from the affected facility shall be controlled as outlined in this Agreement.

2. Philip Morris shall comply with all applicable SAPCB Regulations including the requirements for notification, recordkeeping, and reporting.
3. Philip Morris shall maintain records of all operating parameters necessary to demonstrate compliance. These records shall be maintained for all processes and include, but are not limited to the following:
  - a. annual throughput records for all tobacco processing equipment at the affected facility
  - b. annual emission estimates for all tobacco processing equipment at the affected facility

These records shall be available on site for inspection by the DEQ and shall be current for the most recent five (5) years.

4. Philip Morris shall allow authorized local, state, and federal representatives, upon the presentation of credentials:
  - a. to enter upon Philip Morris' premises on which the facility is located or in which any records are required to be kept under the terms and conditions of this agreement;
  - b. to have access to and copy at reasonable times any records required to be kept under the terms and conditions of this agreement or the SAPCB Regulations;
  - c. to inspect at reasonable times any facility, equipment, or process subject to the terms and conditions of this agreement or the SAPCB Regulations; and
  - d. to sample or test at reasonable times.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours or whenever the facility is in operation.

Nothing contained herein shall make an inspection time unreasonable during an emergency.

5. Annual requirements to fulfill legal obligations to maintain current stationary source emissions data will necessitate prompt response by Philip Morris to requests for information to include: process and production data, and operating schedules. Such requests for information from the DEQ will either be in writing or by personal contact. The availability of information submitted to the DEQ or the Board will be governed by applicable provisions of the Freedom of Information Act, §§2.1-340 through 2.1-348 of the Code of Virginia; §§10.1-1314 and 10.1-1314.1 of the Code of Virginia; and 9 VAC 5-20-150 of the SAPCB Regulations. Information provided to federal officials is subject to appropriate federal law and regulations governing confidentiality of such information.
6. At any time in the future, should Philip Morris plan any modifications (within the context of the new source review program) of the affected facility covered by this Agreement, Philip Morris shall have the right to apply to the Board for a new source review permit, and the Board may consent to such modifications provided such modifications will meet all of the new source review permit program regulatory requirements in existence at that time.
7. The Board may modify, rewrite, or amend this Agreement with the consent of Philip Morris, for good cause shown by Philip Morris, or on its own motion provided approval of the changes is accomplished in accordance with SAPCB regulations, the Administrative Process Act (§9-6.14:1 et. seq.) and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) which provide for public notice and hearing.
8. So long as this Agreement remains in effect, Philip Morris waives the right to any hearing pursuant to §§9-6.14:11 and 9-6.14:12 of the Code and to judicial review of any issue of fact or law contained herein.

Nothing herein, however, shall be construed as a waiver of the right to a hearing or to judicial review of any action taken by the Board to enforce this Agreement.

9. Failure by Philip Morris to comply with any of the terms of this Agreement 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 as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
10. Philip Morris shall not be responsible for failure to comply with any of the terms and conditions of this Agreement if such noncompliance is caused by any act of God, fire, strike, or other occurrences beyond Philip Morris' control resulting in impossibility of compliance, if Philip Morris shows that such occurrences were beyond its control and were not due to a lack of good faith or diligence on the part of Philip Morris. When circumstances such as those mentioned above are anticipated to occur, are occurring, or have occurred, which may cause noncompliance with any material term or condition of this Agreement, Philip Morris shall notify DEQ within fifteen (15) days of the occurrence of the reasons(s) for and projected duration of such noncompliance and the measures taken or to be taken by Philip Morris to prevent or minimize such noncompliance.
11. Philip Morris declares it has received fair and due process under the Administrative Process Act (§9-6.14:1 et. seq. of the Code) in the negotiation of this agreement.
12. This Agreement shall become effective upon signature by both parties and shall continue in effect indefinitely or until otherwise terminated by the Board.

The foregoing Consent Agreement has been executed on behalf of the STATE AIR POLLUTION CONTROL BOARD of the COMMONWEALTH OF VIRGINIA and on behalf of Philip Morris, each by its duly authorized representatives, or self, on the dates indicated below.

DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE COMMONWEALTH OF VIRGINIA

3/26/97  
(date) BY: John M. Dennis  
for Thomas L. Hopkins  
Director

PHILIP MORRIS, INCORPORATED

3/19/97  
(date) BY: David L. Milby  
David L. Milby  
Senior Vice President  
Manufacturing

STATE OF VIRGINIA  
CITY OF RICHMOND

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of March, 1997, by David L. Milby, Senior Vice President, Manufacturing of Philip Morris, Incorporated, a Virginia Corporation, on behalf of the Corporation.

My commission expires 10-31-97

Beth J. [Signature]  
Notary Public

