

Schnader
ATTORNEYS AT LAW

2001 PENNSYLVANIA AVENUE, NW SUITE 300
WASHINGTON, DC 20006-1825
202.419.4200 FAX 202.419.3454 schnader.com

May 4, 2007

John B. Britton
Direct dial 202-419-4218
Direct fax 202-419-4258
E-mail address: jbritton@schnader.com

Via E-Mail

Michael Dowd
Director of Enforcement
Virginia Department of Environmental Quality
629 E. Main Street
P.O. Box 1105
Richmond, VA 23218

**Re: Comments on Proposed Draft Orders; Mirant Potomac River
Generating Station, Alexandria, Virginia**

Dear Mr. Dowd:

The City of Alexandria appreciates this opportunity to comment on the two proposals submitted to the State Air Pollution Control Board ("SAPCB") for an interim regime for the operation after June 1, 2007 of the Potomac River Generating Station ("PRGS"). Accordingly, in response to the Virginia Department of Environmental Quality's ("VDEQ") public notice of April 20, 2007, Alexandria hereby submits the following comments on (i) the VDEQ/Mirant Draft Consent Order and (ii) Alexandria's Draft Order. Alexandria also looks forward to a continuing public dialogue with VDEQ and Mirant to reach agreement on the implementation of a short-term, interim consent order. In a separate letter, Alexandria will submit its comments concerning the SAPCB's proposed permitting options, which Alexandria has concluded is a preferred approach that will more reliably limit sulfur dioxide ("SO₂") emissions to satisfy the National Ambient Air Quality Standards ("NAAQS"). For purposes of these comments, however, Alexandria submits that its proposed Draft Order provides better protection for the public health than the VDEQ/Mirant Consent Order and more quickly leads to the ultimate goal of a comprehensive state operating permit ("SOP").

1. Alexandria prefers a permit over an order. As stated above, Alexandria prefers that the SAPCB issue a short-term, interim permit for the operation of the PRGS pending the issuance of a comprehensive SOP. The SAPCB's proposed permitting options establish emission limits that provide greater certainty of compliance with SO₂ NAAQS than either the proposed Draft Consent Order or the proposed Draft Order. Limits that reflect the capability of the Trona technology to minimize emissions at all times of facility's operation on a sustained basis are required by VDEQ regulations. 9 VAC 5-20-40.E. Alexandria submits that several of the SAPCB's permit options will provide limits that satisfy this regulatory requirement while the VDEQ/Mirant Draft Consent Order does not. Alexandria reiterates its long-standing support for

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a comprehensive SOP that ensures compliance with the NAAQS for all criteria pollutants and the applicable Significant Ambient Air Concentration (“SAAC”) guidelines for toxic pollutants, in particular hydrogen chloride (“HCl”) and hydrogen fluoride (“HF”). Although limited to control of SO₂ emissions, the issuance of a short-term, interim operating permit, consistent with the SAPCB’s proposal, advances the ultimate goal of establishing comprehensive emission limitations in a permanent SOP.

2. Alexandria opposes the VDEQ/Mirant Consent Order. The Alexandria Draft Order provides greater protection for the public health than does the VDEQ/Mirant Draft Consent Order. As Alexandria has stated previously, the Environmental Protection Agency’s (“EPA”) Administrative Compliance Order (“ACO”) is not adequately protective of the NAAQS. The ACO allows operation of the PRGS in an unorthodox manner using dispersion techniques that are prohibited by federal and state regulations even in the context of a consent order, *i.e.*, use of daily predictive modeling and ambient monitoring (intermittent controls) to establish daily operational levels for the PRGS. Under such techniques, the PRGS’s operations are increased when favorable weather is forecasted and only reduced when limited ambient monitoring indicates a possible non-compliance situation. The VDEQ/Mirant Draft Consent Order continues the use of these techniques resulting in increased emissions and a reduction in Trona usage on a daily basis. Because of the high SO₂ emission limits allowed under the VDEQ/Mirant Draft Consent Order, the NAAQS and the public health will not be adequately protected. With the termination of the Department of Energy Emergency Order on July 1, 2007, there is no need to extend these unorthodox techniques. For this reason, Alexandria opposes the VDEQ/Mirant Draft Consent Order.

In contrast, Alexandria’s Draft Order specifies lower SO₂ emission limits that are based on limited routine modeling and allow for operational flexibility by providing an adequate margin of compliance. In the spirit of compromise and to accommodate these lower emission limits and the PRGS’s operational requirements, the Draft Order acquiesces in the limited use of predictive modeling and ambient monitoring, notwithstanding Alexandria’s continuing objection to these expedients. Although Alexandria’s Draft Order is more protective of public health than the VDEQ/Mirant Draft Consent Order, it may not demonstrate NAAQS compliance under all weather and operational scenarios. Alexandria submitted the Draft Order with the understanding that it would be limited to a short period of time, *i.e.*, no more than three or four months, and that an SOP with prescriptive emission limits would be issued prior to the Draft Order’s expiration. Because it strikes a more NAAQS-protective balance between a reasonable compliance margin for Mirant and a reasonable assurance of air quality compliance, Alexandria prefers its Draft Order over VDEQ/Mirant’s Draft Consent Order, and would not object to entry of the Order by the SAPCB.

