IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA AND THE STATE OF MARYLAND Plaintiffs, and DAVID K. PAYLOR, DIRECTOR, COMMONWEALTH OF VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, Plaintiff-Intervenor v. MIRANT POTOMAC RIVER, LLC AND MIRANT MID-ATLANTIC, LLC, Defendants.	)	Civil Action No: 1:04CV1136

AMENDED CONSENT DECREE

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WHEREAS, on January 22, 2004, The United States Environmental Protection Agency ("EPA") issued a Notice of Violation ("NOV") to Mirant Corporation with respect to permit violations at the Potomac River Generating Station in Alexandria, Virginia ("Potomac River Plant") that occurred in 2003;

WHEREAS, EPA and the Commonwealth of Virginia's Department of Environmental Quality ("Virginia DEQ" or "DEQ") have worked together jointly and cooperatively in their efforts to address the Potomac River Plant's alleged exceedance of the NO_x emission limit for the 2003 Ozone Season;

WHEREAS, on September 18, 2000, the Virginia DEQ issued a Stationary Source Permit to Operate, registration number 70228 ("the Permit"), to Potomac Electric Power Company ("PEPCO") for the Potomac River Plant. The Permit established an emission limit in the form of a NOx emissions "cap" of 1019 tons per Ozone Season beginning in 2003 and provided that, as an alternative to compliance with the emission limit, the Permitee could comply with 40 C.F.R. Part 97 or a regulation to be promulgated by Virginia and approved by EPA providing for emissions trading. As a result of litigation commenced prior to the issuance of the Permit, the effective date of the federal trading regulations at 40 C.F.R. Part 97 was delayed until May 31, 2004. Virginia promulgated a regulation that provided for trading beginning in 2004. The Permit was approved by EPA and has been incorporated into the Commonwealth of Virginia's State Implementation Plan ("SIP") at 40 C.F.R. 52.2420(d);

WHEREAS, PEPCO entered into an agreement to sell the Potomac River Plant in Alexandria, Virginia, the Chalk Point Plant in Prince George's County, Maryland, the Dickerson Plant in Montgomery County, Maryland and the Morgantown Plant in Charles County, Maryland to Southern Energy, Inc. (which, through a later name change, became Mirant Corporation);

WHEREAS, as of the date of execution of this Amended Consent Decree, the Potomac River and Chalk Point Plants are owned by Mirant Potomac River, LLC and Mirant Chalk Point, LLC, respectively. Plaintiffs allege that Mirant Mid-Atlantic, LLC operates both the Potomac River and Chalk Point Plants. Mirant Mid-Atlantic, LLC wholly owns Mirant Chalk Point, LLC, owns the real estate on which the Morgantown Plant and the Dickerson Plant are located, and operates the Morgantown and Dickerson Plants pursuant to Facility Lease Agreements. Mirant Chalk Point, LLC owns Mirant Potomac River, LLC. Mirant Mid-Atlantic, LLC, Mirant Chalk Point, LLC, and Mirant Potomac River, LLC are affiliated companies and have common management.

WHEREAS, on July 14, 2003 and July 15, 2003, and on certain subsequent dates, Mirant Corporation and certain of its affiliates filed voluntary petitions in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") for relief under Chapter 11 of Title 11 of the United States Code, Case No. 03-46590 (DML) (the "Mirant Bankruptcy Proceedings");

WHEREAS, the nature and extent of Mirant Mid-Atlantic, LLC's ownership interest in the Morgantown and Dickerson Plants, i.e., whether that interest is a leasehold interest or a fee ownership interest, has been disputed in the Mirant Bankruptcy Proceedings;

WHEREAS, this Amended Consent Decree was amended from its original form as filed in September, 2004, to reflect the possibility that Mirant Mid-Atlantic, LLC may reject or otherwise lose one or more of its leasehold interests in the Morgantown and Dickerson Plants and cease to operate one or both of these Plants during the term of the Amended Consent Decree;

WHEREAS, according to data generated by continuous emission monitors ("CEMS") provided to DEQ by Mirant Potomac River, LLC, the Potomac River Plant's emissions exceeded

the 2003 Ozone Season NO_x emissions limit specified in the Permit on or about July 24, 2003. DEQ issued a Notice of Violation to Mirant Potomac River, LLC on September 10, 2003, alleging an exceedance of the Permit's Ozone Season NO_x emission limit shortly after DEQ received Mirant's CEMS data indicating that the limit had been exceeded;

WHEREAS, based on tentative emissions data provided to DEQ by Mirant's counsel in an email of October 14, 2003 that indicated that the Potomac River Plant emitted 2,139 tons of NOx during the 2003 Ozone Season, DEQ issued a revised NOV to Mirant Potomac River, LLC on October 20, 2003. Subsequent CEMS data provided to DEQ by Mirant indicated that the Potomac River Plant actually emitted 2,129 tons of NOx during the 2003 Ozone Season. The Potomac River Plant, therefore, allegedly exceeded its 2003 NOx emission limit by 1,110 tons.

WHEREAS, Plaintiffs, the United States of America ("the United States"), on behalf of EPA, and the State of Maryland ("Maryland"), have filed a joint Complaint against Mirant Potomac River, LLC and Mirant Mid-Atlantic, LLC for injunctive relief and civil penalties pursuant to Sections 113(a) and (b) of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7413(a) and (b), alleging such permit violations at its Potomac River Plant;

WHEREAS, the United States provided Mirant Potomac River, LLC and the Commonwealth of Virginia ("Virginia") with notice of the alleged violations on or about January 22, 2004, and therefore provided Mirant Potomac River, LLC and Virginia with at least 30 days notice prior to the filing of its claims, as required under Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1);

WHEREAS, Maryland provided notice of the same alleged violations as stated in the United States' Notice of Violation, as required under Section 304(b) of the Act, 42 U.S.C. § 7604(b), prior to the filing of a complaint by Maryland;

WHEREAS, Section 10.1-1186.4 of the Code of Virginia specifically authorizes the Attorney General of Virginia to seek to intervene, on behalf of the Director of the Virginia DEQ, in pending federal enforcement actions such as this one brought by the United States, on behalf of EPA, and Maryland;

WHEREAS, the Director of the Virginia DEQ, pursuant to Section 10.1-1307.3 of the Code of Virginia, enforces the provisions of the Virginia Air Pollution Control Law ("VAPCL"), Code of Virginia Section 10.1-1300 *et seq.*, and is authorized to seek civil penalties and injunctive relief, as provided by Sections 10.1-1316.A and 10.1-1316.B of the Code of Virginia;

WHEREAS, the Director of the Virginia DEQ has filed a Motion for Leave to Intervene and a Complaint in Intervention seeking civil penalties and injunctive relief and alleging that Mirant Potomac River, LLC and Mirant Mid-Atlantic, LLC violated Virginia law by failing to comply with a condition of a valid permit, issued to it by the Virginia DEQ on behalf of the State Air Pollution Control Board, which condition established a limit of 1,019 tons on the emissions of oxides of nitrogen from the Potomac River Plant from May 1, 2003 through September 30, 2003. On September 30, 2004, the Court granted the Director's Motion for Leave to Intervene and ordered that his Complaint in Intervention be filed effective that same day;

WHEREAS, the Director of the Virginia DEQ has a significant interest in this litigation by reason of its aforesaid Complaint in Intervention, as well as by reason of: (a) the fact that a significant portion of the relief provided by this Decree will involve the Potomac River Plant located within Virginia and regulated by the Commonwealth and no other State, and will provide other environmentally beneficial relief within the geographic jurisdiction of the Commonwealth, (b) the fact that such relief will directly impact the issuance, for the affected plant, of permits under the Commonwealth's program approved pursuant to Title V of the Clean Air Act and the

Commonwealth's State Operating Permits program, 9 VAC 5-80-800 *et seq.*, and (c) the fact that the permit condition allegedly violated is contained within a permit included in the Virginia SIP as a control measure to achieve the required air quality for the Washington, D.C. metropolitan statistical area ozone nonattainment area and was approved by EPA as a source-specific requirement of Virginia's SIP on December 14, 2000;

WHEREAS, the United States, Maryland, and Mirant consent to intervention by the Director of the Virginia DEQ;

WHEREAS, Plaintiffs the United States and Maryland allege that their Complaint states claims upon which relief can be granted against Mirant under sections 113 and 304 of the Act, 42 U.S.C. §§ 7413 and 7604;

WHEREAS, Mirant has not answered or otherwise responded to these Complaints in light of the settlement memorialized in this Amended Consent Decree;

WHEREAS, Mirant has denied and continues to deny the violations alleged in the Complaints, maintains that it is not liable for civil penalties, fines, or injunctive relief, and states that it is agreeing to the obligations imposed by this Amended Consent Decree solely to avoid the costs and uncertainties of litigation and to reduce its emissions;

WHEREAS, the United States, Maryland, the Director of the Virginia DEQ, and Mirant (collectively, "the Parties") have agreed that settlement of these actions is in the best interest of the Parties and in the public interest, and that entry of this Amended Consent Decree without further litigation is the most appropriate means of resolving this matter;

WHEREAS, on August 21, 2005, DEQ determined that emissions at the Potomac River Plant were causing or contributing to modeled exceedances of the National Ambient Air Quality Standards (NAAQS) for NO_2, SO_2 and PM_{10}. This Amended Consent Decree is intended only to

resolve the Potomac River Plant's alleged violation of the 2003 Ozone Season NOx emission limitation specified in the Permit. Nothing in this Amended Consent Decree will be deemed to authorize operation of the Potomac River Plant in a manner that would be considered to cause or contribute to exceedances of the NAAQS. On September 23, 2004, Virginia DEQ and Mirant Potomac River, LLC entered into an Administrative Order on Consent that specifically addresses the NAAQS issues, and Mirant Potomac River, LLC and Virginia DEQ are continuing their efforts, separate and apart from this Amended Consent Decree, to address the modeled NAAQS exceedances in the context of that administrative proceeding;

WHEREAS, the Parties recognize, and the Court by entering this Amended Consent Decree finds, that this Amended Consent Decree has been negotiated in good faith and at arm's length and that this Amended Consent Decree is fair, reasonable, consistent with the goals of the Act, and in the best interest of the Parties and the public;

WHEREAS, the Parties have consented to entry of this Amended Consent Decree without trial of any issue;

NOW, THEREFORE, without any admission of fact or law, and without any admission of the violations alleged in the Complaints, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, Sections 113 and 304 of the Act, 42 U.S.C. §§ 7413, 7604, and pursuant to Fed. R. Civ. Pro. 24(a)(2) and 24(b)(2). Venue is proper under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1391(b) and (c). For the purpose of this Consent Decree and the

underlying Complaints, Mirant waives all objections and defenses that it may have to the Court's jurisdiction over this action, to the Court's jurisdiction over Mirant, and to venue in this District. Mirant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. For purposes of the Complaints filed by the Plaintiffs in this matter and resolved by the Consent Decree, and for purposes of entry and enforcement of this Consent Decree, Mirant waives any defense or objection based on standing. Except as expressly provided for herein, this Consent Decree shall not create any rights in any party other than the Parties to this Consent Decree. Except as provided in Section XXVIII (Public Comment) of this Consent Decree, the Parties consent to entry of this Consent Decree without further notice.

II. APPLICABILITY

2. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon the Plaintiffs and Mirant and their successors and assigns, and upon Mirant's officers, employees and agents solely in their capacities as such.

3. Mirant shall provide a copy of this Consent Decree to all vendors, suppliers, consultants, contractors, agents, and any other company or other organization retained to perform any of the work required by Sections IV (NO_x Emission Reductions and Controls), VI (Environmental Projects), and, if applicable, Section XVIII (Severing the Morgantown Plant or Both the Morgantown and Dickerson Plants: Alternative Control Requirements) of this Consent Decree. Notwithstanding any retention of contractors, subcontractors, or agents to perform any work required under this Consent Decree, Mirant shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree, Mirant shall not

assert as a defense the failure of its officers, directors, employees, servants, agents, or contractors to take actions necessary to comply with this Consent Decree.

III. DEFINITIONS

4. A "30-Day Rolling Average Emission Rate" for a Unit shall be expressed as lb/mmBTU and shall be determined by calculating, for each hour that the Unit is operating, an arithmetic average of all hourly emission rates in lb/mmBTU for the current Operating Day and the previous 29 Operating Days. A new 30-Day Rolling Average Emission Rate shall be calculated for each new Operating Day. Each 30-Day Rolling Average Emission Rate shall include NO_x emissions and BTUs that occur during all periods of startup and shutdown of the Unit within an Operating Day, but excludes emissions of NO_x and BTUs occurring during any period of malfunction (as defined at 40 C.F.R. 60.2) of an SCR.

5. "30-Day Rolling Average Removal Efficiency" for a given pollutant means the percent reduction in the mass of that pollutant achieved by a Unit's pollution control device over a 30-Operating Day period. This percent reduction shall be calculated by subtracting the outlet 30-Day Rolling Average Emission Rate from the inlet 30-Day Rolling Average Emission Rate, dividing that difference by the inlet 30-Day Rolling Average Emission Rate, and then multiplying by 100. A new 30-Day Rolling Average Removal Efficiency shall be calculated for each new Operating Day.

6. "12 Month Rolling Average Removal Efficiency" for a given plant means the percent reduction in the mass of a given pollutant achieved by the control devices at all coal-fired units at the plant over a 12-month rolling average period. This percent reduction shall be calculated as follows: calculate the 12-Month Rolling Average Removal Efficiency by: (i) subtracting the sum of the most recent 12 months of post-control outlet emissions from

the most recent 12 months of pre-control inlet emissions; (ii) dividing the difference by the most recent 12 months of pre-control inlet emissions; and (iii) multiplying the resulting quotient by 100. A new 12-Month Rolling Average Removal Efficiency shall be calculated at the conclusion of each new calendar month.

7. "Activated Carbon Injection Technology" or "ACI Technology" means a sorbent injection process whereby activated carbon or other reagent is injected into the flue gas stream upstream of a particulate control device to remove mercury emissions from coal-fired boilers. The gas-phase mercury in the flue gas attaches to the sorbent, which is then collected by an electrostatic precipitator or a fabric filter.

