



ENCLOSURE 1

NVRO-041-98

COMMONWEALTH of VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Northern Virginia Regional Office  
13901 Crown Court  
Woodbridge, VA 22193  
(703) 583-3840  
Fax (703) 538-3841

CONSENT AGREEMENT

WITH

Ogden Martin Systems of Fairfax, Incorporated  
40 Lane Road  
P.O. Box 2615  
Fairfield, New Jersey 07007-2615

Registration No. 71920

SECTION A: Purpose

This Agreement establishes a Reasonably Available Control Technology (RACT) standard for Ogden Martin Systems of Fairfax, Inc. for the control of nitrogen oxides (NO<sub>x</sub>) emissions at the I-95 Energy/Resource Recovery Facility as required by 9 VAC 5-40-310 of the State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution. This RACT standard shall be the basis of NO<sub>x</sub> emissions control for this plant. This Agreement replaces the agreement signed on January 13, 1997 for the same purpose.

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 described 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.

"Federal Plan" or "Federal Rule" means an enforceable plan developed by the U.S. Environmental Protection Agency (EPA) to implement the requirements of Section 129 of the Clean Air Act where no state rule pursuant to that section has been issued. The EPA rule proposed January 23, 1998, 40 CFR Part 62, Subpart FFF, "Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994." would meet this definition.

"Major Stationary Source" means any stationary source which emits, or has the potential to emit 100 tons per year or more of any pollutant subject to regulation under the federal Clean Air Act, or 50 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as serious in 9 VAC 5-20-204 of the SAPCB Regulations. The area in which the affected facility is located is a nonattainment area classified as serious in 9 VAC 5-20-204 of the SAPCB Regulations.

"Municipal Waste Combustor" or "MWC" means any device that combusts, solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved air or excess air), boilers (i.e., steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, or fluidized bed-fired) and gasification/combustion units.

"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.

"NO<sub>x</sub>" means nitrogen oxides as defined by 9 VAC 5-10-20 of the SPCB Regulations.

"Ogden Martin" or "affected facility" or "Fairfax facility" means the I-95 Energy/Resource Recovery Facility located at 9898 Furnace Road, Lorton, Virginia, operated by Ogden Martin Systems of Fairfax, Incorporated.

"Ogden Energy Group, Inc." is a company providing corporate support to Ogden Martin Systems of Fairfax, Incorporated.

"Parts per million" or "ppm" means a concentration (by volume, unless otherwise stated) of one part of the subject gas for every million equal-size parts of the gas mixture in which the subject gas is contained.

"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 both reasonably available, as well as technologically and economically feasible.

"Regional Director" means the Director of the Northern Virginia Regional Office of the Department of Environmental Quality, located at 13901 Crown Court in Dale City (Woodbridge), Virginia.

"SPCB Regulations" means 9 VAC 5 Chapters 10 through 80.

"SIP" or "State Implementation Plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"SNCR" means selective non-catalytic reduction, a means of controlling combustion-produced nitrogen oxides emissions by injection of an ammonia-based reagent into the flue gases.

"State Plan" or "State Rule" means an enforceable rule issued pursuant to Section 129 of the Clean Air Act by the State Air Pollution Control Board to be incorporated into the SIP for the purpose of implementing the requirements of 40 CFR Part 60, Subpart Cb.

"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.

"Units" means the individual boilers (combustors) which are fueled primarily by refuse and which supply steam to electric power generating turbines. The units are numbered 1 through 4.

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

"VAC" or "9 VAC" means *Title 9 of the Virginia Administrative Code*. This title comprises the environmental regulations for the Commonwealth of Virginia, including the regulations of the State Air Pollution Control Board.

### 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 SPCB 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 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. 9 VAC 5-20-130 of the SAPCB Regulations contains the Delegation of Authority from the Board to the Director. In subdivision C 1 of 9 VAC 5-20-130 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. Ogden Martin Systems of Fairfax, Inc. operates a resource recovery facility in which refuse is burned to produce steam for electric power generation at 9898 Furnace Road in Lorton (Fairfax County), Virginia.
2. 9 VAC 5-40-310 (formerly Section 120-04-0408) of the SAPCB Regulations, which became effective on January 1, 1993, requires RACT for all major stationary sources of NO<sub>x</sub> emissions in the Northern Virginia Ozone Nonattainment Area, which includes the Cities of Alexandria, Fairfax, Falls Church, Manassas, Manassas Park, and the Counties of Arlington, Fairfax, Loudoun, Prince William and Stafford.
3. At the time the regulation was enacted and following an opportunity for public comment, Section 120-04-0408 of the SAPCB

Regulations was formally submitted to EPA as a revision to the SIP.

