

COMMONWEALTH OF VIRGINIA OPERATING PERMIT

STATIONARY SOURCE PERMIT TO OPERATE

In compliance with the Federal Clean Air Act and the Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution,

Mirant Potomac River, LLC  
901 F Street NW, Suite 800, Washington, DC 20004  
Registration No. 70228  
County-Plant No. 510-0003

is authorized to operate

an electric power generating station

located at

1400 N. Royal Street  
Alexandria, Virginia

in accordance with the Conditions of this permit and all other applicable permits and regulations of the State Air Pollution Control Board.

Approved on \_\_\_\_\_.

Robert G. Burnley  
Director

Permit consists of 8 pages.  
Permit Conditions 1 to 24.

**PURPOSE**

This permit is issued to Mirant Potomac River, LLC (Mirant), for the purpose of complying with the requirements of Section 110 (a)(1) of the federal Clean Air Act (CAA) pertaining to the attainment and maintenance of the ozone air quality standard and to make enforceable as a part of the State Implementation Plan certain of the requirements of the Consent Decree issued by the United States District Court for the Eastern District of Virginia on (date) in the case of *United States of America, the Commonwealth of Virginia, and the State of Maryland versus Mirant Corporation* as they pertain to the Potomac River Generating Station. Section 110 (a)(1) of the CAA states that each state shall submit to the U.S. Environmental Protection Agency (EPA) a plan (State Implementation Plan) which implements, maintains, and enforces each primary and secondary national ambient air quality standard. Section 110 (a)(2) of the CAA requires the SIP to contain enforceable emission limitations and control measures. This permit provides the means to enforce the control measures set forth in Section 7.2.9 of the Plan to Improve Air Quality in the Washington, DC-MD-VA Region (Severe Area SIP), dated February 19, 2004, and submitted to EPA as a SIP revision on February 25, 2004.

**PERMIT CONDITIONS** – Items listed in parentheses after each condition are the regulatory reference and/or authority for the condition. “Consent Decree” refers to the consent decree described above in the PURPOSE section.

**Affected Units**

1. The equipment to which this permit applies is the following emissions units at the Potomac River Generating Station (PRGS):
  - two coal-fired Combustion Engineering boilers (C101 and C201)\*, rated at  $970.1 \times 10^6$  Btu/hr heat input each, designated at the plant as the Units 1 and 2 boilers, and referred to in this permit as Units 1 and 2;
  - three coal-fired Combustion Engineering boilers (C301, C401 and C501)\*, rated at  $960.7 \times 10^6$  Btu/hr heat input each, designated at the plant as the boilers of Units 3, 4, and 5, and referred to in this permit as Units 3, 4, and 5.

\*Identifying codes for boilers are from the federal operating permit (“Title V”) application dated January 6, 1998.

2. For the purposes of compliance with Conditions 6, 7, 10, 11 and 12, the term “Mirant System” in this permit means the five coal-fired electrical generating units at the PRGS, and all of the coal-fired electric generating units at the following three facilities owned and operated by Mirant Mid-Atlantic, L.L.C., which is an entity affiliated with Mirant Potomac River, L.L.C:

- Chalk Point Station, Units 1 and 2, located in Prince Georges County, MD;
- Dickerson Generating Station, Units 1, 2, and 3, located in Montgomery County, MD; and,
- Morgantown Generating Station, Units 1 and 2, located in Charles County, MD.

NO<sub>x</sub> Emissions Reductions and Controls

3. By May 1, 2004, Mirant shall install and continuously operate low-NO<sub>x</sub> burners ("LNB") (or a technology more effective than LNB at reducing NO<sub>x</sub> emissions) on the PRGS's Units 3, 4 and 5 at all times that these units are in operation.  
(Consent Decree, Paragraph 42)
4. Beginning May 1, 2005, Mirant shall not operate any of the PRGS Units 3,4,or 5 unless it has installed and continuously operates Separated Over-Fire Air ("SOFA") technology (or a technology more effective than SOFA at reducing NO<sub>x</sub> emissions) at the Unit at all times that the Unit is in operation.  
(Consent Decree, Paragraph 43)
5. Mirant shall not emit NO<sub>x</sub> from the PRGS during the Ozone Season (May 1 through September 30) in an amount greater than the following number of tons, during each year specified below:

2004	<u>1,750</u> tons
2005	<u>1,625</u> tons
2006	<u>1,600</u> tons
2007	<u>1,600</u> tons
2008	<u>1,600</u> tons
2009	<u>1,600</u> tons
2010 and each ozone season thereafter	<u>1,475</u> tons