7A. "Actual 2002 Ozone Season Heat Input" means the actual BTUs consumed in the coal-fired boilers at the Morgantown, Dickerson, Chalk Point and Potomac River Plants during the 2002 Ozone Season as follows: (i) Morgantown Units 1 and 2: 32,441,006 mmBTUs; (ii) Chalk Point Units 1 and 2: 20,722,609 mmBTUs; (iii) Dickerson Units 1, 2 and 3: 13,452,005 mmBTUs; and (iv) Potomac River Units 1 through 5: 12,237,325 mmBTUs.

8. "CEMS" or "Continuous Emission Monitoring System" means, for obligations involving NO_x, SO_2, and Mercury under this Consent Decree, the devices defined in 40 C.F.R. § 72.2 and installed and maintained as required by 40 C.F.R. Part 75.

9. "Chalk Point Plant" means, collectively, the two coal-fired units at the Chalk Point Generating Station, located in Prince George's County, Maryland: Unit 1 (355 MW) and Unit 2 (355 MW).

10. "Clean Air Act" or "Act" means the federal Clean Air Act, 42 U.S.C. §§7401-7671q, and its implementing regulations.

11. “Consent Decree” or “Decree” means this Amended Consent Decree including all appendices.

12. “Dickerson Plant” means, collectively, the three coal-fired units at the Dickerson Generating Station, located in Montgomery County, Maryland: Unit 1 (191 MW), Unit 2 (191 MW), and Unit 3 (191 MW).

13. “Emission Rate” means the number of pounds of pollutant emitted per million British thermal units of heat input (“lb/mmBTU”), measured in accordance with this Consent Decree.

14. “EPA” means the United States Environmental Protection Agency.

15. “Facility Lease Agreements” means those contractual agreements entered into by Southern Energy Mid-Atlantic LLC (which, through a name change, became Mirant Mid-Atlantic, LLC) and a consortium of owner/lessors on December 19, 2000, under which Mirant Mid-Atlantic, LLC occupies and operates the Morgantown and Dickerson Plants.

16. “Flue Gas Desulfurization System” or “FGD” means a pollution control device that employs flue gas desulfurization technology for the reduction of sulfur dioxide emissions.

17. “lb/mmBTU” means the ratio of pounds of pollutant per million British thermal units of heat input.

18. “Maryland” means the State of Maryland.

19. “Mercury Allowance” means an authorization or credit to emit a specified amount of mercury as defined in 40 C.F.R. Part 60.4102.

20. “Mirant” means Mirant Mid-Atlantic, LLC, Mirant Potomac River, LLC, and Mirant Chalk Point, LLC.

21. "Mirant System" means, collectively, the Chalk Point Plant, Dickerson Plant, Morgantown Plant, and Potomac River Plant, but excludes any Unit that, after the effective date of the Decree, Mirant rejects or otherwise loses its Ownership Interest in as prescribed by Section XVII (Severance of the Morgantown and/or Dickerson Plants from the Mirant System) or sells or transfers as prescribed by Section XXII (Sales or Transfers of Ownership Interests).

22. "Morgantown Plant" means, collectively, the two coal-fired units at the Morgantown Generating Station, located in Charles County, Maryland: Unit 1 (620 MW) and Unit 2 (620 MW).

23. "MW" means a megawatt or one million Watts.

24. "National Ambient Air Quality Standards" or "NAAQS" means national ambient air quality standards that are promulgated pursuant to Section 109 of the Act, 42 U.S.C. § 7409.

25. "NO_x" means oxides of nitrogen, measured in accordance with the provisions of this Consent Decree.

26. "NO_x Allowance" means an authorization or credit to emit a specified amount of NO_x that is allocated or issued under an emissions trading or market-based permit program of any kind that has been established under the Clean Air Act or a State Implementation Plan.

27. "Operating Day" means any calendar day on which a Unit fires fossil fuel.

28. "Ownership Interest" means part or all of Mirant's interest, legal, equitable, or otherwise, in any Unit or plant in the Mirant System, including any interest or status as lessee or operator.

29. “Ozone Season” means the period from May 1 of any given year through September 30 of that same year.

30. “Parties” means the United States of America, the State of Maryland, Intervenor-Plaintiff, the Director of the Virginia DEQ, and Mirant; “Party” means one of the four named “Parties.”

31. “Plaintiffs” means the United States of America, the State of Maryland, and Intervenor-Plaintiff, the Director of the Virginia DEQ.

32. “Polishing Baghouse” means, for the purposes of this Consent Decree, a baghouse installed in conjunction with ACI Technology for the purpose of maximizing mercury collection and removal and ensuring that particulate matter emissions do not increase as a result of the use of ACI Technology.

33. “Potomac River Ozone Season Tonnage Limitation” means the sum of the tons of NO_X that may be emitted from the Potomac River Plant in the applicable Ozone Season and shall include NO_x emitted during periods of startup, shutdown, and malfunction (as defined at 40 C.F.R. 60.2).

33A. “Potomac River Annual Tonnage Limitation” means the sum of the tons of NO_X that may be emitted from the Potomac River Plant in the applicable year and shall include NO_x emitted during periods of startup, shutdown, and malfunction (as defined at 40 C.F.R. 60.2).

34. “Potomac River Plant” means, collectively, the five coal-fired Units at the Potomac River Generating Station, located in the City of Alexandria, Virginia: Unit 1 (93 MW), Unit 2 (93 MW), Unit 3 (108 MW), Unit 4 (108 MW), and Unit 5 (108 MW).

35. "Project Dollars" means Mirant's expenditures and payments incurred or made in carrying out the Environmental Projects identified in Section VI (Environmental Projects) of this Consent Decree, to the extent that such expenditures or payments both: (a) comply with the requirements set forth in Section VI (Environmental Projects) of this Consent Decree; and (b) constitute Mirant's direct payments for such projects, Mirant's external costs for contractors, vendors, and equipment, or Mirant's internal costs consisting of employee time, travel, or out-of-pocket expenses specifically attributable to these particular projects and documented in accordance with Generally Accepted Accounting Principles.

36. "Selective Catalytic Reduction" or "SCR" means a pollution control device that employs selective catalytic reduction technology for the reduction of NO_x emissions.

37. "Separated Over-Fire Air" or "SOFA" means air injection, separate and downstream from the primary combustion air to the low-NO_x burners, which relies on modifying the fuel-air ratio to suppress NO_x formation.

38. "SO_2" means sulfur dioxide.

39. "SO_2 Allowance" means "allowance" as defined at 42 U.S.C. § 7651a(3): "an authorization, allocated to an affected unit by the Administrator of EPA under Subchapter IV of the Act, to emit, during or after a specified calendar year, one ton of sulfur dioxide."

40. "States" means the Commonwealth of Virginia and the State of Maryland.

41. "System-Wide Annual Tonnage Limitations" means the sum of the tons of NO_x that may be emitted from the Mirant System in the relevant 12-month calendar period, and shall

include NO_x emitted during periods of startup, shutdown, and malfunction (as defined at 40 C.F.R. 60.2).

42. "System-Wide Ozone Season Emissions Limitations" means, collectively, the System-Wide Ozone Season Emission Rate and the System-Wide Ozone Season Tonnage Limitations.

43. "System-Wide Ozone Season Emission Rate" means the total pounds of NO_x emitted from the Mirant System during the period from May 1 through September 30 of each calendar year, divided by the total heat input (in mmBTU) to the Mirant System during the period of May 1 through September 30 of the same calendar year. Each System-Wide Ozone Season Emission Rate shall include all NO_x emissions and BTUs that occur during all periods of startup, shutdown and malfunction (as defined at 40 C.F.R. 60.2).

44. "System-Wide Ozone Season Tonnage Limitation" means the sum of the tons of NO_X that may be emitted from the Mirant System in the applicable Ozone Season, and shall include NO_X emitted during any periods of startup, shutdown, or malfunction (as defined at 40 C.F.R. 60.2).

45. "Third Party Transferee" means any person, as defined at 42 U.S.C. § 7602(e), including successors and assigns, to which an Ownership Interest is sold or transferred.

46. "Title V Permit" means the permit required of each of Mirant's major sources under Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.

47. "Transfer Closing" means completion of a sale or transfer of an Ownership Interest to a Third Party Transferee.

48. "Unit" means, for the purposes of this Consent Decree, collectively, the coal pulverizer, stationary equipment that feeds coal to the boiler, the boiler that produces steam for the

steam turbine, the steam turbine, the generator, the equipment necessary to operate the generator, steam turbine and boiler, and all ancillary equipment, including pollution control equipment and systems necessary for the production of electricity.

49. "Virginia" means the Commonwealth of Virginia.

IV. NO_x EMISSION REDUCTIONS AND CONTROLS

A. Potomac River Plant

50. By May 1, 2004, Mirant shall install and continuously operate low-NO_x burners ("LNB") on the Potomac River Plant's Units 3, 4 and 5 at all times that these Units are in operation.

51. Beginning May 1, 2005, Mirant shall not operate any of the Potomac River Plant's 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_x emissions) at the Unit at all times that the Unit is in operation.

52. In addition to meeting the System-Wide Annual Tonnage Limitations for NO_x set forth in Paragraph 57, and the System-Wide Ozone Season Emissions Limitations set forth in Paragraphs 58 and 59, Mirant shall not emit NO_x from the Potomac River Plant during the Ozone Season and annually in an amount greater than the following number of tons:

Year	Potomac River Plant Ozone Season Tonnage Limitations for NO_x	Potomac River Plant Annual Tonnage Limitations for NO_x
2004	1,750 tons	N/A
2005	1,625 tons	3,700 tons
2006	1,600 tons	3,700 tons
2007	1,600 tons	3,700 tons
2008	1,600 tons	3,700 tons

2009	1,600 tons	3,700 tons
2010 and each ozone season thereafter	1,475 tons	3,700 tons

B. <u>Morgantown Plant</u>

53. Beginning May 1, 2007, Mirant shall not operate Morgantown Unit 1 unless it has installed and continuously operates, on a year-round basis, Selective Catalytic Reduction technology ("SCR") (or an equivalent NO_x control technology approved pursuant to Paragraph 55) so as to achieve a 30-Day Rolling Average Emission Rate from such Unit not greater than 0.100 lb/mmBTU NO_x.

54. Beginning May 1, 2008, Mirant shall not operate Morgantown Unit 2 unless it has installed and continuously operates, on a year-round basis, SCR (or an equivalent NO_x control technology approved pursuant to Paragraph 55) so as to achieve a 30-Day Rolling Average Emission Rate from such Unit not greater than 0.100 lb/mmBTU NO_x.

55. With prior written notice to and written approval from Plaintiffs, Mirant may, in lieu of installing and operating an SCR at Morgantown Unit 1 and/or 2, install and operate an equivalent NO_x control technology, so long as such equivalent NO_x control technology achieves and thereafter maintains a 30-Day Rolling Average Emission Rate not greater than 0.100 lb/mmBTU NO_x.

56. During the periods of times specified above when Mirant must operate an SCR, Mirant shall continuously operate each SCR (or equivalent NO_x control technology approved pursuant to Paragraph 55) at all times that the Unit it serves is in operation, subject to the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for the SCR or equivalent technology.

C. System-Wide Annual Tonnage Limitations for NO_x

57. Except as provided in Paragraph 185, 188, or 189 as applicable, Mirant shall comply with the following System-Wide Annual Tonnage Limitations for NO_x, which apply to all Units collectively within the Mirant System, during each year specified below:

Applicable Year	System-Wide Annual Tonnage Limitations for NO_x
2004	36,500 tons
2005	33,840 tons
2006	33,090 tons
2007	28,920 tons
2008	22,000 tons
2009	19,650 tons
2010 and each year thereafter	16,000 tons

D. System-Wide Ozone Season Emissions Limitations for NO_x

58. Except as provided in Paragraph 185, 188, or 189 as applicable, beginning on May 1, 2004, for each Ozone Season specified, the sum of the tons of NO_x emitted by all Units within the Mirant System shall not exceed the following System-Wide Ozone Season Tonnage Limitations for NO_x:

Applicable Ozone Season	System-Wide Ozone Season Tonnage Limitations for NO_x
2004	14,700 tons
2005	13,340 tons
2006	12,590 tons
2007	10,190 tons
2008	6,150 tons
2009	6,150 tons

2010 and each Ozone Season thereafter	5,200 tons

59. Except as provided in Paragraph 185, 188, or 189 as applicable, beginning on May 1, 2008, and continuing for each and every Ozone Season thereafter, the Mirant System shall not exceed a System-Wide Ozone Season Emission Rate of 0.150 lb/mmBTU NO_x.

E. <u>Use of NO_x Allowances</u>

60. If Mirant exceeds the limitations specified in Section IV, Subsection A (Potomac River Plant), B (Morgantown Plant), C (System-Wide Annual Tonnage Limitations for NO_x), or D (System-Wide Ozone Season Emissions Limitations), Mirant may not claim compliance with this Decree by using, tendering, or otherwise applying NO_x Allowances that were obtained prior to the lodging of this Decree, or that are subsequently purchased or otherwise obtained, and stipulated penalties apply as set forth in Section XI (Stipulated Penalties). Except as provided in Paragraphs 61 and 66, NO_x Allowances allocated to, or purchased by, or on behalf of, the Mirant System may be used by Mirant to meet its own federal and/or State Clean Air Act regulatory requirements to the extent otherwise allowed by law.

61. Solely for the purposes of compliance with any present or future NO_x allowance trading program set forth in the Virginia or Maryland State Implementation Plans including, in particular, the Virginia NO_x Budget Trading Program, 9 VAC 5 Chapter 140 or the Maryland NO_x Reduction and Trading Program, COMAR 26.11.29 - 26.11.30, beginning with:

(a) the 2004 Ozone Season, and during each Ozone Season thereafter; and

(b) the year that an annual NO_x allowance trading program becomes effective in Virginia or Maryland, and during each year thereafter,

Mirant must first use: (1) any and all allowances previously held by Mirant; and (2) allowances allocated to the individual plants within the Mirant System. Only to the extent that such allowances are insufficient to establish compliance with the requirements of those SIPs, Mirant may use NO_x Allowances purchased or otherwise obtained from sources outside the Mirant System.