3. Any interim regime must be for a limited duration. The VDEQ/Mirant Draft Consent Order allows PRGS’s operations under the Order to continue for an extended period of

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time, *i.e.*, as much as two to three years. This is inconsistent with the goal of issuing a comprehensive SOP. The primary purpose of any interim regime is to address operations of the PRGS during the month of June 2007 when the ACO would have expired while the two new PEPCO 230 kV transmission lines would not yet be in service. The secondary purpose of any interim regime is to allow VDEQ adequate time to prepare a comprehensive SOP. Accordingly, Alexandria prefers a short-term option, *i.e.*, no more than three to four months, in contrast to the VDEQ/Mirant Draft Consent Order, both to allow PRGS to operate under a regulatory regime after the ACO expires on June 1, 2007 and to provide VDEQ adequate time to issue a comprehensive SOP.

Because modeling of PRGS's emissions did not demonstrate attainment of the NAAQS, Virginia's State Implementation Plan ("SIP") was deficient. EPA's ACO served to cure that deficiency, but the federal order will soon expire. Whatever the SAPCB now does in this matter, that action cannot again cure the renewed SIP deficiency without being approved by EPA as a federally enforceable SIP revision.

4. The regime should not condone a Model Evaluation Study. While EPA's modeling guidelines allow Mirant to perform a model evaluation study ("MES"), neither an order nor a permit should be used as a vehicle to allow such a study. It is not necessary. The MES only serves to prolong the duration of an interim regime and delay the issuance of a comprehensive SOP. If Mirant wishes to pursue the MES, it should do so under a separate protocol, review, public comment and approval process that should not affect the expeditious issuance of a consent order and/or an SOP.

5. Neither an order nor a permit should allow credit for stack merger. For the purpose of setting emissions limitations, Mirant's proposed stack merger is a prohibited dispersion technique under federal and state regulations. Mirant has made no showing whatever that the stack merger is a necessary or even legitimate part of the plant's Trona-based pollution control project, and merely argues that the stack merge is fortuitously contemporaneous with the Trona project. While Alexandria disputes that the two projects were in fact contemporaneously conceived, such happenstance, even if true, would be insufficient to meet the regulatory requirements for approval by the SAPCB of any dispersion technique exemption. While EPA is currently evaluating this issue and has not yet offered any advice on any determination, the VDEQ/Mirant Draft Consent Order allows the proposed stack merge project to proceed by allowing dispersion credit from that project. Given that Mirant's proposed schedule for implementing the stack merge is Fall 2007 or later, this provision serves to both delay the issuance of a permit and establish high emission limits prohibited by law. Although the VDEQ/Mirant Draft Consent Order assumes the stack merger project, the SAPCB reserves the right to determine the validity of Mirant's proposal for dispersion credit. Alexandria objects to any order or permit which allows dispersion credit for the stack merge project.

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6. **The VDEQ/Mirant Draft Consent Order is not protective of short-term SO₂ guidelines.** The SO₂ emission limits in the Draft Consent Order are too high to be protective of the SO₂ five-minute, health-based guideline. While Mirant is currently collecting ambient monitoring data, it does not record five-minute readings. The recording of five-minute readings is essential to ensure protection of this guideline. Furthermore, while Mirant uses the ambient data to reduce operations when impacts approach the NAAQS compliance levels, the trigger level used in this procedure is set too high to be protective of the five-minute guideline. The trigger also is only based on a small number of monitors that do not represent the exposures of concern in terms of both the horizontal and vertical extent of public exposures. Alexandria's Draft Order provides for both the recording and sharing of five-minute SO₂ data, as well as a lower trigger level at which operations must be reduced.

7. **The VDEQ/Mirant Draft Consent Order allows excessive NO_x emissions.** The VDEQ/Mirant Draft Consent Order allows an excessive level of NO_x emissions during the ozone season that will further exacerbate air quality problems in Alexandria and the metropolitan Washington area. The ozone season limit of 1,600 tons will contribute to continuing ozone and fine particulate matter ("PM_{2.5}") problems. Furthermore, the annual NO_x limit of 3,700 tons contained in the VDEQ/Mirant Draft Consent Order has been shown via dispersion modeling to violate the NAAQS. More stringent NO_x limits for the PRGS are necessary to protect the ambient air quality in Alexandria and the region. Alexandria's Draft Order specifies an ozone season NO_x limit of 1,019 tons which is the same as the limit VDEQ specified in its draft operating permit in 2004. While Alexandria's Draft Order maintains the annual NO_x limit of 3,700 tons, the SO₂ emissions limit in the Draft Order will be more restrictive for the PRGS and, together with the ozone season NO_x limit of 1,019 tons, will serve to reduce annual NO_x emissions below 3,700 tons.