(Consent Decree, Paragraph 44)

6. Beginning on May 1, 2004, for each Ozone Season specified, the sum of the tons of NO<sub>x</sub> emitted by all coal-fired electric generating units within the Mirant System shall not exceed the following Mirant System-Wide Ozone Season tonnage Limitations for NO<sub>x</sub>:

2004	<u>14,700</u> tons
2005	<u>13,340</u> tons

2006 12,590 tons  
2007 10,190 tons  
2008 6,150tons  
2009 6,150 tons  
2010 and each ozone season thereafter 5,200 tons

Any exceedance of the system-wide limit shall result in a violation at Potomac River Generating Station.  
(Consent Decree, Paragraph 50)

7. Beginning on May 1, 2008, and continuing for every Ozone Season thereafter, the Mirant System shall not exceed a System-Wide Ozone Season Emission Rate of 0.150 pounds of NO<sub>x</sub> per million Btu's of heat input (lb/mmBtu). Any exceedance of the system-wide rate shall result in a violation at Potomac River Generating Station.  
(Consent Decree, Paragraph 51)

#### Use of NO<sub>x</sub> Allowances

8. If Mirant exceeds the limitations specified in this permit , Mirant may not claim compliance with this permit or the Consent Decree by using, tendering, or otherwise applying NO<sub>x</sub> allowances that were obtained prior to the lodging of the Consent Decree, or that are subsequently purchased or otherwise obtained. "NO<sub>x</sub> allowance" means an authorization or credit to emit a specified amount of NO<sub>x</sub> that is allocated or issued under an emissions trading or marketable permit program of any kind that has been established under the Clean Air Act or a State Implementation Plan.  
(Consent Decree, Paragraph 52)

#### NO<sub>x</sub> CEMs AND REPORTING

9. In determining compliance with the emission limits for NO<sub>x</sub> set forth in Conditions 5, 6, and 7, Mirant shall use continuous emissions monitors (CEMs) in accordance with those reference methods specified in 40 C.F.R. Part 75 .  
(Consent Decree, Paragraph 57)
10. Mirant shall submit a report to DEQ containing a summary of the data recorded by each NO<sub>x</sub> CEM in the Mirant System, expressed in lb/mmBTU, on a 30-day rolling average basis, in electronic format, within 30 days after the end of each calendar quarter and within 30 days after the end of each month of the Ozone Season, and shall make all data recorded available to the DEQ upon request. In addition, the third quarter report (due within 30 days of September) shall state the cumulative total of pounds and tons of NO<sub>x</sub> emitted from both the PRGS and the

Mirant System for the ozone season (May – September) and the cumulative total heat input for the Mirant System for the ozone season. The third quarter report shall also state the average NO<sub>x</sub> emission rate for the Mirant System for the ozone season.

(Consent Decree, Paragraph 58)

11. Mirant shall provide a written report to DEQ of any violation of the requirements of this permit or the Consent Decree, including exceedences of any PRGS Ozone Season tonnage limitation or Mirant System-Wide Ozone Season tonnage limitation or emission rate limit within ten (10) business days of when Mirant knew or should have known of any such violation. In this report, Mirant shall explain the cause or causes of the violation and all measures taken or to be taken by Mirant to prevent such violations in the future.  
(Consent Decree, Paragraph 83)

#### Information Collection and Retention

12. Any authorized representative of the DEQ, including its attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry upon the premises of any facility in the Mirant System at any reasonable time for the purpose of: monitoring the progress of activities required under this permit; verifying any data or information submitted to DEQ in accordance with the terms of this permit; obtaining samples and, upon request, splits of any samples taken by Mirant or its representatives, contractors, or consultants; and assessing Mirant's compliance with this permit.  
(Consent Decree, Paragraph 122)
13. Mirant shall maintain and make available for inspections at the PRGS until the year 2015 a copy of all records, including those obtained at other facilities, necessary for determining compliance with the conditions of this permit. After the year 2015, the records need only be maintained at the PRGS for a period of five years following their creation.  
(Consent Decree, Paragraph 123; 9 VAC 5-80-900 and 9 VAC 5-80-420)

#### General Provisions

14. Performance standards, emissions limits, and other quantitative standards set by or under this permit must be met to the number of significant digits in which the standard or limit is expressed. For example, an emission rate of 0.100 is not met if the actual emission rate is 0.101. Mirant shall round the fourth significant digit to the nearest third significant digit. For example, if an actual emission rate is 0.1004, that shall be reported as 0.100, and shall be in compliance with an emission rate of 0.100, and if an actual emission rate is 0.1005, that shall be

reported as 0.101, and shall not be in compliance with an emission rate of 0.100. Mirant shall report data to the number of significant digits in which the standard or limit is expressed. As otherwise applicable and unless this permit expressly directs otherwise, the calculation and measurement procedures established under 40 C.F.R. Part 75 apply to the measurement and calculation of NO<sub>x</sub> emissions under this permit.