62. Except as provided in this Consent Decree, Mirant shall not sell or trade any NO_x Allowances allocated to the Mirant System that would otherwise be available for sale or trade as a result of Mirant's compliance with any of the NO_x emission limitations specified in this Consent Decree.

63. Provided that Mirant is in compliance with all of the NO_x emission limitations specified in this Consent Decree, including both unit-specific and system-wide emission rates and plant-wide and system-wide tonnage limitations, nothing in this Consent Decree shall preclude Mirant from selling or transferring NO_x Allowances allocated to the Mirant System that become available for sale or trade when, and only insofar as, both: (a) the total Ozone Season NO_x emissions from all Units within the Mirant System are below the System-Wide Ozone Season Tonnage Limitations for the applicable year, as specified in Paragraph 58; and (b) the annual NO_x emissions from all Units within the Mirant System are below the System-Wide Annual Tonnage Limitations, as specified in Paragraph 57.

64. In order to sell or transfer NO_x Allowances pursuant to Paragraph 63, Mirant must also timely report the generation of such NO_x Allowances in accordance with Section IX (Periodic Reporting) of this Consent Decree.

F. Surrender of NOx Allowances

65. For purposes of this Subsection, the "surrender of allowances" means permanently surrendering NO_x Allowances from the accounts administered by Plaintiffs for all Units in the Mirant System, so that such allowances can never be used to meet any compliance requirement of any person under the Clean Air Act, the Maryland and Virginia SIPs, or this Consent Decree.

66. For each calendar year beginning with calendar year 2004, Mirant shall surrender to EPA, or transfer to a non-profit third party selected by Mirant for surrender: (1) the number of Ozone Season NO_x allowances equal to the amount by which the Ozone Season NO_x allowances allocated to all Mirant System Units for a particular ozone season are greater than the System-Wide Ozone Season Tonnage Limitations for NO_x established in Paragraph 58 for the same year; and (2) the number of "annual" (non-ozone season) NO_x allowances equal to the amount by which the "annual" NO_x allowances allocated to all Mirant System Units for a particular non-ozone season are greater than the difference between the System-Wide Annual Tonnage Limitations for NO_x established in Paragraph 57 and the System-Wide Ozone Season Tonnage Limitations for NO_x established in Paragraph 58 for that same year.

67. If any NO_x Allowances are transferred directly to a non-profit third party, Mirant shall include a description of such transfer in the next report submitted to Plaintiffs pursuant to Section IX (Periodic Reporting) of this Consent Decree. Such report shall: (a) provide the identity of the non-profit third-party recipient(s) of the NO_X Allowances and a listing of the serial numbers of the transferred NO_X Allowances; and (b) include a certification by the third-party recipient(s), in the form provided in Paragraph 93, stating that the

recipient(s) will not sell, trade, or otherwise exchange any of the NO_x Allowances and will not use any of the Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any NO_X Allowances, Mirant shall include a statement that the third-party recipient(s) tendered the NO_X Allowances for permanent surrender to Plaintiffs in accordance with the provisions of Paragraph 68 within one (1) year after Mirant transferred the NO_X Allowances to them. Mirant shall not have complied with the NO_X Allowance surrender requirements of this Paragraph until all third-party recipient(s) shall have actually surrendered the transferred NO_X Allowances to Plaintiffs.

68. For all NO_X Allowances surrendered to Plaintiffs, Mirant or the non-profit third-party recipient(s) (as the case may be) shall first submit a NO_X Allowance transfer request form to EPA directing the transfer of such NO_X Allowances to the Plaintiffs' Enforcement Surrender Account or to any other Plaintiffs' account that Plaintiffs may direct in writing. As part of submitting these transfer requests, Mirant or the third-party recipient(s) shall irrevocably authorize the transfer of these NO_X Allowances and identify – by name of account and any applicable serial or other identification numbers or station names – the source and location of the NO_X Allowances being surrendered.

G. <u>NO_x CEMS</u>

69. In determining Emission Rates for NO_x, Mirant shall use CEMS in accordance with those reference methods specified in 40 C.F.R. Part 75.

70. Mirant shall submit a report to Plaintiffs containing a summary of the data recorded by each NO_x CEMS 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 Plaintiffs upon request.

V. PROHIBITION ON NETTING CREDITS OR OFFSETS FROM REQUIRED CONTROLS

71. In no event shall the emission reductions required by this Decree be considered as creditable contemporaneous emission decreases for the purpose of obtaining a netting credit under the Clean Air Act's Nonattainment NSR and PSD programs.

VI. ENVIRONMENTAL PROJECTS

72. Mirant shall implement each of the Environmental Projects ("Projects") described in Appendix A ("Environmental Projects") in compliance with the approved plans and schedules for such Projects and other terms of this Consent Decree. In implementing all of the Projects, Mirant shall spend no less than $1.0 million in Project Dollars. As to the Projects described in Paragraphs 1, 2, 3, 4, 5, 6, and 8 of Appendix A, Mirant shall operate indefinitely the improvements and installed equipment described therein. For each Environmental Project listed in Appendix A, Mirant shall submit a proposed plan to Plaintiffs for review and approval pursuant to Section X (Review and Approval of Submittals) of this Consent Decree and the schedules set forth in Appendix A. Mirant shall maintain, and present to Plaintiffs, upon request, all documents required by Generally Accepted Accounting Principles to substantiate the Project Dollars expended, and shall provide these documents to Plaintiffs within thirty (30) days of a request by Plaintiffs for the documents.

73. In the event that Mirant satisfactorily and timely completes each of the Projects listed in Appendix A, but the Project Dollars Mirant expends in implementing the Projects is less than the $1 million Mirant is required to spend for the completed Projects, Mirant shall:

a. Submit a proposal to the Plaintiffs for the expenditure of the remaining Project Dollars on one or more projects designed to further reduce PM and/or fugitive dust emissions from the Potomac River Plant including, but not limited to, projects that may result from, or be suggested by, the Settled Dust Study Project (described in Paragraph 7 of Appendix A); or

b. If the Plaintiffs and Mirant, acting in good faith, cannot agree upon an additional Project or Projects, and such proposal is not approved by the Plaintiffs, Mirant shall pay a stipulated penalty to the Plaintiffs equal to the difference between the amount of Project Dollars expended by Mirant and the $1 million sum Mirant is required to spend for the Projects.

74. All plans and reports prepared by Mirant pursuant to the requirements of this Section of the Consent Decree shall be publicly available without charge.

75. Mirant shall certify, as part of each plan submitted to Plaintiffs for any Project, that Mirant is not otherwise required by law, and that Mirant is unaware of any other person that is required by law, to perform the Project described in the plan.

76. Mirant shall use good faith efforts to secure as much benefit as possible for the Project Dollars expended, consistent with the applicable requirements and limits of this Consent Decree. Mirant shall not financially benefit to a greater extent than any other member of the general public in the course of implementing any Project.

77. Within sixty (60) days following the completion of each Project listed in Appendix A, Mirant shall submit to Plaintiffs 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.

78. Beginning six months after entry of this Consent Decree, and continuing until all Projects are completed in accordance with this Decree, Mirant shall provide Plaintiffs with semi-annual updates concerning the progress of, and the costs incurred in implementing, each Project listed in Appendix A.

VII. CIVIL PENALTY

79. Within thirty (30) calendar days after entry of this Consent Decree, Mirant shall pay to the United States a civil penalty in the amount of $250,000. The civil penalty shall be paid by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing USAO File Number 2004v01020 and DOJ Case Number 90-5-2-1-07829 and the civil action case name and case number of this action. The costs of such EFT shall be Mirant's responsibility. Payment shall be made in accordance with instructions provided to Mirant by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Virginia. Any funds received after 2:00 p.m. EDT shall be credited on the next business day. At the time of payment, Mirant shall provide notice of payment, referencing the USAO File Number, the DOJ Case Number, and the civil action case name and case number, to the Department of Justice and to EPA in accordance with Section XVI (Notices) of this Consent Decree.

80. Failure to timely pay the civil penalty shall subject Mirant to interest accruing from the date payment is due until the date payment is made at the rate prescribed by 28 U.S.C. § 1961, and shall render Mirant liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States in securing payment.

81. Within thirty (30) calendar days after entry of this Consent Decree, Mirant shall pay a civil penalty to the Commonwealth of Virginia in the amount of $250,000. Payment shall be made in the form of a certified check or cashier's check, and be payable to "The Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality P.O. Box 10150
Richmond, VA 23240

The payment shall include Mirant's Federal ID number, the Potomac River Plant's state Registration Number, and shall state that it is being tendered in payment of the civil penalty agreed to under this Consent Decree. The check must reference *United States et al. v. Mirant,* and the civil action case number.

82. Mirant shall pay interest if it fails to make a complete or timely payment of the civil penalty that it is required to pay under Paragraph 81. Interest shall be determined pursuant to Section 58.1-15 of the Code of Virginia. The interest shall be calculated on the full amount of the civil penalty due as principal, calculated from the due date specified in this Consent Decree until the date that the delinquent payment is finally paid in full. An additional 10 percent late payment fee may be charged in the event complete payment is not received within 120 days of entry of this Consent Decree.

83. Payments made pursuant to this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax-deductible expenditures for purposes of federal law.

VIII. EFFECT OF SETTLEMENT

84. This Consent Decree represents full and final settlement and resolves Mirant's civil liability to the Plaintiffs for violations alleged in the Complaints filed by the Plaintiffs in this proceeding through the date of lodging of this Consent Decree.

85. The Plaintiffs reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein. This Consent Decree shall not be construed to limit the rights of the United States, Maryland, or Virginia to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified herein.

86. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Notwithstanding any provision of this Consent Decree, Mirant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Mirant's compliance with this Consent Decree shall be no defense to any action by the Plaintiffs commenced pursuant to said laws, regulations, or permits, except to the extent the action is based on matters resolved through this Consent Decree.

87. This Consent Decree does not limit or affect the rights of Mirant or of the Plaintiffs against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Mirant, except as otherwise provided by law.

IX. PERIODIC REPORTING

88. Beginning thirty (30) days after the end of the first full calendar quarter following the entry of this Consent Decree, continuing on a semi-annual basis until December 31, 2012, and in addition to any other express reporting requirement in this Consent Decree, Mirant shall submit to Plaintiffs a progress report.

89. The progress report shall contain the following information:

    a. All information necessary to determine compliance with this Consent Decree, including but not limited to the information reported in accordance with Paragraphs 52, 53, 54, 55, 57, 58, 59, 66, 67, 70, 78, 151, 152, 153, 155, 158, 159, 162, 163, 164, 165, 166, 168, 169, 170, 172, 178 and 179, as applicable;

    b. All information relating to emission allowances and credits that Mirant claims to have generated in accordance with Paragraph 63 by compliance beyond the requirements of this Consent Decree; and

    c. All information indicating that the installation and commencement of operation of a pollution control device may be delayed, including the nature and cause of the delay, and any steps taken by Mirant to mitigate such delay.

90. In any periodic progress report submitted pursuant to this Section, Mirant may incorporate by reference information previously submitted under its Title V permitting requirements, provided that Mirant attaches the Title V permit report and provides a specific reference to the provisions of the Title V permit report that are responsive to the information required in the periodic progress report.

91. In addition to the progress reports required pursuant to this Section, Mirant shall provide a written report to Plaintiffs of any violation of the requirements of this Consent Decree, including exceedences of any Unit-specific 30-Day Rolling Average Emission Rates, Unit-specific 30-Day Rolling Average Removal Efficiencies, any Unit-specific 12-Month Rolling Average Removal Efficiencies, System-Wide Annual Tonnage Limitations, System-Wide Ozone Season Tonnage Limitations, Potomac River Annual or Ozone Season Tonnage Limitations, or System-Wide Ozone Season Emission Rate, 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.

92. Each Mirant report shall be signed by Mirant's Director, Environmental Safety and Health, Mirant Mid-Atlantic, LLC or, in his or her absence, the President of Mirant Mid-Atlantic, LLC, or higher ranking official, and shall contain the following certification:

> This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

93. If any NO_x, SO_2 and Mercury Allowances are surrendered to any non-profit third party pursuant to Subsection IV.F. (Surrender of NO_X Allowances), Subsection XVIII.B. (Surrender of SO_2 Allowances), and Subsection XVIII.E. (Surrender of Mercury Allowances) of this Consent Decree, if applicable, the third party's certification pursuant

to Paragraphs 67, 159 and 179 shall be signed by a managing officer of the third party and shall contain the following language:

> I certify under penalty of law that [name of third party] will not sell, trade, or otherwise exchange any of the [NO_x SO_2, or Mercury] Allowances and will not use any of the Allowances to meet any obligation imposed by any environmental law. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.

X. REVIEW AND APPROVAL OF SUBMITTALS

94. Mirant shall submit each plan, report, or other submission to Plaintiffs whenever such a document is required to be submitted for review or approval pursuant to this Consent Decree. Plaintiffs may approve the submittal or decline to approve it and provide written comments. Within sixty (60) days of receiving written comments from Plaintiffs, Mirant shall either: (a) revise the submittal consistent with the written comments and provide the revised submittal for final approval to Plaintiffs; or (b) submit the matter for dispute resolution, including the period of informal negotiations, under Section XIII (Dispute Resolution) of this Consent Decree.

95. Upon receipt of Plaintiffs' final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, Mirant shall implement the approved submittal in accordance with the schedule specified therein.