8. **The SPCB should require that Mirant collect and report information related to the use of Trona.** Alexandria has raised concerns on numerous occasions regarding the potential for adverse health affects related to the use, handling and disposal of Trona. To date, no health studies have been published regarding exposure to Trona. The Virginia Department of Health ("VDOH") is currently pursuing such a study. In the meantime, it is essential that Mirant collect and maintain data on the quantity of Trona used on an hourly basis for each boiler and provide these records to VDEQ, VDOH and Alexandria for review. Furthermore, the SPCB should require Mirant to perform a post-Trona fly ash analysis to include particle size distribution, elemental analysis, pH, corrosivity and leachability, and report these data to VDEQ, VDOH and Alexandria for review and analysis. In the absence of such data, it is premature for Mirant and VDEQ to claim that Trona is "non-hazardous" and that it forms a "safe non-corrosive product."

The credible evidence to date is that in 1999, the American Society of Governmental Industrial Hygienists (a professional, scientific association formed in 1938 to promote workplace

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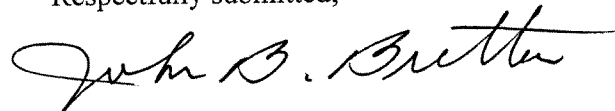
safety) determined that the Threshold Limit Value for exposure to respirable Trona dust should be reduced from 3 mg/m³ to .5 mg/m³, but was forced to rescind this standard in the face of costly lawsuits filed by the Trona industry. More recently, the DOE Special Environmental Assessment found that “[s]elenium concentrations are increased approximately 10-fold in the ash produced when trona is used . . . compared with ash produced by Plant operations without Trona use” DOE/SEA-04, page 99. Tests of leachate from ash samples produced during trona injection “contained detectable levels of arsenic and selenium,” which as measured “exceed the primary drinking water standard” for both toxins, and in one sample the selenium concentration exceeded the “threshold for identifying a waste material as a hazardous waste.” DOE/SEA-04, page 101. Thus, since the record before the SAPCB is devoid of any evidence that Mirant’s use of Trona is safe or environmentally sound, Alexandria objects to the use of Trona other than as a short-term, interim control technology.

9. The SAPCB should establish a Local Air Pollution Control District.

Alexandria reiterates its request, pursuant to Virginia Code § 10.1-1312, that (i) the SAPCB establish a Local Air Pollution Control District, comprising areas of Alexandria impacted by the operations of the PRGS and (ii) a Local Air Pollution Control Committee. The unique circumstances of the PRGS—age, stack height and constrained location—warrant the establishment of a Local District and implementation of strict review and oversight. Furthermore, a Local Air Pollution Control District is consistent with the SAPCB’s mandate to consider the character and degree of the public health impacts of the PRGS and the suitability of the site in which the plant is located. Virginia Code § 10.1-1307E. Alexandria, a local air pollution control agency, and public official and resident representatives are well placed to comprise the Local District Committee and ensure the plant’s compliance with respect to its emissions and other site activities.

Again, Alexandria appreciates this opportunity to participate with VDEQ and Mirant in this consent order process, and looks forward to further discussions. If you have any questions, please contact me at (202) 419-4218.

Respectfully submitted,



John B. Britton
Counsel for the City of Alexandria

Ignacio B. Pessoa
City Attorney
City of Alexandria

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cc: The Honorable James P. Moran
The Honorable Richard L. Saslaw, Senate of Virginia
The Honorable Patricia S. Ticer, Senate of Virginia
The Honorable Adam P. Ebbin, Virginia House of Delegates
The Honorable David L. Englin, Virginia House of Delegates
The Honorable Brian J. Moran, Virginia House of Delegates
The Honorable Mayor and Members of Alexandria City Council
Donald S. Welsh, Regional Administrator, EPA III
Judith Katz, Director, Air Protection, EPA III
Richard D. Langford, Chairman, Virginia SAPCB
Bruce C. Buckheit, Virginia SAPCB
John N. Hanson, Virginia SAPCB
Hullihen Williams Moore, Virginia SAPCB
Vivian E. Thomson, Virginia SAPCB
David Paylor, Director, VDEQ
James K. Hartmann, City Manager, Alexandria
Richard J. Baier, Director, T&ES, Alexandria
William J. Skrabak, T&ES, Alexandria

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