(Consent Decree, Paragraph 147)

15. In the event of any change in control or ownership of the permitted source, the permittee shall notify the succeeding owner of the existence of this permit by letter and send a copy of that letter to the DEQ Regional Compliance Manager. (9 VAC 5-80-940 of State Regulations)
16. A copy of this permit shall be maintained on the premises of the facility to which it applies. (9 VAC 5-80-860 of State Regulations)
17. Except for the State Operating Permit issued to the Potomac Electric Power Company (PEPCO) on September 18, 2000, and subsequently transferred to Mirant, and except to the extent that conditions in this permit may be more stringent, this permit does not supersede or replace any other valid permit, regulatory or statutory requirement, including, but not limited to, any instrument to implement the Reasonably Available Control Technology (RACT) provisions of 9 VAC 5-40-300 and 9 VAC 5-40-310. Furthermore, this approval to operate shall not relieve Mirant of the responsibility to comply with all other local, state and federal regulations, including permit regulations.
18. Once the permit is approved by the U.S. Environmental Protection Agency into the Commonwealth of Virginia State Implementation Plan, the permit is enforceable by EPA and citizens under the federal Clean Air Act. This does not include conditions beyond Condition 20, as they are specifically excluded from inclusion into the State Implementation Plan.
19. The Board may modify, rewrite, or amend this permit with the consent of Mirant, for good cause shown by Mirant, or on its own motion provided approval of the changes is accomplished in accordance with Regulations of the Board and the Administrative Process Act (§ 2.2-4000 et seq.); however, such changes shall not be enforceable as provided in Condition 18 until the changes are approved following the requirements of 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).
20. Failure by Mirant to comply with any of the conditions of this permit shall constitute a violation of a Permit of the Board. Failure to comply may result in a Notice of Violation and civil penalty. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of 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.

Environmental Projects Not for Inclusion in the State Implementation Plan (SIP)

21. Mirant shall implement the Environmental Projects (Projects) listed below for the improvement of air quality and shall implement all other Environmental Projects listed in Appendix A of the Consent Decree and in accordance with the terms and conditions of the Consent Decree. Mirant shall submit plans for the Projects listed below to DEQ for review and approval pursuant to Section X (Review and Approval Submittals) of the Consent Decree and in accordance with the schedules set forth in Appendix A. In implementing all of the Projects listed in Appendix A of the Consent Decree, Mirant shall spend no less than \$1 million in Project Dollars. Mirant shall maintain and present to DEQ upon request all documents required by Generally Accepted Accounting Principles (GAAP) to substantiate the Project Dollars expended, and shall provide these documents to DEQ within 30 days of a request by DEQ for the documents.
- a) bottom ash and fly ash silo vent secondary filtration
  - b) coal pile wind erosion and dust suppression
  - c) coal stackout conveyor dust suppression
  - d) ash loader upgrade
  - e) ash loading dust system dust suppression
  - f) coal railcar unloading dust suppression
  - g) settled dust study
  - h) truck washing facility
- (Consent Decree, Paragraph 64 and Appendix A)
22. Mirant shall certify, as part of each plan submitted to DEQ for any Project, that Mirant is not otherwise required by law, and is unaware of any other person that is required by law, to perform the Project described in the plan.  
(Consent Decree, Paragraph 67)
23. Within sixty (60) days following the completion of each Project, Mirant shall submit to DEQ a report that documents the date that the Project was completed,

Mirant's results of implementing the Project, including the emission reductions or other environmental benefits achieved, and the Project Dollars expended by Mirant in implementing the Project.  
(Consent Decree, Paragraph 69)

24. Beginning six months after entry of the Consent Decree, Mirant shall provide DEQ with semi-annual updates concerning the progress of each Project.  
(Consent Decree, Paragraph 70)

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

**STATEMENT OF BASIS**

Of the  
State Operating Permit for the  
Mirant Mid-Atlantic, LLC  
Potomac River Generating Station  
To Implement the NO<sub>x</sub> Emission Reductions of the  
Attainment Plan for  
The Northern Virginia Nonattainment Area

By John R. McKie, PE

Last revised September 24, 2004

**Background**

One of the primary goals of the federal Clean Air Act (Act) is the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). These standards, designed to protect public health and welfare, apply to six pollutants, of which ozone is the primary focus of this proposed action. Ozone is formed when volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) in the air react together in the presence of sunlight. NO<sub>x</sub> emissions are a by-product from the combustion of fuels and industrial processes.