XI. STIPULATED PENALTIES

96. For any failure by Mirant to comply with the terms of this Consent Decree, and subject to the provisions of Sections XII (Force Majeure) and XIII (Dispute Resolution) of this Consent Decree, Mirant shall pay, within thirty (30) days after receipt of written demand to Mirant by the United States, Maryland, or Virginia, the following stipulated penalties

to the Plaintiffs, in accordance with their direction on the amounts to be paid to each of the Plaintiffs:

Consent Decree Violation	**Stipulated Penalty (per day per violation, unless otherwise noted)**
a. Failure to pay the civil penalty as specified in Section VII (Civil Penalty) of this Consent Decree	$10,000
b. Failure to comply with any applicable 30-Day Rolling Average Emission Rate for NO_x where the violation is less than 5% in excess of the limits set forth in this Consent Decree	$2,500
c. Failure to comply with any applicable 30-Day Rolling Average Emission Rate for NO_x where the violation is equal to or greater than 5% but less than 10% in excess of the limits set forth in this Consent Decree	$5,000
d. Failure to comply with any applicable 30-Day Rolling Average Emission Rate for NO_x where the violation is equal to or greater than 10% in excess of the limits set forth in this Consent Decree	$10,000
e. Failure to comply with any applicable 30-Day Rolling Average Removal Efficiency for SO_2, where the violation is less than 5% in excess of the limits set forth in this Consent Decree	$2,500
f. Failure to comply with any applicable 30-Day Rolling Average Removal Efficiency for SO_2, where the violation is equal to or greater than 5% but less than 10% in excess of the limits set forth in this Consent Decree	$5,000
g. Failure to comply with any applicable 30-Day Rolling Average Removal Efficiency for SO_2, where the violation is equal to or greater than 10% in excess of the limits set forth in this Consent Decree	$10,000
h. Failure to comply with any System-Wide Ozone Season NOx Emission Rate, where the violation is less than 5% in excess of the limits set forth in this Consent Decree	$382,500 per Ozone Season
i. Failure to comply with any System-Wide Ozone Season NOx Emission Rate, where the violation is equal to or greater than 5% but less than 10% in excess of the limits set forth in this Consent Decree	$765,000 per Ozone Season
j. Failure to comply with any System-Wide Ozone Season NOx Emission Rate, where the violation is equal to or greater than 10% in excess of the limits set forth in this Consent Decree	$1,530,000 per Ozone Season

k. Failure to comply with any 12-Month Rolling Average Removal Efficiency for Mercury where the removal efficiency achieved is up to but not greater than 5 percentage points below the applicable 12-Month Rolling Average Removal Efficiency for Mercury	$100,000 (for each applicable exceedence of a 12-Month Rolling Average Removal Efficiency)
l. Failure to comply with any 12-Month Rolling Average Removal Efficiency for Mercury where the removal efficiency achieved is greater than 5, but less than 10 percentage points below the applicable 12-Month Rolling Average Removal Efficiency for Mercury	$200,000 (for each applicable exceedence of a 12-Month Rolling Average Removal Efficiency)
m. Failure to comply with any 12-Month Rolling Average Removal Efficiency for Mercury where the removal efficiency achieved is at least 10 or more percentage points below the applicable 12-Month Rolling Average Removal Efficiency for Mercury	$400,000 (for each applicable exceedence of a 12-Month Rolling Average Removal Efficiency)
n. Failure to comply with any System-Wide Annual Tonnage Limitation for NO_x	$10,000, plus the surrender, pursuant to the procedures set forth in Paragraphs 67 and 68 of this Consent Decree, of NO_X Allowances in an amount equal to two times the number of tons by which the limitation was exceeded
o. Failure to comply with any System-Wide Ozone Season Tonnage Limitation for NO_x	$10,000, plus the surrender, pursuant to the procedures set forth in Paragraphs 67 and 68 of this Consent Decree, of NO_X Allowances in an amount equal to two times the number of tons by which the limitation was exceeded
p. Failure to comply with any Potomac River Annual or Ozone Season Tonnage Limitation for NO_x	$10,000, plus the surrender, pursuant to the procedures set forth in Paragraphs 67 and 68 of this Consent Decree, of NO_X Allowances in an amount equal to two times the number of tons by which the limitation was exceeded
q. Operation of a Unit without operation of a NOx, SO_2, or Mercury pollution control device as required by this Consent Decree	$10,000 per day per violation for the first 30 days, $27,000 per day per violation thereafter
r. Failure to apply for any permit required by Section XIV	$1,000
s. Failure to timely submit, modify, or implement, as approved, the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree	$750 per day per violation for the first ten days, $1,000 per day per violation thereafter

t. Using, selling, or transferring NO_X Allowances, except as permitted by Paragraphs 60, 61 and 63	for each event, the surrender, pursuant to the procedures set forth in Paragraphs 67 and 68 of this Consent Decree, of NO_X Allowances in an amount equal to four times the number of NO_X Allowances used, sold, or transferred in violation of this Consent Decree
u. Using, selling, or transferring SO_2 Allowances, except as permitted by Paragraphs 157 and 161	for each event, the surrender, pursuant to the procedures set forth in Paragraphs 156, 158 and 160 of this Consent Decree, of SO_2 Allowances in an amount equal to four times the number of SO_2 Allowances used, sold, or transferred in violation of this Consent Decree
v. Failure to surrender a NO_X Allowance as required by Paragraph 68	for each event, the surrender, pursuant to the procedures set forth in Paragraphs 67 and 68 of this Consent Decree, of NO_X Allowances in an amount equal to four times the number of NO_X Allowances not surrendered in violation of this Consent Decree
w. Failure to surrender an SO_2 Allowance as required by Paragraph 158	for each event, the surrender, pursuant to the procedures set forth in Paragraphs 156, 158 and 160 of this Consent Decree, of SO_2 Allowances in an amount equal to four times the number of SO_2 Allowances not surrendered in violation of this Consent Decree
x. Failure to surrender a Mercury Allowance, as required by Paragraph 178	for each event, the surrender, pursuant to the procedures set forth in Paragraphs 179 and 180 of this Consent Decree, of Mercury Allowances or Credits in an amount equal to four times the number of Mercury Allowances or Credits not surrendered in violation of this Consent Decree

y. Failure to demonstrate the third-party surrender of an NO_X or SO_2 Allowance or a Mercury Allowance, in accordance with Paragraphs 67, 159, and 179	$2,500
z. Failure to undertake and complete any of the Environmental Projects in compliance with Section VI (Environmental Projects) of this Consent Decree	$1,000 per day per violation for the first 30 days, $5,000 per day per violation thereafter
aa. Failure to make the offer required by Paragraphs 139 through 141 to a new owner or operator of the Morgantown Plant	$2.5 million (one-time penalty)
bb. Any other violation of this Consent Decree	$1,000

97. Violation of a 30-Day Rolling Average Emission Rate or a 30-Day Rolling Average Removal Efficiency is a violation on every day on which the average is based.

98. Where a violation of a 30-Day Rolling Average Emission Rate or a 30-Day Rolling Average Removal Efficiency from the same source recurs within periods of less than thirty (30) days, Mirant shall not pay a daily stipulated penalty for any day of the recurrence for which a stipulated penalty has already been paid.

99. All stipulated penalties shall begin to accrue on the day after the performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

100. Mirant shall pay all stipulated penalties to the Plaintiffs within thirty (30) days of receipt of written demand to Mirant, and shall continue to make such payments every thirty (30) days thereafter until the violation(s) no longer continues, unless Mirant elects within 20 days of receipt of written demand to Mirant to dispute the accrual of stipulated penalties in accordance with the provisions in Section XIII (Dispute Resolution) of this Consent Decree.

101. Stipulated penalties shall continue to accrue as provided in accordance with Paragraph 99 during any dispute, with interest on accrued stipulated penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement, or by a decision of Plaintiffs pursuant to Section XIII (Dispute Resolution) of this Consent Decree that is not appealed to the Court, accrued stipulated penalties agreed or determined to be owing, together with accrued interest, shall be paid within thirty (30) days of the effective date of the agreement or of the receipt of Plaintiffs' decision;

b. If the dispute is appealed to the Court and Plaintiffs prevail in whole or in part, Mirant shall, within sixty (60) days of receipt of the Court's decision or order, pay all accrued stipulated penalties determined by the Court to be owing, together with accrued interest, except as provided in Subparagraph 101.c.;

c. If the Court's decision is appealed by any Party, Mirant shall, within fifteen (15) days of receipt of the final appellate court decision, pay all accrued stipulated penalties determined to be owing, together with accrued interest.

For purposes of this Paragraph, the accrued stipulated penalties agreed by the Parties, or determined by the Plaintiffs through dispute resolution, to be owing may be less than the stipulated penalty amounts set forth in Paragraph 96.

102. All stipulated penalties shall be paid in the manner set forth in Section VII (Civil Penalty) of this Consent Decree.

103. Should Mirant fail to pay stipulated penalties in compliance with the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961.

104. The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to any Plaintiff by reason of Mirant's failure to comply with any requirement of this Consent Decree or applicable law.

XII. FORCE MAJEURE

105. For purposes of this Consent Decree, a "Force Majeure Event" shall mean an event that has been or will be caused by circumstances beyond the control of Mirant, its contractors, or any entity controlled by Mirant that delays compliance with any provision of this Consent Decree or otherwise causes a violation of any provision of this Consent Decree despite Mirant's best efforts to fulfill the obligation. "Best efforts to fulfill the obligation" include using best efforts to anticipate any potential Force Majeure Event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay or violation is minimized to the greatest extent possible.

106. If any event occurs or has occurred that may delay compliance with or otherwise cause a violation of any obligation under this Consent Decree, as to which Mirant intends to assert a claim of Force Majeure, Mirant shall notify the Plaintiffs in writing as soon as practicable, but in no event later than twenty-one (21) business days following the date Mirant first knew, or by the exercise of due diligence should have known, that the event

caused or may cause such delay or violation. In this notice, Mirant shall reference this Paragraph of this Consent Decree and describe the anticipated length of time that the delay or violation may persist, the cause or causes of the delay or violation, all measures taken or to be taken by Mirant to prevent or minimize the delay or violation, the schedule by which Mirant proposes to implement those measures, and Mirant's rationale for attributing a delay or violation to a Force Majeure Event. Mirant shall adopt all reasonable measures to avoid or minimize such delays or violations. Mirant shall be deemed to know of any circumstance which Mirant, its contractors, or any entity controlled by Mirant knew or should have known.

107. If Mirant fails to comply with the notice requirements in Paragraph 106, the Plaintiffs may void Mirant's claim of Force Majeure as to the specific event for which Mirant has failed to comply with such notice requirement.

108. The United States shall notify Mirant in writing regarding Mirant's claim of Force Majeure within twenty (20) business days of receipt of the notice provided under Paragraph 106. If Plaintiffs agree that a delay in performance has been or will be caused by a Force Majeure Event, the Parties shall stipulate to an extension of deadline(s) for performance of the affected compliance requirement(s) by a period equal to the delay actually caused by the event. In such circumstances, an appropriate modification shall be made pursuant to Section XXV (Modification) of this Consent Decree.

109. If Plaintiffs do not accept Mirant's claim of Force Majeure, or if the Parties cannot agree on the length of the delay actually caused by the Force Majeure Event, the matter shall be resolved in accordance with Section XIII (Dispute Resolution) of this Consent Decree.

110. In any dispute regarding Force Majeure, Mirant shall bear the burden of proving that any delay in performance or any other violation of any requirement of this Consent Decree was caused by or will be caused by a Force Majeure Event. Mirant shall also bear the burden of proving that Mirant gave the notice required by Paragraph 106 and the burden of proving the anticipated duration and extent of any delay(s) attributable to a Force Majeure Event. An extension of one compliance date based on a particular event may, but will not necessarily, result in an extension of a subsequent compliance date.

111. A Force Majeure Event shall not include economic hardship, changed economic circumstances, or unanticipated or increased costs or expenses associated with the performance of Mirant's obligations under this Consent Decree.

112. The Parties agree that, depending upon the circumstances related to an event and Mirant's response to such circumstances, the kinds of events listed below are among those that could qualify as Force Majeure Events within the meaning of this Section: delays associated with construction, labor, equipment or, in the case of compliance with Paragraph 51 (SOFA installation) or Section VI (Environmental Projects), securing the applicable local government permits or other related authorizations; malfunction of a Unit or emission control device (as defined at 40 C.F.R. 60.2); acts of God; acts of war or terrorism; and orders by a regulatory authority or a regional transmission organization such as PJM Interconnection, L.L.C., acting under and authorized by applicable law, that direct Mirant to supply electricity in response to a system-wide (state-wide or regional) emergency.

113. As part of the resolution of any matter submitted to this Court under Section XIII (Dispute Resolution) of this Consent Decree regarding a claim of Force Majeure, the

Parties by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Consent Decree to account for the delay in the work that occurred as a result of the Force Majeure Event. Mirant shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule, provided that Mirant shall not be precluded from asserting that a new Force Majeure Event has caused or may cause a new or additional delay in complying with the extended or modified schedule.

114. If Mirant intends to exclude a period of malfunction (as defined at 40 C.F.R. 60.2) from the calculation of any 30-Day Rolling Average Emission Rate, Mirant shall notify Plaintiffs in writing as soon as practicable, but in no event later than fourteen (14) business days following the date Mirant first knew, or by the exercise of due diligence should have known, of the malfunction. Mirant shall be deemed to know of any circumstance which Mirant, its contractors, or any entity controlled by Mirant knew or should have known.

a. In this notice, Mirant shall describe the anticipated length of time that the malfunction may persist, the cause or causes of the malfunction, all measures taken or to be taken by Mirant to minimize the duration of the malfunction, and the schedule by which Mirant proposes to implement those measures. Mirant shall adopt all reasonable measures to minimize the duration of such malfunctions.

b. A malfunction does not constitute a Force Majeure Event unless the malfunction also meets the definition of a Force Majeure Event, as provided in this Section.

XIII. DISPUTE RESOLUTION

115. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, provided that the Party invoking such procedure has first made a good faith attempt to resolve the matter with the other Parties.

116. The dispute resolution procedure required herein shall be invoked by one Party giving written notice to the other Parties advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Parties receiving such a notice shall acknowledge receipt of the notice, and the Parties in dispute shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days following receipt of such notice.

117. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations among the disputing Parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting among the disputing Parties' representatives unless they agree in writing to shorten or extend this period. During the informal negotiations period, the disputing Parties may also submit their dispute to a mutually-agreed-upon alternative dispute resolution ("ADR") forum if the Parties agree that the ADR activities can be completed within the 30-day informal negotiations period (or such longer period as the Parties may agree to in writing).