4. By letter dated February 25, 1993, DEQ notified Ogden Martin that Ogden Martin may be subject to RACT for both VOC and NO<sub>x</sub> emissions. The letter required Ogden Martin to notify DEQ of Ogden Martin's RACT applicability status, make a commitment to determine what would constitute RACT, and provide DEQ with a schedule for achieving compliance by May 31, 1995. Since that notification, numerous submittals by Ogden Martin, responses by DEQ, and meetings have occurred between the parties to discuss technical and legal issues.
5. On February 26, 1996 a DEQ notice appeared in the *Washington Post* newspaper to announce the beginning of a period (to end on March 28, 1996 with a public hearing) during which public comment would be received regarding DEQ's determination that combustion controls would be deemed to constitute RACT for the Fairfax facility and that the currently valid PSD permit would be the enforcement mechanism. The only comments received were in a letter from U.S. EPA, Region III, dated March 28, 1996. The letter [REDACTED] states that EPA disagrees with the economic basis for the determination. In conclusion, the letter says, "EPA would not oppose RACT for this facility to be the installation of SNCR with a compliance schedule that conforms to the MWC rule."
6. DEQ proposed to Ogden Martin, by letter dated April 25, 1996, based on EPA's comments regarding the affected facility and following completion of the public comment period, that RACT be SNCR and establish an implementation schedule linked to the state's implementation of 40 CFR Part 60, Subpart Cb, also known as the MWC (Municipal Waste Combustor) Rule Emission Guidelines for Existing Sources. In subsequent discussions, DEQ stated that any NO<sub>x</sub> controls sufficient to meet the Subpart Cb emission guidelines would constitute RACT.
7. At a meeting of representatives of Ogden Martin, Ogden Energy Group (called Ogden Projects, Inc. at the time), Fairfax County, and DEQ held on July 19, 1996, an agreement was reached in concept that DEQ would determine that NO<sub>x</sub> RACT for the facility is the NO<sub>x</sub> emission guidelines of 40 CFR Part 60, Section Cb, as these come



to be incorporated by the Commonwealth of Virginia into an applicable regulation and implementation plan.

8. Subpart Cb was promulgated on December 19, 1995; therefore, at latest, barring an amendment to the Clean Air Act, the facility must be in compliance with the Subpart Cb guidelines by December 19, 2000, but perhaps earlier, depending on the schedule set forth in either a final state rule or final federal plan. The Clean Air Act Section 129(b) requires the Administrator (EPA) to issue a federal plan if a state has not submitted an approvable plan within two years of the (Subpart Cb) promulgation date. The SAPCB did not submit an approvable plan within the 2 year post-promulgation period, therefore, on January 23, 1998, EPA issued for comment a proposed federal plan (40 CFR Part 62, Subpart FFF) in lieu of a state plan.
9. On August 25, 1997, EPA promulgated amendments to the 40 CFR Part 60 Cb Emission Guidelines. Relevant to the Ogden Martin facility was the revision of the NO<sub>x</sub> emission standard to 205 ppm.
10. On January 13, 1997, a consent agreement between Ogden Martin and DEQ to implement NO<sub>x</sub> RACT at the Fairfax facility was signed. Due to changes in the NO<sub>x</sub> emission standard of 40 CFR Part 60, Subpart Cb, presented in the August 25, 1997 Federal Register, and the issuance of a proposed federal plan, presented in the January 23, 1998 Federal Register, Ogden Martin and DEQ have agreed that it is necessary to enter into an updated consent agreement. This document constitutes the updated consent agreement and replaces the prior January 13, 1997 consent agreement.
11. In response to U.S. EPA's March 28, 1996 comment letter on the February 1996 final RACT analysis and consent agreement for the Fairfax facility and to EPA's August 1997 determination that the applicable NO<sub>x</sub> emission standard for large, existing MWC's is 205 ppmv @ 7% O<sub>2</sub> (as required by 40 CFR 60, Subpart Cb and the proposed federal plan at 40 CFR 62, Subpart FFF), NO<sub>x</sub> RACT for Ogden Martin's Fairfax facility is thus determined by DEQ to consist of a NO<sub>x</sub> emission standard of 205 ppmv for each unit, corrected to 7% O<sub>2</sub>, dry basis.

SECTION E: Agreement

Accordingly, the Board and Ogden Martin agree that:

1. NO<sub>x</sub> emissions from the affected facility shall be controlled as outlined in this Agreement.
2. NO<sub>x</sub> emissions from the units shall be controlled by implementation of all NO<sub>x</sub> emission requirements of 40 CFR Part 60, Subpart Cb (including, but not limited to the applicable emission standard in 40 CFR 60.33 b(d)).
3. The signing of this Agreement by Ogden Martin shall be considered evidence of a good faith effort to attain compliance with the RACT requirements of 9 VAC 5-40-310 of the SAPCB Regulations.
4. At any time in the future, should Ogden Martin plan any modifications (within the context of the new source review program) of the affected facility covered by this Agreement, Ogden Martin 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.
5. The Board may modify, rewrite, or amend this Agreement with the consent of Ogden Martin; for good cause shown by Ogden Martin, 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).
6. So long as this Agreement remains in effect, Ogden Martin 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.
7. Failure by Ogden Martin 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.

8. Ogden Martin declares it has received fair and due process under the Administrative Process Act (§ 9-6.14:1 et. seq.).
9. This Agreement shall become effective upon signature by both parties and shall continue in effect indefinitely, except as provided in paragraph E.4. of this agreement 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 Ogden Martin Systems of Fairfax, Inc., each by its duly authorized representatives, or self, on the dates indicated below.

DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE COMMONWEALTH OF VIRGINIA

4/3/98  
(date)

BY: [Signature]  
Thomas L. Hopkins  
Director

OGDEN MARTIN SYSTEMS OF FAIRFAX, INC.

3/20/98  
(date)

BY: [Signature]  
John M. Klett  
Executive Vice President,  
Operations

New Jersey (State in which notary is commissioned)  
Essex (County in which notary is commissioned)

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of March, 1998, by John M. Klett, Executive Vice President, Operations, Ogden Martin Systems of Fairfax, Incorporated, a Virginia Corporation, on behalf of the Corporation.

My commission expires \_\_\_\_\_

[Signature]  
Notary Public

STEPHANIE B. DURAN  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES AUG. 24, 1998