The one hour National Ambient Air Quality Standard for ozone is 0.12 parts per million (ppm) and was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. When concentrations of ozone in the ambient air exceed the federal standard the area is considered to be out of compliance and is not meeting (attaining) the standard.

The Act sets forth air quality planning requirements for areas that do not attain the federal air quality standard for ozone (that is, nonattainment areas). The Act establishes a process for evaluating the air quality in each region and identifying and classifying each nonattainment area according to the severity of its air pollution problem. Nonattainment areas are classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification (or class) is subject to successively more stringent control measures. Areas in a higher classification of nonattainment must meet the mandates of the lower classifications plus the more stringent requirements of its own class.

Once the nonattainment areas are defined, each state is then obligated to submit a plan (called a state implementation plan or SIP) demonstrating how it will attain the air quality standard in each nonattainment area. The Act requires that certain specific control

measures and other requirements be adopted and included in the plan. The plan must include an attainment demonstration by photochemical modeling including annual emission reductions of 3% from 1996 to 2005.

Failure to develop adequate plans to meet the ozone air quality standard: (i) will result in the continued violations of the standard, (ii) may result in assumption of air quality programs by EPA at which time the Commonwealth would lose authority over matters affecting its citizens, and (iii) may result in the implementation of sanctions by EPA, such as more restrictive requirements on new major industrial facilities and loss of federal funds for highway construction. Furthermore, if a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent air pollution control requirements.

Numerous counties and cities, including Alexandria, within the Northern Virginia area have been identified as nonattainment areas for the one-hour ozone air quality standard in accordance with the Act. Although initially classified as serious, the Northern Virginia Ozone Nonattainment Area is now classified as severe because it failed to attain the one-hour ozone air quality standard by the legislatively mandated attainment date for serious areas.

Control of NO<sub>x</sub> emissions from the Mirant Mid-Atlantic, LLC (Mirant), Potomac River Generating Station (PRGS) located in the City of Alexandria, Virginia has been identified as a control measure necessary for the attainment and maintenance of the ozone air quality standard in the Northern Virginia Area in the following SIP documents (most recent versions): 1) SIP Rate of Progress Demonstration Plan for the Washington, DC-MD-VA Region dated August 13, 2003 and submitted to EPA as a SIP revision on August 19, 2003; and 2) Section 7.2.9 of the Plan to Improve Air Quality in the Washington, DC-MD-VA Region (Severe Area SIP), dated February 19, 2004, and submitted to EPA as a SIP revision on February 25, 2004. The control measure requires that emissions of oxides of nitrogen (NO<sub>x</sub>) from the Mirant facility not exceed 1019 tons during the ozone season (May - September).

The latter SIP document is a revised version of one that was submitted to EPA in February 2000, and approved by EPA in the Federal Register on January 3, 2001. DEQ issued a State Air Pollution Control Board state operating permit (SOP) to PEPCO on September 18, 2000, to implement the Potomac River Generating Station (PRGS) requirements in the SIP document submitted in February 2000. That permit also limited the plant to 1019 tons of NO<sub>x</sub> during the ozone season. Since the time the permit was issued, Mirant purchased the PRGS from PEPCO and automatically acquired the permit. DEQ notified Mirant that the PRGS violated the permit during the ozone season of 2003 by exceeding the 1019 tons NO<sub>x</sub> limit. Mirant contended that under the circumstances a notice of violation was unjust, a contention which DEQ rejected. With the help of EPA and the State of Maryland, Virginia reached a settlement with Mirant through the federal district court. The official settlement document, known as a consent decree, imposes many requirements on Mirant, a portion of which are designed to

accommodate the SIP revisions in the documents described above. Other requirements in the consent decree are included for the purpose of providing other types of environmental benefits.