118. If the disputing Parties are unable to reach agreement during the informal negotiation period, the Plaintiffs shall provide Mirant with a written summary of their position regarding the dispute. The written position provided by the Plaintiffs shall be considered

binding unless, within forty-five (45) calendar days thereafter, Mirant seeks judicial resolution of the dispute by filing a petition with this Court. The Plaintiffs may respond to the petition within forty-five (45) calendar days of filing.

119. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Section may be shortened upon motion of one of the Parties to the dispute.

120. This Court shall not draw any inferences nor establish any presumptions adverse to any disputing Party as a result of invocation of this Section or the disputing Parties' inability to reach agreement.

121. As part of the resolution of any dispute under this Section, in appropriate circumstances the disputing Parties may agree, or this Court may order, an extension or modification of the schedule for the completion of the activities required under this Consent Decree to account for the delay that occurred as a result of dispute resolution. Mirant shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule, provided that Mirant shall not be precluded from asserting that a Force Majeure Event has caused or may cause a delay in complying with the extended or modified schedule.

122. The Court shall decide all disputes pursuant to applicable principles of law for resolving such disputes. In their initial filings with the Court under Paragraph 118, the disputing Parties shall state their respective positions as to the applicable standard of law for resolving the particular dispute.

XIV. PERMITS

123. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires Mirant to secure a permit to authorize construction or operation of any device, including all preconstruction, construction, and operating permits required under state law, Mirant shall make such application in a timely manner.

124. When permits are required as described in Paragraph 123, Mirant shall complete and submit applications for such permits to the appropriate authorities to allow sufficient time for all legally required processing and review of the permit request, including requests for additional information by the permitting authorities. Any failure by Mirant to submit a timely permit application for any Unit in the Mirant System shall bar any use by Mirant of Section XII (Force Majeure) of this Consent Decree, where a Force Majeure claim is based on permitting delays.

125. Notwithstanding the reference to Title V permits in this Consent Decree, the enforcement of such permits shall be in accordance with their own terms and the Act. The Title V permits shall not be enforceable under this Consent Decree, although any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become part of a Title V permit, subject to the terms of Section XXIX (Conditional Termination of Enforcement Under Consent Decree) of this Consent Decree.

126. Within one hundred eighty (180) days after entry of this Consent Decree, Mirant shall apply for amendment of its Title V permits or applicable state operating permits for each plant in the Mirant System, and amend any existing Title V permit application, to

include a schedule for all Unit-specific and system-wide performance, operational, maintenance, and control technology requirements established by this Consent Decree including, but not limited to, the Unit-specific NO_x emission control requirements set forth in Section IV, Subsections A (Potomac River Plant) and B (Morgantown Plant), the Unit-specific SO_2 and Mercury emission control requirements, as applicable, set forth in Section XVIII (Severing the Morgantown Plant or Both the Morgantown and Dickerson Plants: Alternative Control Requirements), the System-Wide Ozone Season Emission Rate, System-Wide Annual Tonnage Limitations, System-Wide Ozone Season Tonnage Limitations, and, as to the Potomac River Plant's permits only, the Potomac River Annual and Ozone Season Tonnage Limitations, as set forth in this Consent Decree.

127. Within one (1) year from the commencement of operation of each pollution control device to be installed under this Consent Decree, Mirant shall apply to amend its Title V permit and any applicable state operating permit for the plant where such device is installed to reflect all requirements under this Consent Decree that are applicable to that plant, including, but not limited to, any applicable 30-Day Rolling Average Emission Rate, 30-Day Rolling Average Removal Efficiency, or 12-Month Rolling Average Removal Efficiency. If, at any time prior to the completion of construction of the SCRs as required by Paragraphs 53 and 54, Mirant rejects, severs, or otherwise loses its Ownership Interest in the Morgantown or Dickerson Plant(s) and fails to secure the agreement of a new owner or operator to be bound by the provisions of this Consent Decree pursuant to Section XVII (Severance of the Morgantown and/or Dickerson Plants from the Mirant System), thereby triggering the requirements of Sections XVIII,

XIX, XX, and XI, as applicable, Maryland shall propose amendments to the Title V permit and any State operating permit(s) for the Morgantown or Dickerson Plant(s), as applicable, to delete any and all obligations applicable to the Plant that derive solely from this Consent Decree. By consenting to this Decree, Mirant hereby waives its right to contest or otherwise object to any such proposed permit amendments.

128. Mirant shall provide Plaintiffs with a copy of each application to amend the Title V permit (or permit application) and applicable state operating permit for each plant in the Mirant System, as well as a copy of any permit proposed as a result of such application, to allow for timely participation in any public comment opportunity.

129. If Mirant:

a. sells or transfers an Ownership Interest in a plant in the Mirant System to a Third Party Transferee in accordance with Section XXII (Sales or Transfers of Ownership Interests), or

b. severs the Morgantown and/or Dickerson Plants from the Mirant System in the manner described in Section XVII (Severance of the Morgantown and/or Dickerson Plants from the Mirant System), Paragraphs 137 and 138, and secures the agreement of a new owner or operator to be bound by the obligations of this Consent Decree in the manner described in Paragraph 139,

then Mirant shall comply with the requirements of Paragraphs 126 through 128 with regard to the sold, severed, or transferred plants, as applicable, consistent with the provisions of Section XVII (Severance of the Morgantown and/or Dickerson Plants from the Mirant System) or Section XXII (Sales or Transfers of Ownership Interests in the

Mirant System Plants), as applicable, and Appendix B (Allocated Emission Limitations in the Event of Severance, Sale or Transfer), prior to executing any amendment of this Consent Decree pursuant to Paragraphs 148, 182, or 191 unless, following such amendment, Mirant will remain the holder of the Title V permit for the affected plant.

XV. INFORMATION COLLECTION AND RETENTION

130. Any authorized representative of the Plaintiffs, including their 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:

a. Monitoring the progress of activities required under this Consent Decree;

b. Verifying any data or information submitted to the Plaintiffs in accordance with the terms of this Consent Decree;

c. Obtaining samples and, upon request, splits of any samples taken by Mirant or its representatives, contractors, or consultants; and

d. Assessing Mirant's compliance with this Consent Decree.

131. Mirant shall retain, and instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records and documents in electronic form) now in its or its contractors' or agents' possession or control, and that directly relate to Mirant's performance of its obligations under this Consent Decree until December 31, 2015. This record retention requirement shall apply regardless of any corporate document retention policy to the contrary.

132. All information and documents submitted by Mirant pursuant to this Consent Decree shall be subject to any requests under applicable law providing public disclosure of documents unless: (a) the information and documents are subject to legal privileges or

protection, or (b) Mirant claims and substantiates in accordance with 40 C.F.R. Part 2 that the information and documents contain confidential business information.

133. Nothing in this Consent Decree shall limit the authority of the Plaintiffs to conduct tests and inspections at Mirant's facilities or otherwise obtain information under Section 114 of the Act, 42 U.S.C. § 7414, or any other applicable federal or state laws, regulations or permits.

XVI. NOTICES

134. Unless otherwise provided herein, whenever reports, notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States of America:
Chief, Environmental Enforcement Section Environment and Natural Resources Division U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
DJ# 90-5-2-1-07829 and

Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance U.S. Environmental Protection Agency
Ariel Rios Building (2242A)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

and

Regional Administrator
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

As to Virginia:
Director
Virginia Department of Environmental Quality
629 East Main Street

P.O. Box 10009
Richmond, VA 23240-0009

As to Maryland:
Manager, Air Quality Compliance Program
Maryland Department of the Environment
1800 Washington Boulevard, Suite 715
Baltimore, MD 21230

As to Mirant:
Mirant Mid-Atlantic, LLC
Attention: Director Environmental, Safety and Health
8711 Westphalia Road
Upper Marlboro, MD 20774;

and

Mirant Corporation
Attention: General Counsel
1155 Perimeter Center
West Atlanta, GA 30338-5416

135. All reports, notifications, communications or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or delivery service; or (b) certified or registered mail, return receipt requested. All reports, notifications, communications and submissions (a) sent by overnight, certified or registered mail shall be deemed submitted on the date they are postmarked; or (b) sent by overnight delivery service shall be deemed submitted on the date they are delivered to the delivery service.

136. Any Party may change either the notice recipient or the address for providing notices to it by serving the other Parties with a notice setting forth such new notice recipient or address.

XVII. SEVERANCE OF THE MORGANTOWN AND/OR DICKERSON PLANTS FROM THE MIRANT SYSTEM

137. If Mirant seeks authorization from the Bankruptcy Court in the Mirant Bankruptcy Proceedings to reject its Ownership Interest in the Morgantown and/or Dickerson Plants

(through the rejection of one or more of its Facility Lease Agreements or through any other means) in accordance with 11 U.S.C. § 365 or other provision of the Bankruptcy Code, Mirant shall:

a. provide the Plaintiffs with written notice thereof at the time of filing any such motion to the Bankruptcy Court; and

b. comply with the provisions of Paragraph 139, below.

138. If Mirant loses its Ownership Interest in the Morgantown Plant and/or the Dickerson Plant for any reason other than the rejection referenced in Paragraph 137 or a negotiated transfer made pursuant to Section XXII (Sales or Transfers of Ownership Interests), Mirant shall:

a. provide the Plaintiffs with written notice within 10 business days after becoming aware of such loss of Ownership Interest; and

b. comply with the provisions of Paragraph 139, below.

139. Except as provided in Paragraph 146, with respect to any plant or plants that Mirant either rejects or otherwise loses its Ownership Interest in, as described in Paragraphs 137 and 138 ("the Severed Plant(s)"), Mirant shall, no later than 60 days after providing the notice specified in Subparagraph 137(a) or 138(a), as applicable, or longer if extended by Plaintiffs, provide the Plaintiffs with:

a. the written agreement of a new owner or operator (as the term "owner" and "operator" are used and interpreted under the Clean Air Act) of the Severed Plant(s) to be bound by the obligations of this Consent Decree, as they are described in Paragraph 141, below, so that such obligations shall

be directly enforceable against the new owner or operator, effective upon this Court's approval of a modification to the Decree;

b. information regarding the technical and financial capabilities, as well as any history of administratively noticed or judicially alleged events of environmental noncompliance, of the new owner or operator who has so agreed to assume the obligations of this Consent Decree; and

c. a draft modification pursuant to Section XXV (Modification) that binds the new owner or operator who has so agreed to be a party to this Consent Decree to the obligations and liabilities referenced in Paragraph 141.

140. For purposes of compliance with this Section, and where the Morgantown Plant is a Severed Plant but the installation of SCRs required by Paragraphs 53 and 54 has not been completed, Mirant shall make a written offer, to any and all prospective owners and/or operators of the Morgantown Plant, to pay for completion of engineering, construction and installation of the SCRs required by Paragraphs 53 and 54 (or alternative control technology approved pursuant to Paragraph 55) as contracted by Mirant for the Morgantown Plant, consistent with the requirements of this Consent Decree, in consideration for the new owner and/or operator entering into an agreement meeting the requirements of Subparagraph 139(a). Mirant shall provide the Plaintiffs with a copy of any such written offer no later than 5 business days following the date on which Mirant makes such an offer. Alternatively, if the Morgantown Plant is a Severed Plant and the installation of SCRs required by Paragraphs 53 and 54 has been completed, Mirant shall use good faith efforts to obtain the agreement of any and all prospective owners and/or operators of the Morgantown Plant to enter into a written agreement to be

bound by the obligations of this Consent Decree, as they are described in Paragraph 141, below, so that such obligations shall be directly enforceable against the new owner or operator, effective upon this Court's approval of a modification to the Decree.

141. In any such written agreement referred to in Paragraph 139, the new owner or operator shall agree to assume the following obligations and liabilities:

a. (1) all applicable Plant-specific and Unit-specific obligations set forth in Section IV of this Consent Decree, including but not limited to the requirements set forth in IV.B. pertaining to the operation of SCR technology at the Morgantown Plant (where the Morgantown Plant is a Severed Plant) and the requirements set forth in IV.E. and IV.F., pertaining to the use and surrender of NO_x Allowances;

(2) the allocated system-wide obligations of the Consent Decree that are applicable to the Severed Plant(s), as specified in Appendix B, and which shall apply in lieu of the Mirant system-wide obligations in Section IV.C. and D. of this Consent Decree; provided that, if after rejection or other loss of Ownership Interest pursuant to Paragraphs 137 or 138, or following any sale or transfer made pursuant to Section XXII, the new owner or operator owns or operates more than one plant, then: (i) the applicable Ozone Season NOx tonnage limitations shall be the sum of the Ozone Season NOx tonnage limitations set forth in Appendix B for each of the Severed and/or transferred plants; (ii) the applicable annual NOx tonnage limitations shall be the sum of the annual

NOx tonnage limitations set forth in Appendix B for each of the Severed and/or transferred plants; and (iii) the applicable Ozone Season NOx emission rate shall be calculated for each Ozone Season as follows:

(the sum of the Ozone Season NOx tonnage caps in Appendix B applicable to each severed or transferred plant
÷
the sum of the Actual 2002 Ozone Season Heat Input for each severed or transferred plant)
×
2,000lb/ton.

These allocated system-wide NOx emission limitations shall be effective on the date the Ownership Interest in one or more plants, as applicable, is severed or transferred; if that date occurs mid-year or during an Ozone Season, the limitation shall be prorated as provided in Appendix C.

(3) all requirements of this Consent Decree that are not specific to any particular plant in the Mirant System, except Sections VI (Environmental Projects) and VII (Civil Penalty), obligations which are exclusively Mirant's; and

(4) in the event that the Severed or transferred plant is the Morgantown Plant, the new owner or operator of the Morgantown Plant shall irrevocably assign to Mirant, beginning in 2007 and for each year thereafter, the number of NO_x Allowances that, when added to the NOx Allowance allocations for each of the Mirant System Units for that year, is equal to the caps in Appendix B that

are applicable to the remaining Mirant System Units. Such assignment shall be at no cost to Mirant and shall authorize the Maryland Department of the Environment and the United States Environmental Protection Agency to deposit such allowances directly into the account of Mirant Mid-Atlantic, LLC to be used by Mirant for the benefit of the remaining Units in the Mirant System; or

b. Any variation of the obligations in Subparagraph (a) above, that has been agreed upon by Mirant, the new owner or operator of the Severed Plant(s), and the Plaintiffs.

