

ATTACHMENT D

City's letter to Director Paylor, VDEQ, and SAPCB, "Proposed Stationary Source Permit to Operate Dated October 19, 2007 and SAPCB Meeting on November 30, 2007; Mirant PRGS, Alexandria, Virginia", November 29, 2007



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November 29, 2007

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**Re: Proposed Stationary Source Permit to Operate Dated October 19,
2007 and SAPCB Meeting on November 30, 2007; Mirant Potomac
River Generating Station, Alexandria, Virginia**

Dear Director Paylor and Honorable Board Members:

At the request of the City of Alexandria Mayor and City Council, we are writing to express the City of Alexandria's deep dissatisfaction and frustration with (i) the format of the November 19, 2007 proceeding concerning the above-referenced proposed operating permit and (ii) the eleventh hour and surreptitious manipulation of the November 30, 2007 State Air Pollution Control Board ("SAPCB") meeting agenda to include a discussion of an operating permit for the Mirant Potomac River power plant that would allow emissions from two merged stacks instead of five.

First, on November 15, 2007, Alexandria sent a letter requesting a full participatory hearing in Alexandria on the proposed operating permit. To date there has been no response to our letter. In that letter we set out the public's understanding, as confirmed by the Department of Environmental Quality ("DEQ") of the attendance and participation of SAPCB members at the November 19th proceeding. We understood their participation in the proceeding to be fully responsive to the SAPCB's regulations for

public participation in a permit process particularly where, as here, there is significant public interest in the air quality issues implicated by the permit and there are relevant and substantial disputed air quality issues. 9 VAC 5-80-270. Unfortunately, the November 19th proceeding did not include any SAPCB member. In fact, as you know, two SAPCB members were present prior to the proceeding and, on the advice of the Attorney General, departed before the proceeding began. This completely undercut Alexandria and northern Virginia elected officials' and the public's anticipation of the tenor and scope of the proceeding and further eroded the public's confidence in the legitimate outcome of the proceeding.

In Director Paylor's public explanation for the SAPCB members' absence, he stated that it was not standard procedure for SAPCB members to attend such proceedings which typically are conducted by DEQ staff. This ignores, however, both the SAPCB's exclusive jurisdiction concerning all matters related to permitting for the Mirant plant and the fact that the SAPCB conducted the hearing for the current operating permit issued on June 1, 2007. Accordingly, with respect to the Mirant plant, reliance on standard hearing procedures should not be assumed and is not warranted. Director Paylor further informed the public that "everybody who's here will have an opportunity to address the [SAPCB] at the meeting that they hold where they will begin to consider the permit. So you'll still have another opportunity to talk to the [SAPCB] before the decisions are made."

Director Paylor's sweeping statement suggests another full evidentiary hearing on the proposed operating permit before the SAPCB, a contradiction to the typical practice to preclude at regular meetings public comments on specific meeting agenda items. This is either an attempt to mislead the public or negligent and careless behavior in implementing this permit process. In any event, Director Paylor publicly committed to a public hearing on the proposed permit before the SAPCB for anyone in the public who is interested and, pursuant to the SAPCB's regulations, such hearing should be held in Alexandria. Considering DEQ's intent to submit a two-stack operating permit for the SAPCB's consideration, we wonder how quickly Director Paylor's statement will become yet another hollow public commitment made by the DEQ.

Subsequent to the November 19th proceeding and in the evening before the Thanksgiving holiday, DEQ posted a notice of a change in agenda for the SAPCB's November 30th meeting in Newport News, Virginia, related to the Mirant plant—the discussion of a "synthetic minor source permit" for Mirant that would accommodate a merged two-stack operation. Remarkably, Director Paylor and the other DEQ staff in attendance at the November 19th proceeding failed to mention their plan to submit a two-stack permit for consideration; a scheme that was being implemented prior to the November 19th proceeding. This behavior shattered all pretense of transparency, fair play and public involvement—an absolute subversion of the public trust. Alexandria's position is crystal clear—any discussion concerning the operation of the plant and potential operating permit, particularly one that involves a stack merger, must be held in Alexandria with proper notice and full participation of the public.

With respect to any permit that accommodates the stack merge, Alexandria reiterates its previously submitted objections. On September 13, 2007, the SAPCB determined that the stack merger project requires a pre-construction New Source Review ("NSR") permit. Alexandria fully supports this position. Importantly, an NSR analysis is a critical first step because pollution controls that are required as a result of the construction project will necessarily drive the emission limits in the operating permit. The two-stack permit presented by DEQ on October 5, 2007 does not include emission limits that are reflective of the degree of emission controls that would be required under an NSR analysis. Furthermore, the two-stack permit differs from the publicly noticed five-stack permit only in that it permits significantly relaxed short-term emission limits. In so doing, it unilaterally and illegally grants Mirant dispersion credit for the stack merger and reveals the project for what it really is, an effort to increase emission limits and increase production through nothing other than pollution dispersion. Both Arlington and Fairfax counties have publicly expressed their concerns with and opposition to any effort by the plant to simply disperse the pollutants into neighboring jurisdictions (see attached comments).

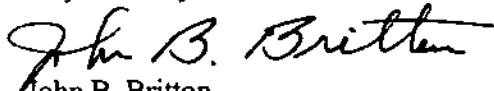
The goals of the Clean Air Act are furthered by reduction of pollutants through enhanced control technology. Since no pollution controls are required as part of the proposed two-stack permit, the two-stack operation allows Mirant to employ a prohibited dispersion technique. Accordingly, absent a comprehensive analysis pursuant to a pre-construction NSR permit, a two-stack permit is adverse to the public interest. Any such permit would allow Mirant to illegally construct another project at the Potomac River plant without necessary NSR analysis, thereby continuing Mirant's legacy of Clean Air Act violations.

Alexandria strongly urges the SAPCB to categorically reject the proposed two-stack permit at this time. On behalf of the Alexandria Mayor and City Council and pursuant to 9 VAC 5-80-270.E, we formally request a full evidentiary hearing in Alexandria to address all issues related to the Mirant plant.

Sincerely,



Ignacio B. Pessoa
City Attorney



John B. Britton
Schnader Harrison Segal and Lewis LLP

Counsel for the City of Alexandria

Attachments

cc: The Honorable James P. Moran
The Honorable Tim Kaine
Mark Rubin, Sr. Adv., Governor
The Honorable L. Preston Bryant, Jr.
The Honorable Richard L. Saslaw, Senate of Virginia
The Honorable Patricia S. Ticer, Senate of Virginia
The Honorable Mary Margaret Whipple, Senate of Virginia
The Honorable Bob Brink, Virginia House of Delegates
The Honorable Adam P. Ebbin, Virginia House of Delegates
The Honorable David L. Englin, Virginia House of Delegates
The Honorable Al Eisenberg, Virginia House of Delegates
The Honorable Brian J. Moran, Virginia House of Delegates
The Honorable Mayor and Members of City Council
Michael G. Dowd, VDEQ
Jim Sydnor, VDEQ
Richard Weeks, VDEQ
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