### **Implementation**

The consent decree can only be enforced by officials of the federal government and has some limits on its enforceability, including an expiration date. Primary responsibility for the protection of air quality in Virginia falls upon the Commonwealth. For this reason, the provisions of the consent decree need to be in an administrative mechanism enforceable by the state. It is also necessary that certain provisions of this administrative mechanism be included as part of the Commonwealth of Virginia State Implementation Plan to meet the Commonwealth's obligations under the federal Clean Air Act. The administrative mechanism that the Virginia Department of Environmental Quality (DEQ) has chosen for this purpose is a state operating permit (SOP). The proposed permit is being issued pursuant to Article 5 (9 VAC 5-80-800 et seq.) of 9 VAC 5 Chapter 80 of the State Air Pollution Control Board's (SAPCB) Regulations for the Control and Abatement of Air Pollution (Regulations) and is state enforceable upon issuance. SAPCB Regulation 9 VAC 5-80-800 C 2 b allows the use of a state operating permit to "establish a source-specific emission standard or other requirements necessary to implement the federal Clean Air Act or the Virginia Air Pollution Control Law." A permit issued for this reason requires no application. This proposed SOP contains only provisions pertaining to the ozone attainment plan and the consent decree. The SOP will eventually be incorporated into a federal "Title V" operating permit, which will also include all other air-related requirements applicable to the facility.

A major amendment to the September 2000 SOP was proposed in the spring of 2004. A public comment period was held on the proposed amending of the SOP. The comment period ended with a public hearing on April 12, 2004. The SOP proposed at that time contains some requirements that conflict with the consent decree. Therefore, the draft SOP with amendments presented for public comment has had to be redrafted, to accommodate the consent decree, as well as some revisions suggested during the public comment period. However, due to the considerable revisions required, a new public comment period is warranted for this latest draft SOP. It should be noted that issuance of a state operating permit can occur without public participation; however, a revision of the SIP cannot and the purpose of this SOP is to revise the SIP. If and when this new SOP is issued it will replace the SOP issued on September 18, 2000, which is being rescinded.

Unlike the 2000 SOP and the amended version proposed in the spring of 2004, the currently proposed SOP has a schedule for phased-in reduction of NO<sub>x</sub> emissions beginning in 2004 rather than a flat 1019 tons per ozone season limit beginning May 2003. The schedule for phased-in reductions reflects the reality that construction of emission controls takes time and some generating units have to remain operating while others are

shutdown for retrofitting. It also accounts for the delay in beginning reductions at the PRGS, as explained in the following paragraphs.

Perhaps the most important difference between the currently proposed SOP and either the 2000 SOP or the one proposed in the spring of 2004 is how compliance with the ozone season NO<sub>x</sub> emission limit could be attained. The 2000 SOP allows some or all of the reductions to be attained by taking credit for reductions at other facilities that have surpassed their regulatory reduction requirements. The SOP proposed in the spring of 2004 prohibited the use of reductions achieved elsewhere to comply with the NO<sub>x</sub> limit. The SOP proposed now would utilize a specified combination of real reductions at the PRGS and reductions at other Mirant facilities within the greater Washington, DC ozone nonattainment area. Emission reductions at other Mirant facilities cannot be credited toward compliance with the new, proposed permit, if those reductions were already required for other reasons.

Mirant had assumed that it would comply with the 2000 SOP NO<sub>x</sub> reductions by securing credits for reductions taken at facilities outside the greater Washington, DC area. However, DEQ determined that Mirant's reliance on out-of-area emission reduction credits would not serve the purpose of the attainment plan that the SOP was intended to implement. This conflict was not settled until the issuance of the aforementioned consent decree. Therefore, much of the retrofitting work necessary to attain the reductions required at the PRGS was not begun prior to the issuance of the consent decree. This delay was factored into the phased schedule for emission reductions in both the consent decree and this permit.

As stated above, a permit for purposes of modifying the SIP is subject to public participation, so a public comment period is being advertised for this SOP, to be concluded with a public hearing. Following consideration by DEQ of the comments received, the amended permit will be revised if warranted and issued. The final (issued) SOP and supporting documentation will be forwarded to EPA for final approval as being satisfactory to implement the attainment plan and for inclusion into the SIP. Mirant will be expected to comply with the new SOP as soon as it becomes legally effective, following issuance. The date of effectiveness is expected to occur before EPA's approval for inclusion into the SIP.