142. No later than sixty (60) days after the provision of the documents referred to in Paragraph 139 to the Plaintiffs, Mirant, the new owner or operator of the Severed Plant(s), and the Plaintiffs shall execute a modification to this Consent Decree setting forth the liabilities and obligations of the new owner or operator and making such entity a party to the Decree, and submit same to the Court for approval.

143. In any such modification submitted pursuant to Paragraph 142, Mirant may also request that the modification relieve Mirant of its obligations and liabilities under this Consent Decree associated with the Severed Plant(s) to the extent such obligations are assumed by the new owner or operator. Provided the conditions of Paragraph 137 or 138, as applicable, and 139 through 141 are satisfied, Plaintiffs will not oppose such request if they determine that such transfer of liability and obligations is justified upon consideration of the new owner or operator's technical capability, financial capability and history of administratively noticed or judicially alleged events of environmental

noncompliance. Unless and until such modification relieving Mirant of liability for the obligations and liabilities associated with the Severed Plant(s) is entered by the Court, Mirant shall remain liable for all the requirements of this Consent Decree, including those that may be applicable to the Severed Plant(s).

144. Nothing in this Section is intended to affect or waive any rights the Plaintiffs may have against a new owner or operator of the Morgantown or Dickerson Plants in the enforcement of this Consent Decree, consistent with Paragraph 2 of this Decree.

145. In no event shall a modification submitted in accordance with Paragraph 142 assign to a new owner or operator, or release Mirant from, any obligation under this Consent Decree that is not specifically applicable to Severed Plant(s), including but not limited to the obligations set forth in Sections VI (Environmental Projects) and VII (Civil Penalty) of this Consent Decree.

146. If Mirant either rejects or otherwise loses its Ownership Interest in the Morgantown Plant and/or the Dickerson Plant, as described in Paragraphs 137 and 138, and Mirant does not timely secure the agreement of a new owner or operator to be bound by the obligations of this Consent Decree in accordance with Paragraphs 139 through 141, Mirant shall so notify the Plaintiffs and:

a. if the installation of the SCRs required by Paragraphs 53 and 54 at Morgantown has not been completed, Mirant shall also notify the Plaintiffs that it shall comply with the provisions of Section XVIII (Severing the Morgantown Plant or Both the Morgantown and Dickerson Plants: Alternative Control Requirements), and with Sections XIX or XXI (Revised System-Wide NOx Emission Limitations), as applicable;

b. except as provided in Paragraph 182, if the installation of the SCRs required by Paragraphs 53 and 54 at the Morgantown Plant has been completed, Mirant shall also notify the Plantiffs that it shall comply with Section XVIII (Severing the Morgantown or Both the Morgantown and Dickerson Plants; Alternative Control Requirements), and with Sections XIX or XXI (Revised System-Wide NOx Emission Limitations), as applicable; or

c. if Mirant either rejects or otherwise loses its Ownership Interest in the Dickerson Plant only, Mirant shall notify the Plaintiffs that it shall comply with Section XX (Severing the Dickerson Plant: Revised System-Wide NOx Emission Limitations).

Any such notification under (a), (b) or (c) above shall be in writing; shall be provided no later than 75 days following the notices required by Paragraph 137(a) or 138(a), as applicable, and shall document Mirant's efforts to secure the agreement of a new owner or operator as described in Paragraphs 139 and 140, above.

XVIII. SEVERING THE MORGANTOWN PLANT OR BOTH THE MORGANTOWN AND DICKERSON PLANTS: ALTERNATIVE CONTROL REQUIREMENTS

147. In the event that:

a. Mirant, at any time, either rejects or loses its Ownership Interest in the Morgantown Plant, or both the Morgantown and Dickerson Plants, as described in Paragraphs 137 and 138, and

b. Mirant does not timely secure the agreement of a new owner or operator to be bound by the obligations of this Consent Decree in accordance with Paragraphs 139 through 141,

then, and only in that event, the provisions of this Section XVIII (Severing the Morgantown Plant or Both the Morgantown and Dickerson Plants: Alternative Control Requirements), including the obligations set forth in Paragraphs 151 through 181, shall apply.

148. At any time after Mirant provides the notice required by Paragraph 146, Mirant and the Plaintiffs shall execute a modification to this Consent Decree relieving Mirant of the obligations and liabilities under this Consent Decree that pertain exclusively to the Severed Plant(s), expressly obligating Mirant to comply, in the alternative, with the provisions of this Section XVIII (Severing the Morgantown Plant or Both the Morgantown and Dickerson Plants: Alternative Control Requirements), except as provided in Paragraphs 182 through 184, and submit same to the Court for approval.

149. Unless and until the modification referred to in Paragraph 148 or Paragraph 182 is entered by the Court, Mirant shall remain liable for all the requirements of this Consent Decree.

150. In no event shall a modification submitted in accordance with Paragraph 148 release Mirant from any obligation under this Consent Decree that is not specifically applicable to the Severed Plant(s), including but not limited to the obligations set forth in Sections VI (Environmental Projects) and VII (Civil Penalty) of this Consent Decree.

A. SO_2 Control Requirements at the Chalk Point Plant

151. Mirant shall install and commence continuous operation of FGD technology (or equivalent SO_2 control technology approved pursuant to Paragraph 153) on the flue gas streams from Chalk Point Units 1 and 2 so as to achieve and thereafter maintain, as to the SO_2 emissions from each Unit, a 30-Day Rolling Average Removal Efficiency for SO_2 of at least ninety-five percent (95%).

152. Mirant shall install and commence continuous operation of the FGD technology specified in Paragraph 151:

    a. by June 1, 2010, if Mirant was authorized by the Bankruptcy Court in the Mirant Bankruptcy Proceedings to reject its Ownership Interest in the Morgantown Plant in accordance with 11 U.S.C. § 365 or other provision of the Bankruptcy Code; or

    b. by a date no later than 36 months after Mirant loses its Ownership Interest in the Morgantown Plant, if Mirant has lost its Ownership Interest in the Morgantown Plant as described in Paragraph 138.

153. With prior written notice to and written approval from the Plaintiffs, Mirant may, in lieu of installing and operating the FGD technology required in Paragraph 151, install and operate an equivalent SO_2 control technology so long as such equivalent SO_2 control technology achieves and maintains, as to the SO_2 emissions from each Chalk Point Unit, a 30-Day Rolling Average Removal Efficiency for SO_2 of at least ninety-five percent (95%).

154. Mirant shall continuously operate the FGD technology (or equivalent SO_2 control technology approved pursuant to Paragraph 153) installed at the Chalk Point Plant so as

to control emissions from each Unit at the Chalk Point Plant at all times that either Unit is in operation, subject to the technological limitations, manufacturers' specifications, and good engineering and maintenance practices for the FGD or equivalent technology.

155. In determining removal efficiency rates for SO_2, Mirant shall use CEMS in accordance with the reference methods specified in 40 C.F.R. Part 75, and the outlet SO_2 Emission Rate and the inlet SO_2 Emission Rate shall be determined in accordance with 40 C.F.R. § 75 (using SO_2 CEMS data from both the inlet and outlet of the control device). Mirant shall submit a report to Plaintiffs containing a summary of the daily inlet and outlet data recorded by each SO_2 CEM, 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 shall make all data recorded available to the Plaintiffs upon request.

B. <u>Surrender of SO_2 Allowances</u>

156. For purposes of this Subsection, the "surrender of allowances" means permanently surrendering SO_2 allowances from the accounts administered by EPA for all Units at the Chalk Point Plant, so that such allowances can never be used to meet any compliance requirement under the Clean Air Act, the Maryland or Virginia State Implementation Plans, or this Consent Decree.

157. Mirant may use any SO_2 Allowances allocated by EPA to the Chalk Point Plant only to meet the Chalk Point Plant's federal and/or state Clean Air Act regulatory requirements.

158. For each calendar year beginning with the calendar year in which Mirant is required to commence continuous operation of FGD technology pursuant to Paragraph 152, Mirant shall surrender to EPA, or transfer to a non-profit third party selected by Mirant for surrender, the number of SO_2 Allowances equal to the amount by which the SO_2

Allowances allocated to the Units at the Chalk Point Plant for a particular year are greater than the total amount of SO_2 emissions allowed under this Section XVIII (Severing the Morgantown Plant or Both the Morgantown and Dickerson Plants: Alternative Control Requirements) for the same year.

159. If any allowances are transferred directly to a non-profit third party for surrender, Mirant shall include a description of such transfer in the next report submitted to EPA and Maryland pursuant to Section IX (Periodic Reporting) of this Consent Decree. Such report shall: (i) provide the identity of the non-profit third-party recipient(s) of the SO_2 Allowances and a listing of the serial numbers of the transferred SO_2 Allowances; and (ii) include a certification by the third-party recipient(s) stating that the recipient(s) will not sell, trade, or otherwise exchange any of the allowances and will not use any of the SO_2 Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any SO_2 Allowances, Mirant shall include a statement that the third-party recipient(s) surrendered the SO_2 Allowances for permanent surrender to EPA in accordance with the provisions of Paragraph 160 within one (1) year after Mirant transferred the SO_2 Allowances to them. Mirant shall not have complied with the SO_2 Allowance surrender requirements of this Paragraph until all third-party recipient(s) shall have actually surrendered the transferred SO_2 Allowances to EPA.

160. For all SO_2 Allowances surrendered to EPA, Mirant or the third-party recipient(s) (as the case may be) shall first submit an SO_2 Allowance transfer request form to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such SO_2 Allowances to the EPA Enforcement Surrender Account or to any other EPA account

that EPA may direct in writing. As part of submitting these transfer requests, Mirant or the third-party recipient(s) shall irrevocably authorize the transfer of these SO_2 Allowances and identify – by name of account and any applicable serial or other identification numbers or station names – the source and location of the SO_2 Allowances being surrendered.

161. Provided that Mirant is in compliance with the 30-Day Rolling Average Removal Efficiency for SO_2 of at least ninety-five percent (95%) specified in Paragraph 151, nothing in this Consent Decree shall preclude Mirant from banking, selling or transferring SO_2 Allowances allocated to the Chalk Point Plant that become available for sale or trade when, and only insofar as, Mirant achieves and maintains a 30-Day Rolling Average Removal Efficiency for SO_2 at the Chalk Point Plant that is greater than 95 percent, either through over-control or permanent shutdown, so long as Mirant timely reports the generation of such surplus SO_2 Allowances in accordance with Section IX (Periodic Reporting) of this Consent Decree.

C. Mercury and Particulate Matter Controls at the Chalk Point and Potomac River Plants

162. Mirant shall install and commence continuous operation of ACI Technology on the flue gas streams from Units 1, 2, 3, 4 and 5 at the Potomac River Plant as specified in Paragraph 163.

163. Mirant shall not operate any Unit at the Potomac River Plant as specified below unless it has installed and commenced continuous operation of ACI Technology specified by Paragraph 162:

a. if Mirant was authorized by the Bankruptcy Court in the Mirant Bankruptcy Proceedings to reject its Ownership Interest in the

Morgantown Plant as described in Paragraph 137, on Units 3, 4 and 5 by December 31, 2006, and on Units 1 and 2 by March 31, 2007; or

b. if Mirant has lost its Ownership Interest in the Morgantown Plant as described in Paragraph 138, on Units 1 through 5 by a date no later than 24 months after such loss of Ownership Interest in the Morgantown Plant.

164. Prior to commencing continuous operation of the ACI Technology on Units 1 through 5, Mirant shall perform stack tests of the flue gas stream from each Unit in conformance with 40 C.F.R. Part 60, Appendix A8, Reference Method 29 (for mercury) and 40 C.F.R. Part 51, Appendix M, Test Method 201A and 202 (for particulate matter) to determine:

a. particulate matter and uncontrolled mercury emissions from each Unit without operation of the ACI Technology; and

b. particulate matter and mercury emissions while the ACI Technology is operating to achieve maximum mercury removal.

165. Except as provided in Paragraph 166, Mirant shall continuously operate the ACI Technology on all Units at the Potomac River Plant at all times the Units are in operation so as to achieve and thereafter maintain a plant-wide 12-Month Rolling Average Removal Efficiency for mercury of at least seventy percent (70.0%).

166. In the event that operation of the ACI Technology on Units 1, 2, 3, 4 or 5 at the Potomac River Plant causes an increase in particulate matter emissions from the baseline emissions from any such Unit established pursuant to Paragraph 164(a), as measured in lbs/mmBTU, after approval by the Plaintiffs, Mirant shall continuously operate the ACI Technology on any such Unit to achieve the maximum possible mercury removal efficiency rate without causing an increase in particulate matter emissions, as measured

in lbs/mm BTU. This approved maximum possible removal efficiency rate shall become the required removal efficiency rate for the applicable Unit until such time as the Plaintiffs, after consultation with Mirant, determine that a removal efficiency for mercury of at least seventy percent (70%) can be achieved without causing an increase in particulate matter emissions.

D. <u>Cost Accounting and Additional Control Requirements</u>

167. Mirant shall maintain, and present to Plaintiffs upon request, all documents required by Generally Accepted Accounting Principles to substantiate the capital costs expended by Mirant to install the FGD technology required by Subsection A and the mercury controls specified in Subsection C, and shall provide those documents to Plaintiffs within thirty (30) days following Plaintiffs' request.

168. In the event that Mirant expends less than $165 million in capital costs to install the FGD technology required by Subsection A and the mercury controls required by Paragraphs 162 and 163 of Subsection C, Mirant shall expend the remaining funds up to $165 million on installation of additional mercury and particulate matter controls as provided herein. No later than one (1) year following installation of the ACI Technology on Units 3, 4, and 5 at the Potomac River Plant as required by Paragraphs 162 and 163, Mirant shall submit to the Plaintiffs for review and approval a plan to install and commence continuous operation of additional mercury and particulate matter controls in the following order of priority, as funds permit, up to $165 million: (1) a Polishing Baghouse(s), or equivalent technology approved by Plaintiffs pursuant to Paragraph 172, on Units 3, 4 and 5 at the Potomac River Plant; (2) ACI Technology on Unit 2 at the Chalk Point Plant to control mercury emissions; and (3) a Polishing Baghouse, or

equivalent technology approved by Plaintiffs in accordance with Paragraph 172, on Unit 2 at the Chalk Point Plant. Such plan shall include an estimate of the costs associated with installation of each pollution control device. Mirant shall complete installation and commence continuous operation of each approved control device in accordance with Paragraphs 169 and 170, as applicable, no later than two (2) years following approval of the plan by Plaintiffs. Plaintiffs may, in their sole discretion, revise the order of priority for the installation of pollution controls required by this Paragraph.