### **Permit Contents**

**PURPOSE** – The purpose and regulatory grounds for this state operating permit are presented in this section of the permit. The Clean Air Act citation given is the basis for EPA requiring that Virginia submit an ozone attainment plan. This state operating permit is the means of enforcing the relevant portion of the attainment plan. The authority to issue a state operating permit to establish a source-specific emission standard or other requirements necessary to implement the federal Clean Air Act is given at 9 VAC 5-80-800. The consent decree issued by the United States District Court for the Eastern District of Virginia on (date) in the case of *United States of*

*America, the Commonwealth of Virginia, and the State of Maryland versus Mirant Corporation* imposes requirements on Mirant that are important for implementing the Potomac River Generating Station's (PRGS) role in the ozone attainment plan. The state operating permit (SOP) issued September 18, 2000, which has fulfilled this purpose in the past is being rescinded. This rescission would leave a void in the State Implementation Plan (SIP) with respect to the ozone attainment plan, were it not for this new SOP.

## PERMIT CONDITIONS

<u>Condition Number</u>	<u>Purpose and Basis of the Condition</u>
1.	Specifies the emitting units at the Potomac River Generating Station (PRGS) to which the permit conditions apply. In this case, the units are all of the boilers supplying steam for electric power generation. This permit is issued only for the purpose of allowing operation of the PRGS, and consequently, compliance with the conditions of this permit is only indicative of compliance for that particular facility, even though some of the conditions depend on operations at other facilities.
2.	Specifies the units owned by Mirant, besides those of the PRGS, that are considered as part of the Mirant System in conditions of this permit that set system-wide limitations. This list of units is taken from the definition of "Mirant System" in the Consent Decree. These units are the coal-fired units at the Potomac River, Chalk Point, Morgantown, and Dickerson Generating Stations.
3.	States the type of NO <sub>x</sub> emissions control (low-NO <sub>x</sub> burners) required by the Consent Decree to be installed on the PRGS Units 3, 4 and 5 by May 1, 2004. With DEQ approval, a more effective technology may be substituted, but this is a moot point, as low-NO <sub>x</sub> burners are already installed and operating. The Consent Decree does not require any controls on Units 1 and 2, so control of those units is not addressed in this condition.
4.	States the type of NO <sub>x</sub> emissions control (separated over-fire air; a.k.a, SOFA) required by the Consent Decree to be installed on the PRGS Units 3, 4 and 5 by May 1, 2005. With DEQ approval, a more effective technology may be substituted. Shutdown of a unit will also be considered as compliance with this condition for that unit, because the shutdown would be achieving the same objective as this condition, reduction of NO <sub>x</sub> emissions. The Consent Decree does not require any controls on Units 1 and 2, so they are not addressed in this condition. The Consent Decree does require controls to be installed on the coal-fired units at Mirant's Morgantown plant, but due to jurisdictional enforceability issues, that requirement is not included in this state operating permit.

5. Sets an incrementally decreasing limit for the PRGS on NO<sub>x</sub> emissions each ozone season (May – Sep) from 2004 through 2010. The limit for each year is from the Consent Decree. The basis for the limits is a combination of the requirements of the attainment plan, negotiations between parties (Mirant, EPA, VA, MD) to the Consent Decree, and the physical scheduling constraints inherent in installing the proposed controls. It should be noted that there are NO<sub>x</sub> reductions required by the Consent Decree at other Mirant facilities during the same period, so reductions system-wide are greater than reflected in the schedule for this condition. Compliance with the NO<sub>x</sub> limits in this condition can only be achieved through keeping the emissions at the PRGS below the limits, not by claiming credit for emission reductions occurring elsewhere.
6. Sets an incrementally decreasing limit for the Mirant System (see Condition 2) on NO<sub>x</sub> emissions each ozone season (May – Sep) from 2004 through 2010. The limit for each year is from the Consent Decree. The basis for the limits is a combination of the requirements of the attainment plan, negotiations between parties (Mirant, EPA, VA, MD) to the Consent Decree, and the physical scheduling constraints inherent in installing the proposed controls. This condition does not limit the NO<sub>x</sub> contribution of any particular plant or unit, because all the units are believed to contribute to the ozone problem of the Washington, DC – MD – VA nonattainment area. The reduction of NO<sub>x</sub> emissions system-wide is important to this permit, because the emissions from the PRGS alone will not be reduced as much as anticipated under the NO<sub>x</sub> budgets originally proposed in Virginia's portion of the attainment plan. That shortfall is being made up through these system-wide limits. Because the shortfall is for the PRGS, it is important that the system-side limits be enforceable through the PRGS permit.
7. Sets a NO<sub>x</sub> emissions limit in terms of pounds of NO<sub>x</sub> per million Btu's of heat (fuel) input system wide during the ozone season. This limit (0.15 lb/mmBtu) is the same rate that was used as the basis for Virginia's NO<sub>x</sub> reductions from power plants in the attainment plan and for setting budgets for the electric utilities in EPA's "SIP Call" to reduce long-range transport of NO<sub>x</sub>. It is included in this permit, because it is in the Consent Decree and because the NO<sub>x</sub> limit in the state operating permit (SOP) that this one replaces was also based on that rate. The limit in the former attainment plan SOP for the PRGS was actually a cap on total tons of NO<sub>x</sub> emissions, but it was equivalent to the sum of the caps on emissions for each unit as given in the Virginia NO<sub>x</sub> Budget Trading Program regulation, which was based on historical heat inputs at a presumed emission rate of 0.15 lb/mmBtu. The attainment plan SOP issued to Virginia Power for the Possum Point Power Station in 2000 has its NO<sub>x</sub> limit as 0.15 lb/mmBtu, so both facilities are being treated equally.
8. Prohibits the use of emission credits from an emissions "trading program" as a means of compliance with the emission limits of this permit. The SOP issued in 2000 did allow the use of such emission credits for compliance, but it also stated that the permit could be amended if DEQ determined that such use would