169. Mirant shall operate the ACI Technology installed on Unit 2 at the Chalk Point Plant, pursuant to Paragraph 168, to control mercury emissions from Unit 2 at all times that the Unit is in operation so as to achieve and thereafter maintain a 12-Month Rolling Average Removal Efficiency for mercury of at least seventy percent (70.0%), demonstrated in accordance with Paragraph 175.

170. Mirant shall operate any Polishing Baghouse(s) installed on Unit 2 at the Chalk Point Plant and/or on Units 3, 4 or 5 at the Potomac River Plant, pursuant to Paragraph 168, to control mercury emissions from such Unit(s) at all times that the Unit(s) is in operation so as to achieve and thereafter maintain a 12-Month Rolling Average Removal Efficiency for mercury of at least ninety percent (90.0%), demonstrated in accordance with Paragraph 175.

171. If Mirant completes all projects approved in accordance with Paragraph 168, and Mirant has not expended a total of $165 million dollars in capital costs, then Mirant shall submit a plan to Plaintiffs for approval that provides for expenditure of all remaining funds through installation and operation of additional NOx, SO_2, mercury or particulate matter controls at the Chalk Point or Potomac River Plants, or purchase and permanent

retirement of NOx, SO_2 or mercury allowances, not otherwise required by existing federal or state law, regulation, permit, order or consent decree.

172. With prior written notice to and written approval from the Plaintiffs, Mirant may, in lieu of installing and operating the Polishing Baghouses required by Subsection D, install and operate an alternative control technology that achieves mercury reductions equivalent to those required by Paragraph 170 and particulate matter reductions equivalent to those that would be achieved by a Polishing Baghouse.

173. If Mirant demonstrates to Plaintiffs' satisfaction that installation of one or more Polishing Baghouses at the Potomac River Plant is technically infeasible, Mirant shall be relieved of its obligation to install such Baghouse(s). Mirant shall have the burden of demonstrating technical infeasibility of this technology.

174. Particulate emissions from any Unit equipped with a Polishing Baghouse installed pursuant to this Consent Decree shall not exceed the lowest achievable emission rate (LAER).

175. By June 30, 2006, Mirant shall submit to the Plaintiffs for approval a proposed plan to determine the mercury removal efficiency for each Unit at the Potomac River Plant and Unit 2 at the Chalk Point Plant. The plan shall, at a minimum, provide for initial and annual stack testing of each Unit in accordance with 40 C.F.R. Part 60, Appendix A8, Reference Method 29. As part of the stack test required by the plan, Mirant may consider the establishment of parametric limits, such as a parameter that enables determination of the activated carbon injection rate, to establish the targeted mercury removal efficiency over the load range. The plan shall demonstrate, to Plaintiffs' satisfaction, a correlation between the parametric limits and the removal efficiency over

the load range. Any plan submitted pursuant to this Paragraph may include use of CEMS to measure mercury emissions and calculate the mercury removal efficiency.

E. <u>Surrender of Mercury Allowances</u>

176. For purposes of this Subsection, the "surrender of allowances" means permanently surrendering Mercury Allowances from the accounts administered by EPA for all Units at the Potomac River Plant and Unit 2 at the Chalk Point Plant, if applicable, so that such allowances can never be used to meet any compliance requirement under the Clean Air Act, the Maryland or Virginia State Implementation Plans, or this Consent Decree.

177. Mirant may use any Mercury Allowances allocated by the permitting authority to the Potomac River Plant only to meet federal and/or state Clean Air Act regulatory requirements applicable to the Potomac River Plant and may use any Mercury Allowances allocated to Unit 2 at the Chalk Point Plant, if applicable, only to meet federal and/or state Clean Air Act regulatory requirements for Unit 2 at the Chalk Point Plant.

178. Beginning with the first calendar year in which Mercury Allowances are allocated, Mirant shall surrender to Plaintiffs, or transfer to a non-profit third party selected by Mirant for surrender: (1) the number of Mercury Allowances equal to the amount by which the Mercury Allowances allocated to the Potomac River Plant for a particular year are greater than the total amount of mercury emissions allowed by the Potomac River Plant for the same year under this Section XVIII (Severing the Morgantown Plant or Both the Morgantown and Dickerson Plants: Alternative Control Requirements); and (2) if applicable, the number of Mercury Allowances equal to the amount by which the Mercury Allowances allocated to Unit 2 at the Chalk Point Plant for a particular year are

greater than the total amount of Mercury emissions allowed by Unit 2 at the Chalk Point Plant under this Section XVIII for the same year.

179. If any allowances are transferred directly to a non-profit third party for surrender, Mirant shall include a description of such transfer in the next report submitted to Plaintiffs pursuant to Section IX (Periodic Reporting) of this Consent Decree. Such report shall: (i) provide the identity of the non-profit third-party recipient(s) of the Mercury Allowances and a listing of the serial numbers of the transferred Mercury Allowances; and (ii) include a certification by the third-party recipient(s) stating that the recipient(s) will not sell, trade, or otherwise exchange any of the allowances and will not use any of the Mercury Allowances to meet any obligation imposed by any environmental law. No later than the third periodic report due after the transfer of any Mercury Allowances, Mirant shall include a statement that the third-party recipient(s) surrendered the Mercury Allowances for permanent surrender to Plaintiffs in accordance with the provisions of Paragraph 178 within one (1) year after Mirant transferred the Mercury Allowances to them. Mirant shall not have complied with the Mercury Allowance surrender requirements of this Paragraph until all third-party recipient(s) shall have actually surrendered the transferred Mercury Allowances to Plaintiffs.

180. For all Mercury Allowances surrendered to Plaintiffs, Mirant or the third-party recipient(s) (as the case may be) shall first submit a Mercury Allowance transfer request form to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of such Mercury Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. As part of submitting these transfer requests, Mirant or the third-party recipient(s) shall irrevocably authorize the

transfer of these Mercury Allowances and identify – by name of account and any applicable serial or other identification numbers or station names – the source and location of the Mercury Allowances being surrendered.

181. Provided that Mirant is in compliance with the 12-Month Rolling Average Removal Efficiency for mercury required by Paragraphs 165, 169 and 170, as applicable, nothing in this Consent Decree shall preclude Mirant from banking, selling or transferring Mercury Allowances allocated to the Potomac River Plant and, if applicable, Unit 2 at the Chalk Point Plant, that become available for sale or trade when, and only insofar as, Mirant achieves and maintains a 12-Month Rolling Average Removal Efficiency for mercury at Units 1 through 5 at the Potomac River Plant and Unit 2 at the Chalk Point Plant that is greater than the removal efficiency required by Paragraphs 165, 169 and 170, as applicable, either through over-control or the permanent shutdown of one or more Units.

F. Severing the Morgantown Plant, or Both the Morgantown and Dickerson Plants, After Completion of the SCRs

182. Notwithstanding the foregoing, Mirant shall not be subject to the provisions of this Section XVIII (Severing the Morgantown Plant or Both the Morgantown and Dickerson Plants: Alternative Control Requirements) if: (a) Mirant has completed installation of the SCRs as required by Paragraphs 53 and 54; and (b) the provisions of Sections IV.B. (Morgantown Plant), IV.E. (Use of NOx Allowances), IV.F. (Surrender of NOx Allowances), IV.G. (NOx CEMs), IX (Periodic Reporting), X (Review and Approval of Submittals), XV (Information Collection and Retention), XVI (Notices), Paragraph 206 (regarding significant digits) and the allocated system-wide obligations that are applicable to the Severed Plant(s) as specified in Appendix B are imposed and federally

enforceable against a new owner or operator of the Severed Plant(s) by law, order, rule, regulation or permit. In such event, Mirant and the Plaintiffs shall execute and seek to obtain court approval of a modification to this Consent Decree relieving Mirant of the obligations and liabilities that pertain exclusively to the Severed Plant(s).

183. Unless and until the modification referred to in Paragraph 182 is entered by the Court, Mirant shall remain liable for all the requirements of this Consent Decree, including those that may be applicable to the Severed Plant(s), and any rejection or loss of Ownership Interest in the Severed Plant(s) shall not constitute a Force Majeure Event.

184. In no event shall a modification executed pursuant to Paragraph 182 release Mirant from any obligation under this Consent Decree that is not specifically applicable to the Morgantown Plant, including but not limited to the obligations set forth in Sections VI (Environmental Projects) and VII (Civil Penalty) of this Consent Decree.

XIX. SEVERING THE MORGANTOWN PLANT: REVISED SYSTEM-WIDE NO_x EMISSION LIMITATIONS

185. If Mirant rejects and/or loses its Ownership Interest in the Morgantown Plant but continues to operate the Dickerson Plant, in addition to the other applicable requirements of this Consent Decree: (a) the System-Wide Annual Tonnage Limitations for NOx, set forth in Paragraph 57, shall be revised to be the sum of the annual tonnage limitations set forth in Appendix B as applicable to the Potomac River Plant, the Chalk Point Plant, and the Dickerson Plant; (b) the System-Wide Ozone Season Tonnage Limitations for NOx, set forth in Paragraph 58, shall be revised to be the sum of the ozone season tonnage limitations set forth in Appendix B as applicable to the Potomac River Plant, the Chalk Point Plant, and the Dickerson Plant, and (c) the System-Wide Ozone Season Emission Rate, set forth in Paragraph 59, for the Potomac River Plant, the

Chalk Point Plant and the Dickerson Plant shall be calculated for each Ozone Season as follows:

(sum of the Ozone Season NOx tonnage limits in Appendix B applicable to each remaining Mirant System plant
÷
the sum of the Actual 2002 Ozone Season Heat Input for each remaining Mirant System plant)
×
2,000 lb/ton.

The revised System-Wide NOx Emission Limitations shall be effective on the date the Ownership Interest is lost or rejected. When that date occurs mid-year or during the Ozone Season, the System-Wide Ozone Season Tonnage Limitation, the System-Wide Annual Tonnage Limitation and the System-Wide Ozone Season Emission Rate shall be prorated in accordance with Appendix C.

186. If Mirant rejects or loses its Ownership Interest in both the Morgantown and Dickerson Plants, as described in Paragraphs 137 and 138, Mirant shall comply with revised system-wide NO_x emissions limitations in accordance with Paragraph 189, below.

XX. SEVERING THE DICKERSON PLANT: REVISED SYSTEM-WIDE NO_x EMISSION LIMITATIONS

187. In the event that:

a. Mirant, at any time, either rejects or loses its Ownership Interest in the Dickerson Plant, as described in Paragraphs 137 and 138, and

b. Mirant fails to timely secure the agreement of a new owner or operator to be bound by the obligations of this Consent Decree in accordance with Paragraphs 139 through 141,

the provisions of this Section XX (Severing the Dickerson Plant: Revised System-Wide NO_x Emission Limitations) shall apply.

188. If Mirant rejects and/or loses its Ownership Interest in the Dickerson Plant but continues to operate the Morgantown Plant, in addition to the other applicable requirements of this Consent Decree: (a) the System-Wide Annual Tonnage Limitations for NOx, set forth in Paragraph 57, shall be revised to be the sum of the annual tonnage limitations set forth in Appendix B as applicable to the Potomac River Plant, the Chalk Point Plant, and the Morgantown Plant; (b) the System-Wide Ozone Season Tonnage Limitations for NOx, set forth in Paragraph 58, shall be revised to be the sum of the ozone season tonnage limitations set forth in Appendix B as applicable to the Potomac River Plant, the Chalk Point Plant, and the Morgantown Plant, and (c) the System-Wide Ozone Season Emission Rate, set forth in Paragraph 59, for the Potomac River Plant, the Chalk Point Plant, and the Morgantown Plant shall be calculated for each Ozone Season as follows:

(sum of the Ozone Season NOx tonnage caps in Appendix B applicable to each remaining Mirant System plant
÷
the sum of the Actual 2002 Ozone Season Heat Input for each remaining Mirant System plant)
×
2,000 lb/ton.

The revised system-wide NOx emission limitations shall be effective on the date the Ownership Interest is lost or rejected. When that date occurs mid-year or during the Ozone Season, the System-Wide Ozone Season Tonnage Limitation, the System-Wide Annual Tonnage Limitation and the System-Wide Ozone Season Emission Rate shall be prorated in accordance with Appendix C.

XXI. SEVERING THE MORGANTOWN AND DICKERSON PLANTS: REVISED SYSTEM-WIDE NOx EMISSION LIMITATIONS

189. If Mirant rejects and/or loses its Ownership Interest in both the Morgantown and Dickerson Plants, as described in Paragraphs 137 and 138, in addition to the other

applicable requirements of this Consent Decree: (a) the System-Wide Annual Tonnage Limitations for NOx, set forth in Paragraph 57, shall be revised to be the sum of the annual tonnage limitations set forth in Appendix B as applicable to the Potomac River Plant and the Chalk Point Plant; (b) the System-Wide Ozone Season Tonnage Limitations for NOx, set forth in Paragraph 58, shall be revised to be the sum of the ozone season tonnage limitations set forth in Appendix B as applicable to the Potomac River Plant and the Chalk Point Plant; and (c) the System-Wide Ozone Season Emission Rate, set forth in Paragraph 59, for the Potomac River Plant and the Chalk Point Plant shall be calculated as follows:

(sum of the Ozone Season NOx tonnage caps in Appendix B applicable to each remaining Mirant System plant
÷
the sum of the Actual 2002 Ozone Season Heat Input for each remaining Mirant System plant)
×
2,000 lb/ton.