impede the intended attaining of the ozone standard. DEQ determined prior to a trading program becoming available to Mirant, that reliance on emission credits to meet NO<sub>x</sub> limits for the PRGS would not serve the intended purpose. Therefore, DEQ proposed to amend the 2000 permit and submitted a draft for public comment in March, 2004. Due to potential conflicts with the Consent Decree, the draft proposed in March has been withdrawn. This permit replaces the draft proposed in March, while retaining a similar prohibition on the use of emission credits from trading programs for compliance with the NO<sub>x</sub> limits. The prohibition is copied directly from the Consent Decree.

9. States compliance will be determined by continuous emissions monitoring. Mirant already has continuous emissions monitors (CEM's) for purposes of determining compliance with Acid Rain and reasonably available control technology (RACT) provisions of the Clean Air Act. Monitoring requirements for the Acid Rain provisions of the Clean Air Act are covered in Part 75 of Title 40 of the Code of Federal Regulations (CFR). To maintain consistency between Mirant's obligation to meet the Acid Rain requirements for CEM's and those of this permit, this condition also requires that the monitoring be done in accordance with Part 75. This is also required by the Consent Decree.
10. Specifies when CEM data must be reported to DEQ. This is taken from the Consent Decree. Although the Consent Decree does not specify a period of less than a whole ozone season for determining compliance with either the limits on total tons of emissions for each year or the 0.15 pounds of NO<sub>x</sub> limit per million Btu's (mmBtu) of heat input to the Mirant System, a more frequent period of reporting (in this case, monthly) is deemed appropriate. The reason is that interim reporting will allow both Mirant and the DEQ to determine if the PRGS or the System are headed toward noncompliance, so that appropriate measures can be taken to prevent a state of noncompliance from actually occurring. This was a valid concern raised during the public comment period for the amended SOP proposed in March 2004. Not in the Consent Decree, but viewed as important information for checking compliance with this permit, is a requirement for Mirant to supply DEQ with the emissions and heat input information necessary to determine compliance with the 0.15 lb/mmBtu limit, including the calculated average lb/mmBtu for each ozone season.
11. Requires Mirant to report any violations of this permit or the Consent Decree to DEQ. The condition also requires that Mirant explain the cause of the violation and how it will be avoided in the future. These requirements are in the Consent Decree and are good measures to minimize noncompliance.
12. Gives representatives of DEQ, including those contracted to DEQ, the right of entry at any Mirant facility to assess status of compliance. The text is similar to the Consent Decree, except the consent decree gives the right of entry to the "Plaintiffs," rather than DEQ in particular. By "Plaintiffs," DEQ is assuming that the Consent Decree is referring to all the plaintiffs, including DEQ. Unlike in

Virginia, the DEQ does not have the right by law to enter facilities in Maryland for the purpose of determining compliance. The Consent Decree gives DEQ that right. It is important to restate that right in this permit, because failure by Mirant to comply with the permit will only be deemed as noncompliance at the PRGS, even though data to demonstrate compliance will be gathered from additional facilities in Maryland. Authorities in Maryland cannot be expected to have the same interest in pursuing an enforcement matter pertaining to the PRGS in Virginia that the DEQ would.