The revised system-wide NOx emission limitations shall be effective on the date the Ownership Interest is lost or rejected. When that date occurs mid-year or during the Ozone Season, the System-Wide Ozone Season Tonnage Limitation, the System-Wide Annual Tonnage Limitation and the System-Wide Ozone Season Emission Rate shall be prorated in accordance with Appendix C.

XXII. SALES OR TRANSFERS OF OWNERSHIP INTERESTS

190. If Mirant proposes to sell or transfer all or part of Mirant's Ownership Interest in any Unit in the Mirant System to a Third Party Transferee, prior to the execution of any agreement for such sale or transfer, Mirant shall advise the Third Party Transferee in writing of the existence of this Consent Decree, provide a copy of this Consent Decree to

such Transferee, and, within 10 days after execution of such agreement, send a copy of such written notification to the Plaintiffs pursuant to Section XVI (Notices) of this Consent Decree. Any agreement for sale or transfer of a Ownership Interest shall provide, as a condition of sale or transfer, and effective as of the Transfer Closing, that: (a) the Third Party Transferee agrees to be bound by the obligations of this Consent Decree as they are described in Subparagraphs a. or b., below, as applicable; and (b) that such obligations under this Consent Decree shall be directly enforceable against the Third Party Transferee.

In any such transfer of an Ownership Interest, upon the completion of such sale or transfer ("Transfer Closing Date"), the Third Party Transferee shall assume the following obligations and liabilities:

a. (1) all applicable Plant-specific and Unit-specific obligations set forth in Section IV of this Consent Decree;

(2) the allocated system-wide obligations of the Consent Decree that are applicable to the sold or transferred Ownership Interest, as specified in Appendix B, and which shall apply in lieu of the Mirant system-wide obligations in Section IV.C. and D. of this Consent Decree; provided, that if, following any sale or transfer pursuant to this Section XXII, or after severance of an Ownership Interest pursuant to Paragraphs 137 or 138, the Third Party Transferee owns or operates more than one plant, then: (i) the applicable Ozone Season NOx tonnage limitations shall be the sum of the Ozone Season NOx tonnage limitations set forth in

Appendix B for each such plant; (ii) the applicable annual NOx tonnage limitations shall be the sum of the annual NOx tonnage limitations set forth in Appendix B for each such plant; and (iii) the applicable Ozone Season NOx emission rate shall be calculated for each Ozone Season as follows:

(the sum of the Ozone Season NOx tonnage caps in Appendix B applicable to each plant
÷
the sum of the Actual 2002 Ozone Season Heat Input for each plant)
×
2,000lb/ton.

The allocated system-wide NOx emission limitations shall be effective on the date the Ownership Interest is sold or transferred. When that date occurs mid-year or during the Ozone Season, the System-Wide Ozone Season Tonnage Limitation, the System-Wide Annual Tonnage Limitation and the System-Wide Ozone Season Emission Rate shall be prorated in accordance with Appendix C.;

and

(3) all requirements of this Consent Decree that are not specific to any particular plant in the Mirant System, except Sections VI (Environmental Projects) and VII (Civil Penalty), obligations which are exclusively Mirant's; or

b. Any variation of the obligations in Subparagraph (a), above, that has been agreed upon by Mirant, the Third Party Transferee, and the Plaintiffs.

Prior to the Transfer Closing Date, Mirant shall provide to the Plaintiffs, in accordance with Section XVI (Notices): (a) a copy of the aforesaid agreement for sale or transfer of an Ownership Interest, or the portion thereof demonstrating the Third Party Transferee's assumption of obligations; (b) information regarding the technical and financial capabilities of the Third Party Transferee; and (c) a draft modification pursuant to Section XXV (Modification) that makes the Third Party Transferee a party to this Consent Decree.

191. No later than sixty (60) days after the provision of such documents to the Plaintiffs, Mirant, the Third Party Transferee, and the Plaintiffs shall execute the above modification, to be effective at the Transfer Closing, which the Parties shall submit to the Court for approval.

192. In any such modification submitted pursuant to Paragraph 191, Mirant may also request that the modification relieve Mirant of its obligations and liabilities under this Consent Decree to the extent obligations are undertaken by the Third Party Transferee with respect to the purchased or transferred Ownership Interests (and the draft modification submitted by Mirant shall incorporate language providing such relief from liability). Provided the conditions of Paragraph 190 are satisfied, Plaintiffs will not oppose such request if they determine that such transfer of liability and obligations is justified upon consideration of the Third Party Transferee's technical capability, financial capability and history of administratively noticed or judicially alleged events of environmental noncompliance.

193. Unless and until such modification relieving Mirant of liability for the obligations and liabilities associated with the transferred Ownership Interest is entered by the Court,

Mirant shall remain liable for all the requirements of this Consent Decree, including those that may be applicable to the purchased or transferred Ownership Interests.

194. In no event shall a modification submitted pursuant to Paragraph 191 assign to a Third Party Transferee, or release Mirant from, any obligation under this Consent Decree that is not specifically applicable to the sold or transferred Ownership Interests, including the obligations set forth in Sections VI (Environmental Projects) and VII (Civil Penalty) of this Consent Decree.

195. Notwithstanding anything set forth in this Section, or in Sections XVII (Severance of the Morgantown and/or Dickerson Plants from the Mirant System), XVIII (Severing the Morgantown Plant or Both the Morgantown and Dickerson Plants: Alternative Control Requirements), XIX (Severing the Morgantown Plant: Revised System-Wide NO_x Emission Limits), XX (Severing the Dickerson Plant: Revised System-Wide NO_x Emission Limitations) or XXI (Severing the Morgantown and Dickerson Plants: Revised System-Wide NO_x Emission Limitations), the Potomac River Plant may not exceed the emissions limitations assigned to it in Section IV, Subsection A of this Consent Decree, and no loss of Ownership Interest in any Unit in the Mirant System may affect this requirement.

196. Nothing in this Section is intended to affect or waive any rights the Plaintiffs may have against a Third Party Transferee in the enforcement of this Consent Decree, consistent with Paragraph 2 of this Decree.

XXIII. EFFECTIVE DATE

197. On July 14, 2003 and July 15, 2003, Mirant and certain of its affiliates filed voluntary petitions in the United States Bankruptcy Court for the Northern District of Texas (the

"Bankruptcy Court") for relief under chapter 11 of Title 11 of the United States Code, Case No. 03-46590 (DML). From and after the date of execution of this Consent Decree, Mirant shall use its best efforts to obtain, on an expedited basis, approval of Mirant's entry into this Consent Decree by the Bankruptcy Court, under Federal Rule of Bankruptcy Procedure 9019, but in any event shall move for such approval no later than 60 days after lodging of this Decree, unless the Plaintiffs agree to a limited extension of this period. The parties agree that this Consent Decree shall not be binding on Mirant without the approval of the Federal Bankruptcy Court for the Northern District of Texas.

198. The effective date of this Consent Decree shall be the later of: (a) the date upon which this Consent Decree is entered by this Court; or (b) the date upon which Mirant's entry into this Consent Decree is approved by the Bankruptcy Court.

XXIV. RETENTION OF JURISDICTION

199. The Court shall retain jurisdiction of this case after entry of this Consent Decree to enforce compliance with the terms and conditions of this Consent Decree and to take any action necessary or appropriate for its interpretation, construction, execution, modification or adjudication of disputes. During the term of this Consent Decree, any Party to this Consent Decree may apply to the Court for any relief necessary to construe or effectuate this Consent Decree.

XXV. MODIFICATION

200. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

XXVI. GENERAL PROVISIONS

201. This Consent Decree does not apply to any claim(s) of alleged criminal liability.

202. In any subsequent administrative or judicial action initiated by the Plaintiffs for injunctive relief or civil penalties relating to the facilities covered by this Consent Decree, Mirant shall not assert any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, or claim splitting, or any other defense based upon the contention that the claims raised by the Plaintiffs in the subsequent proceeding were brought, or should have been brought, in the instant case.

203. Except as specifically provided by this Consent Decree, nothing in this Consent Decree shall relieve Mirant of its obligation to comply with all applicable federal, state, and local laws and regulations. Nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the Plaintiffs to obtain penalties or injunctive relief under the Act or other federal, state, or local statutes, regulations, or permits.

204. Every term expressly defined by this Consent Decree shall have the meaning given to that term by this Consent Decree and, except as otherwise provided in this Consent Decree, every other term used in this Consent Decree that is also a term under the Act or the regulations implementing the Act shall mean in this Consent Decree what such term means under the Act or those implementing regulations.

205. Each limit and/or other requirement established by or under this Consent Decree is a separate, independent requirement.

206. Performance standards, emissions limits, and other quantitative standards set by or under this Consent Decree 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 Consent Decree expressly directs otherwise, the calculation and measurement procedures established under 40 C.F.R. Part 75 apply to the measurement and calculation of NO_x and SO_2 emissions under this Consent Decree.

207. This Consent Decree does not limit, enlarge or affect the rights of any Party to this Consent Decree as against any third parties.

208. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree, and supercedes all prior agreements and understandings among the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding, or promise constitutes any part of this Consent Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

209. Each Party to this action shall bear its own costs and attorneys' fees.

210. Mirant has agreed that it will not propose or support any Plan of Reorganization in the Mirant Bankruptcy Proceedings that contains any language that has the effect of altering or abridging the provisions of the Consent Decree and the obligations thereunder. The Plan or Confirmation Order provides that: "Nothing in the Plan or the Confirmation

Order shall adversely affect in any way the rights and remedies of the United States, the Commonwealth of Virginia, or the State of Maryland under the actions styled as United States, et al. v. Mirant Potomac River, LLC and Mirant Mid-Atlantic LLC, No. 1:04CV1136 (E.D. Va.), including without limitation, the Consent Decree therein and any amendment(s) thereto ("E.D. Va. Actions"). Nor shall anything in the Plan or Confirmation Order divest or limit the jurisdiction of the United States District Court for the Eastern District of Virginia over the E.D. Va. Actions. Upon the Effective Date of the Plan, the E.D. Va. Actions shall survive the bankruptcy case and may be adjudicated and enforced in the United States District Court for the Eastern District of Virginia, provided, however, that Bankruptcy Court approval must be obtained for any allowance of an administrative expense."

211. The penalties provided for under Paragraphs 79 and 81 of this Consent Decree shall be allowed administrative expenses and shall be paid in full under the Plan of Reorganization. The filing of this Consent Decree as an attachment to Mirant's motion for approval of Mirant's entry into the Consent Decree shall satisfy any requirement for the United States and/or Virginia to file an application for administrative expense for such penalties, and shall also constitute the filing of an application for, and satisfy any requirement for the filing of an application for, a contingent administrative expense for civil penalties in the event that the Consent Decree, as amended, is not approved.

XXVII. SIGNATORIES AND SERVICE

212. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind to this document the Party he or she represents.

213. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

214. Each Party hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXVIII. PUBLIC COMMENT

215. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the procedures of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and the right of the United States to withdraw or withhold consent if the comments disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. Mirant shall not oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified Mirant, in writing, that the United States no longer supports entry of the Consent Decree.

XXIX. CONDITIONAL TERMINATION OF ENFORCEMENT UNDER CONSENT DECREE

216. After Mirant:

a. Has successfully completed construction, and has maintained operation, of all pollution controls as required by this Consent Decree;

b. Has obtained final Title V permits (i) as required by the terms of this Consent Decree; (ii) that cover all Units in this Consent Decree; and (iii) that include as enforceable permit terms all of the Unit performance

requirements, all plant-specific and system-wide NO_x limitations, and all other requirements specified in Section XIV (Permits) of this Consent Decree; and

c. Certifies that the date is later than December 31, 2011;

then Mirant may so certify these facts to the Plaintiffs and this Court. If the Plaintiffs do not object in writing with specific reasons within forty-five (45) days of receipt of Mirant's certification, then, for any violations that occur after the filing of notice, the Plaintiffs shall pursue enforcement of the requirements contained in the Title V permit through the applicable Title V permit and not through this Consent Decree.

217. Notwithstanding Paragraph 216, if enforcement of a provision in this Consent Decree cannot be pursued by a Party under the applicable Title V permit, or if a Consent Decree requirement was intended to be part of a Title V Permit and did not become or remain part of such permit, then such requirement may be enforced under the terms of this Consent Decree.

XXX. FINAL JUDGMENT

218. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment in the above-captioned matter between the Plaintiffs and Mirant.

SO ORDERED, THIS _____ DAY OF _____, 2006
UNITED STATES DISTRICT COURT JUDGE

Signature Page for Amended Consent Decree in:

United States of America, State of Maryland and David K. Paylor, Director, Commonwealth of Virginia Department of Environmental Quality
v.
Mirant Potomac River, LLC and Mirant Mid-Atlantic, LLC

FOR THE UNITED STATES OF AMERICA:

_____
SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

_____
ARNOLD ROSENTHAL, Senior Counsel
NICOLE VEILLEUX, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

PAUL J. MCNULTY
United States Attorney

_____
RICHARD W. SPONSELLER (VSB 39402)
Assistant United States Attorney
2100 Jamieson Avenue
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Signature Page for Amended Consent Decree in:

United States of America, State of Maryland and David K. Paylor, Director, Commonwealth of Virginia Department of Environmental Quality
v.
Mirant Potomac River, LLC and Mirant Mid-Atlantic, LLC

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GRANTA Y. NAKAYAMA
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

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ADAM M. KUSHNER
Acting Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

_____
EDWARD J. MESSINA
Attorney Advisor
Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

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DONALD S. WELSH
Regional Administrator, Region 3
U.S. Environmental Protection Agency

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FOR THE COMMONWEALTH OF VIRGINIA:

_____
CARL JOSEPHSON
Senior Assistant Attorney General
Commonwealth of Virginia

_____
DAVID K. PAYLOR
Director
Department of Environmental Quality
Commonwealth of Virginia

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FOR THE STATE OF MARYLAND:

_____
KENDL P. PHILBRICK, Secretary
Maryland Department of the Environment

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

_____
KATHY M. KINSEY
Assistant Attorney General
Office of the Maryland Attorney General

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FOR MIRANT POTOMAC RIVER, LLC, MIRANT CHALK POINT, LLC AND MIRANT MID-ATLANTIC, LLC:

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