13. Requires Mirant to make available to DEQ for inspection at the PRGS its records for determining compliance. This includes records from other facilities that must be considered to determine compliance with system-wide limits. Not only does this make it possible for a DEQ employee to inspect and compare all the records at once, but it greatly reduces the need to visit facilities outside DEQ's area of jurisdiction, i.e., Maryland. This condition also states the length of time that the records must be maintained at the PRGS. 9 VAC 5-80-900 allows the DEQ to set the procedures for maintaining records in state operating permits. 9 VAC 5-80-420 requires that records be maintained for five years for Title V purposes. The PRGS is subject to Title V. Because Conditions 5 and 6 of this permit have limits for each year through 2010, it is logical, as the Consent Decree requires, to maintain all records through 2010 plus five years, i.e., 2015. After that, meeting the Title V requirements on length of retention should suffice.
14. Specifies the number of significant digits to be applied to data when determining compliance and when reporting data. To facilitate comparison of data and standards or limits the reported data should exhibit the same number of significant digits as the applicable standard or limit. Rounding off extra digits will be by standard scientific convention, i.e., 5 or greater is rounded up, less than 5 is rounded down. The PRGS must already meet the requirements of 40 CFR Part 75 for its Acid Rain permit, so to maintain consistency, this condition also requires that measurements and calculations be done in accordance with 40 CFR Part 75, except where a condition specifies otherwise. This condition is the same as found in the Consent Decree.
15. Requires that Mirant notifies any new owner of the facility about this permit and sends a copy of the notice to DEQ. DEQ would then make the necessary administrative amendments to the permit to show that it is transferred to the new owner.
16. States that a copy of the permit must remain on the premises. Besides being a regulatory requirement, it serves as a reminder to the facility staff of its obligations under the attainment plan as well as assuring the availability of inspection of the permit by DEQ personnel and others.
17. States that this permit does not supersede any permit or regulations, except the the state operating permit issued September 18, 2000. The purpose of this

permit is strictly for implementation of requirements in the revised ozone attainment plan relevant to the Potomac River Generating Station and to enhance enforceability of provisions of the Consent Decree relevant to the PRGS. As such, it is not intended to be an all-encompassing permit for the facility. All other applicable requirements under any jurisdictional authority (whether in permits or regulations) still apply.

18. Informs the permittee of the statutory provisions that govern how the permit will become federally enforceable as provided in federal statutes. Most of the permit will be become federally-enforceable as a part of the Virginia State Implementation Plan under the Clean Air Act. The remainder of the permit, the "Environmental Projects" section, is derived from an order of a federal court which would normally be enforceable only by officials of the federal government but will be enforceable by the state once the permit is effective. All conditions will be state-enforceable upon issuance.
19. Informs the permittee of the procedures for amendment of the permit within the context of state and federal statutory provisions. This applies only to this permit, not to the Consent Decree, which is a court order.
20. Reminds the permittee that (as prescribed by the Air Pollution Control Law of Virginia) failure to comply with permit conditions is subject to a Notice of Violation and civil penalty.
21. A list of air quality-related environmental projects that the Consent Decree requires Mirant to do. These projects are in addition to the measures being implemented to help the area achieve attainment of the ambient air quality standard for ozone. For that reason, they do not need to be included in the state implementation plan. They are included in this permit, because they will need to be enforced by DEQ inspectors, the same inspectors who enforce DEQ permits. The projects have been designed to address air quality concerns raised by the local citizenry, primarily related to fugitive dust and ash alleged to be emanating from the PRGS. The projects must meet specified cost criteria to demonstrate that Mirant is fulfilling its part of the negotiated settlement that led to the Consent Decree. The projects and their schedules are described in more detail in the Consent Agreement. This permit condition requires that Mirant do the projects in accordance with the Consent Decree, so failure to do the projects in accordance with the Consent Decree will be considered a violation of this permit.
22. Requires that Mirant certify that none of the work it proposes to do on the projects listed in this permit are not already required by law. As part of the settlement and in exchange for the Plaintiffs, of which DEQ was one, not pursuing further penalties, Mirant agreed to do projects that were not otherwise required.

23. Specifies reporting requirements following the completion of each project. These requirements are in the Consent Decree. The reports can be used to assess Mirant's compliance with the minimum criteria these projects must meet under the Consent Decree and this permit.
24. Requires semi-annual reports from Mirant on the progress of each project. This is a requirement of the Consent Decree.